

March 14, 2018

REPORT TO: Administration & Finance Executive Committee

FROM: Elizabeth (Lisa) Slomke, Clerk

SUBJECT: Lame Duck Council

The *Municipal Act, 2001*, Section 275 (3) restricts the acts of an outgoing council if certain conditions hold following Nomination Day in a municipal election year.

This section as it relates to our council provides as follows:

After the day (nomination day July 27th or as late as election day October 22nd) it is determined that a new council will include less than 75% of the members of the outgoing council, (5 is less than 75% of 7), the outgoing council shall not take any of the following actions:

- a) The appointment or removal from office of any officer of the municipality;
- b) The hiring or dismissal of any employee of the municipality;
- c) The disposition of any real or personal property of the municipality which has a value exceeding \$50,000 at the time of the disposal; and *
- d) Making any expenditure or incurring any liability which exceeds \$50,000. *

Please note: * c) and d) do not apply if the disposition or liability was included in the most recent budget adopted by the council before nomination day in the election year.

Nothing in this section of the Act prevents any authority of a municipality that has been delegated to a person prior to nomination day. In past elections, Council has elected to delegate authority for the above four matters to the Chief Administrative Officer during the lame duck period by passing a by-law (i.e. 28/14).

Restricted acts after Nomination Day in Ontario

35

- five members of the old council are elected and two are defeated;
- four members are acclaimed to their old office and one of the three members running for mayor is elected, thus two are defeated; or
- five members are acclaimed and two have retired.

In these examples, it can be determined *with certainty* that less than 75 percent of the current members of council will be returning to sit on the new council. Thus, the test in paragraph 1 of subsection 275 (1) – that the new council *will* include less than 75 percent of the outgoing council – is satisfied. Thus, in these examples, the old council is a lame duck council from the date of the election to the end of the term, and its powers are therefore restricted.

Restricted Acts

Once the determination has been made with certainty that the council is lame duck for either or both time frames, then the four restrictions in subsection (3) will apply. These are:

- (a) the appointment or removal from office of any officer of the municipality;
- (b) the hiring or dismissal of any employee of the municipality;
- (c) the disposition of any real or personal property of the municipality that has a value exceeding \$50,000 at the time of disposal; and
- (d) making any expenditures or incurring any other liability that exceeds \$50,000.

This is the complete list. There are no other restrictions on a council's ability to make decisions or exercise powers.

The restriction on the hiring or firing of staff could cause real difficulties for a municipality, particularly as many will be

hiring for winter maintenance. Subsection 275 (6) provides that nothing in this section prevents a person or body from exercising authority delegated by council. Thus, if the power to hire employees has been delegated to staff, then the fact that council's powers are restricted during the lame duck period will not restrict staff from being hired or fired. Large municipalities have delegated to staff this authority to hire and fire, but it is important for smaller municipalities where councils often maintain control of the hiring process.

It is important to note that council cannot delegate during the election period. The delegation by council must be made before nomination day. Any delegation will require that council's delegation policy be amended. This could require special notice in accordance with council's notice policy.

There is another provision that lessens the impact of the restrictions on a lame duck council. Subsection 275 (4) provides that restrictions in clauses (c) and (d) do not apply if the disposition or liability was approved by council in the annual budget. The one condition is that council must have approved the budget before nomination day.

Thus, a contract could be awarded by a lame duck council for an amount in excess of \$50,000, so long as the amount was included in the annual budget. The lame duck council would not be able to award the contract, however, if the amount of the tenders or bids exceeded the amount included in the budget.

A frequently asked question is whether the municipality can close a real estate transaction during the lame duck period. The answer is "yes" – assuming that council passed a by-law approving the execution of the agreement of purchase

and sale in advance of the lame duck period.

In 2006, the province added a new subsection (4.1), which provides that nothing in section 275 prevents a municipality taking action in the event of an emergency. What constitutes an emergency? It does not mean merely urgent or inconvenient. The best definition for a council to apply is found in the *Emergency Management and Civil Protection Act*, in which "emergency" is defined to mean "a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise."

Conclusion

Council and staff should begin planning well in advance for the eventuality of a council whose powers are restricted during the election period.

Once nomination day arrives, the first step is for the clerk to do the 75 percent calculation; don't round up or down. Determine whether the council's powers will be limited during both the period between nomination and election day, and then again between election day and the end of the term of the old council. If it is a lame duck council, there are only four powers of council that are restricted.

The impact of these restrictions is reduced by the ability of council to exercise powers in those matters that have been previously approved in the annual budget. Also, council may delegate its powers before nomination day and the person to whom they have been delegated will be able to act. *MW*

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TOWN OF FORT FRANCES

BY-LAW NO. 28/14

(BEING a by-law to delegate certain authority to the Chief Administrative Officer - the *Municipal Act, 2001*, S.O. 2001, c.25, Section 270.)

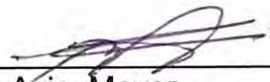
WHEREAS, on August 11, 2014, Council approved a report from the Deputy Town Clerk respecting the delegation of certain Council authority.

NOW THEREFORE Council for the Corporation of the Town of Fort Frances **HEREBY ENACTS** as follows:

1. That the following authority, not being legislative in nature, and where not already vested by virtue of any other continuing document or policy be hereby vested in the Chief Administrative Officer:
 - 1) The appointment or removal from office of any officer of the municipality;
 - 2) The hiring or dismissal of any employee of the municipality;
 - 3) The disposition of any real or personal property of the municipality, the value of which may exceed \$50,000 at the time of disposal;
 - 4) The making of any expenditures or incurring any other liability the value of which may exceed \$50,000.
2. The provisions of this by-law do not supercede any delegation of authority to the current Chief Administrative Officer through the provisions of any document or policy that had been entered into, approved or enacted by Council for the Town of Fort Frances prior to this by-law save and except Town of Fort Frances By-Law No. 50/10.
3. Section 1. of this by-law shall come into effect on September 12, 2014 only if the present Council is subject to the "Lame Duck" provisions at section 275 of the *Municipal Act, 2001*.
4. Town of Fort Frances By-Law No. 50/10 is hereby repealed.
5. The provisions of section 1. of this by-law shall not be in effect or extend beyond the date when Council for the term December 1, 2014 to November 30, 2018 is sworn into office.

This by-law shall come into force and take effect on the final passing thereof.

READ THREE TIMES and finally passed in open Council this 11th day of August 2014.



R. Avis, Mayor



K. Lawson, Deputy Clerk