VAUGHAN

Finance, Administration and Audit Committee Report

DATE: Wednesday, June 06, 2018   **WARD(S):** ALL

TITLE: RECRUITMENT POLICY REVIEW TASK FORCE – FINDINGS REPORT

FROM:
Todd Coles, City Clerk

ACTION: FOR INFORMATION

Purpose

The purpose of this report is to forward for Council's consideration the Recruitment Policy Review Task Force Findings Report.

Report Highlights

- The Recruitment Policy Review Task Force submitting their Findings Report for Council consideration.

Recommendations

The City Clerk provides the following recommendation on behalf of the Recruitment Policy Review Task Force:

1.   That the current Recruitment Policy (as approved in 2015) be maintained without changes, as reflected in the contents and references in Item 1 of the Recruitment Policy Review Task for meeting of May 22, 2018 (Attachment 1), which are consistent with the Ontario Municipal Act and all other applicable legislation.

Background

The Recruitment Policy Review Task Force was established by Council's by the adoption of Item 11, Report No. 8, of the Finance, Administration and Audit Committee

which was adopted without amendment by the Council of the City of Vaughan on September 26, 2017.

The mandate was as follows:

1)   The Recruitment Policy Review Task Force is a sub-committee of the Finance, Administration and Audit Committee.

2)   The Recruitment Policy Review Task Force will review the Recruitment Policy to clarify and define the role of Council in the recruitment process of senior staff and report its findings to the Finance, Administration and Audit Committee by June 2018.

The appointed members of the Recruitment Policy Review Task Force include the following members:

    Councillor Yeung Racco, Chair
    Regional Councillor Ferri
    Councillor Iafrate
    Councillor DeFrancesca

The Task Force had 3 meetings on January 29, 2018, February 20, 2018 and May 22, 2018.

At the February 20, 2018 Recruitment Policy Review Task Force meeting, staff brought forward an agenda with updates, background and documents to provide the Task Force members with all pertinent information to assist with making recommendations with respect to the mandated role of this Task Force. These documents are Attachment 2 to this report.

The Task Force at its meeting of May 22, 2018, adopted the recommendations in the Findings Report and are being presented at this time.

On April 18, 2018 a Council Education Session was held for Members of Council. David Siegel, Professor of Political Science made a presentation entitled, "Council-Staff Relations: The Public Service Bargain", as referenced in Attachment 3 and a publication paper as referenced in Attachment 4. Paul Cassan from the Wishart Law Firm also made a presentation entitled, "We are in this Together – Council Education Session: City of Vaughan", as referenced in Attachment 5.

Previous Reports/Authority

N/A

Analysis and Options

The Recruitment Policy Review Task Force was mandated to bring forward a Findings Report to the June 2018 Committee of the Whole meeting.

Financial Impact

There is no financial impact.

Broader Regional Impacts/Considerations

N/A

Conclusion

The City Clerk is forwarding the Recruitment Policy Review Task Force's Findings Report of May 22, 2018, for Council's consideration.

Attachments

1 – Minutes from the May 22, 2018 Recruitment Policy Review Task Force meeting
2 – Recruitment Policy Review Task Force, February 20, 2018 meeting package
3 – Presentation by David Siegel, Professor of Political Science
4 – Publication by David Siegel, Professor of Political Science
5 – Presentation by Paul Cassan from the Wishart Law Firm

Prepared by

Adelina Bellisario,
Council/Committee Administrator
Ext. 8698

CITY OF VAUGHAN

REPORT NO. 3 OF THE

RECRUITMENT POLICY REVIEW TASK FORCE

For consideration by the Finance, Administration and Audit Committee
of the City of Vaughan
on June 6, 2018

The Recruitment Policy Review Task Force met at 9:42 a.m. on May 22, 2018.

Present: Councillor Sandra Yeung Racco, Chair
                Regional Councillor Mario Ferri
                Councillor Rosanna DeFrancesca

Staff Present: Daniel Kostopoulos, City Manager
                Laura Mirabella, Chief Financial Officer and City Treasurer
                Demetre Rigakos, Chief Human Resources Officer
                Adelina Bellisario, Council / Committee Administrator

The following item was dealt with:

1   ROLE OF COUNCIL IN THE RECRUITMENT OF SENIOR ROLES – <u>STAFF RECOMMENDATIONS</u>

The Recruitment Policy Review Task Force advises Council:

1)   That the recommendation contained in the following report of the Chief Human Resources Officer, dated May 22, 2018, were approved, as amended to read as follows:

1.   That the current Recruitment Policy (as approved in 2015) be maintained without changes, as reflected in the contents and references in Item 1 of the Recruitment Policy Review Task For meeting of May 22, 2018, which are consistent with the Ontario Municipal Act and all other applicable legislation.

<u>Purpose</u>
To provide the Recruitment Policy Review Task Force with recommendations on clarifying the role of Council in the recruitment of senior staff and to support the task force in forwarding the final recommendations to Council for consideration.

<u>Recommendations</u>
1. That the current Recruitment Policy (as approved in 2015) be maintained without changes.

REPORT NO. 3 OF THE
RECRUITMENT POLICY REVIEW TASK FORCE FOR CONSIDERATION BY THE
FINANCE, ADMINISTRATION AND AUDIT COMMITTEE,
JUNE 6, 2018

Report Highlights
- Background of work undertaken by the task force
- Previous communications / reports on this issue
- Key themes presented at the Council Education session
- Recommended approach to improve clarity of roles and improve governance

Background

The Recruitment Policy Review Task Force was created by Council to review the role of Council in the recruitment of senior staff and to provide recommendations to Council for consideration.

The recruitment policy task force met on two separate occasions.
On January 29, 2018 following the first meeting of the task force, staff were directed to conduct additional research and provide a summary report to the task force for consideration. (see hyperlink)

On February 20, 2018 staff presented an overview of the background and research on this issue and the task force directed staff to seek additional legal advice as well as advice from the integrity commissioner and to further explore an opportunity to receive additional input from professor David Siegel the author of the article entitled "***The "public service bargain" in local government: A new way of looking at relations between municipal councils and CAOs".*** (see hyperlink)

On April 18, 2018 staff hosted an education session for Council. Professor Siegel presented a framework to help Councillors and staff understand that the best decisions are a melding of the two perspectives. Legal professional Paul Cassan presented on the importance of staff and council working together as a team; Roles and responsibilities; Legislative environment; Council staff relations; Bill 132: Anti-Harassment and Workplace Violence.

Some of the key themes to consider in terms of defining the appropriate role of Council in the recruitment of senior roles emerged from the education session and included:

a) Council is a governance board, not a management board.

b) Council (as a whole) is the employer and supervisor only of the City Manager.

c) Council must give the City Manager the responsibility and accountability to build a senior leadership team that will enable the administration to deliver on Council's priorities.

d) Council is responsible to ensure that policies are developed and approved.

e) It is the City Manager's and Staff responsibility to implement policies in accordance with Council's direction.

f) Council's legal power is as a collective, not as individuals.

g) Statutory positions such as the Clerk, Treasurer, Fire Chief and Chief Building Official are appointed by Council and have statutory roles but direction flows through the City Manager.

Taking into consideration the material and themes shared with Council and with the taskforce the following are some key recommendations for the Task Force's consideration:

1. The City Manager commits to providing Council with appropriate and relevant information throughout the recruitment process, to satisfy Council that the recruitment policy is implemented effectively and that the recommendation for the successful candidate is supported with evidence that gives Council confidence in approving the recommendation.

2. Council commits to providing the City Manager with reasonable authority, responsibility and accountability to build the leadership team and run the administration effectively and as such, Council will not be directly involved in the recruitment process. In other words, staff will be responsible for initiating the recruitment process, interviewing candidates and forming a recommendation for Council's consideration and approval.

The most recent recruitments of senior staff and staff with a statutory role have followed these recommendations with great success. Staff have led the recruitment process, given Council regular updates and Council has ratified on the City Manager's recommendation, in some cases without meeting the final candidate and in others by having the recommended candidate meet with Council to provide that final layer of re-assurance.
At this point staff do not recommend any changes to the recruitment policy itself.
The only exception to this approach is the recruitment of Council's one employee, that of the City Manager. When Council undertakes a recruitment of the City Manager then Council is directly involved in the entire recruitment, selection and decision-making process unless Council specifically decides to delegate some of those responsibilities to staff.

Financial Impact
There are no financial impacts with maintaining the current policy.

Broader Regional Impacts/Considerations
Current Recruitment Policy is consistent with leading practice in York Region and across Ontario as outlined in the Finance, Administration and Audit committee meeting of

September 2017. Maintaining current policy helps attract top candidates in recruitments by demonstrating good governance and minimizing the perception of political interference.

Conclusion

The recruitment and selection of senior municipal staff is a very important function in ensuring that the municipality employs and retains competent staff to address Council's priorities and serves the needs of the citizens. The decision-making process is of paramount important in ensuring good governance and quality outcomes.

Clarifying roles and responsibilities in the recruitment and selection process of senior staff leads to improved governance. Good governance contributes to quality decisions, improved productivity and staff engagement and enhances the public's trust in their government. It also contributes to increased trust within the organization as well as between Council and Staff and between the City Manager and the Mayor and facilitates the recruitment and retention of competent staff.

The recommendations contained in this report will facilitate clarity of roles and responsibilities and lead to improved decisions.

For more information, please contact: Demetre Rigakos, Chief Human Resources Officer.

Prepared by

Demetre Rigakos, Chief Human Resources Officer ext. 8297.

The meeting stood adjourned at 10:43 a.m.

Respectfully submitted,

Councillor Sandra Yeung Racco, Chair

Report prepared by:
Adelina Bellisario, Council / Committee Administrator

RECRUITMENT POLICY REVIEW TASK FORCE   FEBRUARY 20, 2018

RECRUITMENT PROCESS FOR SENIOR ROLES – UPDATE AND BACKGROUND INFORMATION

Purpose

To provide the task force with an overview of this issue, provide relevant reports requested by the task force and identify recommended next steps to explore this issue, and a suggested project plan to reach the objectives of the task force.

Recommendations

1.   That this report be received for information.

Report Highlights

- Background of authority through the City Manager's By-Law
- Overview of recruitment process over the past 2-3 years
- Previous communications / reports on this issue
- Response to Task Force's request for additional information
- Recommended next steps to achieve the Task Force's objectives

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Background

The Recruitment Policy task force was created by Council to review the role of Council in the recruitment of senior staff and to provide recommendations to Council for consideration.

The Municipal Act defines the role of Council and the role of the Chief Administrative Officer. The City Manager's by-law approved by Council outlines the City Manager's responsibilities as it relates to "Personnel Administration".

2.1 To have authority to recommend to Council the appointment or dismissal of a Commissioner and to have the authority to discipline a Commissioner.

2.2 To have authority and responsibility to appoint, promote, demote, suspend or dismiss employees of the Corporation below the position of Commissioner in accordance with the lines of authority that are defined in the organization chart with the exception of the appointment or dismissal of individuals with respect to the following positions:

City Clerk (Municipal Officer)

City Treasurer (Municipal Officer)

Chief Building Official (appointment required by the Building Code Act)

Fire Chief (appointment required by the Fire Protection and Prevention Act)

Director of Internal Audit

The City Manager's By-Law was last revised in 2012 following recommendations to Council through a task force. At that time one of the key changes was for the City Manager no longer requiring Council's approval for hiring or dismissal decisions related to Director level roles with the exception of statutory positions listed above.

Overview of how senior level positions were recruited
Vaughan has undertaken numerous recruitments for senior executives over the past several years. These recruitments have included statutory positions as well as Commissioner, Deputy City Manager and City Manager roles.
Until 2015 the City's practice with respect to the recruitment of senior staff included the following process:

- Retaining an executive search firm from a roster of pre-approved vendors.
- Compiling a briefing document and ad strategy.
- Staff conducting the first round of interviews.
- A Council sub-panel approved by Council (4 members-appointed by Council) attended along with staff the second and final round interviews with the finalists.
- City Manager's recommended candidate for the role would be submitted to Council for consideration and ratification in a closed meeting.

In and around 2015 Council elected to end the Council sub-panel and instead directed that staff bring to all of Council the final candidates for final interviews and consideration of the City Manager's recommended candidate for approval.

This approach has been utilized for the role of City Manager, Deputy City Manager, Public Works, Director, Internal Audit, Deputy City Manager, Planning and Growth Management and Deputy City Manager, Community Services.

Council Education Session (Spring 2017).

On February 3, 2017 staff presented to Council in a Council Education Session the attached presentation titled *"Council's Role in the Recruitment of Municipal Staff"* (Attachment #1). The main points of the presentation included the importance of having clear roles and responsibilities, an outline of the recruitment process, the difference between staff reporting to Council and those reporting to the City Manager and the responsibilities of each party in the process. (Presentation material attached).

Integrity Commissioner's Comments regarding this issue

In September of 2017 the Integrity Commissioner has provided commentary on the role of Council in the recruitment process.

Specifically, the Integrity Commissioner's guiding principles from the code include:

*It is inappropriate for Members to involve themselves in matters of administration or departmental management which fall within the jurisdiction of the City Manager. Therefore, **individual** Members of Council have no role to play in influencing in any way, the hiring process for any member of staff, except for the position of Executive or Administrative Assistant to the Mayor and/or Members of Council.*
Any attempt by individual members of Council to, for example, urge that an individual candidate must be put on the shortlist or to secure additions to or removals from an already determined shortlist, is behavior prohibited under the Code. This kind of conduct amounts to inappropriate meddling and undue use of influence in terms of the Code.

Staff Communication to Council regarding the Recruitment Process (September 25, 2017)

The option of involving Council in the recruitment process for the Deputy City Manager, Planning and Growth Management were further explored during a FA&A meeting on September 10, 2017. See link to extract:

https://www.vaughan.ca/council/minutes_agendas/AgendaItems/Finance0920_17_10.pdf (Attachment #2)

Several options were provided along with the risks for each option and a briefing was prepared by an external governance consultant on the role of Council in this process along with the pros and cons of each option.

A confidential legal opinion was also provided to Council during an in-camera meeting identifying some of the legal risks for Council's consideration.

Academic Research on Local Government Governance Issues

At the first meeting (January 29, 2018) of the Recruitment Task Force an article titled: ***The "public service bargain" in local government: A new way of looking at relations between municipal councils and CAOs*** was shared with the Task Force. The article shared was an edited version, of the full article, that had been published in the May 2017 edition of the Municipal World magazine. The article link is available here:

https://vol.vgn.cty/departments/OCHRO/Documents/Governance/The%20Public%20Service%20Bargain%202.pdf (Attachment #3)

In the article, the professor Siegel argues that the CAO must have reasonable complete authority to manage the activities of the public service including particularly the ability to hire, promote, discipline and fire staff on a merit basis. In exchange, Council has the right to hold the CAO accountable for the competence, efficiency and effectiveness of the public service. Council must refrain from becoming involved in managing the public service.

Number of internal vs external hires on senior roles.

At the January 29, 2018 Recruitment Policy Task Force meeting staff were directed to provide an overview of the number of internal versus external hires for key roles (senior roles) during this term of Council (2014 to date).
Overall for Director and above level positions and above there were a total of eleven (11) internal hires and four (4) external hires.

The internal promotion rate overall throughout the organization has been tracked for the past few years and the following chart shows the comparison between Vaughan and other public service organizations across Canada. In essence, what the chart below shows is that Vaughan's internal promotion rate (all positions) has been consistently higher than the average of like organizations.
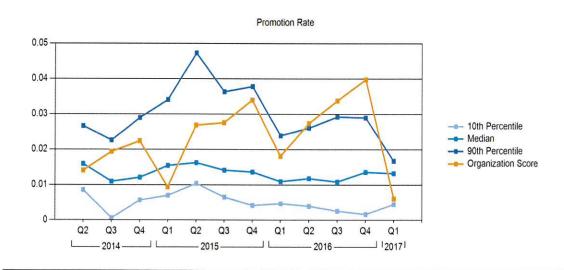
HR metrics SERVICE

HR Metrics Service - Analyst Report

Workforce Demographics

Promotion Rate

	2014			2015				2016				2017
	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1
10th Percentile	0.9%	0.1%	0.6%	0.7%	1%	0.7%	0.4%	0.5%	0.4%	0.3%	0.2%	0.4%
Median	1.6%	1.1%	1.2%	1.5%	1.6%	1.4%	1.4%	1.1%	1.2%	1.1%	1.4%	1.3%
90th Percentile	2.7%	2.3%	2.9%	3.4%	4.7%	3.6%	3.8%	2.4%	2.6%	2.9%	2.9%	1.7%
Your score	1.4%	1.9%	2.2%	0.9%	2.7%	2.8%	3.4%	1.8%	2.7%	3.4%	4%	0.6%
Sample size	18	19	18	15	15	11	12	14	14	13	12	12

Promotion Rate

Jurisdictional review of recruitment process of senior roles with similar size municipalities

Municipality	CM / CAO Presents Recommendation to Council for approval	CM / CAO Interviews with Sub-panel of Council (3/21 members)	CM In /CAO interviews with all of Council
Mississauga	✓		
Ottawa	✓		
Edmonton	✓		
Hamilton	✓		
Brampton	✓		
York Region		✓	
Vaughan			✓

This jurisdictional review requested by the task force provides a quick overview of the process used to select and approve Commissioner and Statutory roles. (Does not apply to the selection of CAO).

Hiring Process Audit Report 2015

The task force also directed that staff share the internal audit report on the hiring process that was conducted in 2015. The following link is to the Council extract and the second link is to the full report including the presentation material.

https://www.vaughan.ca/council/minutes_agendas/Extracts/11Finance0908_15ex_2.pdf (Attachment #4)

http://www.vaughan.ca/council/minutes_agendas/AgendaItems/Finance0908_15_2.pdf (Attachment #5)

Recommended Project Plan for the Recruitment Policy Task Force

The task force also directed that staff provided a recommended approach on how we should work towards achieving the objectives of the task force. The following is a quick overview of the next dates and suggested discussion items:

Date	Topic of Discussion / Outcome
February 20, 2018	Present summary of topic and relevant literature to date / Discuss report and address questions
March 19, 2018	Cancel
April 18, 2018	Attend Education Session / Governance overview (Date to be confirmed)
May 22, 2018	Formulate recommendations for Council's consideration including options with pros and cons

Financial Impact

There are no financial impacts

Broader Regional Impacts/Considerations

Not Applicable.

Conclusion

This report provides an overview of the recruitment process, and the role of Council over the past 3 years. It identifies the relevant authority provided to the City Manager through the City Manager's By-Law and an overview of previous relevant communications on this topic. In addition, it provides responses to the questions the task force submitted to staff during the January 29, 2018 meeting and a quick overview of the recommended next steps to achieve the task force's objectives.
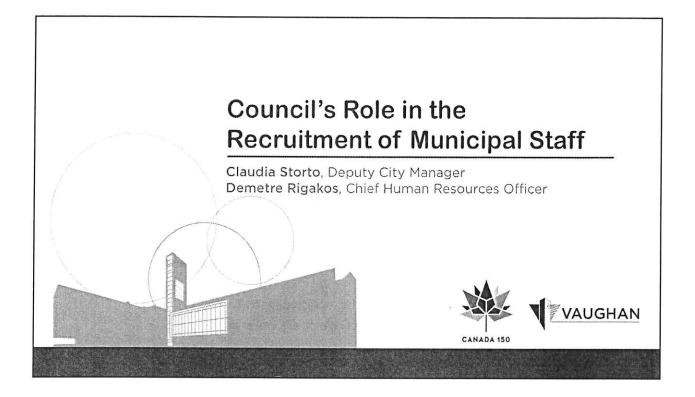
For more information, please contact: Demetre Rigakos, Chief Human Resources Officer.

Attachments

#1 - Presentation titled *"Council's Role in the Recruitment of Municipal Staff"*
#2 – Extract – Item 10, Report 8 (2017) Finance, Administration and Audit Committee
#3 – Article entitled "The Public Service Bargain"
#4 - Extract – Item 2, Report 11 (2015) Finance, Administration and Audit Committee
#5 - Extract and Full Report

Prepared by

Demetre Rigakos, Chief Human Resources Officer ext. 8297.

Council's Role in the Recruitment of Municipal Staff

Claudia Storto, Deputy City Manager
Demetre Rigakos, Chief Human Resources Officer

CANADA 150

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Why is it important to have clear roles?

A well defined recruitment process for the selection of senior staff (where Council is participating) will improve governance and transparency, enhancing the public's trust in its elected officials.

46

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What is the authority?

Section 224 of the Municipal Act, 2001

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

47

What is the authority?

By-law 012-2013 A By-law to amend By-law 403-203 that defines the general duties, roles and responsibilities of the City Manager.

2.1   To have authority to recommend to Council the appointment or dismissal of a Commissioner and to have the authority to discipline a Commissioner.

2.2   To have authority and responsibility to appoint, promote, demote, suspend or dismiss employees of the Corporation below the position of Commissioner in accordance with the lines of authority that are defined in the organization chart with the exception of the appointment or dismissal of individuals with respect to the following positions:

• City Clerk (Municipal Officer)

• City Treasurer (Municipal Officer)

• Chief Building Official (appointment required by the Building Code Act)

• Fire Chief (appointment required by the Fire Protection and Prevention Act)

• Director of Internal Audit

48

When is Council involved in the process?

Positions reporting directly to Council

- City Manager
- Director of Internal Audit
- Integrity Commissioner

Senior administrators reporting to the City Manager

- City Treasurer (Municipal Officer)
- Deputy City Managers
- Fire Chief
- Director of Building Standards (Municipal Officer)
- City Clerk (Municipal Officer)

49

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What are the steps in the Recruitment and Selection process?

- Identifying the role and the specifications/required qualifications
- Identifying the competencies and characteristics
- Selecting a Search Consultant
- Defining the advertising strategy
- Developing a Job Profile (details)
- Sourcing candidates

- Initial screening by Search Consultant
- Long List presented to hiring panel
- Short List selected to be interviewed along with Qs
- Interviews 1st and 2nd round
- Selection decision
- References and background checks

50

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What are the steps in the Recruitment and Selection process? (DCM's, Municipal Officers, CBO, Fire Chief, Treasurer - Reporting to the CM directly or indirectly)

Tasks	Responsibility	Support
Identify the role requirements / JD	CM	HR / Search Consultant
Identifying competencies	CM	HR / Search Consultant
Selecting a Search Consultant	CM	HR
Defining the advertising strategy	CM	HR / Search Consultant
Sourcing candidates	Search Consultant	HR / CM
Initial screening of candidates / applicants	Search Consultant	
Long list presented to hiring panel	Search Consultant	
Short list decision	CM	HR / Search Consultant
First round interviews	CM / HR / Search consultant	
Final round interviews	CM /DCM / Council (as appropriate)	HR / Search Consultant
Selection Decision	Council approval required of CM recommendation	CM / DCM / Search Consultant / HR

51

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What are the steps in the Recruitment and Selection process? (Roles reporting directly to Council)

Tasks	Responsibility	Support
Identify the role requirements / JD	Council	CM / HR / Search Consultant
Identifying competencies	Council	CM / HR / Search Consultant
Selecting a Search Consultant	Council	CM / HR
Defining the advertising strategy	Council	CM / HR / Search Consultant
Sourcing candidates	Search Consultant	
Initial screening of candidates / applicants	Search Consultant	
Long list presented to Council	Search Consultant	CM / HR
Short list decision	Council	
First round interviews	Council	CM / HR / Search Consultant
Second round interviews	Council	CM / HR / Search Consultant
Selection Decision	Council	CM / HR / Search Consultant
References and background checks	HR	CM / Search Consultant

52

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Recruitment Policy

The Corporation is committed to a fair and transparent recruiting process that supports hiring the best candidate for all positions. The Corporation ensures all candidates have an equal opportunity. There is no toleration of personal bias or discrimination of candidates in the recruitment process. The Corporation strives to represent the diversity of the community by underscoring the importance of external recruitment to diverse applicant pools.
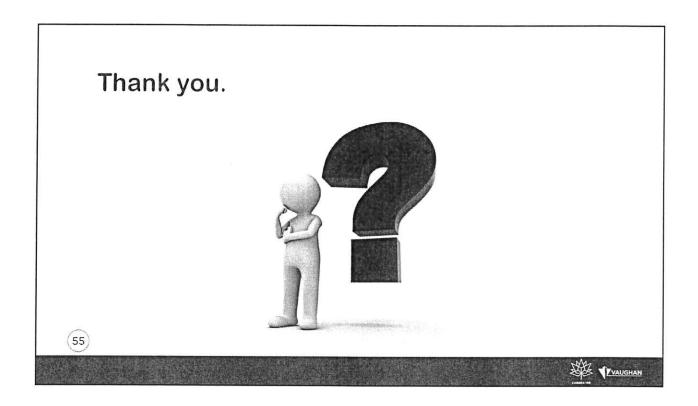
53

How do other Municipalities in the GTA handle the recruitment of senior staff?
(Roles reporting to Council)

Municipality	Council interviews final candidates
Mississauga	Optional
Oakville	No
Hamilton	No
Richmond Hill	Yes
Markham	Yes

54

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 26, 2017

Item 10, Report No. 8, of the Finance, Administration and Audit Committee, which was adopted, as amended, by the Council of the City of Vaughan on September 26, 2017, as follows:

By approving the following in accordance with Communication C3, from the Chief Human Resources Officer, dated September 25, 2017:

1. *That Council approve the recruitment process as per Item 10 on the September 20, 2017 Finance, Administration and Audit agenda and as outlined in Option 1; and*

2. *That the City Manager provide progress update(s) to Council on the recruitment process (without disclosing confidential personal information of or pertaining to candidates) prior to making a final recommendation to Council as outlined in Option 3;*

By approving the confidential recommendation of the Council (Closed Session) meeting of September 26, 2017; and

By receiving the report of the City Manager, Deputy City Manager, Legal and Human Resources and Chief Human Resources Officer, dated September 19, 2017.

10   RECRUITMENT FOR DEPUTY CITY MANAGER, PLANNING AND GROWTH MANAGEMENT

The Finance, Administration and Audit Committee recommends that consideration of this matter be deferred to the Council meeting of September 26, 2017, to allow staff to provide Council with further information and options.

Recommendation

The City Manager, Deputy City Manager, Legal and Human Resources and Chief Human Resources Officer recommend:

1. That Council approve the selection process for Deputy City Manager, Planning and Growth Management as outlined in the report.

Contribution to Sustainability

The recruitment process will support the implementation of the Service Excellence Strategy Map (2014-2018) that Council approved on September 30, 2015 ensuring minimal impact to the operations and continuing service to Vaughan citizens.

Economic Impact

The costs associated with the recruitment processes have already been included in the approved budget. Therefore, there is no economic impact associated with this report.

Communications Plan

A media release was issued to announce the appointment of the current Deputy City Manager, Planning and Growth Management, Mr. John MacKenzie as the new Chief Executive Officer of the Toronto and Region Conservation Authority effective November 2017.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 26, 2017

Item 10, Finance Report No. 8 – Page 2

Purpose

The purpose of this report is to advise Council that the recruitment process for the soon to be vacant role of Deputy City Manager, Planning and Growth Management has been initiated and to inform Council of the expected selection process.

Background - Analysis and Options

In August of this year Mr. John MacKenzie, Deputy City Manager, Planning and Growth Management submitted his resignation effective October 2017. Mr. MacKenzie will be taking on the role of Chief Executive Officer with the Toronto and Region Conservation Authority.

To move quickly with backfilling the anticipated vacancy staff retained the services of an executive search firm to initiate the recruitment process and an ad was posted both internally and externally on August 31, 2017. Currently the recruitment agency is sourcing candidates and it will present a long list to the City Manager in late September 2017. The selection committee comprised of the City Manager, Chief Human Resources Officer and the search consultant will conduct interviews during the month of October 2017 with the expectation that the top one or two candidates will be invited to meet with all of Council for a final interview and approval of the City Manager's recommended candidate by November 2017. Staff expect the successful candidate will assume their new role shortly thereafter.

Although not recommended, should Council wish, they may appoint three members of Council to participate along with the selection committee in the final selection interviews. Council may wish to select one regional and one local Council member in addition to the Mayor.

The role of the selection committee as selected by Council will be to participate in the final round of interviews of the top candidates and to provide their input to the City Manager on the recommended candidate. The City Manager will then seek approval of the recommended candidate by all of Council.

Relationship to Term of Council Service Excellence Strategy Map (2014-2018)

The report is consistent with Council's Service Excellence Strategy Map and Term of Council Priorities.

Regional Implications

There are no Regional implications associated with this report.

Conclusion

The role of Deputy City Manager, Planning and Growth Management is an integral position within the City of Vaughan and the Corporate Management Team. Noting this role will become vacant in November of 2017 staff have initiated a recruitment process to ensure a smooth transition and implementation of the City's Service Excellence Strategy Map. Staff is seeking Council's endorsement of the election process to ensure effective implementation of the City's recruitment policy as well as ensuring that the City attracts an effective candidate to be appointed to this important role.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 26, 2017

Item 10, Finance Report No. 8 – Page 3

Attachments

N/A

Report prepared by:

Demetre Rigakos, Chief Human Resources Officer

VAUGHAN

DATE: September 25, 2017

TO: Mayor and Members of Council

FROM: Demetre Rigakos, Chief Human Resources Officer

COPIES: Daniel Kostopoulos, City Manager, Claudia Storto, Deputy City Manager, Legal
               and Human Resources, Barb McEwan, City Clerk

RE: **Additional information and options for recruitment of Deputy City Manager,
               Planning and Growth Management**

Recommendation:

The Chief Human Resources Officer recommends:

1. That Council approve the recruitment process as per Item 10 on the September 20, 2017
   Finance, Administration and Audit agenda and as outlined in Option 1 below; and

2. That the City Manager provide progress update(s) to Council on the recruitment process
   (without disclosing confidential personal information of or pertaining to candidates) prior
   to making a final recommendation to Council as outlined in Option 3 below.

Purpose:

The purpose of this communication is to address Council's direction to report back on options for
Council involvement in the recruitment process for the Deputy City Manager, Planning and
Growth Management.

Discussion

At the September 20, 2016 Finance Administration and Audit (FAA) Committee meeting, Council
discussed the staff report "Recruitment for Deputy City Manager, Planning and Growth
Management".

Council considered the options before them and the following positions were put forward by
various individual members of Council as well as by Staff:

1. Accept staff recommendation as per the September 20, 2017 FAA report and have all
   members of Council participate in an interview of the final qualified candidate or
   candidates as presented by the selection committee comprised of the City Manager,

Chief Human Resources Officer and Search Consultant.

2. Consider creation of a hiring subcommittee of three members of Council, who will participate in the final interviews along with the City Manager, Chief Human Resources Officer and Search Consultant to assist in the final determination of the recommended candidate by the City Manager for Council's approval. This option was presented by Staff as well in the September 20, 2017 report however, it was not a recommended option.

3. That Staff proceed with the recommended option as per the September 20, 2017 report but that they also provide an update to Council prior to final interviews as to the response to the posting and search consultant's efforts and an explanation of how the selection committee arrived at the preferred candidate(s) for final interview(s).

In addition to these three options, one of the considerations discussed at the meeting was that individual members of Council who wish to participate in the interviews be permitted to attend the interviews and observe without active participation. The purpose of this would be for any member of Council that wishes to monitor the selection process. This option is not recommended due to legal and governance risks (see confidential attachment 1).

In addition, the memorandum from the Office of the Integrity Commissioner (attachment 2) identifies potential violations of certain rules within the Code of Ethical Conduct for Members of Council.

The following is a summary of the benefits and risks of each of the options identified:

Option #	Benefits	Risks
1.	Participation by all of Council in the interview(s) of the finalist(s) prior to deciding on the City Manager's recommendation.	Little to no risk
2.	Council's appointment of 3 members of Council as a hiring subcommittee to be included in the selection panel facilitates the process so that the City Manager's recommended candidate to all of Council has been endorsed by the selection panel that includes members of Council.	Little to no risk. Council needs to identify who will participate.
3.	An update to Council in terms of the steps taken in the recruitment process to arrive at the final candidates is beneficial so that all of Council understands the efforts undertaken to date and how the selection panel arrived at its recommendation.	Little to no risk.

Additional information related to senior executive recruitment and best practices

At the September 20, 2017 FA&A meeting the City Manager highlighted some of the best practices when undertaking a recruitment process for senior executive positions. It is important to follow up on the City Manager's comments with some additional information to support Council in making an informed decision that is in the best interest of the City and public they serve.

- Attracting top talent to senior local government roles is very challenging. One of the factors is the significant demand for talent by many of our neighboring municipalities, as well as from the private and public sector more broadly.

- An important consideration for potential candidates is whether the recruitment process will be discreet and confidential to protect candidate's privacy and their current employment situation. Following discussion at FAA, candidate(s) indicated an intent to withdraw from the competition if there was risk of their identity being exposed as an applicant. Additional legal advice on this risk is provided in confidential attachment 1.

- Municipalities, pursuant to the *Municipal Act, 2001,* are corporations run by a Governance Board; This is to be distinguished from a Management Board. Council is not a business, it is a level of Government controlled by statute. Councillors are not managers nor supervisors. Council as a body is the employer and supervisor only of the City Manager. The Clerk (per the *Municipal Act*), the Fire Chief (per the *Fire Protection and Prevention Act*) and the Chief Building Official (per the *Building Code*) are appointed by Council and have statutory roles <u>but direction flows</u> through the City Manager.

- At the February 2017 Council education session, staff reinforced the distinction between Council hiring a City Manager, Integrity Commissioner or Director of Internal Audit from the City Manager hiring senior roles such as Deputy City Managers or statutory positions. While Council can take an active role in the entire recruitment process when hiring a position that reports directly to them, the same is not appropriate when the City Manager undertakes a recruitment for one of the roles that reports to his office directly or to one of the Deputy City Managers. (Governance briefing as per attachment 3).

- The selection of the search firm to support this process is one that has been carefully considered by the City Manager and staff to achieve the desired outcome. The reputation of the search firm, their competence and skills in identifying talent for senior executive roles and their past performance in achieving results are all important considerations.

- The City of Vaughan undertook a review of its recruitment policy and procedures in late 2015 and in April of 2016, Council approved a revised policy. The policy review process

involved a jurisdictional review of practices in other municipalities and review of best practices in the industry. The policy statement is as follows:

The Corporation is committed to a fair and transparent recruiting process that supports hiring the best candidate for all positions. The Corporation ensures all candidates have an equal opportunity. There is no toleration of personal bias or discrimination of candidates in the recruitment process. The Corporation strives to represent the diversity of the community by underscoring the importance of external recruitment to diverse applicant pools.

Conclusion

The recruitment process to fill the role of Deputy City Manager, Planning and Growth Management is extremely important to the Corporation in its efforts to meet Council Priorities and serve the citizens and businesses of Vaughan. Council has an important role to play in considering the City Manager's recommended candidate. Options 1 and 3 are both recommended to Council in an effort to support the effectiveness, confidentiality and success of the recruitment process.

Respectfully submitted,

Demetre Rigakos
Chief Human Resources Officer

ATTACHMENTS:

1. Confidential legal advice (provided to Mayor and Members of Council under separate cover)
2. Memorandum from the Integrity Commissioner
3. Governance briefing

VAUGHAN

memorandum

DATE: September 21, 2017

TO: Demetre Rigakos, Chief Human Resources Officer

FROM: Suzanne Craig, Integrity Commissioner

RE: **Role of Members of Council in Recruitment**

I am writing today to provide you with comments from a Code of Conduct perspective with respect to the role of individual Members of Council in City recruitment processes.

Relevant Code of Conduct for Members Rules
Rule 7 (Improper Use of Influence) and Rule 16 (Conduct Respecting Staff) of the Code contain provisions respecting contact between Members of Council and staff, whether that is regularly employed staff or contract consultants acting on behalf of staff.

Rule 16 of the Code prohibits improper interactions between Members of Council and staff. A Member's conduct can be both workplace harassment under Rule 14 and a breach of Rule 16 if it is disrespectful of staff's professional capacity or if it interferes with staff's duties

The Commentary to Rule 7 states that, pursuant to corporate policy, the City Manager directs City Commissioners (now DCMs). Therefore, City Council and **not individual** Members of Council appropriately give direction to the City administration, including in recruitment

Guiding Principles that flow from the Code
It is inappropriate for Members to involve themselves in matters of administration or departmental management which fall within the jurisdiction of the City Manager. Therefore, **individual** Members of Council have no role to play in influencing in any way, the hiring process for any member of staff, except for the position of Executive or Administrative Assistant to the Mayor and/or Members of Council.

Any attempt by individual members of Council to, for example, urge that an individual candidate must be put on the shortlist or to secure additions to or removals from an already determined shortlist, is behavior prohibited under the Code. This kind of conduct amounts to inappropriate meddling and undue use of influence in terms of the Code.

Allowable activities in recruitment models in accordance with the Code:

1. In the context of defining a job profile, competencies and desired skill sets that a potential job description should include, input from individual Members of Council is allowable only through discussion as part of a properly convened sub-Committee of Council;
2. Unless as part of a sub-Committee of Council, contact between/meetings with the executive search team is not an allowable activity (Rule 7 – improper use of influence);
3. Where an independent contractor/search firm reports directly to a sub-Committee of Council or Council under the Memorandum of Understanding (MOU) with the City, any suggestions in respect to the makeup of any short list of candidates should be made before the hiring sub-Committee of Council, not offline in a private meeting or by telephone;

1

4. The RFP for selection of the executive search firms and MOUs should include reference to the City's Recruitment Policy and should clearly set out the roles and responsibilities of Members of Council *in their capacity* of sub-Committee of Council set up as a hiring committee. This should include but not be limited to the reporting relationship of the executive search firm team and whether there will be reports to the sub-Committee.

Suzanne Craig
Suzanne Craig
Integrity Commissioner

GovernanceSolutions

BRIEFING FOR THE CITY OF VAUGHAN

GOVERNANCE IMPLICATIONS FOR COUNCIL'S ROLE IN RECRUITMENT OF DEPUTY CITY MANAGER, PLANNING AND GROWTH MANAGEMENT

September 2017

BRIEFING ON COUNCIL'S ROLES

The City of Vaughan asked Governance Solutions Inc. to prepare this briefing on governance implications – alternatives, pros and cons – of Council's role in recruitment of a Deputy City Manager, Planning and Growth Management.

We looked at the different stages of authority / decisions in recruitment, alternative ways and places for Council to engage or be involved, and evaluated these through the lens of governance best practices, opportunities and risks. While this briefing applies to this specific situation, the governance principles apply broadly to recruitment of staff beyond the City Manager.

The matrix below outlines a range of alternatives where Council – or a sub-committee – might engage in stages of this recruitment. These are the main touchpoints in a recruitment process, but it's not a comprehensive list. Following the matrix is a review of pros and cons.

RANGE OF ALTERNATIVES: AUTHORITY STAGES AND APPROVAL LEVELS:

Stage of Recruitment	Prepare	Review	Approve	Monitor	Comment
1. Profile of position: needed attributes	?	?	?	?	
2. Posting of position	?	?	?	?	
3. Initial screen of applicants: reduce to shortlist	?	?	?	?	
4. Interview / meet candidates on shortlist	?	?	?	?	
5. Final screen of applicants: reduce to single top applicant	?	?	?	?	
6. Interview / meet single top candidate	?	?	?	?	
7. Appoint top candidate	?	?	?	Yes	Council needs to approve the recommendation of the City Manager with regard to appointment

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Key: the stages of governance authority are (the matrix only shows four of these since Council would rarely Recommend or Report):

Prepare: means the process of preparing a document or leading a function

Review: means the process of checking someone else's work to give input, advice and suggestions for improvement and passing it along to someone else for a decision

Recommend: means the process of both reviewing [above] and formally signing-off on a document or function to indicate concurrence, and passing this along to someone else for a decision

Approve: means the process of both reviewing [above] and formally signing-off on a document or function to indicate that a decision has been made to proceed

Report: means being required to provide information in a prescribed form, usually to the next level of authority

Monitor: means to be aware of content and strategic implication of actions, and the process of checking that decisions and recommendations are being carried our effectively after a decision

PROS AND CONS

Clearly, there are many different combinations of ways where Council, or a sub-committee, may play a role in the recruitment process.

Two facts are clear and important here:

- ✓ Council has the legal right under both statute and bylaws to engage in any or all of these recruitment steps: authority of the Corporation vests in Council until and unless Council delegates this to the City Manager (or others, such as a sub-committee);
- ✓ Council has chosen to delegate the overall authority for staff administration to the City Manager (through the City Manager's By-Law 012-2013), and
- ✓ Council needs to approve the recommendation of the City Manager with regard to appointment.

At one end of the spectrum, Council could choose to be "hands-on", directly involved early at each step: to prepare a profile of needed attributes, the posting, initial screen, short-list interviews, final screen and interview, and then the appointment.

By preparing, or actually "doing", the stage, Council would take "ownership" or "hold the pen" on the whole process. This is not generally what Council does or is equipped to do – even in the recruitment of the City Manager, the Council's direct employee, Council would delegate the "prepare" stage to others, human resource professionals qualified to develop profiles, job postings and the like.

Or Council or a sub-committee could choose to conduct the initial screen of candidates and interview / meet candidates on the short-list. When a City Manager is recruited, Council usually strikes a Search Sub-Committee that would take on this role. But by doing this for a Deputy City Manager, Council would be taking direct responsibility for the selection, and more importantly, removing this responsibility from the City Manager.

This is at the crux of the governance implications in Council's choice here: what is the City Manager accountable for, and who is the Deputy City Manager accountable to? By directly selecting among the applicants, Council signals to the City Manager that the consequences of the recruitment belong to Council, and the City Manager is no longer accountable for these. This is the governance principle of alignment: that we delegate authority level equivalent to the level of accountability that we expect.

If Council expects to be able to hold the City Manager accountable for the Deputy City Manager's performance and contributions, then it should delegate that selection authority.

There are other implications.

The greater involvement that Council has in the recruitment process, this signals to the Deputy City Manager that she/he is accountable not to or through the City Manager, but perhaps directly to the Council. This risks unclear lines of accountability within the City's management, with multiple positions feeling that they report to Council. This turns Council from a governing body into a managing body, like a management committee.

There are indirect consequences in terms of public and reputational perception. What message do we want to send to the public in terms of Council's role, and its confidence in its City Manager? How is the public interest best served? In governance, while legislative branches always have the right to make decisions directly, they typically delegate the bulk of operational or tactical decisions to the executive branch, precisely so that they can fulfill their governance and oversight roles. Once you make a decision directly, you can no longer independently oversee it and provide the public confidence in this independent (second) line of defence or control.

Another implication is confidentiality. Recruitment of a senior position is a sensitive matter, and if candidates saw that they were going to be interviewed by Council or a sub-committee at an earlier stage, those with a good job with other cities might deselect and not apply. The recruitment process itself needs to be transparent, but the applicants need to stay confidential to encourage the largest number of highly qualified candidates.

Having said that, what is the appropriate role of Council in this recruitment process?

At the other end of the spectrum, Council could choose to be "hands-off", to wait for the final recommendation of the City Manager, and to approve that recommendation.

But what we're aiming to do here in governance is to balance the principle of empowerment – delegating sufficient authority for tactical decisions to capable people that may then be expected to be held accountable – with the principle of consistency and diligence – Council being confident ("gaining reasonable assurance") that the process followed by those people was fair, equitable and reached a reasonable outcome.

By engaging in the recruitment process to the minimum extent necessary to satisfy this governance principle of consistency, diligence and fairness, but no more than that, Council balances its governance accountabilities with its operational empowerment.

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One path forward would be for Council to monitor the earlier stages of recruitment, not preparing (doing), reviewing or approving, but overseeing the decisions made by the City Manager in the profile, posting, screening and interviews, and then perhaps meeting or interviewing the top candidate as an opportunity to gain reasonable assurance that this choice – which is being made by the City Manager – is reasonable and fair.

It's not unusual for governing bodies to meet the top candidate for key positions before the approval of their appointment. One reason is diligence – reaching a confidence level that we just talked about. Another is succession – Council is legitimately interested in the qualifications and character of people who may be in line to succeed their one employee, the City Manager, one day. Another reason is that key positions fulfill governance functions that independently give Council assurance that governance is effective: that financial and ethical integrity is in place, not solely relying on the City Manager. This is a sensitive but important area of governance, making sure that other senior positions are clear that, while they report to and are accountable to the City Manager for operations, when it comes to governance (e.g. financial and ethical integrity), they are obliged to communicate with Council without interference from or fear of the City Manager.

This briefing gives Council a sense of the range of alternatives and governance implications involved in their role in recruitment of this senior position, and hopefully will clarify these sufficiently to make a clear choice and path forward.

About Governance Solutions

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Contact us at: 1-888-698-3971 or info@governancesolutions.ca

FINANCE, ADMINISTRATION & AUDIT COMMITTEE – SEPTEMBER 20, 2017

RECRUITMENT FOR DEPUTY CITY MANAGER, PLANNING AND GROWTH MANAGEMENT

Recommendation

The City Manager, Deputy City Manager, Legal and Human Resources and Chief Human Resources Officer recommend:

1. That Council approve the selection process for Deputy City Manager, Planning and Growth Management as outlined in the report.

Contribution to Sustainability

The recruitment process will support the implementation of the Service Excellence Strategy Map (2014-2018) that Council approved on September 30, 2015 ensuring minimal impact to the operations and continuing service to Vaughan citizens.

Economic Impact

The costs associated with the recruitment processes have already been included in the approved budget. Therefore, there is no economic impact associated with this report.

Communications Plan

A media release was issued to announce the appointment of the current Deputy City Manager, Planning and Growth Management, Mr. John MacKenzie as the new Chief Executive Officer of the Toronto and Region Conservation Authority effective November 2017.

Purpose

The purpose of this report is to advise Council that the recruitment process for the soon to be vacant role of Deputy City Manager, Planning and Growth Management has been initiated and to inform Council of the expected selection process.

Background - Analysis and Options

In August of this year Mr. John MacKenzie, Deputy City Manager, Planning and Growth Management submitted his resignation effective October 2017. Mr. MacKenzie will be taking on the role of Chief Executive Officer with the Toronto and Region Conservation Authority.

To move quickly with backfilling the anticipated vacancy staff retained the services of an executive search firm to initiate the recruitment process and an ad was posted both internally and externally on August 31, 2017. Currently the recruitment agency is sourcing candidates and it will present a long list to the City Manager in late September 2017. The selection committee comprised of the City Manager, Chief Human Resources Officer and the search consultant will conduct interviews during the month of October 2017 with the expectation that the top one or two candidates will be invited to meet with all of Council for a final interview and approval of the City Manager's recommended candidate by November 2017. Staff expect the successful candidate will assume their new role shortly thereafter.

Although not recommended, should Council wish, they may appoint three members of Council to participate along with the selection committee in the final selection interviews. Council may wish to select one regional and one local Council member in addition to the Mayor.

The role of the selection committee as selected by Council will be to participate in the final round of interviews of the top candidates and to provide their input to the City Manager on the recommended candidate. The City Manager will then seek approval of the recommended candidate by all of Council.

Relationship to Term of Council Service Excellence Strategy Map (2014-2018)

The report is consistent with Council's Service Excellence Strategy Map and Term of Council Priorities.

Regional Implications

There are no Regional implications associated with this report.

Conclusion

The role of Deputy City Manager, Planning and Growth Management is an integral position within the City of Vaughan and the Corporate Management Team. Noting this role will become vacant in November of 2017 staff have initiated a recruitment process to ensure a smooth transition and implementation of the City's Service Excellence Strategy Map. Staff is seeking Council's endorsement of the election process to ensure effective implementation of the City's recruitment policy as well as ensuring that the City attracts an effective candidate to be appointed to this important role.

Attachments

N/A

Report prepared by:

Demetre Rigakos, Chief Human Resources Officer

Respectfully submitted,

_____
Daniel Kostopoulos, City Manager

_____
Claudia Storto
Deputy City Manager, Legal and Human Resources

_____
Demetre Rigakos, Chief Human Resources Officer

The Public Service BARGAIN

A new way of looking at relations between municipal councils and CAOs

Developing the appropriate relationship between the mayor and council on one hand, and the CAO and municipal staff on the other, is very important in terms of maintaining proper accountability and ensuring good service delivery. However, this important relationship is sometimes fraught with tension and dysfunction. One way of bringing structure to the council-staff relationship is to see the relationship between council and the CAO as a "public service bargain." This type of bargain is not a formal legal relationship, but rather an informal, dynamic relationship that helps define the proper role of council and staff.

This is an edited version of a longer work: "The Public Service Bargain in Local Government: A New Way of Looking at Relations between Council and CAOs," *Canadian Public Administration*, vol. 58, no. 3 (September 2015), pp. 406-25.

The Public Service Bargain

Many aspects of society are built on bargains. This could be a formal, explicit bargain, such as a contract to sell a parcel of property; or, it could be the kind of implicit bargain that couples develop about how child care responsibilities will be handled. The concept of the public service bargain has been widely discussed in parliamentary systems.

An example of such a bargain would be: public servants will remain neutral in partisan political discussions in exchange for reasonable security of tenure when governments change. Each side in the bargain gives up something in order to obtain something. Politicians give up the right to hire and fire public servants at will in exchange for a loyal and professional public service. Public servants give up some rights to political participation in exchange for reasonable job security.

Like the marriage bargain about child care, the public service bargain is not a written agreement negotiated between the parties; it is an understanding that develops over time. However, the ability to arrive at an appropriate bargain about child care can determine whether the marriage will survive; the same kind of statement can be made about finding an appropriate bargain between council and the CAO.

The Bargain Applied to Council and the CAO

The bargain between council and the CAO can be divided into two parts. The first part of the bargain is the condition precedent. In legalese, a condition precedent is a condition that must occur before other parts of a contract can become operative.

The condition precedent in this case involves an agreement on the role that council expects the CAO to play. Figure

DAVID SIEGEL is the interim Dean, Faculty of Education and Professor of Political Science at Brock University.

Figure 1
Role of the CAO with Regard to Council

Proactive   *Reactive*

CAO brings new issues to council even if not requested	CAO responds to council request to provide broad policy advice including options council had not considered	CAO provides advice on the policy options discussed by council	CAO provides information about the administrative implications of policy that council is considering	CAO implements council decisions, but does not offer any advice on policy

1 is a continuum that illustrates some possible positions that the CAO could occupy vis-à-vis council. There is no ideal position on this continuum. Council and the CAO could land at any point on the continuum; the important point is that council and the CAO are in agreement about the point on which they want to land.

The first thing that a new CAO (or a continuing CAO working with a new council) must do is to negotiate the position that he or she is expected to occupy on this continuum. In this context, "negotiate" does not mean sitting down at a table and discussing an issue until the parties arrive at a written agreement. The negotiation process in this case is much more subtle.

Some of this negotiation should occur *before* the CAO takes a new position. A council should have a sense of the role it wants the CAO to play, and the CAO should have a sense of where he or she prefers to fit on this continuum. A part of the job interview process should involve the two sides sizing up one another to determine if there is a good fit in regards to these expectations. When this condition precedent is met, there are several other aspects to the bargain that need to be understood between the parties.

A major part of the bargain is based on the idea that councillors and public servants each bring a different kind of expertise to the table. On the one hand, councillors are elected by the public and put their jobs on the line every few years. This makes them highly attuned to community values and citizens' expectations with regard to policy. On the other hand, public servants are highly-trained professionals who have a great deal of knowl-

edge and experience in their areas of expertise. The best policy decisions reflect the two different kinds of expertise brought to the table by the two groups; good decisions will be the product of a melding of community values and professional expertise.

In order for this melding to occur, both sides need to carry out the role assigned to them properly. Public servants must provide their best professional, administrative advice to councillors. They should never temper that advice in order to tell councillors what they want to hear. Public servants are short-changing their employer if they provide anything other than their best professional advice.

Figure 2
The Advice Bargain

The CAO will provide her or his best professional, administrative advice to council. It is important to be aware of the political implications of this advice, but those implications should not change the advice offered.	Council will consider the CAO's advice in a respectful manner. If it chooses to reject that advice, it will do so without public, personal criticism of the CAO.

Looking at the situation from the other side, councillors need the best professional advice that they can receive. If they do not obtain that advice, then they are making a decision on something other than the best information available, and they risk making an uninformed and bad decision. However, if councillors want to receive the best advice, then they must ensure that they create an atmosphere where public servants feel comfortable providing that advice. This leads to one aspect of the public service bargain.

The bargain does not require the council to *accept* the advice provided by the CAO. The role of council is to *evaluate* the CAO's professional, administrative advice in light of community culture and values. In some cases, council will reject the CAO's advice. However, council must understand that the CAO has a role to play by providing professional, administrative advice, and council must respect the CAO for doing that.

The fact that the CAO's advice must be based on professionalism and rationality does not require the CAO to be completely politically naïve. The wise CAO should be able to anticipate the reaction that her or his advice will evoke, and decide how forcefully to pursue the advice. A really wise CAO might happen to have a compromise position in reserve to bring forward at the appropriate time.

If council engages in virulent public, personal attacks on the CAO, then council is creating an atmosphere that encourages the CAO to provide advice that mimcs what council wants to hear. If the CAO is forced to come over to "the other side," then council will not be well-served because it will never hear the CAO's best professional, administrative advice. As discussed above, the best decisions will involve a melding of professional, administrative advice with community culture and values. If one side of this is muted, then council runs the risk that its decisions will be unbalanced.

The CAO as Sole Employer

It can be useful for council to think of itself as having only one employee – the CAO. The CAO is responsible for managing the public service, within the confines of policy set by council. This does not prevent the mayor or councillors from interacting with staff to ask questions or seek advice about certain matters; it does prevent the mayor or councillors from attempting to manage or provide instructions to staff members.

Figure 3
The Accountability Bargain

The CAO must have reasonably complete authority to manage the activites of the public service, including the ability to hire, promote, discipline, and fire staff on a merit basis.	Council has the right to hold the CAO accountable for the competence, efficiency, and effectiveness of the public service. Council must refrain from becoming involved in managing the public service.

This bargain requires that the CAO must have "reasonably complete authority" to manage the public service. "Reasonably complete" means that the CAO must have authority to manage the operations of the municipality, but it is also a recognition that council has an obligation to set the broad policies within which the CAO must operate. For example, council has an obligation to ensure that the CAO has a proper merit system in place, but council cannot interfere in a specific merit-based hiring decision made by the CAO.

This is a very important aspect of the public service bargain. If council wants to maintain the idea that it has only one employee – the CAO – and it wants to hold that employee accountable for the competence, efficiency, and effectiveness of the public service, then council must allow that person reasonable freedom to make management decisions. If council involves itself in making management decisions, then it can no longer hold the CAO accountable for the results of those decisions, and for the competence, efficiency, and effectiveness of the public service.

The Overarching Bargain

The preceding sections have discussed a number of aspects of the public service bargain. They all come together in one overarching bargain. The CAO must serve the current council loyally; and, in exchange, council will provide the CAO with reasonable security of tenure assuming good behaviour and proper performance of her or his duties. Proper performance means providing council with the best professional, administrative advice, even if the CAO knows in advance that the council would rather not hear the advice; the CAO has an obligation to speak truth to power. The CAO must present bad news as well as good. Council would not be well served if the CAO ignored these issues and allowed them to fester.

Figure 4
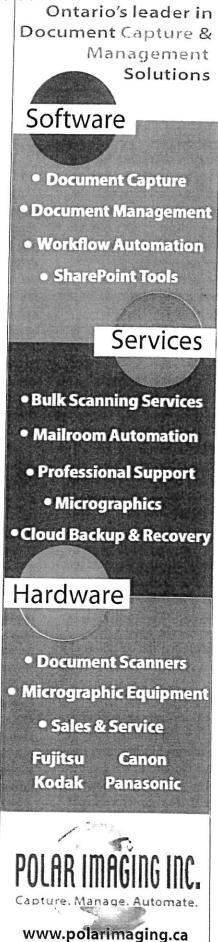### The Overarching Bargain

The CAO will be loyal to the current council, provide professional advice, and carry out the instructions of council in a conscientious and loyal manner.	Council will provide the CAO with security of tenure based on good behaviour and proper performance of her or his duties.

As argued earlier, the best decisions will be products of the interaction of the CAO's professional, administrative advice and the council's knowledge of local values and culture.

If the two sides are going to merge properly, then each side in the discussion needs to feel free to play its role. From the perspective of the CAO, the council must create an atmosphere in which the CAO will not feel threatened when presenting unpopular advice.

BARGAIN, cont'd from p. 10

This means that council must avoid public personal criticism of the CAO, including the ultimate criticism that an employer can impose on an employee – termination of employment. If a council develops a reputation for dealing harshly with staff, then that council will have difficulty finding good staff who want to work in the municipality, and when someone is found, he or she will likely resort to telling council what it wants to hear. This is not appropriate professional behaviour, and it does not serve either the council or the residents of the municipality well.

This understanding gives rise to the overarching bargain.

The maintenance of this bargain will provide a good working environment for staff, a positive experience for councillors, and most important, it will provide a well-governed and well-managed municipality that will serve the interests of residents.

The CAO plays a key role in providing advice to council as well as in implementing council's decisions in an efficient and effective manner. The CAO is the essential link in the accountability relationship between council and the public service.

It is essential that a municipality has a professional CAO, and it is essential that the CAO has the tools and the ability to carry out the duties of the position. An important part of the ability to carry out those duties is a positive relationship with council. This positive relationship will only develop when both parties in the relationship understand their respective roles and are able to carry out those roles in a competent manner. The council must respect the role of the CAO as the professional administrative expert, and the CAO must respect the council as the reflection of community will. The concept of the public service bargain developed in this article could be used to structure the relationship between council and the CAO so that the abilities of the CAO can used to the utmost. MW

SCHOOL, cont'd from p. 26

The community may look viable in the short term, as there is no immediate functional collapse with the closing of the local school; over the long term, however, it becomes unviable – and eventually declines.

Call to Action

Good public policy requires a nonpartisan and objective approach, supported by proper due diligence and study. It also requires, in a democratic society, fulsome public consultation, and involvement in crafting its final objectives and outcomes. Modern policy development also recognizes that, within the Canadian context, diversity is valued and needs to be a key factor in its final considerations. In this case, diversity requires urban policy makers to recognize the unique conditions and context of rural communities.

Continuing to make determinations regarding the closures of schools in rural and remote communities without any study of the consequences of this activity – including the potential exacerbation of the hollowing out of these communities – is not good policy making. It can be seen as a form of non-evidence based decision making. Neither is it sound practice to engage in policy making within institutional silos, as it fails to recognize the potential consequences within the larger societal framework.

If provincial governments value rural communities, they need to redress their current educational policies around how they regard and fund rural schools. In reality, local school administrators and boards abide by provincial policy. A better understanding of the longitudinal consequences of rural school closures is required; continuing to close schools in absence of evidence is bad policy. Until this research is conducted, a moratorium on any future closings of rural and remote schools is the best approach, to help prevent irresponsible damage to these communities. MW

TASK FORCE, cont'd from p. 34

The CANTF2 medical component, although intended to support the CANTF2 team, operated as the critical medical support for the entire incident, treating many of the responders involved.

Fort McMurray is a remote, self-sufficient community that was under a full mandatory evacuation order. Many first responders deployed quickly when the call for help came from the local community and many arrived without the necessary supplies to be self-sufficient. CANTF2, is designed for self-sufficiency; in the early days of the response, the team was one of the only sources of food. The team travelled with a kitchen trailer and supplies, ensuring the capacity to serve the equivalent of 600 meals per day. For over a week, the team chef (who is also a firefighter and rescue specialist) was able to prepare and deliver 3,500 meals in one day out of that trailer until more suitable facilities could be provided. CANTF2 was able to ensure that everyone that came to the kitchen trailer left with a hot meal and drink, which gave them much needed energy to continue responding.

Success in Many Forms

It is always interesting to define success for a team like CANTF2, as it can look different responding to different types of events. During the response to support Slave Lake in 2011, the team defined success as being able to watch and help the community come home. Success in Fort McMurray looked different. Due to the length of the evacuation, the team was not going to be in the community when residents were allowed to return home. Success meant having key members of the community return home, as rested as possible, to take on the roles that CANTF2 members were supporting. Success was watching local community members lead, drive, and recover their own community. MW

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 16, 2015

Item 2, Report No. 11, of the Finance, Administration and Audit Committee, which was adopted without amendment by the Council of the City of Vaughan on September 16, 2015.

2   **INTERNAL AUDIT REPORT – AUDIT OF HIRING PRACTICES**

The Finance, Administration and Audit Committee recommends:

1)   **That the recommendation contained in the following report of the Director of Internal Audit, dated September 8, 2015, be approved; and**

2)   **That the presentation by the Audit Project Manager and the Acting Commissioner of Strategic and Corporate Services and C3, presentation material titled "*Hiring Practices Audit*", dated September 8, 2015, be received.**

Recommendation

The Director of Internal Audit recommends:

1. That the Internal Audit Report on the Audit of Hiring Practices be received.

Contribution to Sustainability

Internal Audit activities and reports contribute to the sustainability of the City by providing advice and assurance that controls supporting the effective delivery of services and programs are effective. Longer term sustainability needs the support of good, efficient risk mitigation strategies. Internal Audit can provide support for that sustainability by providing independent advice and assurance.

Economic Impact

There are no direct economic impacts associated with this report.

Communications Plan

Not applicable.

Purpose

To present to the Finance, Administration and Audit Committee the Internal Audit Report on the Audit of Hiring Practices.

Background - Analysis and Options

The process of hiring staff in the City of Vaughan is done by individual departments with guidance from the Human Resources Department. All hiring must be done in compliance with the City's Hiring and Nepotism Policy. The City is committed to hiring the best staff possible consistent with City Policy and governing legislation.

As a result of reports coming from the Anonymous Reporting System and the increased interest in how the City recruits and hires staff, Internal Audit decided to review current practices and processes.

Relationship to Vaughan Vision 2020/Strategic Plan

This report supports the strategic goal of management excellence through financial stability and effective governance.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 16, 2015

Item 2, Finance Report No. 11 – Page 2

Regional Implications

Not applicable.

Conclusion

An audit of 42 individual recruitments done in 2013 and 2014 demonstrated that the City's current hiring process is unbiased. Based on our review of the current hiring process, we conclude the City does its utmost to hire the best staff available.

We did identify opportunities to streamline recruitment file documentation with the objective of making the overall process more efficient. Management has agreed to complete its documentation strategy and is looking at issuing an RFP for an e-recruit technology solution that will better support a more efficient process.
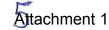
Attachment

1. Internal Audit Report – Audit of Hiring Practices

Report prepared by:

Paul Wallis CPA, CMA CIA CISA CRMA
Director, Internal Audit

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)

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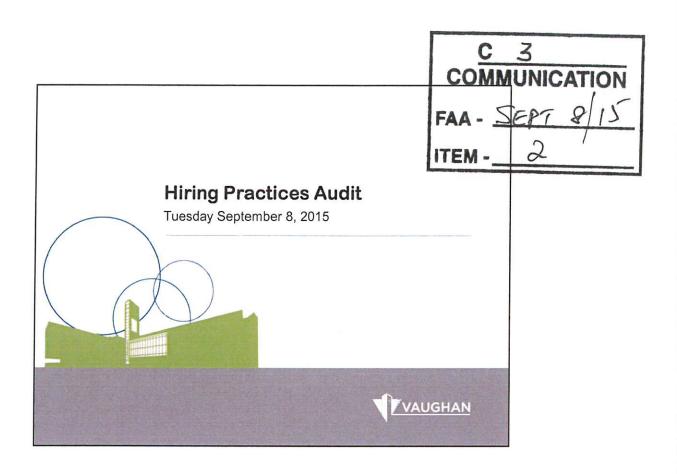
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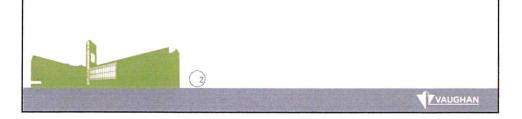
Report prepared by:

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Director, Internal Audit

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)

Hiring Practices Audit

Tuesday September 8, 2015

VAUGHAN

Today's Presentation

- Audit Objective, Scope and Methodology
- Audit Conclusion
- Audit Recommendations
- Management Response and Action Plans
- Next Steps
- Questions

2

VAUGHAN

Audit Objective

- To evaluate the adequacy and effectiveness of the internal controls, processes and procedures in place to mitigate the business risks associated with the hiring of staff in the City of Vaughan.

③

VAUGHAN

Audit Scope & Methodology

- Review of existing Policies and Procedures
- Staff interviews
- Sampling of recruitment files
- 42 of 82 Full Time staff hired that are still actively employed
- Review period of January 2013 – December 2014
- Analysis of staff sourcing.

Not in Scope: →Vaughan Fire and Rescue Service recruitment.

④

VAUGHAN

Audit Conclusion

- No evidence of inappropriate hiring practices for the period under review.

- Opportunities exist to streamline recruitment file documentation

⑤

VAUGHAN

Audit Recommendations

1. Develop and implement a documentation and file management strategy

2. Applications and job inquiries are received by Human Resources directly from the applicant.

⑥

VAUGHAN

Management Action Plans

1. Develop and implement a documentation and file management strategy:

→ Completing the documentation strategy.
→ Standardizing recruitment forms across the organization.
→ Implementing an e-recruit solution.

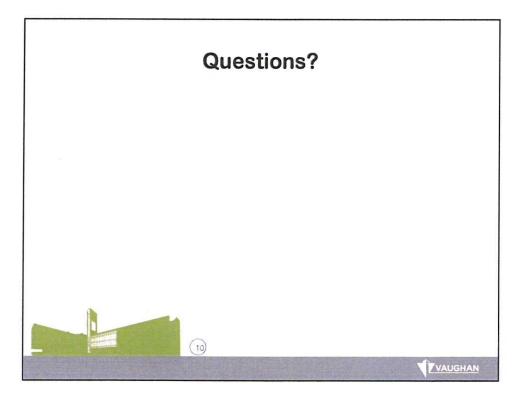⑦   ▼VAUGHAN

Management Action Plans

2. Applications and job inquiries are received by Human Resources directly from the applicant:

→ Enhancing Recruitment policies and procedures to communicate process to be followed by all job applicants.
→ Implementing standard protocol to be followed by HR staff when dealing with inquiries from Council and senior management, staff members or constituents.

⑧   ▼VAUGHAN

Next Steps

- Action plans have been developed.
- Implementation is underway.
- Internal Audit will follow up and report on the status of these action plans.

9

VAUGHAN

Questions?

10

VAUGHAN

FINANCE, ADMINISTRATION AND AUDIT COMMITTEE   SEPTEMBER 8, 2015

INTERNAL AUDIT REPORT – AUDIT OF HIRING PRACTICES

Recommendation

The Director of Internal Audit recommends:

1.   That the Internal Audit Report on the Audit of Hiring Practices be received.

Contribution to Sustainability

Internal Audit activities and reports contribute to the sustainability of the City by providing advice and assurance that controls supporting the effective delivery of services and programs are effective. Longer term sustainability needs the support of good, efficient risk mitigation strategies. Internal Audit can provide support for that sustainability by providing independent advice and assurance.

Economic Impact

There are no direct economic impacts associated with this report.

Communications Plan

Not applicable.

Purpose

To present to the Finance, Administration and Audit Committee the Internal Audit Report on the Audit of Hiring Practices.

Background - Analysis and Options

The process of hiring staff in the City of Vaughan is done by individual departments with guidance from the Human Resources Department. All hiring must be done in compliance with the City's Hiring and Nepotism Policy. The City is committed to hiring the best staff possible consistent with City Policy and governing legislation.

As a result of reports coming from the Anonymous Reporting System and the increased interest in how the City recruits and hires staff, Internal Audit decided to review current practices and processes.

Relationship to Vaughan Vision 2020/Strategic Plan

This report supports the strategic goal of management excellence through financial stability and effective governance.

Regional Implications

Not applicable.

Conclusion

An audit of 42 individual recruitments done in 2013 and 2014 demonstrated that the City's current hiring process is unbiased. Based on our review of the current hiring process, we conclude the City does its utmost to hire the best staff available.

We did identify opportunities to streamline recruitment file documentation with the objective of making the overall process more efficient. Management has agreed to complete its documentation strategy and is looking at issuing an RFP for an e-recruit technology solution that will better support a more efficient process.

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Report prepared by

Paul Wallis CPA, CMA CIA CISA CRMA

Director, Internal Audit

Respectfully submitted,

Paul Wallis CPA, CMA CIA CISA CRMA
Director, Internal Audit

INTERNAL AUDIT REPORT

Audit of Hiring Practices

July 2015

INTERNAL AUDIT REPORT

AUDIT OF HIRING PRACTICES

CONCLUSION AND SUMMARY

We did not find any evidence of inappropriate hiring practices for the period under review. Our examination of the recruitment files demonstrated that the hiring process was unbiased. Based on our review, we conclude that the City does its utmost to hire the best staff to support the City's vision and objectives. However, no system or process is perfect. No matter how good a process is, hiring the right employee for every position is not guaranteed. As such, we made no attempt to determine if the right hiring decision was made. We were only concerned that a reasonable and defendable process was in place to reduce the risks of inappropriate hiring.

We did identify some opportunities for improvement that would enable a more streamlined approach to documenting the hiring process. These include:

- Enhancing the current internal process by developing a more standardized approach to ensure that recruitment file structure is consistent. This also includes the level of documentation needed to support a reasonable and defendable hiring process.

- Developing standardized forms [i.e. interview scoring, screening criteria, decision notations] to support a more efficient documentation process.

Files we examined had a variety of approaches with respect to documenting the recruitment and selection process and decisions. Recruitments handled internally generally had more complete documentation and were easier to follow. Although some documentation was missing, further follow-up indicated that a reasonable process was followed and that all relevant parties were involved in the hiring process. Some of the documentation was maintained in electronic format while some was in paper file format. In addition, some of the documentation was kept in files other than the recruitment file (e.g. employee files).

Files involving third-party recruiters were less complete. These files did not have all interview notes and decision making documentation was absent in some files. Using a third-party recruiter improves the chances of recruiting a quality candidate and is used often by the City to hire senior level positions [commissioners, directors and some managers]. As such, the risk of hiring an unqualified or preferential candidate is reduced as the City is using a resource that can penetrate the broader marketplace. However, having complete documentation serves to better support the overall hiring decision and further reduces the perceived risk of inappropriate hiring practices.

A number of different forms and methods were used to document the hiring process. For example, not all files contained checklists, standard screening documentation or standard interview note formats. In the case of candidate searches done using third-party recruiters, many different forms of documentation were used. Using standard forms and criteria adds to a more efficient and effective process. Aside from supporting increased efficiency and effectiveness, consistent documentation adds strength to a defendable process.

In discussing these issues with Human Resources, the intent was to suggest a documentation strategy that would enhance the defendability of the process while reducing the type and amount of documentation needed. In a public sector collective bargaining environment, a well-documented hiring process helps support public and employee trust and confidence.

INTERNAL AUDIT REPORT

AUDIT OF HIRING PRACTICES

The Human Resources Department currently uses a recruitment checklist, and has developed a Recruitment Policy/Recruitment and Selection Guidelines. A draft policy and procedures document is currently under review. Aside from finalizing this document, the Department has agreed to look at the type and amount of documentation needed.

We will follow-up on the status of outstanding Management Action Plans related to this audit and will report the status to the Finance, Administration and Audit Committee.

BACKGROUND

The process of hiring staff in the City of Vaughan is done by individual departments with guidance from the Human Resources Department. All hiring must be done in compliance with the City's Hiring and Nepotism Policy. The City is committed to hiring the best staff possible consistent with City Policy and governing legislation.

As of December 31, 2014, the City of Vaughan workforce consisted of 1161 full time and 103 permanent part time staff.

As a result of reports coming from the Anonymous Reporting System and the increased interest in how the City recruits and hires staff, Internal Audit decided to review current practices and processes.

OBJECTIVES AND SCOPE

The objective of the audit was to evaluate the adequacy and effectiveness of the internal controls, processes and procedures in place to mitigate the business risks associated with the hiring of staff in the City of Vaughan.

The scope of the audit initially included all full time staff hired in 2013 and 2014 who are still employed by the City. This represented 138 staff. Because of the specialized nature of recruiting fire and rescue personnel, we eliminated the Vaughan Fire and Rescue Service from the total population leaving an audit population of 82. From the remaining 82, we sampled 42 individual recruitments or just over 50% of the relevant population.

Our sample selection included all levels of positions across all commissions in the organization.

In addition, we examined recruitment files and processes done by third-party recruitment firms. We did not include documentation kept by third-party recruitment firms as initial search information is not shared to protect the integrity of the process.

**Auditors: Catherine Atkari CIA CFE, Kevin Shapiro CIA CFE CRMA and
         Paul Wallis CMA, CPA CIA CISA CRMA**

Author: Paul Wallis CMA, CPA CIA CISA CRMA

Director: Paul Wallis CPA, CMA CIA CISA CRMA

INTERNAL AUDIT REPORT

AUDIT OF HIRING PRACTICES

DETAILED REPORT

1. *Type and Amount Of Recruitment Documentation Needs to be Defined*

The City of Vaughan has a systematic process for recruiting and hiring new staff. It is the responsibility of the Human Resources Department, in conjunction with the hiring department, to make sure recruitment and hiring staff is done in compliance with City goals and objectives, legislation and policy.

Key steps in the process include:

- Requisitioning staff
- Position posting and advertising
- Application screening and selection criteria
- Interviewing and testing
- Candidate selection
- Reference checking
- Criminal background checking
- Credential validation
- Offer to successful candidate

Human Resources have the responsibility for retaining all relevant documentation and maintaining recruitment and hiring information.

Our review of files indicated that the amount and quality of documentation varies depending on the hiring team and whether the recruitment is done internally or through a third-party. In some cases interview notes, application selection criteria, credential vetting information and final decision documentation were either missing or incomplete.

Through follow-up, we were able to validate that the right process was followed, although it was not necessarily documented completely.

File documentation can be a time consuming process but the risks of not doing it consistently or completely can lead to the perception that a proper process was not followed. Because recruitment and hiring can ultimately affect people in the organization, it is important to ensure all files are fully documented.

Recommendation

We recommend that Human Resources management:

- Determine the documentation required for all files with the objective of keeping the minimum level needed to defend all hiring decisions.

- Develop standardized forms or formats to ensure consistency. Once again, technology can be used to improve the efficiency and effectiveness of the documentation process.

INTERNAL AUDIT REPORT

AUDIT OF HIRING PRACTICES

In both cases technology solutions should be considered in developing and implementing a documentation strategy.

Management Action Plan

Management agrees with the recommendations in the audit report and the Director of Human Resources commits to developing the following:

- **Complete documentation strategy. [Fourth Quarter - 2015]**

- **Standardized forms across the organization. [Fourth Quarter - 2015]**

- **Human Resources is about to issue an RFP for an e-recruit solution that will further enhance our ability to streamline the process, and standardize the forms used throughout the process. [Fourth Quarter - 2015]**

INTERNAL AUDIT REPORT

AUDIT OF HIRING PRACTICES

2. *All Job Applications Should Directly Go Through Human Resources*

On occasion, candidates for positions may go directly to senior management or Council to either inquire about job prospects or to be considered for an existing vacant position. Usually the request or resume is subsequently forwarded by the initial contact to Human Resources for follow-up.

We found one example where two members of Council received e-mails from a candidate asking to be considered. The requests were forwarded to Human Resources with instructions to respond to the candidate.

Although this is not a major issue or risk, there is a possibility that resumes being directed by Council and senior management to Human Resources could be viewed as an attempt to influence the hiring process or perceived as preferential treatment. It is for this reason that job inquiries and resumes must go directly through Human Resources.

Recommendation

We recommend:

- Council or senior management who receive job inquiries or resumes send a reply to the sender instructing the sender to go directly through Human Resources. This will eliminate the perception of Council or senior management having influence.

- Human Resources revise procedures to provide guidance and instructions on how to handle hiring inquiries coming through Council or senior management.

Management Action Plan

Management agrees with the recommendations and the Director of Human Resources will develop as part of the revised Recruitment policy and procedures the expectation that all candidates submit their interest for a particular position through the process identified in the posting. [Third Quarter - 2015)

INTERNAL AUDIT REPORT

AUDIT OF HIRING PRACTICES

3. *Sources of Staff Hires are Reasonably Distributed*

Staff recruitment should be viewed as a transparent and open process where all skilled and qualified people have an opportunity to apply and be considered for positions in the City. This is stated very clearly in the City's Hiring and Nepotism Policy.

Sometimes there is the perception that hiring managers may favour people from a certain organization or based on friendships.

Based on the current hiring process, we believe that risk is very low. To test this, Human Resources provided us a list of thirty recent management hires and the organizations from which they came.

Our analysis of the staff sources is highlighted in the following table.

Sources of New Management Staff	Number
Municipalities [Including Regions and other Cities – 9 in all] **	17
Private Sector [Non-Government Organizations]	11
Ontario Public Service/Agencies	2
Total	30

** **Nine Municipalities included Orillia, Peel, Ajax, Oshawa, Waterloo, Newmarket, Brampton, Markham and Toronto.**

Based on our test, we conclude that staff are sourced from a variety of organizations representing both the public and private sectors.

No further recommendations are necessary at this time.

Council-Staff Relations: The Public Service Bargain

City of Vaughan
April 18, 2018

David Siegel
Professor of Political Science
dsiegel@brocku.ca

1

My motivation

To provide a framework to help councillors and staff understand their respective roles, and how they can work together in the interest of the municipality

2

Brock

Background and some history
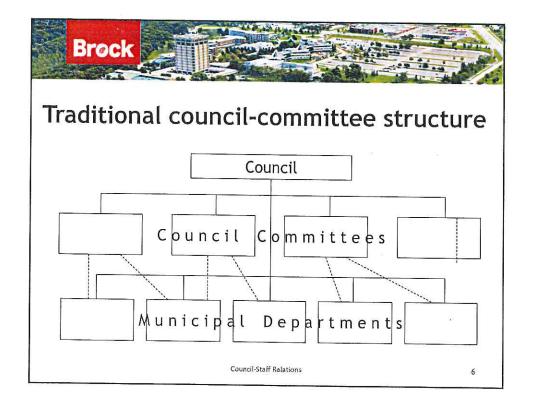
3

Brock

Roles of councillors and staff

Councillors

- Representatives of the community
- Sensitive to local issues

Public service

- Substantive knowledge
- Full-time expert

4

Complementary roles of councillors and staff

Councillors	Best decisions	Staff
Reflect popular opinion in the community	are a melding of the two perspectives	Provide professional administrative advice

5

Traditional council-committee structure

Council

Council Committees

Municipal Departments

Council-Staff Relations

6

Traditional council-committee structure

- Council works well as a deliberative body

- Council does not work well as a management body

- Departments operate in silos

- Weak coordination of service delivery

7

Council-CAO structure

```
          Mayor
         Council
   Committee of the Whole          Council has
                                   one employee
        Council committees

   Chief Administrative Officer

            Staff
```

8

Council-CAO structure

- Council does what it does best -deliberates and makes policy

- Council communicates that policy to its one employee

- Council can hold that employee accountable for service delivery

9

The Public Service Bargain

10

The public service bargain

- Bargain between council and staff
- Establishes rules of interaction
- Creates mutual expectations
- Each side gives up something in exchange for gaining something else

11

Negotiating the bargain

- Implicit bargain - avoid legalism
- Iterative process of mutual interaction and finding the sweet spot

12

The policy advice bargain

Staff members will provide their best professional, administrative advice without regard to the political implications of that advice.

Council will consider staff advice in a respectful manner. If it chooses to reject that advice, it will do so without public, personal criticism of staff.

13

Importance of the bargain

- Best policy decisions are made when each side fulfils its role

- Council needs honest professional, administrative advice

- Staff must feel comfortable providing professional, administrative advice

14

The management bargain

The CAO will have reasonably complete authority to manage the public service including the ability to hire, promote, discipline, and fire staff on a merit basis.

Council can hold the CAO accountable for the efficiency and effectiveness of the public service, but council will refrain from becoming involved in managing the public service.

15

Importance of the bargain

- Council has one person who is responsible for quality of management

- Council can focus on decision-making

- CAO has authority to build an efficient management team reporting to CAO

16

The overarching bargain

Staff will be loyal to the current council, provide professional advice, and carry out the instructions of council in a conscientious and loyal manner.

Council will consider staff advice carefully, treat staff with respect, and provide staff with security of tenure based on proper performance of duties.
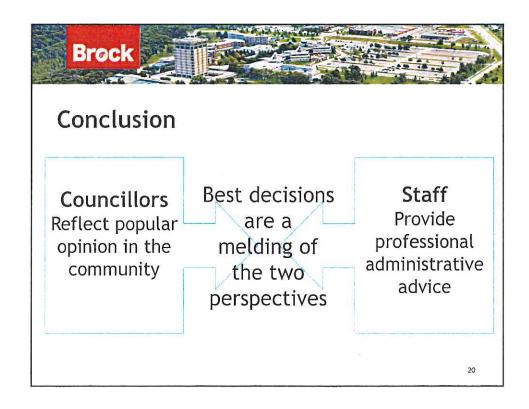
17

What's in it for council

- Council focuses on what it does best – policy-making

- Council receives good policy advice based on professional expertise

- Loyal and efficient public service

- Good service delivery

18

What's in it for staff

- Staff members focus on what they do best – deliver service

- Hiring and promotion on merit

- Reasonable security of tenure

19

Conclusion

| Councillors Reflect popular opinion in the community | Best decisions are a melding of the two perspectives | Staff Provide professional administrative advice |

20

David Siegel | **The "public service bargain" in local government: A new way of looking at relations between municipal councils and CAOs**

Abstract: This article examines the link in local government between the mayor and councillors, on one hand, and the chief administrative officer (CAO), on the other hand. The CAO is an essential link in the accountability process that flows from the electorate through the municipal council to the public servants who work for the municipality. In practice, this delicate linkage has frequently been forged in an ad hoc manner by trial and error. This article proposes a framework for a more solid structure for this important relationship.

Sommaire : Cet article examine le lien au sein des administrations locales entre le maire et les conseillers, d'une part, et le directeur municipal, d'autre part. Le directeur municipal est un lien essentiel dans le processus d'imputabilité qui découle du corps électoral par le biais du conseil municipal jusqu'aux fonctionnaires qui travaillent pour la municipalité. Dans la pratique, cette corrélation délicate a souvent été forgée d'une façon ponctuelle à la suite de tâtonnements. Le présent article propose un cadre pour que cette importante relation ait une structure plus solide.

Establishing a proper relationship between the politicians who are directly accountable to the electorate and the public servants who are responsible for advising about policy and implementing decisions made by their political masters is essential for the proper functioning of a democratic form of government. This relationship needs to ensure that the link of accountability between the electorate and elected members is preserved as the link passes into the public service.

The purpose of this paper is to examine that link in local government between the mayor and councillors on one hand, and senior staff, in particular the chief administrative officer (CAO), on the other hand. The CAO provides policy advice to council and ensures efficient management of the municipality. The CAO is also an essential link in the accountability

process that flows from the electorate through the municipal council to the public servants who work for the municipality. In practice, this delicate linkage has frequently been forged in an ad hoc trial and error manner. This paper will propose a framework that could be used to provide a more solid structure for this important relationship.

The paper begins with a discussion of the current state of the dominant management structure in local government in Canada—the council-CAO system. It then discusses the concept of the public service bargain which has been widely used to describe the relationship between politicians and public servants in other orders of government. The main part of the paper then applies the concept of the bargain to the CAO system in order to develop a framework which can be used to structure the relationship between council and staff.

The CAO/city manager system in Canada

The dominant system of local government administration in Canada has evolved over time, and in classic Canadian fashion, has borrowed elements from a number of different systems used in a variety of jurisdictions. This eclectic heritage could be one of the factors that has led to some current disquiet in the city management profession.

The Canadian CAO/city manager system has evolved gradually with no underlying theory, no obvious group of civic supporters, or even the rhetorical flourish that usually accompanies major innovations. The genesis of the city manager system in the United States is clearly dated from the appointment of the first city manager in Staunton, Virginia in 1908. It is viewed as the invention of one man—Richard S. Childs (Stone, Price, and Stone 1940: 10)—but it grew out of the broader Progressive movement that had an influence on all levels of government. It was a well thought out innovation in management sometimes referred to as the "manager movement" (White 1927: 300), and championed by groups such the National Municipal League, the Good Government League (Ridley and Nolting 1934:7, 26), and the Short Ballot Organization (Stone, Price, and Stone 1940: 10). It is so precisely defined that it has its own model city charter, and a city that does not employ the characteristics set out in the charter is not considered "reformed," and therefore its manager is not considered a *real* city manager (Stillman 1974). Even in its early years, it generated a substantial amount of academic literature trumpeting the value of this innovation (White 1927). A twenty-five year retrospective on the city manager system led off with chapters entitled "The Invention and Theory of the City Manager Plan" and "The Promotion and Spread of the City Manager Plan" (Stone, Price, and Stone 1940).

By contrast, Canadian municipalities developed their version of the city manager or CAO system, almost by stealth. Before the advent of the CAO system, the council-committee system was the dominant management structure. In this system, appointed department heads reported directly to council, but also had a close relationship with council committees and the chairs of those committees. The accountability regime involved an unwieldy arrangement of a ten- or twenty-person council holding a few hundred (or thousand) public servants accountable through eight or ten department heads. This resulted in a very limited form of true accountability, and an extreme form of silo management which was sometimes compared to a feudal fiefdom. Each individual department was generally managed well, but there was very weak accountability, and no mechanism for coordinating service delivery across departments.

Starting in about the 1970s,[1] as governing became more complex, and policies became more intertwined among services, some councils saw the value of appointing a single manager who would serve as a link between council and the administration and would also coordinate the activities of the diverse departments within the civic administration. The ultimate idea was that the CAO would be seen as council's one employee, and the other municipal staff reported to the CAO. However, councils had no model to pursue this new idea.

For many councils, their first step was to change the job title of the clerk to "clerk/administrator" or "clerk/coordinator." The rationale for looking to the clerk was likely that council already had a significant amount of interaction with the clerk, and the clerk had a broader view of the municipality as a municipality than any of the other department heads. The weakness of this approach was that the clerk managed one of the smallest departments in terms of number of staff and size of budget. As well, in many cases, the clerk/administrator or clerk/coordinator was not given line authority over all department heads. The incumbent was expected to somehow manage or coordinate the activities of these powerful department heads with no real mandate of authority. This was not a system that was well thought out, and it was clearly not going to work very well, but it did serve as a half-measure that could be used to sneak up on a full-fledged CAO system.

Gradually the council-CAO system was adopted by more and more municipalities as a pragmatic response to the problem of managing a larger organization with complex policy systems.

In 1969, forty municipalities in Ontario (4% of the total) used the system; by 1976 this had increased to 100 municipalities (12%) (Ontario, Ministry of Treasury, Economics and Intergovernmental Affairs 1976: 19), although some of these "CAO" positions carried titles like clerk-administrator, town administrator, or administrator-clerk-treasurer. Gradually the title seems to

have settled on chief administrative officer. One of the main reasons for the rapid spread of the CAO system was the personal influence of, and a seminal report prepared by, Paul Hickey (Hickey n.d.), a senior official in the Department of Municipal Affairs. This resulted in a stipulation in the legislation creating many of the 1970s-era regional governments that they must have a chief administrative office. This clearly would have had an influence on other municipalities. There is no systematic census of these things, but by 2010 it seems that virtually every municipality in Canada had some form of city manager or CAO system.

However, it had no clearly-enunciated underlying theory and no organization such as the National Municipal League or the Good Government League in the United States to promote its adoption; it was a pragmatic solution to a gradually-emerging problem. Because of the pragmatic and incremental nature of its adoption, it also attracted virtually no attention from academics who might have supplied some theoretical underpinnings (Plunkett 1992; Price 1995).

There was also no accepted training and development program for aspiring CAOs as had developed in the United States. Councils frequently appointed either the head of public works (usually the largest department) or finance to the CAO position (Ontario, Ministry of Treasury, Economics and Intergovernmental Affairs 1977: 24). Usually, this worked out fairly well, but because of the prevalence of silo management, these people did not typically bring much broad knowledge of municipal government to the position. The first CAO in a municipality also had to struggle with the issue of bringing previously highly autonomous department heads under the control of this new position.

A certain unease has recently developed within the fledging profession of CAO.

Over time, the trappings of professionalism have begun to develop around the position of CAO, but the position does not fit all aspects of the classic model of a profession. There is no one clear educational route to becoming a CAO (O'Flynn and Mau 2014: 161), although there are now national and provincial/territorial professional associations, codes of conduct, and a recognized body of knowledge. Also, the aspiring profession is not self-regulating in that it does not control entry to the profession, and it has no monopoly of scope or protected area of practice.

A certain unease has recently developed within the fledging profession of CAO. A part of the unease comes from the fact that the profession has very little public recognition. Compared to traditional professions like medicine, law, and accounting, the public does not have a good

understanding of the profession of city management. As discussed earlier, only a handful of academics have shown much interest in the role of CAOs. The profession seems isolated whether because of the reluctance of professionals to tell their own stories or lack of interest on the part of others.

A look at topics discussed at professional association meetings suggests that CAOs seem concerned that even their political masters do not understand their role or give them proper respect. This is reflected in a perception by members of the profession that they are sometimes dealt with unfairly by councillors in a public venue and sometimes even fired unfairly. This is disquieting for the direct reason that firing brings financial consequences and personal discredit on the person fired, but also because these firings can reflect poorly on the profession.

A situation that comes up frequently in discussions with CAOs is the 2012 firing of Gary Webster from his position as general manager of the Toronto Transit Commission. His offence was presenting his professional advice about the future direction of transit policy in Toronto, even though this advice conflicted with the view held by the mayor. An editorial in the Toronto Star summarized the situation this way: "Make no mistake: Webster wasn't let go for any failure as TTC manager. He was dismissed specifically for doing his job well—for speaking the truth as he saw it and standing up on behalf of riders. It's a sad day for Toronto when that becomes a firing offense" (Star 2012; a similar view is expressed by Gee 2012 and Hood 2012).

> *One way of bringing a certain amount of logic and structure to the council-staff relationship would be to see the relationship between council and the CAO as a public service bargain.*

It is impossible to collect quantitative data on the firing of CAOs to determine if the concern is justified. Even if one could develop some measure like an index of uncivil behaviour, it would be a practical impossibility to apply this across several thousand municipalities in Canada and measure how it has changed over time. It is also impossible to measure firings of CAOs. Ceremonial public dismissals are relatively rare. In most cases, the CAO will recognize that a relationship is becoming untenable and will find other employment before the issue comes to a head. If a situation does come to a head, council and the CAO will frequently arrive at a confidential agreement in which the CAO will resign to pursue "other career opportunities" in exchange for a cash settlement. It is difficult for an outsider to

discriminate between a de facto firing and a career decision by the CAO to move on.

One way of bringing a certain amount of logic and structure to the council-staff relationship would be to see the relationship between council and the CAO as a public service bargain. This concept of public service bargain could encompass the usual employment contract setting out pay and benefits, responsibilities of the position, and so forth, but the public service bargain is much broader than that. The concept will be explained in the next section.

The public service bargain

Many aspects of society are built on bargains. This could be a formal explicit bargain such as a contract to sell a parcel of property or it could be the kind of implicit bargain that couples develop about how child care responsibilities will be handled. The idea that social interaction is based on an exchange of some kind was developed by sociologists such as Peter Blau (Blau 1967). Chester Barnard applied the idea of an exchange relationship to the workplace in his contributions-inducements theory; employees who are expected to make a contribution to an organization must be rewarded with appropriate inducements or they will cease providing the contributions the organization needs (Barnard 1938).

The genesis of the concept of the public service bargain is usually dated from Bernard Schaeffer's 1973 book, *The Administrative Factor*, in which he suggested that one way to help introduce the Westminster system of government to colonial territories was to explain it as a bargain (Schaeffer 1973: 250-63). Kenneth Kernaghan never used the word bargain in his seminal 1976 article on political neutrality, but it was clear that he was describing the relationship between politicians and public servants in terms of a bargain (Kernaghan 1976).

The concept of the public service bargain began to gain more currency around the turn of the century when Christopher Hood espoused the idea in a number of his writings. He has defined the public service bargain as:

[A] deal—explicit or implicit—concluded between public servants and elected politicians or the society at large. Such a deal is concerned with the entitlements and duties of the public service relative to other players in the polity, and is expressed in convention or formal law (typically a mixture of the two) (Hood 2000: 178).

There are at least two actors in any bargain, and each side gives up something in order to obtain some concession from the other side. The actors could be individuals or groups, and the groups could be clearly-defined corporate bodies such as a municipal council or more amorphous

groups such as society at large. Hood and Lodge provide an example of a broad-based institutional public service bargain (PSB):

> To understand a PSB, like any other bargain, we need to identify what the various players gain and what they give up relative to one another and the written or unwritten understandings (or misunderstandings) that surround that relationship. In a PSB, politicians normally expect to gain some degree of political loyalty and competency from bureaucrats or public servants, and those public servants normally expect to gain some assured place in the structure of executive government, a definite sphere of responsibility and some mixture of tangible and intangible reward. Politicians often give up some of their rights to hire, fire, remunerate, or even direct public servants at will, and public servants often give up some of their rights to blame or express political opposition to the ruling regime. Political loyalty in some form is typically exchanged for discretion on the part of public servants (Hood and Lodge 2006: 7).

Donald Savoie brought the idea of the bargain to Canada in his 2003 book, *Breaking the Bargain*, in which he argued that the traditional bargain in Canadian parliamentary governments has been breaking down in recent years, and he discussed the consequences of that breakdown (Savoie 2003). There has been considerable discussion of this bargain in the parliamentary system at the national level of government. There has been no real discussion of how this concept might be applied to the local level.

The council-CAO bargain

In a recent article in this Journal and a recent book, I have argued that the CAO must lead in three directions (Siegel 2010, 2014). *Leading down* involves dealing with subordinates in order to ensure that policies are implemented properly and services are delivered efficiently. This is relatively straightforward in that the CAO sits atop an organizational hierarchy and has the legitimate authority to direct staff. *Leading out* involves dealing with community groups, media, other governments, and similar organizations that have an interest in local government but are separate from the municipal corporation. Leading out is more difficult than leading down because the CAO does not have legitimate authority over these groups and so must rely on influence through expertise, strategic location, and other techniques. *Leading up* is clearly the most difficult because this requires a subordinate—the CAO—to exercise some leadership over her or his superiors—the council. This might involve introducing new ideas that council is not comfortable with. It might involve speaking truth to power—telling councillors some things that they would rather not hear.

This paper will focus mainly on the bargain between council and the CAO. This is the most important bargain not only because it lies at a key juncture of ensuring accountability of public servants to their political masters, but also because this is the most difficult bargain to maintain over

time. However, it is a relationship that is key in making the municipality work effectively.

The public service bargain in local government has more implicit than explicit elements. One way to think about the structure of the bargain is to see what the bargain looks like in three dimensions—the bargain with council, the bargain involving the community, and the bargain involving staff. Note that there is a slight difference in wording of these dimensions. In one sense, the bargain is always between council and the CAO because that is the locus of the employer-employee relationship. However, the bargain involving the community and staff is actually a more complex three-way bargain.
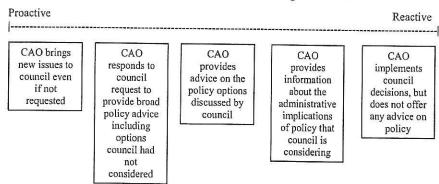
The bargain with council

The most important bargain for the CAO is the bargain with council, because this is the employer-employee relationship and council has the ultimate authority to reward or discipline the CAO.

However, developing the bargain can be complicated by the fact that councillors have a different perspective from public servants. Councillors are selected by voters based on a variety of considerations related to the candidates' stance on policy issues, ability to articulate issues on the podium, background in the community, and so forth. These are important in being a good representative of citizen interests, but they do not generally guarantee that the new councillor will know very much about the machinery of government, or the appropriate relationship between council members and staff. The ideal bargain would be between the CAO and a homogeneous, or at least reasonably well-aligned, group of councillors. When a council is divided, the bargain can be very difficult to attain and maintain over time. However, this is the situation in which many CAOs find themselves.

That bargain with council can be divided into two parts. The first part of the bargain is the condition precedent. In legalese a condition precedent is a condition that must occur before other parts of a contract can become operative.

In this case, the condition precedent involves an agreement on the overarching role that council expects the CAO to play. Figure 1 is a continuum that illustrates some possible positions that the CAO could occupy vis-à-vis council. There is no ideal position on this continuum. The location of the CAO on this continuum involves negotiation between the council and the CAO. That ideal location might change with regard to the issue at hand and it will almost certainly change over time. However, one certainty is that the CAO will have to adjust her or his position to suit the desires of council. Over the long run, the CAO can work with council to try to get

DAVID SIEGEL

Figure 1. *The Role of the CAO with Regard to Council*

Proactive   Reactive

|---|

| CAO brings new issues to council even if not requested | CAO responds to council request to provide broad policy advice including options council had not considered | CAO provides advice on the policy options discussed by council | CAO provides information about the administrative implications of policy that council is considering | CAO implements council decisions, but does not offer any advice on policy |

council to adjust its views on the CAO's location on this continuum. However, in the final analysis, it is always the responsibility of the CAO to adjust to council's position; if the CAO is not able to do this, then the CAO will need to find a different work environment.

Finding agreement on the CAO's location is the condition precedent in the bargain because if council and the CAO cannot agree on this part of the bargain, then none of the other components of the bargain to be discussed later in this section matter; the bargain is doomed to failure.

Figure 1 illustrates that a CAO can take a variety of positions with regard to council. At the extremes, the CAO could be reactive meaning very passive and responding only when requested by council, or proactive meaning taking a strong leadership position to guide the activities of council.

The first thing that a new CAO (or a continuing CAO working with a new council) must do is to negotiate the position that he or she is expected to occupy on this continuum. In this context, "negotiate" does not mean sitting down at a table and discussing an issue until the parties arrive at a written agreement (Althaus and Vakil 2013). This kind of legalism would be counter-productive. In the first place, it would be virtually impossible to negotiate a written agreement covering all of the subtleties involved in this relationship. However, even if it were possible, tethering the two sides to a legal agreement would be dysfunctional in terms of recognizing the flexibility and developing the trust that is needed in this kind of bargain.

The negotiation process in this case is much more subtle. A new CAO might begin by determining where the previous CAO fit on this continuum. If the previous CAO was fired for being too far to the left on the continuum, then the new CAO has a starting point. The new CAO might take

a tentative position and gauge the reaction of council, then either stay put, or move left or right depending on that reaction. This will be an iterative process that will unfold over time. It will require sensitivity and people skills on both sides to begin to settle into the proper position, although it is understood that the primary adjustment will involve the CAO adjusting to what council desires. The complexity is increased because the CAO's acceptable position might vary depending on the issue at stake or over time (Bourgault 2011) (for example, proximity to an election).

> *A major part of the bargain is based on the idea that politicians and public servants each bring a different kind of expertise to the table.*

Some of this negotiation should occur before the CAO takes a new position. A council should have a sense of the role it wants the CAO to play, and the CAO should have a sense of where he or she prefers to fit on this continuum. A part of the job interview process should involve the two sides sizing up one another to determine if there is a good fit in these expectations. Assuming that this condition precedent is met, then there are several other aspects to the bargain that need to be understood between the parties.

A major part of the bargain is based on the idea that politicians and public servants each bring a different kind of expertise to the table. On the one hand, councillors are elected by the public and put their jobs on the line every few years. They are highly attuned to community values and citizens' expectations with regard to policy. On the other hand, public servants are highly trained professionals who have a great deal of knowledge and experience in their areas of expertise. The best decisions of a community reflect the two different kinds of expertise brought to the table by the two groups; good decisions will be the product of a melding of community values and professional expertise.

In order for this melding to occur, both sides need to carry out the role assigned to them properly. Public servants must provide their best professional, administrative advice to politicians. They should never temper that advice in order to tell politicians what they want to hear. Public servants are short-changing their employer if they provide anything other than their best professional advice.

Looking at the situation from the other side: politicians need the best professional advice that they can receive. If they do not obtain that advice, then they are making a decision on something other than the best information available, and they risk making an uninformed and bad decision. However, if politicians want to receive the best advice, then they must ensure that they create an atmosphere where public servants feel

comfortable providing that advice. This leads to one aspect of the public service bargain.

The CAO will provide her or his best professional, administrative advice to council. It is important to be aware of the political implications of this advice, but those implications should not change the advice offered.	Council will consider the CAO's advice in a respectful manner. If it chooses to reject that advice, it will do so without public, personal criticism of the CAO.

The bargain does not require the council to accept the advice provided by the CAO. It is the responsibility of council to evaluate the CAO's professional, administrative advice in light of community culture and values and, in some cases council will reject the CAO's advice. However, council must understand that the CAO has a role to play which involves providing professional, administrative advice, and council must respect the CAO for doing that.

The fact that the CAO's advice must be based on professionalism and rationality does not require the CAO to be completely politically naïve. The wise CAO should be able to anticipate the reaction that her or his advice will evoke and decide how forcefully to pursue the advice. A really wise CAO might happen to have a compromise position in reserve to bring forward at the appropriate time.

If council engages in virulent public, personal attacks on the CAO, then council is creating an atmosphere that encourages the CAO to provide advice that second guesses what council wants to hear. If the CAO is forced to come over to "the other side," then council will not be well-served because it will never hear the best professional, administrative advice. As discussed above, the best decisions will involve a melding of professional, administrative advice with community culture and values. If one side of this is muted, then council runs the risk that its decisions will be unbalanced.

The CAO must present her or his best professional, administrative advice untainted by any political bias. In order to demonstrate that freedom from political bias, the CAO must remain apart from the politics of securing electoral office (Mouritzen and Svara 2002: 140ff). The CAO can exercise her or his right to cast a secret ballot, but beyond that he or she must maintain neutrality with regard to the politics of securing office. The CAO cannot campaign for or against particular candidates. This neutrality is very important because council must feel assured that the advice presented by the CAO is based solely on professional expertise, and is not tainted by a partisan bias. In exchange, council must treat the CAO with

professional respect, even when the CAO is presenting advice that council would rather not hear.

The CAO must remain neutral with regard to electoral politics. The CAO will carry out the instructions of council in a conscientious and loyal manner.	Council must treat the CAO in a professional manner and accept that her or his advice is based on professional expertise untainted by political bias. A new council must also accept that the CAO will be as professional and as loyal to the new council as he or she was to the previous council.

The CAO must provide solid advice to council, but council also needs to communicate clearly with the CAO. Ideally, any policy adopted by council will be stated in a clear and concise manner so that council's intentions with regard to implementation are clear. Unfortunately, not all legislation meets this standard. The only way that some legislation can be approved is by assembling an awkward coalition which can only be accomplished by inserting either deliberately vague or seemingly contradictory provisions in the legislation. To the extent that this is an inevitable part of the legislative process, administrators must accept it. However legislators must understand that they should make their intentions as clear as possible, and if they do not, then they must accept some uncertainty on the part of administrators about how the policy will be implemented. This is a clearly avoidable risk.

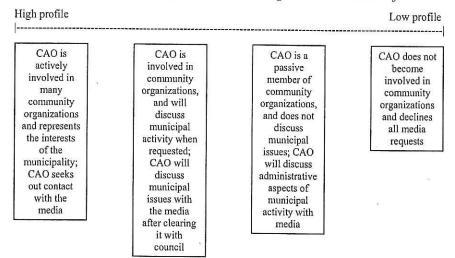|	
Council will provide clear and consistent policy direction to the CAO.	The CAO will carry out all decisions of council in an energetic and loyal manner.

Bargains involving the community

Leading out involves working with community groups, the media, other governments, and a variety of other organizations. The first part of the leading out bargain is the condition precedent related to the role of the CAO in the local community. Council certainly has a significant role in engaging with the community. However, this role can be supplemented by the CAO. In most places, councillors are part-time and therefore have only a limited amount of time to spend on community activities. Therefore the CAO will be expected to represent the municipality's position in the community. In addition, there will be cases where the interaction with external groups will be handled better by an administrator because it involves

Figure 2. *The Role of the CAO With Regard to the Community*

High profile   Low profile
|---|

| CAO is actively involved in many community organizations and represents the interests of the municipality; CAO seeks out contact with the media | CAO is involved in community organizations, and will discuss municipal activity when requested; CAO will discuss municipal issues with the media after clearing it with council | CAO is a passive member of community organizations, and does not discuss municipal issues; CAO will discuss administrative aspects of municipal activity with media | CAO does not become involved in community organizations and declines all media requests |

detailed administrative aspects of policy which are better addressed by an administrator than a politician. CAOs also have to accept the reality that council might want the CAO to be the bearer of bad news to the community, while councillors will convey the good news. For a variety of reasons, there are times when the CAO will be expected to step forward to represent the municipality.

However, the CAO is in an ambivalent position in leading out because he or she must defer to council's public role. My recent book about CAOs is entitled *Leaders in the Shadows* reflecting the contradictory position of CAOs who must simultaneously be both leaders while remaining in the shadows behind their political masters.

The condition precedent which must be negotiated in this case is illustrated in Figure 2. The CAO is a knowledgeable and articulate professional who can play a significant role in the community as an ambassador for the municipality. Some councils will be pleased to have one more articulate voice out in the community delivering the municipality's message. Other councils will want to guard that role jealously for themselves. The CAO will have to engage council to develop an understanding of what role it wants her or him to play. As with the previous condition precedent, there is no ideal position; determining the preferred position is a continuing iterative process.

The CAO will frequently be called upon to explain municipal policy to the general public; in these situations he or she can be a two-way conduit between council and the community. Policies can sometimes be complex,

and changes in policy can incite a negative reaction from a public that might not understand those changes completely. The CAO is well-positioned to explain the intricacies of legislation and how it affects particular groups.

The CAO can also play a role in taking public views to council. Councillors pride themselves on being connected with community culture and values, but senior administrators frequently have a particular relationship with certain community groups which allows the administrators to hear about gathering storms before they become apparent to councillors.

This role as a two-way conduit is an important one for the CAO. However, it can also make the CAO vulnerable to the extent that he or she can be seen as the point person for a particular policy. When the CAO is loyally carrying out the role of speaking for council, council must support the CAO even when he or she is drawing a great deal of criticism in the community. If the council does not support the CAO in this way, then council cannot expect the CAO to continue to engage in this useful activity in the future. This is another clearly avoidable risk.

| The CAO will act as a two-way conduit facilitating the exchange of information and ideas between council and the community. | Council will support the CAO in her or his engagement with the public, and not criticize or disavow positions taken by the CAO if those positions have been agreed upon in advance. |

Bargains involving staff

Leading down—dealing with staff—does not have the same issue of establishing a condition precedent as the previous two cases did, because the situation here is fairly clear. Of course, the council bears ultimate responsibility for all actions of the municipality. However, practical necessity will require that council delegate responsibility for management of the municipality and its staff to the CAO.

It can be useful for council to think of itself as having only one employee—the CAO. The CAO is then responsible for managing the remainder of the public service, within the confines of policies set by council. This does not prevent the mayor or councillors from interacting with staff to ask questions or seek advice about certain matters; it does prevent the mayor or councillors from attempting to manage or provide instructions to staff members.

The CAO must have reasonably complete authority to manage the activities of the public service including particularly the ability to hire, promote, discipline, and fire staff on a merit basis.	Council has the right to hold the CAO accountable for the competence, efficiency and effectiveness of the public service. Council must refrain from becoming involved in managing the public service.

This bargain requires that the CAO must have "reasonably complete authority" to manage the public service. The phrase "reasonably complete" means that the CAO must have authority to manage the operations of the municipality. However, the "reasonably complete" phrase is a recognition that council has an obligation to determine that the CAO has policies in place which ensure that the municipality is managed with proper prudence and probity. For example, council has an obligation to ensure that the CAO has a proper merit system in place, but it should not interfere in a specific merit-based hiring decision made by the CAO. Council has an obligation to ensure that a good performance evaluation system is in place; the CAO has full authority to prepare performance evaluations for her or his staff (in some cases, this could involve consultation with councillors). Thus, the CAO must have the discretion to make management decisions in the operation of the municipality, but that discretion needs to be structured in reasonable ways by policies approved by her or his political masters.

The traditional politics-administration dichotomy was discarded long ago. It is clear that the practical boundary between politics and administration is too porous to amount to a dichotomy. However, there is some value in recognizing that that there is a distinction between roles and that politicians should have primacy in politics and policy, and public servants should have primacy in administration, even if these boundaries are not watertight. It was argued earlier that a CAO who does not provide policy advice is not serving her or his employer loyally. It is also recognized that politicians have a right to ensure that the policies they have mandated are being implemented properly. So while the barrier between policy and administration is not watertight, it should be recognized that some separation is desirable.

This bargain might sound like a self-denying ordinance on the part of councillors. Why should they give up the ability to make patronage appointments and to become heavily involved in decisions that affect their constituents?

There are several responses to this. What might be called the high-road response goes back to a point made earlier about the respective areas of expertise of politicians and staff. Politicians are experts with regard to local culture and values, which makes them experts about how policies will be

accepted in the community. CAOs are experts in policy advice and implementation, and management. The system will work better if both groups focus mainly on their own area of expertise.

However, seasoned politicians discover that it is better to stay out of administration for more pragmatic reasons. It might sound like a good idea to neophyte politicians to curry public favour by providing jobs for their friends, but politicians soon discover that they have more friends than jobs. Politicians discover that there are occasions when it can be very helpful to have a merit system that can be blamed for tying their hands.

> *If council wants to maintain the idea that it has only one employee—the CAO—and it wants to hold that employee accountable for the competence, efficiency, and effectiveness of the public service, then council must allow that person reasonable freedom to make management decisions.*

Seasoned politicians also discover that their reputation as councillors is tied closely to how efficiently the municipality operates. A true merit-based public service will cause the municipality to operate efficiently, which will make the council look good. Hiring a spouse's relatives might make a councillor a hero at home, but it can lead to serious problems in service delivery that will tarnish the reputation of the council. The limitation on politicians becoming involved in administration is not just a restriction on councillors' rights; it is actually quite helpful in the efficient operation of the overall system.

What this all adds up to is a very important aspect of the public service bargain. If council wants to maintain the idea that it has only one employee—the CAO—and it wants to hold that employee accountable for the competence, efficiency, and effectiveness of the public service, then council must allow that person reasonable freedom to make management decisions. If council starts making management decisions, then it is impossible to hold the CAO responsible for the results of those decisions. This is not a risk that council wants to take.

The overarching bargain

The preceding sections have discussed a number of aspects of the public service bargain. They all come together in one overarching bargain. The CAO must serve the current council loyally, and in exchange council will provide the CAO with reasonable security of tenure assuming good behaviour and proper performance of her or his duties. This loyalty will involve providing council with the best professional, administrative advice even if

the CAO knows in advance that the council would rather not hear the advice; the CAO has an obligation to speak truth to power. The CAO must present bad news as well as good. Council would not be well served if the CAO ignored these issues and allowed them to fester.

The maintenance of this bargain will provide a good working environment for staff, a positive experience for councillors, and most important, it will result in a well-governed and well-managed municipality that will serve the interests of residents.

As argued earlier, the best decisions will be products of the interaction of the CAO's professional, administrative advice and the council's knowledge of local values and culture. If the two sides are going to merge properly, then each side in the discussion needs to feel free to play its role. From the perspective of the CAO, the council must create an atmosphere in which the CAO will not feel threatened when presenting unpopular advice. This means that council must avoid public personal criticism of the CAO including the ultimate criticism that an employer can impose on an employee—termination of employment. If a council develops a reputation for dealing harshly with staff, then that council will have difficulty finding good staff who want to work in the municipality, and when someone is found, he or she will likely resort to telling council what it wants to hear. This is not appropriate professional behaviour, and it does not serve either the council or the residents of the municipality well.

This understanding gives rise to the overarching bargain.

The CAO will be loyal to the current council, provide professional advice, and carry out the instructions of council in a conscientious and loyal manner.	Council will provide the CAO with security of tenure based on good behaviour and proper performance of her or his duties.

The maintenance of this bargain will provide a good working environment for staff, a positive experience for councillors, and most important, it will result in a well-governed and well-managed municipality that will serve the interests of residents.

When the bargain breaks down

This has been a description of a fairly complicated bargain involving a number of elements. And this bargain needs to be maintained in a complex

and rapidly changing environment. It is inevitable that, in spite of the best efforts and good faith of everyone involved, sometimes the bargain will break down. Then, what happens?

Seeing the council-staff relationship as a bargain with various elements provides a framework for dealing with breakdowns in that relationship. When the phrase "negotiating the bargain" was used earlier, it was made clear that this was not a matter of sitting at a table to hammer out a written agreement. This kind of legalism will not serve the purpose of this type of bargain. However, it should be possible for council and the CAO to sit down and discuss how a certain aspect of this bargain has gone awry. Thinking of the overall relationship as a series of bargains some of which are going well, but some of which have become derailed can help the participants restore the relationship. Focussing on specific issues should avoid the war of all against all over everything that these exchanges can sometimes become.

In the past there has been a tendency for any breakdown in the bargain to result in the dismissal of the CAO. There can be situations where this is the only feasible outcome. The bargain makes it clear that CAO can be dismissed for performance or behavioural issues. There might also be situations where the bargain around the conditions precedent (the overall structure of the relationship between council and the CAO) comes apart. A parting of the ways might be the only viable option here.

Council must respect the role of the CAO as the professional administrative expert, and the CAO must respect the council as the reflection of community will.

However, councils should be careful in exercising this option too quickly. As a practical matter, unjust dismissal brings with it a significant financial cost, but an even greater cost could accrue when the professional community perceives that a particular municipality is not good at honouring its side of the bargain. This could make it difficult for that municipality to find a good replacement.

Conclusion

The municipal CAO plays a key role in providing advice to council as well as in implementing council's decisions in an efficient and effective manner. The CAO is the essential link in the accountability relationship between council and the public service.

It is essential that a municipality have a professional CAO, and it is essential that the CAO have the tools and the ability to carry out the duties

of the position. An important part of the ability to carry out those duties is a positive relationship with council. This positive relationship will only develop when both parties in the relationship understand their respective roles and are able to carry out those roles in a competent manner. Council must respect the role of the CAO as the professional administrative expert, and the CAO must respect the council as the reflection of community will. The purpose of this paper was to develop the concept of the public service bargain that could be used to structure the relationship between council and the CAO. This concept of the bargain should help both council and the CAO understand their respective roles and the relationship between them. This should assist them in carrying out their proper roles which should result in a more effective system of municipal administration.

Note

1 Actually, some city managers were appointed in Canada shortly after the system was introduced in the United States. However, these were a small number of isolated cases. It did not spread widely and did not even necessarily have much continuity in the cities in which it was first tried.

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WE ARE IN THIS TOGETHER
Council Education Session: City of Vaughan

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Agenda

1. Importance of working together as a team
2. Team members' roles:
   - Council
   - Staff
   - Mayor
3. Governance vs. Management
4. Council/staff relations
5. Bill 132: Anti-Harassment and Workplace Violence

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2

Protection under the *Municipal Act, 2001*

- Statutory immunity

  Immunity

  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. 2001, c. 25, s. 448 (1).

- **Key points:**
  - the act must have been performed **in good faith**
  - Act must be done in the performance or intended **performance of a duty**
- Does not relieve municipality of any vicarious liability
- Protects the **individual** from personal liability

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3

What is municipal governance?

- Governance is a term used to describe political organization of municipalities
- Concerns the on-going involvement of citizens and the accountability of council members

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4

SO many teams... How do they work together?

- Consider the teams:
  - Council
  - Committees
  - Local Boards
  - Staff
  - Ratepayers
  - ALL TOGETHER AS ONE
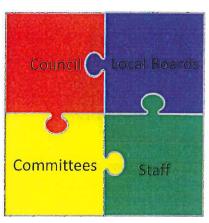

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The collective goal

- What are we working towards?
- A smoothly running, legally compliant municipality, complete with motivated, high performing staff and visionary, effective leaders

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6

How do we reach the goal?

- Each member of the Overall Team has a specific role to play and it is critically important that each understand and play "their" role
- Municipalities are the most accessible level of government

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The importance of the roles of team members

- Imagine if the goalie in an important hockey game stopped the shot and then went on a breakaway without anyone on the team expecting that
- Going outside your role puts the team at risk!

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8

Team members depend on each other

- Councillors **make** policies and are accountable to the public who elect them
- The effective implementation of these policies is dependent on the administrative branch's resources and abilities
- The administrative branch is dependent on council to develop reasonable and achievable policy goals

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9

2. Team Members' Roles

10

The Role of Council

- First, Mayor and Council have the power to lead the Municipality from a policy, direction setting and service delivery perspective;

- Council's legal power is as a collective, not as an individual;

- Municipal Councils are not partisan as are the other two levels of government. There is no "official opposition". The intent is that once Council votes on a matter, all Councillors have the obligation to move the decision forward notwithstanding how they voted or their positions prior to the decision

- Municipal Councils are also the only level of government that is required to be completely transparent in their operation (fishbowl)

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11

The Role of Council under the *Municipal Act*

- The role of council is set out in section 224 of the *Municipal Act, 2001:*

    s.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.

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12

Role of Staff

- Second, Council and Municipal Staff are supposed to act as a team. Council sets the policy and gives direction to the Clerk or CAO and then staff implement the decisions.
- Municipalities are a statutorily created level of government. Authority comes from legislation, regulations and Council's efforts are driven by by-laws
- It is important that Staff and Council understand their roles
- Staff do not set policy and do not control Council. Staff reports to and advises Council so Council can make informed decisions

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Staff's role set out in the *Municipal Act*

Municipal administration – In the *Municipal Act, 2001*

s.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.

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14

Council must collectively direct action

- Only Council, by resolution, motion or by-law can direct the Chief Administrator or a Committee to take an action.
- Individual Councillors **cannot** direct the Chief Administrator or any Municipal Staff members or any members of a Committee to take an action.
- Direction must go through the CAO.
- Council can, and should request reports from various departments or committees to ensure that policy decisions and directions are being implemented.

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15

Council Meetings

- By-laws are passed at council meetings
- As such, it is important that council meetings be properly called and organized and that proper procedures are followed
- Section 238 requires municipalities and local boards to have a procedure by-law to govern the calling, place and proceedings of their meetings

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16

Mayor as Chief Executive Officer

- Mayor has a prominent and highly public profile
- Under 226.1 the head of council (mayor) is an **officer** of a municipal corporation
- Mayor has primary duty to ensure that policies of the Municipality are implemented
- Mayor must **bring ideas forward** to Council in order to foster the well-being of the municipality
- However, mayor is not staff; Must maintain distinction between role of staff and council, including mayor

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17

3. Governance vs. Management

18

Governance vs. Management

- Municipalities, pursuant to the *Municipal Act, 2001,* are corporations run by a **governance board**
- This is to be distinguished from a management board
- Council is **not** a business, it is a level of **government** controlled by statute
- Councilors are **not** managers
- Councilors are **not** supervisors
- Council (as a whole) is the employer and supervisor only of the CAO
- The Clerk, Treasurer (per the *Municipal Act, 2001),* the Fire Chief (per the *Fire Protection and Prevention Act*), and the Chief Building Official (per the *Building Code),* are appointed by Council and have statutory roles but direction flows THROUGH the CAO

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19

Governance vs Management

- Elected representatives have a:
  - Representative role
  - Policy role
  - Stewardship role
- Staff:
  - Research policy and programs
  - Give best professional advice
  - Implement decisions
- Elected representatives need to be cautious about unclear direction and must have confidence in the abilities of staff
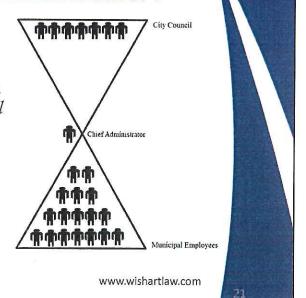
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How do Council and administration differ?

- *"Councils and their administration have different roles within the municipality, but their roles have common goals and purposes. In general, it is the role of the elected council to represent the community and set the direction and policy for the municipality, and it is the role of staff to manage people and resources to achieve council's vision."*

-Municipal Affairs and Housing (MAH)

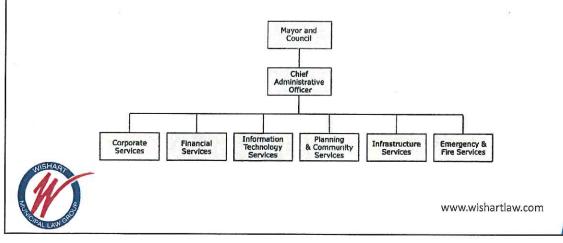www.wishartlaw.com

21

Chief Administrator

- Brock University's David Siegel has studied traits that make an effective CAO
- CAO has to manage "down" to staff and departments, "out" to community stakeholders and "up" to Council members

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22

Who directs implementation of Council's wishes?

- **Only** the Chief Administrator of a Municipality i.e. CAO or other single individual who is at the top of the organizational chart

What about when Council "directs staff"?

- Council Resolutions often "Direct Staff" to take certain actions
  - Regardless of how the resolution, motion or by-law is worded, **legally**, the Council is directing the Chief Administrator to ensure that whichever action is being directed gets done.
  - Councillors should NOT personally direct staff, nor should they EVER personally operate municipal equipment or perform municipal work.
- Confusing?
  - Advice and Reports are provided to Council by many staff members, and this often results in Council believing that all senior staff report to them, but in reality only the CAO is responsible to Council for all matters that are before them.
  - It is a legal error for Council, or Councillors to direct staff that reports to the CAO
  - For example, individual Councillors should NOT direct or instruct the Roads department, the treasurer, the By law enforcement officer etc.

Elliot Lake Integrity Commissioner Report

- Councillor Connie Nykyforak was accused to have conducted "backroom direction to staff without the approval or consent of council as a whole."

- Memo from Mayor and interim CAO directed "Councillors [to] refrain from involvement in day to day operations of staff and that they not contact staff below the level of Director."

- Integrity Commissioner said this is proper: "I have experience with many municipalities making the same request which is a benefit to both staff in their busy schedule and to Councillors who receive the best information from experienced senior staff. In her response, Councillor Nykyforak makes the following statement:
  - "I took great offence to this memo as it not only undermined the office of Council but also created a very unhealthy working environment for staff by being directed to Mr. Humble's office prior to any contact. . . "

- "In her response, Councillor Nykyforak also claimed to have experience in administration and described her interaction with junior staff not as directing them but as "helping" them and much "appreciated" by them. It is hoped after reading this report, that Councillor Nykyforak will understand that **she has absolutely no part to play in the staff chain of command of the City**."

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Appointment of CAO, Clerk, and Treasurer

- Council has authority to appoint a CAO pursuant to s. 229 of the *Municipal Act, 2001.*
- States that a municipality **may** appoint a CAO 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
- Municipalities are required to appoint a clerk and a treasurer
- Unlike CAO's, clerks and treasurers are not required to be employees of the municipality.

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26

Council's Role in Recruitment

- Council should not play an active role the recruitment process.
- Independent hiring committees should be struck, which should include individuals from diverse backgrounds with HR experience.
    - Studies show diverse groups have better problem solving and decision-making.
- Council sets policy about hiring. Adding Councillors to policy conflicts with City Manager and CAO roles. Council has delegated this authority. Process should be to approve, or disapprove the recommendation, not to be involved in the selection process.
- Council members' participation can give rise to perceived impropriety of the recruitment process.

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27

Niagara Region: CAO's Hiring Compromised by Leak

- Hiring of Niagara Region's CAO tainted by back-room dealing and violation of critical confidentiality rules.
- Toronto recruiting firm hired to run recruiting and interview process for $230K per year job.
- To protect candidates from potential professional blowback, their identities were to be kept confidential by selection committee members.
- Carmen D'Angelo was ultimately hired and the names and biographies of candidates were leaked to him in a memo sent from Regional Chair Alan Caslin's office during the selection process.
- Also, it was found that there were internal efforts at the Region to clear a path for D'Angelo, that key members of the selection committee were current or recent employers, and that the municipality's HR dept. was removed from the process despite being name to the committee in the terms of reference.

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Bellamy Report Re Toronto Computer Leasing Scandal

- Justice Denise Bellamy was appointed to probe the Toronto computer leasing scandal.
- Biggest cost was the contract between the City and MFP Financial Services for $40M in computers and computer services. The City ended up spending >$80M under that contract.
- Complex facts, but boil down to staff not disclosing relationships putting them in conflict and accepting meals, tickets, and trips in exchange for their advocacy.
- Justice Bellamy described two staff members as:

  "individuals who lacked professionalism, ignored obvious conflicts of interest, showed a prodigious appetite for corporate freebies, and were incompetent and persistent liars. They were almost pathetically vulnerable to sales tactics in the guise of entertainment and favours".

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29

Offences under the Municipal Elections Act

- Recall there are offences under the *Municipal Elections Act* pertaining to recruitment.

90(3) No person shall, directly or indirectly,

(c) give, procure or promise or agree to procure an office or employment in connection with the exercise or non-exercise of an elector's vote;

(d) apply for, accept or agree to accept any valuable consideration or office or employment in connection with the exercise or non-exercise of an elector's vote;

(e) give, procure or promise or agree to procure an office or employment to induce a person to become a candidate, refrain from becoming a candidate or withdraw his or her candidacy;

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30

Council must ensure policies are being implemented

- The Ministry of Municipal Affairs and Housing states that:

"There is a fine line between council's overall stewardship of the municipality and the administration's management of day-to-day activities. Council monitors the implementation of its approved policies and programs, but the practical aspects of its implementation and administration are a staff responsibility."

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31

How do you oversee administration without administering?

- "Nose in, hands out". In other words, inquire about matters at Council, seek reports, seek recommendations but do not direct and definitely do not participate in Municipal work

- Set goals – Strategic Plans, Asset Management Plans, etc.

- Establish policies on implementation of directives;

- Have staff report back to Council to ensure ongoing progress is being made in the implementation of Council directives.

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32

Legal Proceedings Against Councillors

- Recent headlines:
  - "Timmins city councilor charged with corruption"
  - "Thunder Bay Mayor charged with extortion"
- Highlights importance of codes of conduct and policies for municipalities

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33

4. Council / Staff Relations

34

Council-Staff Relations:
Best Practices

- **The "Equality Factor"**
    - **All** council members are equal
        - Staff must avoid favoritism
        - Treat council as a collective decision making body
    - Ontario has a non-partisan model

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35

Best Practices

- When council looks good so does the municipality - at the same time, when council looks bad it reflects on the staff
- Council must ensure not to make important policies without thought and analysis of material and recommendations
- Should raise issues with senior staff beforehand
- Staff can speak for themselves
- Get motions right the first time
- The name game: elected office is an honour; Use "elected representative", "Mayor", "Councillor"

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36

Airing Dirty Laundry

- Operating in a "fishbowl"
- Staff can be a convenient target
- Councillors may see the need to criticize
  - Ex. Incorrect, poor research, too slow
- Must **never** publicly accuse staff of stupidity, lack of ethics or being unprofessional
- **Council should "police" themselves**

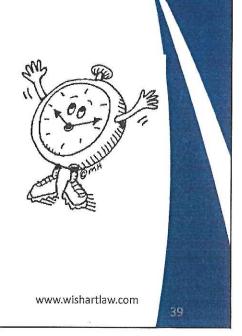www.wishartlaw.com

37

Councillors: Not Customer Service Reps

- Councillors must not act as customer service representatives
- What you hear may not be the whole story
- Rely on your own sources
- Always show leadership
  - There is always respect for leaders who make difficult, integrity based decisions
  - Don't take the easy way out
    - Approve, disapprove, or defer – if the situation calls for it

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38

Time management

- Staff reports cost taxpayers dollars
- Insist on formal staff directions
  - Helps to ensure that no dominance by one member
- Resist temptation to ask for staff report to get past a delegation item
- If you know what you are going to do **JUST DO IT**

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39

Who is the public figure?

- Staff comments to the media should be restricted
- Media relations is a council job (Mayor)
- Staff provides information and advice **only**
  - Comments always pertain to fact and history
- Council advances, explains, and defends policy recommendations once adopted
- Staff should not be routinely questioned in any public session
- Council members "in charge" (seen to be in charge)

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40

Council's expectations of staff

- Well planned agendas
- Thorough staff reports
  - Brief, but adequate information and analysis for decision making
  - Options and implications
  - Recommendations
- Follow up actions and implementation
- An understanding that council will make some political decisions
- Loyalty and Support
- Recognition of the structure of the organization and its inherent reporting hierarchy

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41

Staff's expectations of council

- Learn about the municipal organization and its operations
- Do homework before meetings
  - Read the agenda
- Be supportive
  - Don't criticize staff in public or at meetings
- Appreciate demand of the job which includes the statutory responsibilities and professional obligations (ethics)
- Objectivity which includes consistent application of policies
- Give clear direction
- Respect professional opinions provided by staff and outside professionals
- Recognition of the structure of the organization and its inherent reporting hierarchy

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42

5. Bill 132: Anti-Harassment and Workplace Violence

43

Bill 132: Anti-Harassment and Workplace Violence

- Bill 168 and Bill 132 of the *OHSA* require employers to have a *Workplace Anti-Violence, Harassment, and Sexual Harassment* Policy

- This Law also states that employees *must be trained* by the Employer about the policy

- Employers must perform some form of investigation into every incident or complaint of workplace harassment

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44

Bill 132 Cont.

- Investigation being done – fact gathering process by independent professional investigator;
- Will determine if harassment has occurred
- May make recommendations regardless of whether harassment occurred with a goal of a better functioning, healthier workplace
- Harassment occurs on a spectrum from minor to major/criminal
- OHSA prohibits reprisals against complainants

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45

Bill 132 Cont.

No discipline, dismissal, etc., by employer

- **50** (1) No employer or person acting on behalf of an employer shall,
- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,
- because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act or the regulations or in an inquest under the *Coroners Act*. R.S.O. 1990, c. O.1, s. 50 (1).

Onus of proof

- (5) On an inquiry by the Board into a complaint filed under subsection (2) or a referral made under subsection (2.1), the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection (1) lies upon the employer or the person acting on behalf of the employer. R.S.O. 1990, c. O.1, s. 50 (5); 1998, c. 8, s. 56 (2); 2011, c. 11, s. 13 (5).

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46

Workplace Harassment

- Bill 132 came into effect September of 2016 and has amended the OHSA to include new definitions of harassment

- There is a requirement that harassment complaints be investigated

- The Ministry of Labour has the jurisdiction to Order a third party investigation of harassment complaints with the investigation to be paid for by the Employer. The Ministry decides who will do the investigation if they Order one. As such it is imperative for a Municipality to get the investigation done correctly the first time.

- Third party investigations often cost from $20,000-$100,000

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47

Workplace Harassment

- If an employee of the Municipality is being harassed, they complain to the Chief Administrator
  - If the Harassment is by the CAO, employees should complain through the process established by the municipalities policy and procedures with the understanding that Council, as the CAO's supervisor, is responsible to ensure the complaint is investigated properly.

- If the Chief Administrator is being harassed by a Councillor, the Municipality could be liable for any damages arising from such harassment.

- The CAO is responsible pursuant to s. 25 OHSA to take every precaution reasonable to protect staff from harassment

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48

Workplace Harassment

- It is mandatory to have a harassment policy compliant with Bill 132 as of September 2016
- Although Councillors are NOT supervisors or employers of Municipal staff per the Municipal Act, they could be held to be employers pursuant to OHSA
- Fines per OHSA are not protected by s.448 Municipal Act
  - Up to $25,000 for an individual
  - Up to $500,000 for a corporation

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49

OHSA Penalties

- Fines per *OHSA* are:
  - Up to $25,000 for an individual
  - Up to $500,000 for a corporation
- Recently, an organization was fined approximately $70,000 for failing to have a Bill 132 policy in place

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50

25

Protection under the *Municipal Act, 2001*

- Statutory immunity

  Immunity

  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. 2001, c. 25, s. 448 (1).

- **Key points:**
  - the act must have been performed **in good faith**
  - Act must be done in the performance or intended **performance of a duty**

- Does not relieve municipality of any vicarious liability
- Protects the **individual** from personal liability

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51

Wishart
LAW FIRM LLP

J. Paul R. Cassan
pcassan@wishartlaw.com

390 Bay Street, Suite 500

Sault Ste Marie, Ontario P6A 1X2

Tel 705.949.6700

Fax 705.949.2465

www.wishartlaw.com

52