

GOOD GOVERNANCE: THOUGHTS ON THE ROLES AND ACTIONS OF MUNICIPAL OFFICIALS AND STAFF

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COLLINGWOOD JUDICIAL INQUIRY - NOV. 27, 2019

OUTLINE

- Roles – Council, Mayor, Council Member, CAO, Treasurer, Staff (and Volunteers) Generally, Town Solicitor in Law and Practice
- Relationships (1) – Direction of Staff (Council/Staff; Mayor/Staff; Council Member/Staff; CAO/Staff) in Law and Practice
- Relationships (2) – Delegation to Council Members; To Staff and to third Parties In Law and Practice
- Regulation of Relationships – Preventing Improper Influences and Inappropriate Conduct - Statutes, Codes, Contracts and Customs – Acculturation and Enforcement

THE STATUTORY FRAMEWORK – MUNICIPAL ACT

- Powers Exercised by Council – s.5
- Delegation – General – s. 23.1
- Role of Council – s. 224
- Role of Head of Council – s. 225
- Head of Council as CEO – s. 226.1
- Role of Municipal Administration – s.227
- Roles of Clerk (s.228), CAO (s.229) and Treasurer (s.285)

ROLE OF COUNCIL

224 It is the role of council,

- (a) to represent the public and to consider the well-being and interests of the municipality;
- (b) to develop and evaluate the policies and programs of the municipality;
- (c) to determine which services the municipality provides;
- (d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
- (d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- (e) to maintain the financial integrity of the municipality; and
- (f) to carry out the duties of council under this or any other Act.

CENTRALITY OF COUNCIL

- 5 (1) The powers of a municipality shall be exercised by its council.
- 23.1 (1) Without limiting sections 9, 10 and 11, those sections authorize a municipality to delegate its powers and duties under this or any other Act to a person or body subject to the restrictions set out in this Part.

ROLE OF HEAD OF COUNCIL (I)

225 It is the role of the head of council,

- (a) to act as chief executive officer of the municipality;
- (b) to preside over council meetings so that its business can be carried out efficiently and effectively;
- (c) to provide leadership to the council;
- (c.1) without limiting clause (c), to provide information and recommendations to the council with respect to the role of council described in clauses 224 (d) and (d.1);
- (d) to represent the municipality at official functions; and
- (e) to carry out the duties of the head of council under this or any other Act.

ROLE OF HEAD OF COUNCIL (2)

226.1 As chief executive officer of a municipality, the head of council shall,

- (a) uphold and promote the purposes of the municipality;
- (b) promote public involvement in the municipality's activities;
- (c) act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally; and
- (d) participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents

ROLE OF COUNCIL MEMBER

- Undefined in Ontario's Municipal Act
- Note – role of councillor discussed in Municipal Councillor's Handbook, 2018 (Ontario):

Three principle roles outlined in the handbook:

- Representative
- Policy maker
- Steward

ROLE OF MUNICIPAL ADMINISTRATION – OF OFFICERS AND EMPLOYEES (STAFF) GENERALLY

227 It is the role of the officers and employees of the municipality,

- (a) to implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
- (b) to undertake research and provide advice to council on the policies and programs of the municipality; and
- (c) to carry out other duties required under this or any Act and other duties assigned by the municipality.

REQUIRED OFFICERS (I) – ROLE OF CLERK

228 (I) A municipality shall appoint a clerk whose duty it is,

- (a) to record, without note or comment, all resolutions, decisions and other proceedings of the council;
- (b) if required by any member present at a vote, to record the name and vote of every member voting on any matter or question;
- (c) to keep the originals or copies of all by-laws and of all minutes of the proceedings of the council;
- (d) to perform the other duties required under this Act or under any other Act; and
- (e) to perform such other duties as are assigned by the municipality.

REQUIRED OFFICERS (2) – ROLE OF TREASURER

286 (1) A municipality shall appoint a treasurer who is responsible for handling all of the financial affairs of the municipality on behalf of and in the manner directed by the council of the municipality, including,

- (a) collecting money payable to the municipality and issuing receipts for those payments;
- (b) depositing all money received on behalf of the municipality in a financial institution designated by the municipality;
- (c) paying all debts of the municipality and other expenditures authorized by the municipality;
- (d) maintaining accurate records and accounts of the financial affairs of the municipality;
- (e) providing the council with such information with respect to the financial affairs of the municipality as it requires or requests;
- (f) ensuring investments of the municipality are made in compliance with the regulations made under section 418, if applicable; and
- (g) complying with any requirements applicable to the treasurer under section 418.1.

STATUTORILY PERMITTED SENIOR OFFICER – ROLE OF CAO

229 A municipality may appoint a chief administrative officer who shall be responsible for,

- (a) exercising general control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality; and
- (b) performing such other duties as are assigned by the municipality

ROLE OF TOWN SOLICITOR

- Not required by legislation
- Prudent to create position or more minimally to have contractually established method of obtaining legal advice
- Roles include providing or directing the provision of legal advice on wide array of matters from real estate through human rights, conducting or supervising litigation, preparing or supervising the production of legal documents and providing legal insight into policy development
- Need for direct reporting relationship to council

VOLUNTEER ROLES

- Complex array of voluntary positions – board and committee positions through recreation workers through volunteer firefighters
- Comprehensive management of municipal volunteers rare – importance of risk management and liability issues
- Role definition specific to position(s)

REQUIRED FUNCTION – INTEGRITY COMMISSIONER

223.3 (1) Without limiting [sections 9, 10](#) and [11](#), those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to any or all of the following: **application of the code of conduct.; application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council; application of [sections 5, 5.1](#) and [5.2](#) of the *Municipal Conflict of Interest Act* ; Requests from members of council and of local boards for advice on Code, and on MCIA ; and provision of educational information re Code and MCIA**

Provision for functions if no Commissioner appointed

- **(1.1) If a municipality has not appointed a Commissioner under subsection (1), the municipality shall make arrangements for all of the responsibilities set out in that subsection to be provided by a Commissioner of another municipality**

REQUIRED CODE OF CONDUCT

- **223.2** (1) A municipality shall establish codes of conduct for members of the council of the municipality and of its local boards. 2017, c. 10, Sched. 1, [s. 18](#).
- **Same**
- (2) Without limiting [sections 9](#), [10](#) and [11](#), those sections authorize the municipality to establish codes of conduct. 2017, c. 10, Sched. 1, [s. 18](#).
- **No offence or administrative penalty**
- (3) A by-law cannot provide that a member who contravenes a code of conduct is guilty of an offence or is required to pay an administrative penalty.