



Elected officials and *The Municipal Act*

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With the election season over and a new term underway, now seems the appropriate time to review some of the statutory provisions governing

the conduct of municipal councillors. While limited space obviously makes comprehensive survey of the legislation impossible, it is hoped that at least some of the more basic

procedural rules and other requirements can be covered.

Under *The Municipal Act*, a council is responsible for developing and evaluating the policies and programs of the municipality; for ensuring that the powers, duties and functions of the municipality are properly carried out; and for discharging the powers, duties and functions expressly given to council by legislation. This is a lengthy way of saying that, in all matters of any significance, a municipality acts through its elected council. Such decisions typically are made at meetings of council. A quorum, meaning a majority of members comprising the council, is required at each meeting. The minimum number for a quorum of a council is three. A member of council has one vote each time a vote is held at a meeting at which he or she is present.

The Municipal Act expressly states that a council may act only by resolution or by-law. A resolution can be passed at a single meeting. Each proposed by-law, on the other hand, must be given three separate readings at meetings of council and be put to a vote each time. Depending on the nature of the proposed by-law, *The Municipal Act* or other legislation may require council to hold a public hearing. Such a hearing is to take place before the by-law is given third reading. In the case of a tie vote for and against a particular resolution or by-law, it is defeated.

A question sometimes arises as to which of the two methods – resolution or by-law – should be employed when council proposes to act in a certain fashion. The simple answer is that a resolution will suffice save for those instances where council is expressly required or authorized under a by-law or legislation to do something by by-law only. Under that scenario, the passing of a by-law is mandatory. In all other cases, council may act by way of resolution.

The *Act* also imposes on council certain obligations with respect to the retention and disposition of municipal records. The details





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are set out in the applicable regulation, which includes a schedule separating the records into categories and specifies the minimum retention period for each. It also identifies whether, upon expiry of the prescribed period, that particular type of record can be destroyed or must be sent to an archives. For example, minutes from meetings of council must be kept on hand for at least 10 years, following which they can be sent to archives, but not destroyed.

Familiarity and compliance with these requirements is particularly important given that, under *The Act*, a person can request and must be given access to the following records:

- Assessment rolls;
- Financial plans;
- Financial statements;
- Reports of the auditor appointed to audit the records and books of account of the municipality for a given year;
- Minutes of council and committee meetings;
- By-laws and resolutions of council and committees;
- A report of the Ombudsman received by council.

Council members also should be mindful of the legislative provisions governing con-

flicts of interest. In this regard, all councillors are subject to *The Municipal Council Conflict of Interest Act*. This legislation imposes specific obligations on a council member where, during a meeting, there arises a matter in which the councillor or any of his dependants have a direct or indirect pecuniary interest or a matter involving such an interest of any party to whom the councillor or any of his dependants has a direct or indirect pecuniary liability. Faced with this situation, the councillor is required to disclose the nature of the direct or indirect pecuniary interest or liability and must withdraw from the meeting without voting or participating in the discussion. He or she must also refrain at all times from attempting to influence the matter.

The Municipal Council Conflict of Interest Act defines the term "direct pecuniary interest" and also describes when, for the purposes of the *The Act*, a person shall be presumed to have an indirect pecuniary interest or an indirect pecuniary liability. It also sets out the various circumstances in which such an interest or liability will not be presumed. Relevant considerations include the value of the particular interest or liability and whether it exceeds that of the ordinary resident. Certain specific transactions identified in the *Act* also are deemed not to give rise to a pecuniary interest.

The Act sets out the procedure by which an elector can bring an allegation of conflict of interest before the court. The consequences for a council member found to be in violation of any of its provisions can be dire. Most significantly, any councillor guilty of such a breach is disqualified from office and his or her seat becomes vacant. In addition, where the councillor has realized financial gain in a transaction to which the violation relates, he or she may be ordered to make restitution to the affected party. It should be noted that, where the breach occurred unknowingly or through inadvertence, the councillor will not be disqualified and the seat will not be declared vacant.

In practical terms, whether or not a particular situation amounts to a conflict of interest may be difficult to determine. Council members are advised to err on the side of caution when it comes time to identify such potential conflicts and to proceed accordingly.

The above information, while important, is but a small sampling of the procedural requirements and other rules of conduct imposed by statute on elected officials. Council members may wish to review *The Municipal Act* and other legislation to learn more about their various powers and obligations. ☞



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