

Things That Can Happen to a Municipal City Councillor

November 12, 2012

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Introduction In the legislation authorizing municipal decision-making by collective voting of councils, there is almost no reference to members of councils as individuals or, aside from the *Municipal Conflict of Interest Act*, establishing what they can or cannot do. The following is for the information of members of municipal councils in Ontario, to demonstrate some of the problems and pitfalls which may befall them when acting in that capacity. For every municipality, proper council procedures, conduct, and maintaining order in the public interest, should be highlighted at orientation sessions for councillors. It is also important to recognize that each member is there by reason of having been elected by a constituency to represent the electors and serve the public interest. **Disruptive Conduct of a Member at a Meeting** Many municipal councils have a member perceived as a troublemaker, whose disruptions and delay of council business pose a persistent source of annoyance to fellow members. What strategies and remedies are open to the council and the member chairing the meeting to bring a disruptive councillor to heel? Approaches could include adjourning the session, calling the member to order, asking the member to sit down, seeking reconciliation between members, holding speakers to time limits, ruling a member out of order (subject to appeal to the members), or requesting that the member apologize before the meeting can continue. Whatever is done must respect the right of the member, and not be seen as a way to silence an unpopular view. **Bringing the Procedure By-law to Bear** It may be useful for a council to adopt policies and procedures designed to minimize disruptive conduct by its members. Council procedure by-laws could include provisions for this purpose, such as:

- emphasizing that it is the chair's responsibility to chair the meeting objectively;
- non-acceptance of motions that are obviously frivolous or tending to cause delay;
- addressing points of order, points of privilege, and points of personal privilege;
- requiring compliance with recognized Rules of Order;
- requiring that members speak respectfully;
- prohibiting disrespectful, offensive or unparliamentary language;
- emphasizing respect for and compliance with rulings of the chair (unless successfully appealed) and majority decisions of the council;
- requiring that members address only the matter under consideration by the council;
- requiring a formal warning to a member before the chair calls the member to order or takes other action to calm the disturbance.

Some procedure by-laws have a requirement that the chair may order a member who continues to disobey the procedure by-law or the chair's rulings to leave for the rest of the meeting and/or until the member returns to apologize, with such ruling appealable to the council as a whole. Reference may also be made to the member's declaration or oath of office, a personal undertaking to follow proper procedures. While not necessarily enforceable, these voluntary undertakings may bring to the attention of the councillor the importance of his or her position as an elected member. Requiring order in debate maintains both council and public confidence in the relevance and propriety of council decision-making. **Formal Measures Available to Address More Serious Problems Involving Councillors**

Expulsion from Meeting

Section 241(2) of the *Municipal Act, 2001* (the “Act”) authorizes a head of council or other presiding officer to expel any person for improper conduct at a meeting. This provision is not limited to non-council members, and if expulsion of any person, whether a member or not, will enable the council to get on with its business, such action may be legally supportable. The expulsion could not last longer than the end of the meeting, and could be made terminable, for instance, on the condition that the member apologizes or takes other steps to rectify the damage. Expulsion should be used only as a last resort, and only to the extent necessary to bring the meeting to order. It is unclear what is meant by “improper conduct”, but there would appear to be some degree of discretion available to the head of council in determining that issue, supported by the powers of the council to govern its own processes, and carry on proper meetings.

Council Code of Conduct

Sections 9, 10, 11 and 223.2 of the Act authorize a municipality to establish a code of conduct for members of the council and its local boards. The council has the power to reprimand a member or suspend the member’s remuneration for up to 90 days, after an inquiry by the municipality’s integrity commissioner reporting that, in his or her opinion, the member has contravened the code. That provision is not exclusive in terms of any other sanctions which may be imposed or actions which the council may take arising out of a breach of the code, nor is there a provision precluding the council itself from making a decision that the code of conduct has been contravened. A report from an integrity commissioner is required to be made available to the public. Councils may be creative in determining what action to take against a councillor found to have contravened a code of conduct.

The Role of the Municipal Ombudsman

Section 223.13 of the Act authorizes a municipal council to appoint an Ombudsman, who reports to council and whose function is to investigate in an independent manner any decision or recommendation made, or acted on, or omitted in the course of the administration of the municipality. An Ombudsman is given wide powers and procedural authority to conduct an investigation in private, and to disclose in any report to the council such matters as, in his or her opinion, ought to be disclosed in order to establish grounds for his or her conclusions and recommendations. Recently, the Ombudsman of the City of Toronto presented a comprehensive report to City Council, which included her conclusions that the Mayor’s Office had exerted undue influence on the appointment process to the City’s boards and commissions. Her recommendations, including a procedure to ensure any potential or actual conflicts of interest would be flagged and reported to the Civic Appointments Committee, were adopted by the Council.

The Consequences of other Transgressions by Members of Municipal Councils

A number of statutory provisions may impact on the rights of an individual to run for municipal office, hold such office, or continue as a member of council. For instance, sections 256 and 257 of the Act provide that a person is qualified to be elected and to hold office as a member of a council, who is entitled to be an elector in the municipality. Under section 17 of the *Municipal Elections Act*, this would preclude from voting, for instance, a person serving a sentence of imprisonment in a penal or correctional institute. Under section 258(2) of the Act, a member becomes disqualified from holding office if, at any time during his or her term of office, that member is prohibited from voting in an election for the office of member of council if an election were held at that time. For example, a member of council who became an employee of the municipality, or were appointed to an administrative position in the municipality, would lose the right to continue to hold office. Where a member becomes disqualified from holding office, the office becomes vacant, following which the council must make a declaration of vacancy, and fill it by by-election or appointment. Aside from the foregoing, and in the absence of a resignation, death of a member, or successful proceedings against the member under the *Municipal Conflict of Interest Act*, there are few processes by which a member’s conduct may render him or her ineligible to hold office during his or her term. There is no general right to “recall” a person elected to office.

Other Matters which may affect the Capacity and Status of a Member of Council

Events Leading to Vacancy of Office

Section 259 of the Act mandates that the office of a member of council of a municipality becomes vacant “if the member, (a) becomes disqualified from holding the office of a member of council under section 256, 257 or 258; [referred to above] (b) fails to make the declaration of office before the deadline in section 232; (c) is absent from the meetings of council for three successive months without being authorized to do so by a resolution of council; (d) resigns from his or her office and the resignation is effective under section 260; (e) is appointed or elected to fill any vacancy in any other office on the same council; (f) has his or her office declared vacant in any judicial proceeding; (g) forfeits his or her office under this or any other Act; or (h) dies, whether before or after accepting office and making the prescribed declarations.” A resignation is not effective if it would reduce the number of members of the council to less than a quorum. Under section 261 of the Act, if a person’s name appears on the ballots for more than one municipal office and he or she is elected to either, the election is declared void and the office is vacant. Section 265 authorizes any elector to apply to the Superior Court of Justice for a declaration that the office of a member of a council has become vacant, and for an order removing the member from office and declaring the office vacant. Under section 274 of the Act, a municipality, by resolution, may request a judge of the Superior Court of Justice to investigate any supposed breach of trust or other misconduct by a member of council, inquire into any matter connected with the good government of the municipality, or inquire into the conduct of any part of the public business of the municipality. Such inquiries are public proceedings in which witnesses give evidence under oath. At the termination of the inquiry, the judge is required to report the results of the investigation to the council as soon as practicable. Recommendations from such an inquiry may be quite far-reaching, and may impact on the reputation of both the municipality and members of its council. Members of municipal councils may become the subject of legal proceedings, in some cases as co-defendants with the municipal corporation, and in some cases, as defendants on their own behalf, such as in actions for negligence, abuse of office or defamation.

Provisions of the Municipal Elections Act Protecting a Person elected to Office

Under section 83 of the *Municipal Elections Act*, an elector may apply to the Superior Court of Justice for determination as to whether or not an election is valid, and whether or not the election of an individual to an office is valid. Such a proceeding may result in a determination that the election was invalid and require the calling of a by-election. Under sections 89 and 90 of the *Municipal Elections Act*, a person found guilty of an offence constituting a corrupt practice, if it was committed knowingly, is disqualified from voting in an election until the next regular election, a consequence which would also render him or her ineligible to continue to hold office. Under section 91, where such a person is convicted of a corrupt practice under the Act, or of an offence under the *Criminal Code* in connection with an act or omission that relates to an election to which the Act applies, then, in addition to any other penalty, the individual’s election is forfeited and the office becomes vacant. The individual in question then becomes ineligible to be nominated for, or elected, or appointed to any office until the next two regular elections have taken place, unless it is found that the person committed the corrupt practice or offence without any intent of causing or contributing to a false outcome of the election. Provisions of the *Criminal Code* include the offences of “municipal corruption” and attempts to influence municipal officials through unlawful or improper means.

Protection for Councillors

Section 448(1) of the Act provides as follows: “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.” Section 283 of the Act authorizes a municipality to pay the expenses of a member of council incurred in his or her capacity as a member. Under section 279, a municipality may be or act as an insurer with respect to the payment of damages or costs awarded against a member as a result of

any action or proceeding arising out of acts or omissions done or made by the member in his or her capacity as a member, including while acting in the performance of a statutory duty. Section 14 of the *Municipal Conflict of Interest Act* authorizes a municipality to protect a member of the council found not to have contravened that Act, against costs or expenses incurred by the member as a result of proceedings brought under that Act.

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