

October 15, 2019

REPORT TO: Administration & Finance Executive Committee
FROM: Elizabeth (Lisa) Slomke, Clerk
SUBJECT: Procedure By-law Review

BACKGROUND INFORMATION

The *Municipal Act, 2001*, section 238 (copy attached) provides guidance to Ontario municipalities related to the establishment of a Procedure By-law. When you are reviewing this section pay close attention to phrases that contain the words 'shall' and 'may' as they have very distinct meanings. Simply put, when the legislation indicates that a municipality shall do something, there is no choice. Section 238 (2) indicates that: "Every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings."

The legislation does not provide Ontario municipalities with details as to what should or should not be included in their procedure by-laws. Each municipality is unique and the Procedure By-law that governs each municipality is also unique. I have yet to locate two that are identical. Certain components are more important to spell out for some municipalities and may be less critical elsewhere.

The current Town of Fort Frances Procedure By-law 34/95 (attached) was created in 1995 and has had revisions A, B, C, D and E in 1996, 1996, 2007, 2015 and 2017 respectively. A thorough review has not been undertaken in several years. There is no legislated requirement to complete scheduled reviews, but as the provincial legislation is amended, in many instances it becomes necessary to amend the procedure by-law (i.e. 2017 amendment changed the definition of meeting as per Bill 68). Many municipalities have adopted the practice of reviewing these types of by-laws at least once per term of Council.

In addition to the Procedure By-law, Members of Council of the Town of Fort Frances are also governed by several other pieces of legislation, by-laws and policies/procedures which include (but not limited to):

- Municipal Act, 2001
- Municipal Conflict of Interest Act
- Municipal Elections Act
- Occupational Health & Safety Act
- Municipal Freedom of Information and Protection of Privacy Act
- Planning Act

- Accessibility for Ontarians with Disabilities Act
- Human Rights Code
- Municipal Code of Conduct 04/19
- Notice By-law 64/02
- Staff/Council Relations Policy 3.32

NEXT STEPS

Due to the fact that the existing Procedure By-law is over 20 years old, I recommend that a complete review/rewrite take place. Further, I suggest that sections of a new by-law are brought forward for consideration through the Administration & Finance Executive Committee as often as time permits until a new Procedure By-law has been drafted. Once a full draft has been vetted by Administration & Finance Executive Committee, then appropriate advertising will be undertaken for the draft by-law to be considered by Committee of the Whole. Upon receipt of the Committee of the Whole's approval / feedback the new Procedure By-law will be considered at a subsequent Council Meeting.

Council approval of this report will agree to the recommendation of Administration to complete a review/rewrite of the Procedural By-law in steps as further outlined in the report.
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PROCEDURE BY-LAW

Procedure by-law

Definitions

238 (1) In this section and in sections 239 to 239.2,

“committee” means any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards; (“comité”)

“local board” does not include police services boards or public library boards; (“conseil local”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “local board” in subsection 238 (1) of the Act is amended by striking out “police services boards” and substituting “police service boards”. (See: 2019, c. 1, Sched. 4, s. 33 (8))

“meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

- (a) a quorum of members is present, and
- (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee. (“réunion”) 2001, c. 25, s. 238 (1); 2006, c. 32, Sched. A, s. 102 (1, 2); 2017, c. 10, Sched. 1, s. 25 (1).

Procedure by-laws respecting meetings

(2) Every municipality and local board **shall** pass a procedure by-law for governing the calling, place and proceedings of meetings. 2001, c. 25, s. 238 (2).

Notice

(2.1) The procedure by-law **shall** provide for public notice of meetings. 2006, c. 32, Sched. A, s. 102 (3).

Outside municipality

(3) The procedure by-law **may** provide that meetings be held and public offices be kept at a place outside the municipality within an adjacent municipality. 2001, c. 25, s. 238 (3).

Electronic participation

(3.1) The applicable procedure by-law **may** provide that a member of council, of a local board or of a committee of either of them, can participate electronically in a meeting which is open to the public to the extent and in the manner set out in the by-law provided that any such member **shall not** be counted in determining whether or not a quorum of members is present at any point in time. 2017, c. 10, Sched. 1, s. 25 (2).

Same

(3.2) The applicable procedure by-law **shall not** provide that a member of council, of a local board or of a committee of either of them, can participate electronically in a meeting which is closed to the public. 2017, c. 10, Sched. 1, s. 25 (3).

Presiding officer

(4) The procedure by-law **may**, with the consent of the head of council, designate a member of council, other than the head of council, to preside at meetings of council. 2006, c. 32, Sched. A, s. 102 (4).

Secret ballot

(5) A presiding officer **may** be designated by secret ballot. 2006, c. 32, Sched. A, s. 102 (4).