

BECOMING A MORE EFFECTIVE MUNICIPAL COUNCIL



Amberley Gavel Ltd

***Presentation by
Fred Dean & Nigel Bellchamber
April 2017***

Introducing Fred Dean

- **Municipal Lawyer & coach**
- **Former Sudbury City Solicitor**
- **Acts exclusively for municipalities and municipal associations**
- **Chair of ROMA/OGRA Question Box Panel**
- **Association of Municipalities of Ontario (AMO)**
 - **Facilitator & Trainer**
 - **2007 named to Honour Roll**
- **Amberley Gavel**
 - **Closed Meeting Investigations**
 - **Integrity Commissioner**
 - **Academy**

Introducing Nigel Bellchamber

- **Former County CAO and City Treasurer**
- **Consulting practice includes recruiting CAOs and Senior Managers; Strategic Planning; Organizational, Fiscal, and Policy Reviews; Municipal Ombudsman**
- **Past Chair PSAB**
- **Association of Municipalities of Ontario (AMO)**
 - **Facilitator & Trainer**
 - **2007 named to Honour Roll**
- **Amberley Gavel**
 - **Closed Meeting Investigations**
 - **Integrity Commissioner**
 - **Academy**

Topics for today

- **Municipal Powers**
- **Roles and Responsibilities**
- **Conflict of Interest**
- **Trending Issues in Municipal Finance**
- **Closed meetings**
- **Bill 68**
- **Codes of Conduct and Integrity Commissioners**
- **Workplace Incivility vs Harassment**
- **.....and much more**

The Burning Question!

**Write it down so we can be sure to
cover it.**

Municipal Powers

- **Where do they come from?**
- **Who may exercise?**
- **When and where can they be exercised?**
- **How are they exercised?**

Municipal Powers

- **Powers come from the Province**
 - **Acts and Regulations**
- **No inherent jurisdiction**
- **Size does not matter**
 - **Types of Municipalities**

Basic Principles

- **Municipal Powers**
 - **Complex, technical, multi-faceted**
 - **Section 5 Municipal Act**
 - **Shall be exercised by Council**
 - **Exercised by By-law**
 - **“Key slide!”**

How Powers are Exercised

Power are exercised at a duly constituted meeting

- ✓ **Open to the public**
- ✓ **Notice to the public**
- ✓ **Quorum**
- ✓ **Majority vote**
- ✓ **All members vote**

Roles and Responsibilities

What have you been elected to do?

- **What is your job description?**
- **What duties/responsibilities come with your office?**
- **What is the scope of your duties?**
- **All powers come from the province!**

Statutory Roles & Responsibilities

- **Set out in Municipal Act 2001**
- **Updated in 2007**
 - **Council**
 - **Head of Council**
 - **CAO**
 - **Municipal Staff**

Roles & Responsibilities

- **Members of Council**
- **Staff**
- **Public**
- **Media**

Council

It is the role of Council to...

- **represent the public and to consider the well-being and interests of the municipality**
- **develop and evaluate the policies and programs of the municipality**
- **determine which services the municipality provides**

Council

It is the role of Council to...

- **ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council**

Council

It is the role of Council to...

- **ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality**

Council

It is the role of Council to...

- **maintain the financial integrity of the municipality**
- **carry out the duties of council under this or any other Act**

In Summary...Council

- Exercises corporate powers
- Acts collectively, publicly & with advanced notice
- No management functions by
 - Council
 - Members
 - Head

Head of Council

- **“Mayor”**
- **“Reeve”**
- **“Warden”**
- **“Chair”**
- **“Lord Mayor”**

It is the role of the Head of Council to...

- **act as chief executive officer of the municipality (CEO)**
- **preside over council meetings so that its business can be carried out efficiently and effectively**
- **provide leadership to the council**

It is the role of the Head of Council to...

- **provide information and recommendations to council with respect to the role of council respecting the administrative & controllership policies, practices and procedures in place to implement the decisions of council**

It is the role of the Head of Council to...

- **provide information / recommendations to council with respect to the role of council respecting the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality**

It is the role of the Head of Council to...

- **represent the municipality at official functions; and**
- **carry out the duties of the head of council under this or any other Act**

***As CEO
the Head of Council shall...***

- ✓ **uphold and promote the purposes of the municipality**
- ✓ **promote public involvement in the municipality's activities**

***As CEO
the Head of Council shall...***

- ✓ **participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents**

Head of Council

- ✓ **Leadership to council**
- ✓ **Advisor to council on key matters**
- ✓ **Effective chair**
- ✓ **Power of office is influence**
- ✓ **No management powers**
- ✓ **Municipal “Champion” as CEO**

Chief Administrative Officer

- **Council may appoint a CAO who shall be responsible for**
 - **exercising general control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality**
 - **performing such other duties as are assigned by the municipality**

Municipal Staff

It is the responsibility of Administration to:

- **undertake research & provide advice to council**
- **implement council's decisions**
- **establish administrative practices & procedures to carry out council's decisions**

Statutory Officers

- **Appointed by council by-law**
- **Have duties under a provincial statute or regulation**
- **Council or other staff cannot interfere with the exercise of those powers**
- **Examples –**
 - **Clerk / CBO / Treasurer**

Councillor

- **Public Official**
- **Limited individual powers**
- **No management powers**
- **Member of Council that**
 - **Sets Policy**
 - **Makes decisions**

The Public

- **Provide input to members**
- **Observe meetings of council**
- **Appear as delegation as permitted in
Procedure By-law**

The Media

- **What makes news?**
- **What is Media's role?**
 - **Report what observed**
 - **Sell papers/acquire "hits"**
- **Councillors do not speak on behalf of council**
- **The Head of Council does**
- **Be prepared before being interviewed**
- **Members require media training**

Roles Summary

Issue identification (All)



Analysis and Recommendations (Staff)



Decision (Council)



Implementation and Measurement (Staff)



Evaluation (Council)

Council should steer the boat rather than row it!

- Council should decide what services and programs the municipality will offer and leave to staff the “how to”
- Osborne and Gaebler (*Reinventing Government*)

Things to Consider...

- ***Council Exercises Power***
- ***Micromanaging***
- ***Unique role of Head of Council***
- ***Other personal responsibilities***
- ***Being on a local board***
- ***Municipal Conflict of Interest Act***

THE MUNICIPAL CONFLICT OF INTEREST ACT

- ✓ Your personal obligation
- ✓ Governs conduct of members
- ✓ Does not apply to staff
- ✓ Statutory Duty to disclose pecuniary interests and the general nature thereof

Pecuniary Interest

- ✓ What is a pecuniary interest?
- ✓ Direct & indirect
 - ✓ Parent, spouse, child, same sex partner
 - ✓ Corporations
 - ✓ Member of a body
 - ✓ Employee
 - ✓ Partner

Member's Duties

If a member has a pecuniary interest:

- **Declare the pecuniary interest**
- **State the general nature of the interest**
- **Do not:**
 - **Influence before, during or after the meeting**
 - **Participate**
 - **Vote**

“Do I have a Pecuniary Interest?”

“NO”

- ✓ **Participate**
- ✓ **Influence &**
- ✓ **Vote**
- ✓ **“Business as usual”**

“YES”

**Does a section 4
Exception
Apply?**

→ “YES”

- **Participate,
Influence & Vote**

→ “NO”

- **Declare Pecuniary
Interest**
- **Do NOT Participate,
Influence or Vote**

Conflict of Interest Exceptions

- user of any public utility service
- member being entitled to receive any service or commodity on same terms as others
- purchasing or owning a debenture of the municipality
- member making a deposit with the municipality or local board, which is or may be returnable to the member in like manner as such a deposit is or may be returnable to all other electors
- having an interest in any property affected by a work under the Drainage Act or relating to local improvements

Conflict of Interest Exceptions

- having an interest in farm lands that are exempted from taxation
- being eligible to fill a vacancy in the council or local board when the council to fill such vacancy
- being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board or by reason only of the member being a member of a board, commission, or other body as an appointee of a council or local board

Conflict of Interest Exceptions

- setting compensation for members of council
- setting compensation for members of a volunteer fire brigade
- an interest in common with electors generally
- interest which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member

Municipal Conflict Of Interest Act

- **Exceptions – section 4**
 - **If exception – business as usual**
- **Closed meetings**
- **Quorum**
 - **Can be reduced to 2 members**
- **Absence from meeting**
 - **Declare at next meeting**

“I think I have a Pecuniary Interest... What do I do?”

- **Educate yourself**
 - **Read the Act regularly**
 - **Book and articles**
 - **Google Alerts**
- **Seek only general advice from staff**

“I think I have a Pecuniary Interest... What do I do?”

- **Whom do I ask for specific advice?**
 - **Retain independent legal counsel**
- **Whom do I not ask for specific advice?**
 - **Other members**
 - **Staff**
 - **Head of Council**

Consequences?

- **Court Application**
 - **By Elector**
 - **Within 6 weeks of Knowledge**
 - **Up to 6 Years from alleged contravention**

The Court may find...

- **No breach**
- **Breach**
- **Breach with Saving Provision**
 - **Inadvertence**
 - **Error in judgment**

Practical Tips

- ✓ **When to declare**
- ✓ **What to declare**
- ✓ **Read Act regularly**
- ✓ **Resources available**

Trending Issues in Municipal Finance

- Tax rates and user fees
- Reporting versus budgeting
- Budget monitoring
- Infrastructure spending
- Asset Management

Tax Rates and User Fees

- **Often the primary focus**
- **Should be the last issue in the discussion!**

Reporting versus Budgeting

- **Audited Financial Reports**
 - Full accrual accounting
 - Changed for 2009
 - They get little attention
 - They deserve much more!
 - Multi year comparisons
 - “Management Discussion and Analysis”
 - Public reporting

Budget Monitoring

- **Early adoption**
- **Multiyear possible**
- **Periodic reports**
- **Written variance analysis**
- **Detail should allow for high level discussion**
- **Approval of disbursements is an anachronism in most cases**

Infrastructure Spending and Asset Management Planning

- Two cannot be logically separated
- AM Plans should be mature by 2018 election
- Multiyear capital budgets should reflect the AMP
- Incorporate financing as well as spending
- Not just an aging of assets basis
- Condition assessment critical
- Allows for incorporation of lifecycle costing approach and integration with operating budget

Accountable and Transparent Government

- ***Policies***
 - ***A & T Policy***
- ***Duly constituted meetings***
- ***MFIPPA***
- ***Code of Conduct***
- ***Integrity officers***
- ***Open meetings***
- ***Bill 8 2014 in progress***

Meetings – Open or Closed?

- **Key element of Accountable and Transparent Government**
- **Members and staff must know legislated rules for holding closed meetings**
- **Closed meetings**
 - **Limited ability to hold closed meetings**
 - **Subject to review by an Investigator**

Basic Principles...

- **All meetings of council, local boards and committees shall be open to the public!**
- **Meetings may only be closed in circumstances set forth in section 239, Municipal Act**
- **Rules apply to council, committees and some local boards**

Subject Matters at Closed Meetings

Section 239

- **Security of property**
- **Personal matter about an identifiable individual**
- **Acquisition or disposition of real property**
- **Labour relations or employee negotiations**

Subject Matters at Closed Meetings

Section 239

- **Litigation or potential litigation**
- **Advice that is subject to solicitor-client privilege**
- **Under another Act**
 - ***Emergency Management Act***
 - ***MFIPPA***

Subject Matters at Closed Meetings

Subsection 239 (3.1)...

- Meeting may be closed if –
 - for the purpose of educating or training the members AND
 - no member discusses or deals with a matter in a way that materially advances the business or decision-making

Public Resolution Required

- **Required before closed meeting can occur**
- **Must be passed at an open meeting**
- **The Resolution must**
 - **Acknowledge fact of closed meeting**
 - **Indicate the general nature of the matter to be considered**
- **No additional items!!**

What is a “Meeting”?

- **Not just a numbers exercise**
- **Email**
- **Advancing the business**
- **Influence**
- **Under review**

Votes at Closed Meetings

- **Votes are only permitted for the following -**
 - **Procedural Matters**
 - **Direction**
 - **Adjournment**
- **Why are written Resolutions important?**

Closed Meeting Investigations

- **Any person may request an investigation**
- **Whether municipality, local board or committee has complied with section 239 or the procedure by-law in respect of a closed meeting**

Investigation Request

- **Independent Investigation by**
 - **Investigator appointed by council**
 - **Ontario Ombudsman if council has not appointed an Investigator before request received**
- **Amberley Gavel Ltd.**

Codes of Conduct

Codes of Conduct

- **One of many tools of Transparency and Accountability introduced recently**
- **Optional for all municipalities except Toronto**

Codes of Conduct

Typical Contents

- **Definitions**
- **General standards**
- **Roles and responsibilities**
- **Interpersonal behaviour**
- **Conduct at meetings**
- **Use of municipal resources**
- **Relationship with staff**
- **Confidentiality**

Codes of Conduct

- **May also include reference to harassment**
- **May or may not define it**
- **Specifies who may lay a complaint**
- **Include enforcement**
 - **Integrity Commissioner**
- **Include penalties**
- **Codes optional but increasing in number**
- **When a complaint is filed.....**

Workplace Incivility

Workplace Incivility

- **A relatively new term**
- **Not necessarily a new phenomenon**
- **May have emerged slowly, suddenly or not at all in a workplace**
- **But where it has the impact is serious**
- **So, what is it?**

Definition

- ***Workplace incivility*** has been defined as low-intensity deviant behavior with ambiguous intent to harm the target. Uncivil behaviors are characteristically rude and discourteous displaying a lack of regard for others.

Workplace Harassment

- ***The OHSA defines workplace harassment as engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome. The definition of workplace harassment includes workplace sexual harassment***

Subtle Examples of Incivility

- ✓ asking for input and then ignoring it
- ✓ "forgetting" to share credit for a collaborative work
- ✓ giving somebody a "dirty look"
- ✓ interrupting others
- ✓ not listening
- ✓ side conversations during a formal business meeting/presentation
- ✓ speaking with a condescending tone

Dealing with it

- “Decorum” is in procedure by-laws for a reason
- Role of the Chair
- Role of other Councillors
- It is not acceptable to say “everyone knows what Tom/Joe/Mary is like”
- If unchecked it becomes the norm for the individual

Overt Examples

- ✓ **disrupting meetings**
- ✓ **emotional put-downs**
- ✓ **giving expressive dirty looks or eye rolling**
- ✓ **giving public reprimands**
- ✓ **giving the silent treatment**
- ✓ **Insulting others**
- ✓ **making accusations about professional competence**
- ✓ **not giving credit where credit is due**
- ✓ **overruling decisions without giving a reason**
- ✓ **sending a nasty and demeaning note**
- ✓ **talking about someone behind his or her back**
- ✓ **Undermining credibility in front of others**
- ✓ **Repeating unsubstantiated rumours or gossip**

Workplace Incivility

- **Does not extend to the level of violence or harassment**
- **Does not usually breach a code of conduct**
- **But it is corrosive and leads to workplace distress, disengagement, lower productivity and higher turnover, all costly and undesirable**

Incivility in Council Meetings

- It is rare in some Councils, is rampant in others.
- It is never positive, and has a very negative impact on staff and on the public image of the Council

Council Role

- **Municipal Act s224**

It is the role of council.....

- **b) to develop and evaluate the policies and programs of the municipality**

As a Councillor

- You are responsible to behave in accordance with Statutory and Discretionary Codes and your Oath of Office
- You are to participate in their review where directed –eg OHSA annually
- You have a responsibility to evaluate your own too
- Complaints have occurred and Investigations are quietly(and some not so quietly) in progress across the Province.

Municipal Ombudsman

- **Municipal Ombudsman in place from Bill 8**
- **Maladministration**
- **Broad powers**
- **In effect January 1, 2016**

Bill 68

- In Committee at present
- Codes of Conduct will be mandatory
- IC's role expanded
- Will include MCIA advice and investigations
- Will also expand closed meeting possibilities
- Will require very cautious use by Councils
- Complaints will likely increase in all three areas CofC, CMI, MCIA

10 Critical Success Factors for Effective Councils

- 1. Respect and Decorum**
- 2. Appropriate Facilities**
- 3. No Ambushes!**
- 4. Know Roles**
- 5. Well Constructed Agenda**
- 6. Effective Chair**
- 7. Competent Staff, Comprehensive Reports**
- 8. Commitment to Transparency and Accountability**
- 9. Know and follow the Procedure By-law**
- 10. Be There and Be Prepared**

Effectiveness or Failure

- Is a choice
- Determined by a majority of the members of Council
- Collective action or inaction
 - Not by the Mayor alone
 - Not by an individual councillor
 - Not by the staff

