

Municipal Act, 2001 and Governance

Presentation to Effective Governance and
Oversight Task Force – May 19, 2020

Wendy Law, Deputy City Manager, Administrative
Services and City Solicitor

Today's Topics

1. Municipality – legal existence
2. Governing Legislation
3. Municipal Act Overview
4. Municipal Act and Governance
 - a) Role of Council
 - b) Role of Administration
 - c) Accountability and Transparency
 - d) Judicial Inquiries
5. Judicial Proceedings
6. Appendix: Bellamy Report – Toronto Computer Leasing Inquiry & Toronto External Contracts Inquiry

Legal Existence

Constitution Act, 1867 – s. 92:

Subjects of exclusive Provincial Legislation

In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say..... (8) Municipal Institutions in the Province

- Each Province regulates municipalities differently
- Municipalities cannot exceed the jurisdiction conferred by the Province

Legal Existence

Municipal Act, 2001:

Body corporate

4 (1) The inhabitants of every municipality are incorporated as a body corporate.

Non-application

(2) The *Corporations Act* and the *Corporations Information Act* do not apply to a municipality.

Purpose of Municipalities

Municipal Act, 2001:

2 Municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for the purpose of providing good government with respect to those matters.

- Created by the Province
- Responsible, accountable and good government
- Powers and duties within their jurisdiction (conferred by legislation)

Governing Legislation

Key Legislation on Governance and Conduct:

- Municipal Act, 2001
- Municipal Conflict of Interest Act (MCIA)
- Municipal Elections Act
- Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)
- Human Rights Code
- Charter of Rights and Freedoms
- Criminal Code

Governing Legislation

Examples of other legislation commonly applicable to local municipalities:

- Accessibility for Ontarians with Disabilities Act, 2005
- Building Code Act, 1992
- Development Charges Act
- Emergency Management and Civil Protection Act
- Expropriations Act
- Fire Protection and Prevention Act, 1997
- Occupational Health and Safety Act
- Planning Act
- Provincial Offences Act

Municipal Act Overview

3 types of municipalities:

- Single tier (e.g. Toronto, Ottawa, Hamilton)
 - Toronto is under *City of Toronto Act, 2006* instead of Municipal Act
- Upper-tier (Regional governments, e.g. York, Peel, Durham)
- Lower-tier (Local municipalities, e.g. Vaughan, Markham, Richmond Hill)
- Regulatory powers differ based on type of municipality
- Governance, accountability and transparency rules the same

Municipal Act Overview

- Municipalities as “natural persons” (s. 9)
- Regulatory powers:
 - Broad powers and spheres of jurisdiction (s. 10 and 11)
 - Specific Powers throughout legislation
 - Municipal powers to be given broad and purposive interpretation (case law)
 - Enforcement powers
- No bonusing (s. 106)
- Financial Administration and Taxation powers

Municipal Act and Governance

Generally:

- **Council:** exercise power of municipality (s. 5)
(The directing mind of the corporation; the board of directors)
- **Administration:** staff – exercise power delegated by Council or required by statute (s. 227)
- **Local boards, committees, municipal services boards, municipal services corporations etc:** delegated power by council to exercise specific purposes and authority
- **Accountability offices** (e.g. Integrity Commissioner, closed meeting investigator)

Municipal Act and Governance

- Council must act by bylaw (s. 5)
 - Ensure due deliberation of councils of all important policy matters through more formal procedure of enacting a bylaw (case law)
 - E.g., Procedure Bylaw – governs meetings of Council and committees, such as EGOTF; administered by Clerk
- Resolutions – usually for more temporary or discrete matters
 - Confirmed by Confirmatory Bylaw
- Policies and Procedures – to flush out more details of a matter
 - Council policies – approved by Council and confirmed by Confirmatory Bylaw (e.g. Procurement, Respectful Workplace)
 - Administrative policies – approved by Administration (e.g. Acceptable use of Information Technology)

Municipal Act and Governance

Mandatory Policies

270 (1) A municipality shall adopt and maintain policies with respect to the following matters:

1. Its sale and other disposition of land.
2. Its hiring of employees.
 - 2.1 The relationship between members of council and the officers and employees of the municipality.
3. Its procurement of goods and services.
4. The circumstances in which the municipality shall provide notice to the public and, if notice is to be provided, the form, manner and times notice shall be given.
5. The manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public.
6. The delegation of its powers and duties.
7. The manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality.
8. Pregnancy leaves and parental leaves of members of council.

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.

Role of Mayor

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.

Council – Mayor as CEO

Head of council as chief executive officer

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.

Administration

Municipal administration

- 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.

Chief administrative officer (City Manager)

- 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.

Council-Staff Roles & responsibilities

In sum:

- Role of Council: set strategic direction and policy
- Role of staff: implement Council's direction and corporate administration

Other governing docs:

- Council-Staff Relations Policy
- Code of Conduct
- Delegation of Authority Bylaws and Policies

Delegation of Authority

S. 23.1-23.5: general rules re: delegation of authority

General Principles:

- Delegation can be revoked at any time, unless otherwise specified in the delegation bylaw
- Delegation may be in whole or in part
- May impose conditions and procedures to follow in delegation

Examples of powers that can be delegated:

- Negotiate and execute agreements subject to council approval of the deal, or where there are established policies
- Issue licences, administer and enforce bylaws
- Power to appoint enforcement officers
- Authority to defend the City in litigation
- Minor legislative powers to staff (e.g. minor exemptions/deferral of fees)

Delegation of Authority

What cannot be delegated? (s. 23.3)

- Appoint or remove officers, including Integrity Commissioner
- Taxation powers
- Power to incorporate Municipal Services corporations
- Adopt official plan or zoning bylaws
- Power to adopt community improvement plan, municipal capital facility or small business program
- Power to adopt or amend a budget
- Other powers as prescribed by the Province

City Clerk

- 228** (1) 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.
- Statutory office (similar to Treasurer, Chief Building Official and Fire Chief)
 - Appointed by Council (often as staff but not required)
 - Has obligations under legislation directly, irrespective of Council direction
 - Other legislation managed by Clerk: *Municipal Elections Act* and *Municipal Freedom of Information and Protection of Privacy Act*

Accountability & Transparency

- Code of Conduct for members of Council and local boards – mandatory (s. 223.2)
- Integrity Commissioner – mandatory (s. 223.3)
- Closed Meeting Investigator – mandatory (s. 239.1)
- Lobbyist Registry – not mandatory (s. 233.9)
- Auditor General – not mandatory (s. 223.19)
- Municipal Ombudsman – not mandatory (s. 223.13)
- Provincial Ombudsman (Ombudsman Act s. 14)

Code of Conduct

- City's Ethical Code of Conduct for Members of Council and Local Board (Vaughan - since 2009, amended recently to include MCIA complaints and some minor amendments)
- Violation of Code – Council may impose (s. 223.4(5))
 - Reprimand; or
 - Suspension of pay for up to 90 days
- Violation of *Municipal Conflict of Interest Act* - Integrity Commissioner may make application to court for determination by judge under the MCIA

Integrity Commissioner

- Responsible to conduct inquiries into violation of Code of Conduct or MCIA
- Has summons powers and the power to hold a hearing under *Public Inquiries Act*
- S. 223.4(4): Entitled to free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belong to or used by the municipality or a local board that the Commissioner believes to be necessary for an inquiry.
- S. 223.5: Duty of confidentiality of all matters except criminal proceeding or otherwise required by law (but not MFIPPA)
- Reports are to be made available to the public (s. 223.6)
- S. 223.8: if IC finds contravention of other legislation, such as Criminal Code – refer the matter to appropriate authorities and suspend inquiry until any resulting police investigation and charge are disposed of

Vaughan's Integrity Commissioner – Suzanne Craig:

https://www.vaughan.ca/cityhall/integrity_commissioner/Pages/default.aspx

Meetings & Closed Meeting Investigator

All Council and its committee meetings **shall be open** to the public unless it falls within specific exceptions (s. 239)

- Managed by the Clerk as part of running council meetings
- Exceptions need to be provided as part of informing the public on why the item is closed
- Anyone can request an investigation of whether the municipality has complied with closed meeting rules by filing a complaint with the closed meeting investigator appointed by the municipality or by the Provincial Ombudsman if no investigator is appointed (s. 239.1)
- If Investigator finds that a meeting (or part of) should not have been closed to the public, Investigator shall report to council and municipality shall make report public. Council needs to pass a resolution to state how it intends to address the report. (s. 239.2)

Vaughan's Closed Meeting Investigator:
LAS (Local Authority Services, branch of AMO)

Lobbyist Registry

S. 223.9: municipality may establish a lobbyist registry, code of conduct for lobbyists, and conditions around lobbying

S. 223.11: appoint a registrar

S. 223.12: registrar may conduct an inquiry on compliance with Lobbyist Registry bylaw and Lobbyist Code of Conduct

- Duty to maintain confidentiality
- If Registrar provides a report to municipality, the municipality shall ensure that it is made public
- If in the course of investigation determines there are other legislative breaches – suspend inquiry until police investigation and charge have been disposed of

Vaughan's

Lobbyist Registrar: Suzanne Craig

Lobbyist Registry Bylaw and Code of Conduct:

<https://www.vaughan.ca/cityhall/lobbyistregistry/Pages/default.aspx>

Auditor General

223.19(1): a municipality may “appoint an Auditor General who reports to council and is responsible for assisting the council in holding itself and its administrators accountable for the quality of stewardship over public funds and for achievement of value for money in municipal operations”.

- Similar powers as Integrity Commissioner on access to information and investigation, as well as duty of confidentiality, with slight modifications

Municipal Ombudsman

A municipality may “appoint an Ombudsman who reports to council and whose function is to investigate in an independent manner any decision or recommendation made or act done or omitted in the course of the administration of the municipality, its local boards and such municipally-controlled corporations as the municipality may specify and affecting any person or body of persons in his, her or its personal capacity.” **(223.13(1))**

S. 223.13(7): limitations:

- decisions only reviewable after all rights of appeal have been exercised, or time for appeal has expired;
- no power to review legal advice

S. 223.14: investigation must be conducted in private

s. 223.15: Duty of confidentiality

Provincial Ombudsman

Ombudsman Act

14 (1) The function of the Ombudsman is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a public sector body and affecting any person or body of persons in his, her or its personal capacity.

- Provincial Ombudsman will not investigate what is being investigated by municipal Ombudsman, Integrity Commissioner, Lobbyist Registrar or Auditor General

Judicial Inquiries

274 (1) If a municipality so requests by resolution, a judge of the Superior Court of Justice shall,

- a) investigate any supposed breach of trust or other misconduct of a member of council, an employee of the municipality or a person having a contract with the municipality in relation to the duties or obligations of that person to the municipality;
- b) inquire into any matter connected with the good government of the municipality; or
- c) inquire into the conduct of any part of the public business of the municipality, including business conducted by a commission appointed by the council or elected by the electors.

- Key judicial inquiries on governance:

- **Bellamy Report – Toronto Computer Leasing Inquiry & Toronto External Contracts Inquiry** (2005) → significant changes to *Municipal Act* re: accountability and transparency
- **Cunningham Report – Mississauga Judicial Inquiry: Updating the Ethical Infrastructure** (2011) → IC and Code of Conduct became mandatory under *Municipal Act*; new lighter options of sanctions in MCIA violations

Judicial Proceedings

Quashing Bylaws (including orders and resolutions of Council):

S. 272: A by-law passed in **good faith** under any Act shall not be quashed or open to review in whole or in part by any court because of the unreasonableness or supposed unreasonableness of the by-law.

273 (1) Upon the application of any person, the Superior Court of Justice may quash a by-law of a municipality in whole or in part for illegality.

Judicial Review of Decisions (Council and Administration)

- administration and enforcement of bylaws
- exercise of statutory duties (e.g. Chief Building Officials in the issuance of building permit)
- quasi judicial decisions (e.g. licence revocations and appeals)

Judicial Proceedings

Immunity against Personal Liability – Good Faith

448 (1) No proceeding for damages or otherwise shall be commenced against a member of council or an officer, employee or agent of a municipality or a person acting under the instructions of the officer, employee or agent **for any act done in good faith** in the performance or intended performance of a duty or authority under this Act or a by-law passed under it or **for any alleged neglect or default in the performance in good faith of the duty or authority**.

Examples of Bad Faith:

- Deliberate violation of laws and policies
- Fraud, oppression, improper motives
- Arbitrariness, illegal discrimination

Good Government

Municipal Act, 2001:

Purposes

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Questions?



Appendix: Bellamy Report

Judicial Inquiry

Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry

- \$43M computer leasing contract approved by council in 1999 became \$80M in 2001....how?
- 3 ½ years
- \$11M+
- 214 days of hearings; 156 witnesses
- 4 volumes of findings
- Focus on recommendations on: governance, ethics, lobbying, procurement
 - Volume 2: Good Government – 241 recommendations
 - Led to significant changes to Municipal Act

https://www.toronto.ca/ext/digital_comm/inquiry/inquiry_site/report/index.html

Ethics, Lobbying, Procurement

- Ethics at the top, leadership culture (council and staff)
- Council-staff relations
 - Policy direction vs. neutral, professional advice – respecting each other's respective roles and responsibilities
- Integrity Commissioners and Code of Conduct
- Conflict of Interest, gifts, election financing etc.
- Lobbying Code of Conduct, registry, and rules
- Procurement – establishing procurement policies, roles and responsibilities, procurement processes considerations

Governance

- Mayor – integrity in government as top priority
- Council and Committees – focus on strategy and policy, those matters with financial, legal and other risks
- Hiring of City Manager
- Clear distinction in role of Mayor and CAO
- Staff to keep Council apprised of budgetary matters and provide accurate, concise and neutral professional advice
- Staff's role in projects must be clear; role of staff to further the public trust
- Role of Legal Services
- Reporting

Thank You.

