

*We Are In this Together: A Look at Council,  
Codes of Conduct and Workplace Harassment*



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# Who are “**WE**” – And what is “**This**” Anyway???

- WE are:
  - Council
  - Council and Staff
  - Council, Staff and Ratepayers

# Who are “WE” – And what is “This” Anyway???

- “THIS” is a smoothly running, legally compliant Municipality complete with motivated, high performing staff and visionary, effective leaders
- “THIS” is our collective goal





# Who are “WE” – And what is “This” Anyway???

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- WE, therefore, are various sorts of teams, Council, Council and Staff and Council, Staff and Ratepayers
- Each member of the Team has a specific role to play and it is critically important that each understand and play “their” role

# ROLES OF TEAM MEMBERS

- Imagine if the Centre in a Football game decided not to snap the ball to the quarterback but instead just stood up and decided who to pass to when the rest of the team was looking to the quarterback?
- Imagine if the goalie in the 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!





# 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)

# The Role of Council – Municipal Act

In the *Municipal Act, 2001* the Role of Council is Defined:

**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.

# Council must collectively direct action

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



# Council acts by By-Law

- **Powers exercised by council**
- **5. (1)** The powers of a municipality shall be exercised by its council.
- **Powers exercised by by-law**
- **(3)** A municipal power, including a municipality's capacity, rights, powers and privileges under section 9, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise.
- **Scope**
- **(4)** Subsections (1) to (3) apply to all municipal powers, whether conferred by this Act or otherwise. 2001, c. 25, s. 5 (4).

# 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



# Staff Implements Policy

## **Municipal administration – In the *Municipal Act***

**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

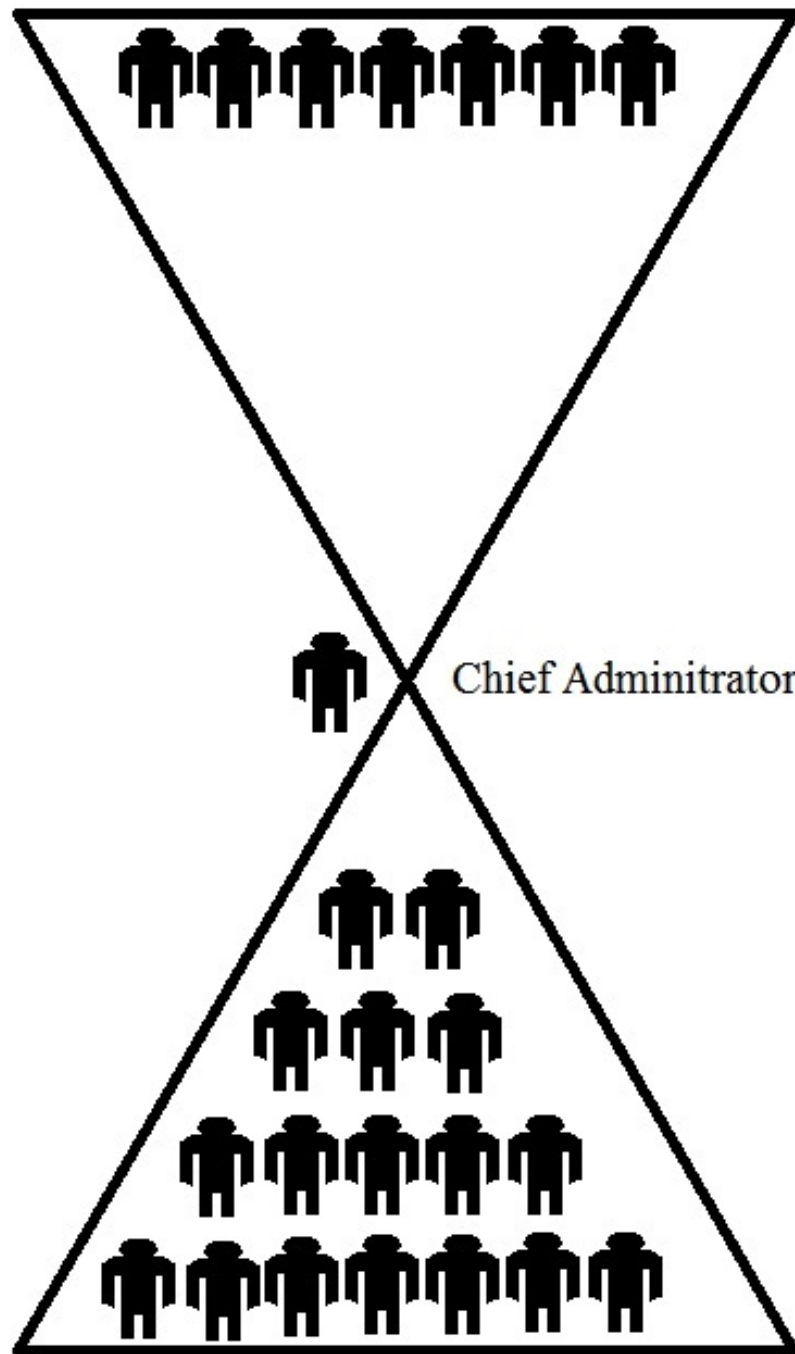
(c) to carry out other duties required under this or any Act and other duties assigned by the municipality.

# 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
- Councillors, are not managers
- Councillors, are not supervisors
- COUNCIL (As a whole) is the employer and supervisor only of the CAO.
- The Clerk (per 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 but direction flows THROUGH the CAO
- The *Municipal Elections Act* prohibits employees of a municipality from serving on Council to avoid role conflict and conflict of interest.

# 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)



City Council

Chief Administrator

Municipal Employees



# Who directs implementation of Council's wishes?

- Only the Chief Administrator of a Municipality – i.e. C.A.O. or other single individual who is at the top of the organizational chart.



# What about when Council does “Direct 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.

# 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.”*

# 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.

## The greater “WE” ...

- The Third “We” - Council and Staff act for the best interest of the ratepayers. So “We” are Council, Staff and Ratepayers, all with specific roles in the life and times of a Municipality.
- In essence, and figuratively, WE Live Here!
  - This is not to say that staff necessarily live within the municipal boundaries, but all parties spend the bulk of their lives within the municipality.
- Tools for living together:
  - Code of Conduct
  - Bill 132 Anti Harassment and Anti Violence Policy(ies)
  - Municipal Act
  - MCOIA



# How does Code of Conduct make THIS work???

- Code of Conduct is “Council’s Promise” about how they and staff will interact with other members, staff, taxpayers, suppliers etc.

# Bill 68: *Municipal Act, 2001* Amendments

## *Code of Conduct*

- 223.2(1): Municipalities shall establish codes of conduct for members of council and local boards.
- 223.2(3): No by-law can provide that a member who contravenes a code of conduct is guilty of an offence or is required to pay and administrative penalty.

# Bill 68: *Municipal Act, 2001* Amendments

## *New Policies*

- Additions to policies that a municipality shall adopt and maintain under s 270(1) include those with respect to the following matters:
  - The relationship between members of council and the officers and employees of the municipality;
  - The manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality; and
  - Pregnancy leaves and parental leaves of members of council.

**Bill 68:  
Municipal  
Act, 2001  
Amendments  
Mandatory  
Integrity  
Commissioner**

- Integrity Commissioner mandatory for municipalities
  - No Commissioner appointed under s 223.3
    - Municipality shall make arrangements for all Commissioner's responsibilities to be provided by another municipality's Commissioner (s 223.1)
  - Commissioner appointed but not all responsibilities assigned
    - Municipality shall make arrangements for those responsibilities not assigned to be provided by another municipality's Commissioner's (s 223.2)

# Bill 68: *Municipal Act, 2001* Amendments *Powers of Integrity Commissioner*

- 223.3: Commissioner can:
  - give advice to councillors of about obligations under code of conduct and municipal rules and policies governing members' ethical behavior
  - conduct, on their own initiative, inquiries about whether councillors contravened code of conduct (**NOTE: This may be removed in Committee**)
  - Give education information to municipality, councillors, and the public about code of conduct

# **Bill 68: *Municipal Act, 2001* Amendments**

## ***Penalties for Contravening Code of Conduct***

- 223.4(5) (unchanged): If Commissioner reports a councillor has contravened the code of conduct a municipality can either:
  - reprimand the councillor;
  - suspend remuneration paid to the councillor for a period up to 90 days



# **Bill 68: *Municipal Act, 2001* Amendments**

## ***AMCTO Standing Committee Submission***

- Among other things AMCTO submitted Bill 68 should be amended to:
  - Include principles for how Integrity Commissioners conduct their duties (and investigations) either in the legislation or separate legislation; and
  - Remove the provision that would allow Integrity Commissioners to launch investigations on their own initiative.
  - Increase range of options for penalizing contraventions of municipal codes of conduct

# Advice in Brighton Investigation

## Micromanaging

Councillor Martinello is in his first term on council. He has the opinion that he, as a member of council, has a duty to ask questions of staff. He does so by emailing lengthy lists of questions to staff when he receives a request from a constituent. His intention is to direct work. With respect, **that is not his role as a member of council.**

There is a fundamental principle in local government in Ontario. All powers of a municipality shall be exercised by council. Powers are not be exercised by individuals within the organization unless the province has granted that power or the council by enacting one or more by-laws has granted the power.

Council's power must be exercised at open, public meetings for which notice has been given.

The Municipal Act details the responsibilities of council. The Act does not give any power to individual members to order work by the administration. The lengthy questions are being used not to deal with ratepayer's enquiries but to overburden staff who have to respond to detailed questions. This is micromanagement. It is not what is intended by the legislation.

# Advice in Brighton Investigation Cont.

The handling of requests by ratepayers to members of council should be following a protocol that does not involve micromanaging the work to be undertaken by staff.

It is the responsibility of the Chief Administrative Officer and other senior managers to undertake the work authorized by council. The quality of the work done by staff should be subject to review by way of staff performance reviews. The performance review of the CAO should be done by council. The remainder of the staff will have performance appraisals regularly undertaken by their supervisors.

Fred Dean, "Report of the Integrity Commissioner to the Council of the Municipality of Brighton", March 16, 2012.

# Workplace Harassment

- Bill 132 – Amendments to *Occupational Health and Safety Act*
- *Council's Anti-Harassment and Anti-Violence Policy sets guidelines about PROHIBITED conduct that will NOT be tolerated in the workplace*



# 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

# 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 to the Mayor and Council
- 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 her staff from harassment

# 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

# Change is Here to Stay

- Province is saying that it is no longer acceptable to “do things the way we have always done them”
  - Bill 132, Bill 68, Provincial Growth Plan, Asset Management plans are all indications that the Province is requiring change and greater responsibility and sophistication from all municipalities
  - All municipalities are held to the same legal standard and are expected to comply. It will not work to say we are a small municipality and can not afford it...



# Saving to the point of Crisis?



- Municipal reality is changing. Some Municipalities are attempting to avoid expenses by drafting significant documents in-house or simply ignoring the requirement for policies or training in an effort to avoid professional fees.
- Another problem is created when Municipalities adopt policies of their neighbours where the original policies are non-compliant OR where they are written by parties not familiar with the intricacies of municipal law.
- Both issues create major potential future liabilities where complaints are made or inappropriate conduct occurs and thereafter investigations and consequences visit the municipality where they could have been avoided by proper policies and training.

# Councillor Protection from Liability

- 448(1): provides there can be no proceeding for damages or otherwise against a member of council or an officer, employee or agent or a person acting under the instructions of the officer, employee or agent for any act undertaken in good faith in the performance of a duty or authority under the Act or a by-law.
- 448(2): does not relieve a municipality from liability it would otherwise be subject to for a tort committed by a member of council, officer, employee, or agent of the municipality or a person acting under the instructions of the officer, employee or agent.

# Leadership Tips

- Communicate, Communicate, Communicate
- Set up safe conversations so Councillors and staff can talk and ask questions
- Give and accept coaching
- Governance is not easy or innate – Ask questions
- Always be cognizant of roles and responsibilities
- Ask why
- Be a team member

# Wishart Municipal Group

- In an effort to foster and facilitate change Wishart Law Firm has developed an entirely new way to provide legal service
- WMG is designed to be a virtual in house legal department for northern municipalities AND to leverage the benefit of collective membership by sharing legal cost for policy drafting, training among multiple member municipalities
- Does away with billable hours and monthly bills that affect budget
- The membership includes Council minutes where Councillors can call a lawyer
  - Would assist with legal questions
  - Assist with role issues and with framing questions to fall within Council's role
  - We would be very pleased to discuss your municipality taking advantage of the WMG opportunity





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