

THE STRUCTURE AND PRINCIPLES OF EFFECTIVE MUNICIPAL GOVERNMENT

A PRESENTATION TO THE TOWNSHIP OF NIPISSING COUNCIL BY
INTEGRITY COMMISSIONER H.G. ELSTON

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OVERVIEW

- Municipal governance in Ontario is a rules-based system. The essential powers and obligations of municipalities and members of council are established in the *Municipal Elections Act, 1996*, the *Municipal Act, 2001*, the *Municipal Conflict of Interest Act* and the *Municipal Freedom of Information and Protection of Privacy Act*.
- Council's are to govern as a whole, in a transparent and accountable way, free from conflicts and bias, in a respectful and honest manner.
- There is a clear division of duties between elected officials and members of staff, which must be respected for municipal governments to be effective.
- Maintaining the public trust is paramount.

THE ROLE OF COUNCIL

It is the role of Council to:

1. Represent the public and to consider the well-being and interests of the Municipality;
2. Develop and evaluate the policies and programs of the Municipality;
3. Determine which services the Municipality provides;
4. Ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement decisions of Council;
5. Ensure the accountability and transparency of the operations of the Municipality;
6. Maintain the financial integrity of the Municipality; and
7. Carry out the duties of Council under the Municipal Act or any other Act.

THE ROLE OF HEAD OF COUNCIL

It is the role of the Head of Council to:

1. Act as the Chief Executive Officer of the Municipality;
2. Preside over Council meetings, so that its business can be carried out efficiently and effectively;
3. Provide leadership to the Council;
4. Represent the Municipality at official functions; and
5. Provide information/recommendations to Council with respect to the role of council respecting accountability and transparency and the administrative policies, practices and procedures in place to implement the decisions of Council.

As Chief Executive Officer, it is the role of the Mayor to:

1. Uphold and promote the purposes of the Municipality;
2. Promote public involvement in the Municipality's activities;
3. Act as the representative of the Municipality and promote it locally, nationally and internationally; and
4. Participate in and foster activities that enhance the economic, social and environmental well-being of the Municipality and its residents.

THE ROLE OF CHIEF ADMINISTRATIVE OFFICER

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

1. 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
2. Performing such other duties as are assigned by the municipality.

Said to be Council's only employee.

THE ROLE OF CLERK

A municipality shall appoint a clerk whose duty it is:

1. To record, without note or comment, all resolutions, decisions and other proceedings of council;
2. If required by any member present at a vote, to record the name and vote of every member voting on any matter or question;
3. To keep the originals or copies of all by-laws and of all minutes of the proceedings of the council;
4. To perform the other duties required under the Act or under any other Act; and
5. To perform such other duties as are assigned by the municipality.

THE ROLE OF STAFF

It is the role of the officers and employees of the municipality to:

1. To implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
2. To undertake research and provide advice to council on the policies and programs of the municipality; and
3. To carry out other duties required under this or any Act and other duties assigned by the municipality.

THE ROLE OF A COUNCILLOR

Municipal Act contains no specific job description or authority for Members of Council.

Ontario's Municipal Councillor's Guide says Councillor's have three main roles:

1. A representative;
2. A policy-maker; and
3. A steward.

Councillors are public officials, with no management powers.

Council and Staff Relations

- Administration Council and Staff Relationship Policy
- Governs the relationship between Members of Council and Staff in accordance with *Municipal Act, 2001*
- Outlines acceptable standards to govern the relationship
- A high standard to provide good governance and maintain public confidence in the administration of the Township
- Relate to one another in a courteous, respectful and professional manner to enhance public confidence in local government
- Understand respective roles and responsibilities

MUNICIPAL ACT ACCOUNTABILITY OFFICERS

Municipal Act, 2001 Part V.1 – Accountability and Transparency
Establishes:

- Codes of Conduct
- Integrity Commissioners
- Lobbyist Registrars
- Municipal Ombudsmen – investigate any decision or recommendation
- Auditor Generals – quality of stewardship over public funds

CODES OF CONDUCT

Codes and Commissioners now mandatory

- From Justice Bellamy's report in the *Toronto Computer Leasing Inquiry*
- Serves as a check and balance against new powers given to municipalities
- Municipalities must establish codes of conduct for members of the council of the municipality and of its local boards
- Municipalities required to appoint an Integrity Commissioner
- Commissioners responsible for application of and advice under the *Municipal Conflict of Interest Act*

CODES OF CONDUCT

Mandatory Content

Regulations prescribe four mandatory subject matters to be included in any code of conduct:

- Gifts, benefits and hospitality
- Respectful conduct, including conduct toward officers and employees of the municipality or the local board
- Confidential information
- Use of property of the municipality or of the local board

CODES OF CONDUCT

Penalties

Code cannot provide that a member who contravenes a code of conduct is guilty of an offence

Municipality may impose either of the following penalties on a member of council if the Commissioner reports that, in his or her opinion, the member has contravened the code of conduct:

- A reprimand.
- Suspension of the remuneration paid to the member in respect of his or her services as a member of council for a period of up to 90 days

Note: The Act does not preclude other sanctions, e.g. an apology, but other measures must not be punitive

THE INTEGRITY COMMISSIONER

- Independent
- Confidential inquiries
- Reports to council in open session
- Applies the Code of Conduct and other ethical rules
- Applies the MCIA
- Provides advice on Code and MCIA matters to Members
- Provides education to Members, the municipality and the public
- Exercises broad powers

ADVICE

- Request for advice from members shall be in writing
- Advice from Commissioner shall be given in writing
- Advice provided by the Commissioner to a member may be released with the member's written consent
- If a member releases only part of the advice provided to the member by the Commissioner, the Commissioner may release part or all of the advice without the member's consent
- Commissioner may disclose such information as in the Commissioner's opinion is necessary,
 1. For the purposes of a public meeting under subsection 223.4.1(8)
 2. In an application to a judge, or
 3. In the written reasons given by the Commissioner

INQUIRIES ARE CONFIDENTIAL

- Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge (except information may be disclosed in a criminal proceeding)
- Duty of confidentiality prevails over the *Municipal Freedom of Information and Protection of Privacy Act*
- Commissioner is not a competent or compellable witness in a civil proceeding in connection with anything done under Part V.1
- BUT if the Commissioner determines there are reasonable grounds to believe there has been a contravention of any other Act (other than the MCI/A) or of the *Criminal Code* he or she shall immediately refer the matter to the appropriate authorities and suspend the inquiry until resulting police investigation and charge have been finally disposed of and shall report the suspension to council

COMMON CODE OF CONDUCT COMPLAINTS

- Conflict of Interest – Pecuniary and Personal
- Discreditable Conduct
 - Intimidating, abusive and bullying behaviour
 - Discriminatory and harassing behaviour (*Ontario Human Rights Code*)
 - Workplace discrimination and harassment (Municipal Policy and *Occupation Health and Safety Act*)
- Conduct at council and committee meetings
 - Lack of decorum and respect
- Conduct respecting municipal employees
 - Members demanding action directly from staff
 - Lack of respect for staff's neutrality and professional advice
 - Injury to professional or ethical reputation of staff
- Improper use of influence
 - Use of status as member to improperly influence decisions to private advantage
- Disclosure of confidential information

A CODE OF CONDUCT INQUIRY

1. The Complaint
 - In writing
 - Signed (some require a sworn affidavit)
 - Describe the conduct and reference section of the code
2. Notice of complaint and copy to respondent member of council
 - Member must know details of the allegation and be given an opportunity to respond
3. Interviews (Confidential)
 - Complainant
 - Respondent
 - Witnesses (provided by complainant and respondent)
4. Report Writing
 - Sources remain confidential
 - Full details of inquiry not required to be reported
 - Consider and apply the code of conduct and relevant law
 - Make finding as to any breach of the code
 - If a breach is found, make recommendations concerning penalties
5. Report to Council
 - Commissioner makes recommendations to council in open session

MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (“MFIPPA”)

Every person has a right of access to a record or part of a record in the custody or under the control of an institution unless,

- (a) The record or part of the record falls within one of the exemptions under sections 6 to 15; or
- (b) The head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

The head of an institution must ensure that reasonable measures respecting the records in the custody or under the control of the institution are developed, documented and put into place to preserve the records.

Section 239 - Meetings Open to the Public UNLESS

Meetings open to public

239 (1) Except as provided in this section, all meetings shall be open to the public.

Exceptions

- (2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,
- (a) the security of the property of the municipality or local board;
 - (b) personal matters about an identifiable individual, including municipal or local board employees;
 - (c) a proposed or pending acquisition or disposition of land by the municipality or local board;
 - (d) labour relations or employee negotiations;
 - (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
 - (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
 - (g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act;
 - (h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
 - (i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
 - (j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
 - (k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

Closed Meetings continued

Other criteria

(3) A meeting or part of a meeting shall be closed to the public if the subject matter being considered is,

(a) a request under the *Municipal Freedom of Information and Protection of Privacy Act*, if the council, board, commission or other body is the head of an institution for the purposes of that Act; or

(b) an ongoing investigation respecting the municipality, a local board or a municipally-controlled corporation by the Ombudsman appointed under the *Ombudsman Act*, an Ombudsman referred to in subsection 223.13 (1) of this Act, or the investigator referred to in subsection 239.2 (1).

Educational or training sessions

(3.1) A meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:

1. The meeting is held for the purpose of educating or training the members.
2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

Closed Meetings continued

Resolution

(4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,

(a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting; or

(b) in the case of a meeting under subsection (3.1), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection.

Open meeting

(5) Subject to subsection (6), a meeting shall not be closed to the public during the taking of a vote.

Exception

(6) Despite section 244, a meeting may be closed to the public during a vote if,

(a) subsection (2) or (3) permits or requires the meeting to be closed to the public; and

(b) the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board.

Record of meeting

(7) A municipality or local board or a committee of either of them shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not.

Record may be disclosed

(9) Clause 6 (1) (b) of the *Municipal Freedom of Information and Protection of Privacy Act* does not apply to a record of a meeting closed under subsection (3.1).

Closed Meeting Investigations

Investigation

239.1 A person may request that an investigation of whether a municipality or local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public be undertaken,

- (a) by an investigator referred to in subsection 239.2 (1); or
- (b) by the Ombudsman appointed under the *Ombudsman Act*, if the municipality has not appointed an investigator referred to in subsection 239.2 (1).

Investigator

239.2 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an investigator who has the function to investigate in an independent manner, on a complaint made to him or her by any person, whether the municipality or a local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation.

Powers and duties

(2) Subject to this section, in carrying out his or her functions under subsection (1), the investigator may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality.

Matters to which municipality is to have regard

(3) In appointing an investigator and in assigning powers and duties to him or her, the municipality shall have regard to, among other matters, the importance of the matters listed in subsection (5).

Same, investigator

(4) In carrying out his or her functions under subsection (1), the investigator shall have regard to, among other matters, the importance of the matters listed in subsection (5). 2006, c. 32, Sched. A, s. 104.

Same

- (5) The matters referred to in subsections (3) and (4) are,
- (a) the investigator's independence and impartiality;
 - (b) confidentiality with respect to the investigator's activities; and
 - (c) the credibility of the investigator's investigative process.

Closed Meeting Investigations

Report and recommendations

(10) If, after making an investigation, the investigator is of the opinion that the meeting or part of the meeting that was the subject-matter of the investigation appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the investigator shall report his or her opinion and the reasons for it to the municipality or local board, as the case may be, and may make such recommendations as he or she thinks fit.

Publication of reports

(11) The municipality or local board shall ensure that reports received under subsection (10) by the municipality or local board, as the case may be, are made available to the public.

Requirement to pass resolution re report

(12) If a municipality or a local board receives a report from a person referred to in clause 239.1 (a) or (b) reporting his or her opinion, and the reasons for it, that a meeting or part of a meeting that was the subject-matter of an investigation by that person appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the municipality or the local board, as the case may be, shall pass a resolution stating how it intends to address the report.

MUNICIPAL CONFLICT OF INTEREST ACT

Section 5 (1): Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- Shall disclose the interest and the general nature thereof
- Shall not take part in the discussion of or vote on any question in respect of the matter
- Shall not attempt in any way whether before, during or after the meeting to influence the voting

Section 5.2 (1): Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter that is being considered by an officer or employee of the municipality or local board, or by a person or body to which the municipality or local board has delegated a power or duty, the member shall not use his or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter.

MCIA - “Indirect” and “Deemed” Pecuniary Interests

Member has an indirect pecuniary interest if:

1. The Member is a shareholder, director or senior officer of a corporation that does not offer its securities to the public (Private Company);
2. The Member has a controlling interest in or is a director or senior officer of a corporation that offers its securities to the public (Public Company);
3. The Member is a member of a body that has a pecuniary interest in the matter; or
4. The Member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

The pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall be deemed to be also the pecuniary interest of the Member.

- Note: siblings not included in the list

MCIA - EXCEPTIONS

Section 5 rules do not apply to certain pecuniary interests, including:

- In respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member maybe entitled
- By reason of the member having a pecuniary interest which is an interest in common with electors generally
- By reason of an interest which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member

MCIA – TIMELINES

An application to a judge by an elector, an Integrity Commissioner or a person acting in the public interest may only be made within six weeks after the applicant became aware of the alleged contravention

No application shall be made after the sixth anniversary of the alleged contravention

Commissioner to complete the inquiry within 180 days of receiving complete application

No application for an inquiry shall be made to the Commissioner during the period of time starting on nomination day and ending on voting day

MCIA – APPLICATION TO A JUDGE

An elector, an Integrity Commissioner, or a person demonstrably acting in the public interest may apply to a judge for a determination of whether a member (or former member while a member) has contravened section 5, 5.1 or 5.2

If judge determines that the member contravened section 5, 5.1 or 5.2, the judge may:

- Reprimand the member
- Suspend the remuneration paid to the member up to 90 days
- Declare the member's seat vacant
- Disqualify the member from being a member for not more than seven years
- Require the member to make restitution to the party suffering the loss

Judge may consider, among other matters, whether the member or former member:

1. Took reasonable measures to prevent the contravention
2. Disclosed the pecuniary interest to an Integrity Commissioner in a request for advice and acted in accordance with the advice
3. Committed the contravention through inadvertence or by reason of an error in judgment made in good faith

THANK YOU AND QUESTIONS