When will a Municipal Councilor be Removed From Office?

Sachin Persaud & Luciana Amaral

Boghosian + Allen LLP

65 Queen Street West | Suite 1000 | M5H 2M5 |

Toronto | Ontario

Tel: 416.367.5558 | Fax: 416.368.1010

spersaud@boglaw.ca

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I. Introduction

Over the past year, the City of Toronto's mayor, Rob Ford, has made international headlines with his "drunken stupors", vulgar language and crack admission, among other things. On November 18, 2013, amid political controversy, City of Toronto councillors brought forward a motion before council to remove a large portion of Ford's powers. The motion was passed almost unanimously, effectively reducing Ford's role to that of a figure head. Ford responded by accusing City council of a coup d'état, stating, "I have no other option other than to challenge this in court."[1] These events raise important questions for municipalities across the country and for democracy in general: do municipal councils have the power to remove a deviant mayor or councillor? Keeping in mind that every individual holding public office does so at the pleasure of the public which elects him or her every four years, if a deviant member of council cannot be removed, what are the implications for democracy? This paper will explore these issues by conducting a comparative analysis of municipal statues across Canada.[2]

II. Birth of Municipalities

Local self-government was first established in Canada by ordinance in Lower Canada in 1840 and by statute in Upper Canada in 1841. Established districts were officially recognized as a body corporate, which bestowed a right upon inhabitants to elect representatives to each district council, which in turn, had authority to regulate matters such as roads, bridges and the

[1] "Rob Ford stripped of key powers in council vote", CBC News, November 15, 2013, available online: <http://www.cbc.ca/news/canada/toronto/rob-ford-stripped-of-key-powers-in-council-vote-1.2426988>

[2] In an effort to narrow the scope of this paper, municipal statues in Quebec and the three territories of Northwest Territories, Nunavut, and Yukon will not be examined.

administration of justice. In Upper Canada, the *Municipal Act, 1849*[3] provided for the incorporation of cities, towns and villages and established a framework within which municipalities could regulate and manage their own affairs. Over time, each province followed suit and enacted similar municipal legislation.

Based on the creation of municipalities via provincial statute, municipalities do not enjoy constitutional status and are purely creatures of provincial legislation. By virtue of s. 92(8) of the *Constitution Act, 1867*[4], each province has the right to create "municipal institutions in the province". The division of powers between the federal and provincial governments as set out in ss. 91 and 92 of the *Constitution Act, 1867* allocates responsibility over municipalities to provincial governments. In particular, s. 92(8) allows provincial legislatures to create legal bodies for the management of municipal affairs, which includes the right to amalgamate such bodies and establish their geographic location.

Examination of the various municipal statutes across Canada reveals that the provisions prescribing the powers of the mayor, members of council and council as a body corporate are very similar to one another, with the exception of the east-coast provinces, which have unique municipal frameworks, as described more fulsomely below.

[3] *Municipal Act, 1849*, (also known as the *Baldwin Act*), 12 Vic., c.8.
[4] *Constitution Act, 1867*, 30 & 31 Vic., c. 3.

III. Duties of Council Members

British Columbia

In British Columbia, pursuant to ss. 115 and 116 of the *Community Charter*[5], council members have the following responsibilities: (a) to consider the well-being and interests of the municipality and its community; (b) to contribute to the development and evaluation of the policies and programs of the municipality respecting its services and other activities; (c) to participate in council meetings; (d) to carry out other duties assigned by the council; (e) to carry out other duties assigned under this or any other Act. The mayor also has the following additional responsibilities: (a) to provide leadership to the council, including by recommending bylaws, resolutions and other measures that, in the mayor's opinion, may assist the peace, order and good government of the municipality; (b) to communicate information to council; (c) to preside at council meetings when in attendance; (d) to provide, on behalf of the council, general direction to municipal officers respecting implementation of municipal policies, programs and other directions of the council; (e) to establish standing committees in accordance with section 141 (which provides that the mayor must establish standing committees for matters the mayor considers would be better dealt with by committee and must appoint persons to those committees); (f) to suspend municipal officers and employees; and (g) to reflect the will of council and to carry out other duties on behalf of the council.

Alberta

In Alberta, pursuant to ss. 153 and 154 of the *Municipal Government Act*[6], councillors have the following duties, among others: (a) to consider the welfare and interests of the

[5] *Community Charter*, S.B.C. 2003, c. 26.
[6] *Municipal Government Act*, R.S.A. 2000, c M-26.

municipality; (b) to participate generally in developing and evaluating the policies and programs of the municipality; (c) to participate in council meetings; (d) to obtain information about the operation or administration of the municipality; and (e) to keep in confidence matters discussed in private at a council meeting. The role of the mayor, specifically, is to (a) preside when in attendance at a council meeting and (b) perform any other duty imposed on a councillor under the *Act*.

Manitoba, Saskatchewan and Ontario

Manitoba's *Municipal Act*[7], Saskatchewan's *The Cities Act*[8] and *The Municipalities Act*[9] and Ontario's *Municipal Act, 2001*[10] contain similar provisions to those found in British Columbia's *Community Charter*. With respect to the duties of mayors, Ontario's *Municipal Act, 2001* goes beyond the duty to preside over council meetings and provide leadership and also requires a mayor to represent the municipality at official functions, uphold and promote the purposes of the municipality, promote public involvement in the municipality's activities, and participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents.

Newfoundland and Labrador and New Brunswick

Interestingly, in addition to the powers typically prescribed to the mayor, both Newfoundland and Labrador's *Municipalities Act, 1999*[11] and New Brunswick's *Municipalities*

[7] *Municipal Act* ,C.C.S.M. c. M225
[8] *The Cities Act*, S.S. 2002, c C-11.1.
[9] *The Municipalities Act* , S.S. 2005, c. M-36.1.
[10] *Municipal Act, 2001*, S.O. 2001, c. 25.
[11] *Municipalities Act, 1999*, S.N.L. 1999 c. M-24.

Act[12] provide that notwithstanding the mayor's powers, the mayor is subject to the direction and control of council and shall abide by the decisions of council.

Nova Scotia

In Nova Scotia, s. 14 of the *Municipal Government Act*[13] simply states that the powers of a municipality are exercised by council. Section 15 states that the mayor or warden shall preside at all meetings of the council and *may*: (a) monitor the administration and government of the municipality; and (b) communicate such information and recommend such measures to the council as will improve the finances, administration and government of the municipality.

Prince Edward Island

The province with the most unique legislative framework is Prince Edward Island ("P.E.I."). P.E.I.'s *Municipalities Act*[14] does not prescribe any duties for councillors or mayors with respect to the administration of the municipality. Rather, the City of Charlottetown, along with several surrounding municipalities have their own legislative framework - *Charlottetown Area Municipalities Act*[15] - but this too does not set out the duties of councillors and mayors, except for s. 80(1) which states that "the administration of the town is vested in a mayor and six councillors elected in accordance with this *Act*, who collectively constitute the town council." It should be noted that the City of Summerside also has its own legislation – *City of Summerside*

[12] *Municipalities Act*, R.S.N.B. 1973, c M-22.
[13] *Municipal Government Act*, S.N.S. 1998, c 18.
[14] *Municipalities Act*, R.S.P.E.I. 1988, c M-13.
[15] *Charlottetown Area Municipalities Act*, R.S.P.E.I. 1988, c C-4.1.

Act[16] - which is very similar to the *Charlottetown Area Municipalities Act* and also does not prescribe any duties for councillors or mayors.

In addition to the municipalities in P.E.I. which are subject to their own legislative framework, as described above, there are a few other municipalities in Canada which also have their own municipal legislation; however it is beyond the scope of this paper to examine all of these statutes in detail, unless they serve to supplement the provincial municipal legislation as in the case of P.E.I. [17]

In addition to the statutory duties described above, all provinces require council members and mayors to swear an oath of office as a prerequisite to taking office. The oaths of office from province to province vary slightly in language but all essentially require an elected official to: (1) faithfully and honestly fulfill their statutory duties and (2) not ask or receive any sum of money or reward, directly or indirectly, for the exercise of their office in a biased or corrupt manner.

IV. Breaching Statutory Duties

What consequences do elected officials face if they fail to abide by their statutory duties and fail to act in accordance with their oath of office? Three mechanisms for regulating conduct

[16] *City of Summerside Act*, R.S.P.E.I. 1988, c S-9.1.

[17] The following municipalities are governed by their own legislation: the City of Toronto, Ontario, is governed by *City of Toronto Act, 2006*, S.O. 2006, c. 11 Sched. A (modeled on Ontario's *Municipal Act, 2001);* the City of Lloydminster, which borders Alberta and Saskatchewan, is governed by *The Lloydminster Charter*, Alta. Reg. 212/2012; the City of Vancouver, British Columbia, is governed by the *Vancouver Charter*, S.B.C. 1953, c 55; the City of St. John's and the City of Mount Peal, Newfound and Labrador, are governed by *City of St. John's Act*, R.S.N.L. 1990, c C-17 and *City of Mount Pearl Act*, R.S.N.L. 1990, c C-16, respectively; the City of Winnipeg, Manitoba, is governed by *The City of Winnipeg Charter*, S.M. 2002, c 39; the City of Greater Sudbury, City of Hamilton, the City of Ottawa, the Towns of Haldimand, Moosonee and Norfolk, Ontario, are governed by *City of Greater Sudbury Act, 1999*, S.O. 1999, c. 14, Sched. A, *City of Hamilton Act, 1999*, S.O. 1999, c. 14 Sched. C, *City of Ottawa Act, 1999*, S.O. 1999, c. 14, Sched. E and *Town of Haldimand Act, 1999*, S.O. 1999, c. 14 Sched. B, *Town of Moosonee Act*, 2000 S.O. 2000, c. 5 Sched., Town of Norfolk Act, 1999, S.O. 1999, c. 14 Sched. D, respectively.

are discussed below: code of conduct violations; conflict of interest breaches; and convictions under the *Criminal Code*[18].

Codes of Conduct

Codes of conduct are often enacted as part of a municipality's procedural by-law and are meant to regulate the ethical behaviour of members. Ontario, Saskatchewan, Alberta and Manitoba are the only provinces that provide express authority to municipalities to establish codes of conduct. In Ontario, Saskatchewan and Alberta, municipalities have the option under s. 223.2 of the *Municipal Act, 2001*, s. 55 of the *Cities Act* and s. 145 of the *Municipal Government Act*, respectively, whereas in Manitoba, municipalities are required to establish a code of conduct under s. 84 of *The Municipal Act*. In Ontario, municipalities are also empowered to appoint an integrity commissioner, who is responsible for performing in an independent manner the functions assigned by the municipality with respect to the application of the code of conduct and general procedures, rules and policies governing the behaviour of members of council. Typically, the integrity commissioner investigates the alleged contravention and prepares a report to council about whether a member has contravened the code of conduct.

One of the criticisms of using the code of conduct approach is that municipalities are often restricted in the types of penalties that they can impose. Municipalities are not granted authority to implement sanctions in their codes of conduct that remove an elected official from office or declare a seat vacant. For instance, in Ontario, if a member is found to have contravened the code of conduct, the municipality may only impose a reprimand or a suspension of the remuneration paid to the member for a period of up to 90 days. Accordingly, the conduct

[18] *Criminal Code*, R.S.C. 1985, c C-46.

of conduct method may be used by other politicians to generate support from the public to try and pressure the disobedient member to resign, however, it has no "teeth" with which to deter or punish members. Ultimately, even if an elected official is found to have contravened the code of conduct, unless that member chooses to step down voluntarily, he or she may carry on with business as usual.

Conflict of Interest and Criminal Offences

Some municipal statutes directly incorporate provisions regulating the conduct of elected officials whereas other municipalities rely on supplementary legislation. In Saskatchewan, a councillor can be disqualified pursuant to *The Municipalities Act* for the following reasons:

> **"Reasons for disqualification**
>
> 147(1) A member of council is disqualified from council if the member:
>
> (a) when nominated, was not eligible for nomination or election as a candidate pursuant to *The Local Government Election Act*;
>
> (b) ceases to be eligible for nomination or election or to hold office pursuant to *The Local Government Election Act* or any other Act;
>
> (c) is absent from all regular council meetings held during any period of three consecutive months during which at least two meetings of the council have been held, starting with the date that the first meeting is missed, unless the absence is authorized by a resolution of council;
>
> (d) is convicted while in office:
>
> (i) of an offence punishable by imprisonment for five years or more; or
> (ii) of an offence pursuant to section 123, 124 or 125 of the *Criminal Code*;
>
> (e) contravenes:
>
> (i) a bylaw passed pursuant to section 145.1 of *The Local Government Election Act*; or
> (ii) section 142 or 144 of this Act;
>
> (f) other than a member of the council of a rural municipality, resort village or municipality that has adopted a bylaw pursuant to clause 89(2)(a), ceases to reside in the municipality;

> (g) in the case of a rural municipality, ceases to reside in Saskatchewan and for three consecutive months does not reside in Saskatchewan; or
>
> (h) in the case of a rural municipality, is convicted of making a false statement in the acceptance of his or her nomination as a candidate."

Clause 147(1)(a) and (b) disqualifies a council member if he or she is not a Canadian citizen or under the age of 18 years old. Clause 147(1)(d) is noteworthy because only council members *convicted* of an offence under the *Criminal Code* (as opposed to charged) will be disqualified, and even then, only if the offence is punishable by imprisonment for five years or more or if the offence is one prescribed by ss. 123-125. Clause 147(1)(d) appears to mean that if a council member is convicted of a *Criminal Code* offence that is punishable by five years or more, notwithstanding the actual sentence received, he or she will be disqualified. For example, a council member convicted of public mischief, an offence which carries a maximum sentence of five years, will be automatically disqualified even if he or she receives a conditional sentence (as will be seen further below). Clause 147(1)(e) provides that a council member will be disqualified if he or she fails to disclose a pecuniary interest in a matter before council, fails to abstain from voting or discussing the matter or fails to leave the room. Section 147 of Saskatchewan's *The Municipalities Act* is similar to other municipal legislation across Canada.

In Ontario, the only real difference is that a council member is disqualified if he or she becomes imprisoned while in office, no matter the length of the prison sentence or how many years the offence is punishable by. For example, if a council member is imprisoned even for one day, the combined effect of ss. 258(2) and 259(1) of the *Municipal Act, 2001* and s. 17(3) of the

Municipal Elections Act, 1996[19], is that he or she is automatically disqualified from office and the seat is declared vacant. If the councillor is not sentenced to any time in prison, a conviction on its own, no matter how egregious the offence, the councillor is not disqualified from holding office.

In British Columbia, the combined effect of ss. 49 and 66 of the *Local Government Act*[20] and s. 52 of the *Election Act*[21] is that a councillor is disqualified if he or she "has not completed the sentence for an indictable offence, unless he or she is released on probation or parole and is not in custody". A plain reading suggests that a councillor who is convicted of an indictable offence under the *Criminal Code* and sentenced to three years in prison but is released on probation within a year, can resume his or her post, since at that stage, he or she would no longer be considered "disqualified". The *Community Charter* provides that in specific circumstances, such as when a member is disqualified for contravening conflict rules, he or she is disqualified until the next general local election. There is no similar restriction when a councillor is disqualified for not completing a criminal sentence.

Strangely, it appears that imprisonment is not a restriction to holding or being nominated to office in Newfoundland and Labrador and P.E.I. There are no provisions disqualifying a council member if he or she is charged or convicted with a criminal offence while in office in each province's respective legislation.[22] In Newfoundland and Labrador, a person is "qualified to be nominated as a candidate at an election, whether or not he or she is qualified to vote in the

[19] *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched.
[20] *Local Government Act*, R.S.B.C. 1996, c 323.
[21] *Election Act*, R.S.B.C. 1996, c. 106.
[22] However, P.E.I.'s *Charlottetown Area Municipalities Act* and *City of Summerside Act* contain such restrictions at s. 6, respecitvely.

electoral district in which he or she is nominated" if he or she is: (a) 18 years of age; (b) resident in the province immediately preceding nomination day; and (c) not disqualified by this or another *Act* for election to or from sitting in the House of Assembly. The *House Assembly Act*[23] does not provide any guidance on this issue. Newfoundland and Labrador's *Municipal Elections Act*[24] and P.E.I.'s *Election Act*[25] are also silent on the effects of imprisonment on holding office and being able to vote.

Pursuant to s. 148(1) of Saskatchewan's *The Municipalities Act,* a member of council who is disqualified "must resign immediately", failing which council as a body corporate or a voter can apply to the court for, among other things, an order declaring the person disqualified from council. This is very similar to s. 175 of Alberta's *Municipal Government Act* and s. 95 of Manitoba's *Municipal Act*. In Ontario, one must turn to the *Municipal Conflict of Interest Act*[26], which allows any person who is entitled to vote in that respective municipality, to bring a court application and have a judge determine whether a councillor has contravened the *Act*. A judge has the following powers in Ontario pursuant to the *Municipal Conflict of Interest Act*:

> **"Power of judge to declare seat vacant, disqualify member and require restitution**
>
> 10. (1) Subject to subsection (2), where the judge determines that a member or a former member while he or she was a member has contravened subsection 5 (1), (2) or (3), the judge,
>
> (a) shall, in the case of a member, declare the seat of the member vacant; and
>
> (b) may disqualify the member or former member from being a member during a period thereafter of not more than seven years; and

[23] *House Assembly Act*, R.S.N.L.1990 c. H-10.
[24] *Municipal Elections Act*, N.L. 2001, c M-20.2.
[25] *Election Act*, S.P.E.I. 1988, c E-1.1.
[26] *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50.

> (c) may, where the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, where such party is not readily ascertainable, to the municipality or local board of which he or she is a member or former member.
>
> **Saving by reason of inadvertence or error**
>
> (2) Where the judge determines that a member or a former member while he or she was a member has contravened subsection 5 (1), (2) or (3), if the judge finds that the contravention was committed through inadvertence or by reason of an error in judgment, the member is not subject to having his or her seat declared vacant and the member or former member is not subject to being disqualified as a member, as provided by subsection (1)."

Subsection 10(2) gives judges the power to not declare a member's seat vacant despite a finding of conflict of interest, if, in the judge's opinion, the contravention was committed through inadvertence or by error in judgment. This 'saving clause' acts like a trump card and grants significant discretion to courts in determining whether an elected official will be ousted from power. Notably, every province has a 'saving clause' in their conflict of interest legislation, except for Newfoundland and Labrador and P.E.I. Under section 101 of British Columbia's *Community Charter*, an elected official will not be disqualified if the breach was done inadvertently or due to a good faith error in judgment. Courts have held that with respect to inadvertence, the elected official must be unaware of the facts underlying the conflict of interest. To be an error of judgment, the elected official must actually be aware of the facts but make a reasonable error in good faith. Withholding information or not disclosing the full extent of a relationship or a benefit that might accrue from a decision are factors that may prompt a court to find that no good faith existed.[27]

[27] *Godfrey v. Bird*, 2005 BCSC 626 at para. 95; and see Stewart, Colin, "A Guide for Municipal Council Members and Regional Directors in British Columbia", 05 Jan. 2012, available online: <http://www.sms.bc.ca/wp-content/files_mf/municipalcouncillorshandbook2012.pdf>.

Elected officials may be subjected to the penalties under s. 10 of Ontario's *Municipal Conflict of Interest Act* if they have contravened s. 5, which prohibits a councillor from taking part, influencing or voting on a matter which he or she has a direct or indirect financial interest:

> **"When present at meeting at which matter considered**
>
> 5. (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,
>
> (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
>
> (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
>
> (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.
>
> **Where member to leave closed meeting**
>
> (2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration.
>
> **When absent from meeting at which matter considered**
>
> (3) Where the interest of a member has not been disclosed as required by subsection (1) by reason of the member's absence from the meeting referred to therein, the member shall disclose the interest and otherwise comply with subsection (1) at the first meeting of the council or local board, as the case may be, attended by the member after the meeting referred to in subsection (1)."

Ontario's *Municipal Conflict of Interest Act* makes it clear that a councillor who has contravened the statute must be removed from office. The *Municipal Conflict of Interest Act* is similar to other municipal conflict of interest legislation found across Canada.[28] In British Columbia, Alberta, Saskatchewan, New Brunswick and Newfoundland and Labrador the

[28] See Manitoba's *The Municipal Council Conflict of Interest Act*, C.C.S.M. c. M255 and Nova Scotia's *Municipal Conflict of Interest Act*, R.S.N.S. 1989, c 299.

provisions regulating conduct are found directly in their respective municipal legislation (ss. 100-101 of the British Columbia's *Community Charter*; ss. 169-173 of Alberta's *Municipal Government Act*; ss. 143-144 of Saskatchewan's *The Municipalities Act;* ss. 90.1-90.91 of New Brunswick's *Municipalities Act*; and ss. 206-209 of Newfoundland and Labrador's *Municipalities Act, 1999*). In P.E.I., the *Municipalities Act* provides that:

> "23. No member of council shall, subject to section 17 [dealing with remuneration of the mayor and councillors], derive any profit or financial advantage from his position as a member of council and, where a member of council has any pecuniary interest in or is affected by any matter before the council, he shall declare his interest therein and abstain from the voting and discussion thereon."

P.E.I.'s *Municipalities Act* does not contain any enforcement mechanisms if a member of council fails to comply with s. 23.

In British Columbia and Manitoba, the only real difference from s. 10 of Ontario's *Municipal Conflict of Interest Act* is that the application to the courts for a determination of whether a council member is disqualified from office, must be made by council as a body corporate or ten or more voters, and as such, this procedure is much more onerous than that found in Ontario, Alberta, Saskatchewan and Manitoba where only one voter is required to commence an application.

Interestingly, in New Brunswick, if a member of council fails to disclose a conflict of interest at a council meeting and fails to withdraw from the meeting, he or she commits an offence punishable by Part II of the *Provincial Offences Procedure Act*[29] as a category F offence, meaning that he or she could face punishment of a fine between $240 and $10,200 or a term of

[29] *Provincial Offences Procedure Act*, S.N.B. 1987, c P-22.1.

imprisonment, depending on the number of convictions and the severity of the offence. A judge also has the power to order that the person resign from office. New Brunswick's *Municipalities Act* does not set out a procedure for how a councillor is formally charged with violating the *Act* nor is there an indication who decides whether an offence has indeed occurred. As set out in greater detail below, there has only been one reported decision dealing with a councillor in breach of the *Act*. [30]

In Newfoundland and Labrador, council has the power at first instance to declare vacant the office of an elected official, including the mayor, if that official (a) fails to disclose that he or she has a conflict of interest in a matter being discussed by the council; or (b) discusses or votes on a matter on which he or she has a conflict of interest. Council must simply pass a resolution declaring the councillor's seat vacant. Subsection 206(4) provides that a councillor cannot sit or act as a councillor after his or her office becomes vacant. For situations where the presence of a conflict is ambigous, s. 209 allows a councillor who is in doubt as to whether or not a conflict of interest exists to proactively allow council to decide the question by majority vote and its decision on the matter is final. Under s. 410 of the *Municipalities Act, 1999*, a councillor whose seat has been declared vacant may then appeal council's decision by filing a notice of appeal with the court.

Also noteworthy is that most municipal legislation provides that elected officials who are disqualified from office are ineligible to be elected until the next general election. This punishment, however, may be of little practical significance if the next election happens to be

[30] We have been advised by City of Moncton's legal department that they are also not aware of any other instances where a councillor has been charged under the *Act*. If a councillor was to be charged, city council would likely have to ask the RCMP to investigate and work with the Crown prosecutor in terms of laying the formal charge.

just around the corner. For instance, if a councillor's seat is declared vacant and there is only one month left in the term[31], that councillor would be able to run for election and reclaim that vacated seat in just one month. Nova Scotia has the most onerous punishment in that the court has the power to disqualify a member for up to ten years. Conversely, some provinces such as New Brunswick do not have such restrictions, making it possible for an elected official whose office has been declared vacant to run in a by-election.

V. Case Law Attempting to Remove Council Members from Office

In many provinces, electors or council as a whole can apply to the courts for an order declaring a councillor's seat vacant. Although on first blush, this appears to be easy, a review of the case law reveals that courts are reluctant to declare a council member's seat vacant and remove him or her from office. Instead, many judges have allowed disobedient members to remain in power through the technical interpretation of the empowering statute or by using their discretion to find that the member acted in inadvertence or by error in judgment.

Madger v. Ford[32] (Toronto, Ontario)

In *Madger v. Ford*, an elector brought an application seeking an order that Mayor Rob Ford had breached s. 5(1) of the *Municipal Conflict of Interest Act* and that his seat on municipal council should be declared vacant. On August 12, 2010, the City's Integrity Commissioner issued a report to council concluding that Ford breached the Code of Conduct by using City resources to solicit funds for a private football foundation. The Integrity Commissioner recommended that council require Ford to reimburse the funds donated and provide confirmation

[31] A term of office for municipal officials is typically four years.
[32] *Madger v. Ford*, [2012] ONSC 5615.

of the reimbursement. Although council adopted the Integrity Commissioner's report and recommendations on August 25, 2010, Ford did not comply. On January 30, 2012, the Integrity Commissioner issued a report on compliance wherein she recommended that council require Ford to furnish proof of reimbursement. This report came before council by way of resolution on February 7, 2012. Ford was present at this council meeting and spoke in his defence. A councillor then made a motion to rescind council's August 25, 2010 resolution. Ford did not speak on this motion but voted in favour of it. Justice Hackland found that Toronto's Mayor Rob Ford had violated s. 5(1) of the *Municipal Conflict of Interest Act* when he spoke and voted on a matter in which he had a pecuniary interest.

Justice Hackand's decision was ultimately overturned on appeal by the Divisional Court but not because Ford did not violate s. 5(1), but rather, because the court found that the August 25, 2010 resolution of council was improper and a nullity. The court noted that under the *City of Toronto Act*, council had authority to impose only two sanctions: a reprimand or a suspension of pay. Accordingly, council did not have authority to require Ford to pay back monies which he never received personally. As a result, the application was dismissed and Ford was allowed to retain his seat.

Schlenker v. Torgrimson[33] **(Salt Spring Island, British Columbia)**

The issue in *Schlenker v. Torgrimson* was whether two elected officials of the Local Trust Committee for Salt Spring Island, a statutory corporation having local government responsibility for land use planning and regulation, were in a conflict when they voted to award two service contracts to two societies (the Water Council and the Climate Action Council) of

[33] *Schlenker v. Torgrimson*, 2013 BCCA 9.

which they were directors, contrary to British Columbia's *Community Charter*. Pursuant to s. 108.1 of the *Community Charter,* the penalty for conflict was disqualification until the next election. The judge of first instance found that no conflict existed as there was no personal economic self-interest at issue since the societies were non-profit organizations. This decision was overturned on appeal on the grounds that, as directors of the societies, the elected officials were under a fiduciary duty to put the societies' interests first. When the elected officials voted in favour of resolutions that benefitted their societies through the granting of contracts, their duties as directors to put the societies' interests first were in direct conflict with their duties as councillors to put the public's interests first. Although the resolution may have, in effect, benefited both the society's and the public's interests equally, a conflict of interest was nonetheless present as neither the society or the public had the undivided loyalty of the elected officials. The court declared that the elected officials violated the *Community Charter*; however, the court was not able to disqualify the official until the 'next election' because the 'next election' had already passed by the time the court reached its decision.

Lac La Biche (County) v. Bochkarev[34] **(Lac La Biche, Alberta)**

In *Lac La Biche (County) v. Bochkarev*, councillor Bochkarev was the sole shareholder of a construction company which, along with other construction companies, were on a list of companies the Alberta county used to do construction related work, based on a rotation system. The list was referred to as the "day labour list". Council held a meeting to consider awarding a tender to two independent contractors that were not on the day labour list for certain road projects. Another councillor made a motion to postpone awarding a tender until the administration could provide comparable rates for the cost of road construction. The motion was

[34] *Lac La Biche (County) v. Bochkarev*, 2009 ABQB 400.

defeated, with Bochkarev voting against it. Another motion was tabled to reject all tenders received and to simply revert to using the day labour list to determine which company would complete the project. Bochkarev did not leave the room, participated in the meeting and voted on the motion. Bochkarev's company was subsequently chosen to do some of the work.

The court found that the decision of council to reject the tenders and use the day labour list financially affected Bochkarev as his company was on that list (albeit, in a rotation), and stood to gain work. Accordingly, the court held that he breached the *Municipal Government Act*. The court went on to consider whether to exercise its discretion under the *Act* and relieve against declaring the councillor disqualified. In reaching its decision, the court identified the following factors for consideration:

1. How obvious was the conflict?
2. Was councillor Bochkarev actually aware of the disqualification? Is there any evidence of wilful blindness or lack of good faith?
3. Did it occur to anyone at the council meeting that councillor Bochkarev was in a conflict of interest?
4. Whether the county had any procedures or policies in place for the purpose of identifying, addressing and reconciling pecuniary interests.
5. Is disqualification from council a harsh result?

Despite Bochkarev's failure to file an affidavit to explain his state of mind, the court did not draw any adverse inferences, but rather, simply noted that there was no evidence of any bad faith or willful blindness since the decision of council attempted to shave one-third of the cost off the project by using the day labour list. After careful consideration of the five factors above, the court was of the view that Bochkarev's actions came "closer to a lack of reflection than to those

cases where the conduct can best be described as outrageous or acting in the face of a patent and obvious conflict." The court declared that he was able to remain a councillor despite contravening the *Act*.

Arbez v. Johnson[35] **(Tache, Manitoba)**

In *Arbez v. Johnson*, a municipality tabled a resolution before council for the construction of a new fire hall and the sale of the land where the old fire hall was located. The owner of the adjacent grocery store made an offer to purchase the municipality's property in order to expand his parking lot. When this matter came before council, the owner also advised Johnson, a city councillor, to withdraw from the meeting and abstain from voting because she owned the only other commercial property in the municipality that sold lottery tickets, and as such, competed with the grocery store. Johnson absented herself from the meeting and subsequently received legal advice on the conflict of interest issue. When the resolution regarding the sale of the land was discussed at the next council meeting, Johnson participated in the discussions and voted against the motion to sell the land to the owner of the grocery store. The Manitoba Court of Appeal held that Johnson was in a conflict of interest as she had an indirect pecuniary interest by the benefit which her company could derive from the grocery store being prevented from providing more parking facilities to its customers. The court concluded that the expansion of the grocery store's parking lots for its customers could have an adverse impact, even if minor, on the volume of customers which Johnson's commercial property received. Accordingly, Johnson's seat on council was declared vacant.

[35] *Arbez v. Johnson*, [1998] M.J. No. 257 (C.A.).

***Duncan v. Thurlow*[36] (Hart Butte, Saskatchewan)**

In *Duncan v. Thurlow*, an application was brought against Thurlow, a municipal councillor, after she participated in and voted on a matter in which she had an alleged pecuniary interest. Thurlow and twenty other people owned property adjacent to land formerly occupied by Trans Canada Trail ("TCT"), a municipality asset. The municipality decided to offer the TCT lands for sale to these adjacent property owners, which included Thurlow. Thurlow argued that since the TCT lands were worthless, pursuant to *The Municipalities Act*, the pecuniary interest was "so remote or insignificant that it cannot reasonably be regarded as likely to influence the member of council". As there was no contradictory evidence from the applicant as to the value of the TCT lands, the court found the pecuniary interest to be remote and insignificant. Although Thurlow had a duty to disclose her pecuniary interest, the court held that she was excused due to inadvertence or by reason of an honest mistake.

***Neary v. Portugal Cove-St. Philips (Town)*[37] (Portugal Cove-St. Philips, Newfoundland and Labrador)**

In *Neary v. Portugal Cove-St. Philips (Town)*, councillor Neary voted on a recommendation at council meeting to "spot rezone" certain lands which included land owned by Neary. Several council meetings followed where Neary insisted that the conflict of interest issue be postponed until the planning consultant returned from vacation. Town council denied Neary's request and the mayor, by resolution, tabled two motions, one to declare Neary in a conflict of interest and the other to declare Neary's seat vacant. With four out of six councillors voting in favour of the motions, Neary's seat was vacated. Neary appealed council's decision to the

[36] *Duncan v. Thurlow*, 2012 SKQB 179.
[37] *Neary v. Portugal Cove-St. Philips (Town)*, 2013 NLCA 47.

Supreme Court Trial Division and was unsuccessful. He then further appealed to the appellate court. Neary argued that he did not know that "spot rezoning" affected his property, as the recommendation was ambiguous as to whether it affected Neary's land. The two councillors who opposed the motion testified that the decision of whether Neary was in a conflict of interest was pre-determined in advance of the council meeting and may have been used by the mayor as a form of retaliation for a previous quarrel with Neary. Although the trial judge found that council's refusal to grant Neary an adjournment constituted a breach of natural justice, she went on to conduct her own analysis of whether Neary was in a conflict of interest. Having decided that he was, the trial judge declared his seat vacant.

The appellate court found that the trial judge made a fundamental error of law. Having found that Neary was denied procedural fairness before municipal council, the trial judge should have simply set aside council's decision. It was improper for the trial judge to decide whether Neary was in a conflict of interest. Accordingly, the trial judge's decision was overturned.

***Stubbs v. Greenough*[38] (Dartmouth, Nova Scotia)**

Stubbs v. Greenough is the most recent decision out of Nova Scotia that judicially considers that province's conflict of interest legislation and in fact, is one of only two decisions that judicially consider Nova Scotia's *Municipal Conflict of Interest Act*.

An application was commenced for a declaration that Greenough's seat as councillor be declared vacant. Greenough owned two lots and pursuant to city by-laws, was required to build a driveway from the lot to the nearest city road and pay for street bonding charges on the part of

[38] *Stubbs v. Greenough*, [1984] N.S.J. No. 73 (S.C. (Trial Div.)).

the lots abutting the road. When a report was submitted to council to revise the bylaws and delete the requirement for lot owners to pay for street bonding, Greenlough disclosed that he had a conflict of interest and did not participate in the meeting. However, prior to the meeting, Greenlough telephoned several councillors to advise them that he had a conflict of interest and asked whether they had any questions he could answer. Further, although he removed himself from the meeting, he simply sat in the public gallery and answered questions that were subsequently posed to him by other councillors. The court held that Greenlough violated the *Municipal Conflict of Interest Act* when he telephoned several councillors in light of the public perception of the purpose behind the telephone calls. The trial judge also found that Greenlough violated the *Act* when he spoke at the council meeting, stating, "[h]owever innocent his intention or words, any comments by an alderman who has declared a conflict and is in conflict, violates the ….Act". Having found Greenlough in contravention of the *Act*, the court exercised its discretion under the *Act* and found Greenlough's actions were made through inadvertence or ignorance of the law. His participation at the meeting was a *bona fide* error in judgment since he openly declared his conflict and did not attempt to deliberately defy the *Act*. Accordingly, the court did not declare his seat vacant.

R. v. Carson[39] and ***Carson v. New Brunswick***[40] **(Moncton, New Brunswick)**

R. v. Carson and *Carson v. New Brunswick* are the only decisions in New Brunswick that have judicially considered the conflict of interest provisions of the *Municipalities Act*. This is likely due to the fact that the enforcement procedure in New Brunswick is governed by the *Provincial Offences Procedure Act*, which hears matters in the Provincial Court, as opposed to

[39] *R. v. Carson*, [1986] N.B.J. No. 251 (Q.B.).
[40] *Carson v. New Brunswick*, [1987] N.B.J. No. 543 (C.A.), rev'd, [1987] N.B.J. No. 91 (Q.B.).

the other provinces which require an application be commenced in the civil courts. The Provincial Court is the entry point for all persons charged with traffic violations or offences under the *Criminal Code* and as such, decisions are rarely reported.

A councillor was charged with seven counts of failing to disclose a conflict of interest. The councillor argued that the information (the formal criminal charge prepared by the Crown) did not set out what the alleged conflict of interest was and he did not know the offences with which he stood charged. The judge agreed and quashed six out of seven counts. The Crown brought an application for judicial review of the judge's order. The court noted that neither ss. 90.4(2) or 90.4(3) of the *Municipalities Act* declares a conflict of interest as an offence, but rather, it is a failure to disclose a conflict of interest which creates the offence. Section 90.2(1) sets forth several ways in which a member of council has a conflict of interest which must be disclosed. Since the charges did not set out the alleged conflict of interest, the court dismissed the Crown's application.

The Crown subsequently amended the information to include the nature of the six counts of conflict of interest in greater detail. The information cited six violations which occurred at three separate council meetings over the course of a year. The six offences involved matters before council where the councillor was either directly or indirectly involved in a company that stood to gain from the issue before council and failed to disclose his conflict of interest and remove himself from the meeting. This time, the councillor brought an application for prohibition to prevent the court from proceeding to trial, citing procedural breaches in the information, for example that the Crown had included multiple charges in one information,

which the councillor claimed was improper. The judge concluded there was no merit to the councillor's objections and dismissed the application.

The councillor subsequently appealed to New Brunswick's appellate court. The issue before the court was whether multiple charges in one information was improper. Given that the applicable legislation only gave a judge the power to either convict or dismiss the information, there was no ability for a judge to find in favour with respect to some of the charges and dismiss others. Accordingly the information against the councillor was quashed.

VI. Case Studies

Hazel McCallion (Mississauga, Ontario)

At the age of 93, McCallion or "Hurricane Hazel" is well known as the mayor of the City of Mississauga, Ontario, and as the longest serving mayor in Canada. However, she too is not without controversy. In 2013, an application was commenced by a resident for an order removing McCallion from office for violating the *Municipal Conflict of Interest Act*. The applicant alleged that McCallion had a financial interest in her son's development company and despite knowing that, participated in and voted at a meeting related to increased development charges wherein her son's company stood to be eligible for lower rates. McCallion alleged that her son told her he was the company's real estate agent, and not the owner. In 2007, the upper tier municipality Region of Peel recommended an 85% increase in development charges with a transition period whereby the increased charges would not be payable to developers who met transitional timing conditions. At the Regional council meeting, McCallion moved a motion to extend the time to obtain a building permit. At another Regional council meeting, McCallion

seconded a motion which would have extended the transition period for developers in Mississauga, Brampton and Caledon. McCallion alleged that she seconded this motion as a matter of routine and to show support for the mayor of Brampton, who was a proponent of the transition period.

The court found that at the time McCallion voted in the above motions, her son's company did not meet the transitional conditions and as such, there was no financial interest in the development charges. Justice J.R. Sproat found that "[o]n that basis alone…the application must be dismissed". The court also went on and examined whether McCallion could rely on the defences under the *Municipal Conflict of Interest Act*. The court held that even if McCallion had a conflict of interest, her financial interest in the matter was minuscule and was unlikely to have influenced her vote. With respect to the defences of error in judgment and inadvertence, Justice J.R. Sproat found that McCallion in fact knew her son owned the subject company but did not know of the details of the company's development plan. She had also admitted to attending many municipal conflict of interest sessions. The belief by McCallion that she could vote was "arbitrary" and contrary to common sense. Having known that her son's company had plans for development but made no inquiry as to the status of the project and whether an application for planning approval was obtained, McCallion was willfully blind to the situation. Accordingly, both the defences of inadvertence and error in judgment were unavailable to McCallion.

Lastly, the court considered the issue of whether the applicant had commenced his court application in time. The *Municipal Conflict of Interest Act* requires that an application be commenced within six weeks of learning of a council member's breach of the *Act*. Since the

court determined that the application was commenced more than a year after the applicant first learned of the breach, it held that the application was dismissed on this ground as well.

Sam Katz **(Winnipeg, Manitoba)**

Last year, Manitoba' Court of Queen's Bench dismissed a conflict of interest allegation against Winnipeg mayor, Sam Katz. It was alleged that Katz billed the City $3,000 after a 2010 office Christmas party for city councillors and staff was held at Hu's Asian Bistro, a restaurant Katz then owned. Justice Keyser held that the *Municipal Conflict of Interest Act* did not apply to politicians at social gatherings. In the alternative, she held that if Katz had breached the conflict of interest provisions, she was prepared to exercise her discretion not to remove Katz from office, given the disproportion between the impugned conduct and the expense of a civic election.

Justice Keyser's decision was subsequently appealed to the Manitoba Court of Appeal. The court disagreed with Justice Keyser's interpretation of the legislation, stating that it must be interpreted liberally. Situations where a councillor approaches an officer or employee of the city seeking to influence the manner in which a contract is awarded or a transaction occurs where the councillor or any of his dependants have a direct or indirect pecuniary interest could trigger a conflict of interest. However, the court ultimately upheld Katz's acquittal of conflict of interest charges, finding that there was no evidence that Katz had ordered the office Christmas party to be held at a restaurant he owned at the time. Further, Justice Kelsey did not err in exercising her discretion to not remove Katz from office.

The applicant further appealed to the Supreme Court of Canada. On February 13, 2014, the Supreme Court dismissed the appeal without reasons.

Joe Fontana **(London, Ontario)**

In 2012, mayor of the City of London, Ontario, Joe Fontana, was charged with fraud under $5,000, breach of trust by a public official and uttering forged documents when he was a Liberal member of Parliament. The RCMP claimed Fontana inappropriately used federal government funds while he was a member of Parliament to help pay for his son's wedding reception. Despite professing his innocence, opinions polls suggested that most electors wanted him to resign.[41] A motion was subsequently brought before city council calling on Fontana to step down but it was defeated.

Fontana proceeded to trial and on June 2014, the court found Fontana guilty of three counts of fraud. Justice B. Thomas, wrote in his decision, "[w]hile I am perplexed as to why a man of such accomplishments might choose to take these actions for $1,700, I do not find that that detracts from the strength of the Crown case." Fontana was subsequently sentenced to four months house arrest and 18 months probation. Although Fontana was not sentenced to prison, and was legally still entitled to hold his seat in office, he voluntarily resigned.

Dar Heatherington **(Lethbridge, Alberta)**

[41] CBC News, "Joe Fontana, mayor of London, Ont., charged with fraud", 21 November 2012, available online: <http://www.cbc.ca/news/canada/joe-fontana-mayor-of-london-ont-charged-with-fraud-1.1268913>; Huffington Post, "Joe Fontana Fraud Charges: London, Ont., Mayor To Remain In Office", 22 November 2012, available online: <http://www.huffingtonpost.ca/2012/11/22/joe-fontana-fraud-charges-london-mayor_n_2174787.html>.

In 2003, in Lethbridge, Alberta, city councillor Heatherington made headlines after she disappeared from Great Falls, Montana, while on council business, and turned up in Las Vegas three days later, claiming to have been abducted, drugged and sexually assaulted. Police in Great Falls investigated the matter and concluded that Heatherington had made the whole story up and charged her with lying to the police. About a month later, Lethbridge police charged Heatherington with public mischief after an eight month investigation into claims she was being stalked, revealed that Heatherington had written salacious letters to herself.

Heatherington was subsequently found guilty of public mischief after the court concluded she had invented a stalker and sent letters to herself. She faced the possibility of five years in prison (the maximum sentence for public mischief under the *Criminal Code*). Pursuant to the *Municipal Government Act*, the conviction meant that Heatherington was automatically disqualified from holding public office; however Hetherington refused to do so. Accordingly, Lethbridge council commenced an application in the Alberta Court of Queen's Bench to forcibly remove her from office.[42] Soon thereafter, Heatherington agreed to resign. Heatherington was subsequently sentenced to eight months of house arrest followed by a 12-month curfew.

VII. Conclusion

A review of decisions of courts across the country reveal that judges are reluctant to remove mayors or councillors from office, recognizing the seriousness of such a penalty; and perhaps, in recognition of the greater implication to the citizens who elected him or her in the first place. On the other hand, however, the difficulty in removing an elected official from

[42] CBC News, "Lethbridge prepared to take legal steps to remove Dar Heatherington", 12 July 2014, available online: <http://www.cbc.ca/news/canada/lethbridge-prepared-to-take-legal-steps-to-remove-dar-heatherington-1.482810>.

power also presents itself as an impediment to democracy where there is public demand for the resignation of a member.

APPENDIX "A"

Across Canada Statutes

	British Columbia: ***Community Charter***	**Alberta:** ***Municipal Government Act***	**Saskatchewan:** ***The Municipalities Act***	**Manitoba:** ***Municipal Act***	**Ontario:** ***Municipality Act, 2001***	**Newfoundland and Labrador:** *Municipalities Act, 1999*	**New Brunswick:** *Municipalities Act*	**P.E.I.**	**Nova Scotia:** *Municipal Government Act*
Duties of Councillors	115. Every council member has the following responsibilities: (a) to consider the well-being and interests of the municipality and its community; (b) to contribute to the development and evaluation of the policies and programs of the municipality respecting its services and other activities; (c) to participate in council meetings, committee meetings and meetings of other bodies to which the member is appointed; (d) to carry out other duties assigned by the council; (e) to carry out other duties assigned under this or any other Act.	153 Councillors have the following duties: (a) to consider the welfare and interests of the municipality as a whole and to bring to council's attention anything that would promote the welfare or interests of the municipality; (b) to participate generally in developing and evaluating the policies and programs of the municipality; (c) to participate in council meetings and council committee meetings and meetings of other bodies to which they are appointed by the council; (d) to obtain information about the operation or administration of the municipality from the chief administrative officer or a	92. Councillors have the following duties: (a) to represent the public and to consider the well-being and interests of the municipality; (b) to participate in developing and evaluating the policies, services and programs of the municipality; (c) to participate in council meetings and council committee meetings and meetings of other bodies to which they are appointed by the council; (d) to ensure that administrative practices and procedures are in place to implement the decisions of council; (e) to keep in confidence matters discussed in private at a council or council committee meeting until discussed at a meeting held in public; (f) to maintain the financial integrity of the municipality; (g) to perform any other duty or function imposed on councillors by this or any other Act or by the council.	83(1) Each member of a council has the following duties: (a) to consider the well-being and interests of the municipality as a whole and to bring to the council's attention anything that would promote the well-being or interests of the municipality; (b) to participate generally in developing and evaluating the policies and programs of the municipality; (c) to participate in meetings of the council and of council committees and other bodies to which the member is appointed by the council; (d) to keep in confidence a matter that is	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.	21 (3) A town councillor is subject to the direction and control of the town council and shall abide by the decisions of the town council.	36(2.1)A councillor of a municipality shall (a)consider the welfare and interests of the entire municipality when making decisions, (b)bring to the attention of council matters that may promote the welfare or interests of the municipality, (c)participate in developing and evaluating the policies and programs of the municipality, (d)participate in meetings of council, council committees and any other body to which he or she is appointed by council, and (e)perform any other duties conferred upon him or her by this or any other Act or by council.	None.	14 (1) The powers of a municipality are exercised by the council. (2) In the general exercise of its powers, the council shall take into account the principle of accessibility for its citizens with disabilities.

		person designated by the chief administrative officer; (e) to keep in confidence matters discussed in private at a council or council committee meeting until discussed at a meeting held in public; (f) to perform any other duty or function imposed on councillors by this or any other enactment or by the council.		discussed at a meeting closed to the public under subsection 152(3) and that the committee decides to keep confidential until the matter is discussed at a meeting of the council or of a committee conducted in public; (d.1) to comply with the code of conduct for members of council; (e) to perform any other duty or function imposed on the member by the council or this or any other Act.					
Duties of Mayor	116 (1) The mayor is the head and chief executive officer of the municipality. (2) In addition to the mayor's responsibilities as a member of council, the mayor has the following responsibilities: (a) to provide leadership to the council, including by recommending bylaws, resolutions and other measures that, in the mayor's opinion, may assist	154(1) A chief elected official, in addition to performing the duties of a councillor, must (a) preside when in attendance at a council meeting unless a bylaw provides that another councillor or other person is to preside, and (b) perform any other duty imposed on a chief elected	93(1) In addition to performing the duties of a councillor, a mayor or reeve has the following duties: (a) to preside when in attendance at a council meeting unless this Act or another Act or a bylaw of council provides that another councillor is to preside; (b) to perform any other duty imposed on a mayor or reeve by this or any other Act or by bylaw or resolution. (2) The mayor or reeve is a member of	83(2) In addition to performing the duties of a member of a council, the head of council has a duty (a) to preside when in attendance at a council meeting, except where the procedures by-law or this or any other Act otherwise provides;	225. It is the role of the head of council, (a) to act as chief executive officer of the municipality; (b) to preside over council meetings so that its business can be carried out efficiently and effectively; (c) to provide leadership to the council; (c.1) without limiting clause (c), to provide information and recommendations to the council with respect to the role	21. (1) The mayor (a) shall make all reasonable efforts to ensure that the laws of the town are executed and obeyed and shall advance the aims of the town council; and (b) shall exercise the powers and perform the duties that may be conferred or imposed upon him or her by the town council or under the Act. (2) Notwithstanding	36(1)The mayor of a municipality shall (a)preside at all meetings of council, except as provided for otherwise in a procedural by-law enacted pursuant to section 10.3 or in a municipal charter or a private or special Act, (b)provide leadership to council, (c)communicate information and recommend actions to council for the improvement of the municipality's finances, administration and government, (d)speak on issues of concern to the municipality on behalf of council, and (e)perform any other duties conferred upon him or her by this or any other Act or by council. 36(1.1)Notwithstanding subsection (1), the mayor of a municipality is	None.	15 (1) The mayor or warden shall preside at all meetings of the coun- cil. (2) During the temporary absence of the mayor or warden, the deputy mayor or deputy warden shall preside and, if neither is present, the council may appoint a person to preside from among the council members

	the peace, order and good government of the municipality; (b) to communicate information to the council; (c) to preside at council meetings when in attendance; (d) to provide, on behalf of the council, general direction to municipal officers respecting implementation of municipal policies, programs and other directions of the council; (e) to establish standing committees in accordance with section 141; (f) to suspend municipal officers and employees in accordance with section 151; (g) to reflect the will of council and to carry out other duties on behalf of the council; (h) to carry out other duties assigned under this or any other Act.	official by this or any other enactment or bylaw. (2) The chief elected official is a member of all council committees and all bodies to which council has the right to appoint members under this Act, unless the council provides otherwise.	all council committees and all bodies established by council pursuant to this Act, unless the council provides otherwise.	(b) to provide leadership and direction to the council; and (c) to perform any other duty or function assigned to a head of council by the council or by this or any other Act.	of council described in clauses 224 (d) and (d.1); (d) to represent the municipality at official functions; and (e) to carry out the duties of the head of council under this or any other Act. 226.1 As chief executive officer of a municipality, the head of council shall, (a) uphold and promote the purposes of the municipality; (b) promote public involvement in the municipality's activities; (c) act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally; and (d) participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents.	subsection (1), the mayor is subject to the direction and control of the town council and shall abide by decisions of the town council. (3) A town councillor is subject to the direction and control of the town council and shall abide by the decisions of the town council.	subject to the direction and control of council and shall abide by the decisions of council.		present. (3) The mayor or warden may (a) monitor the administration and government of the municipality; and (b) communicate such information and recommend such measures to the council as will improve the finances, administration and government of the municipality.