



Municipal Governance

MNL Symposium 2022

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Municipal Law Practice Areas

- Real Estate Sales and Purchases
- Crown Lands Acquisitions
- Subdivision Development
- Commercial Agreements
- Procurement
- Taxation
- Governance

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What is Governance?

- Governance refers to the **processes and structures** used to direct and manage an organization's operations and activities. It defines the **division of power** and establishes mechanisms to achieve accountability among stakeholders, council and management.
- **Good governance** systems are designed to help organizations focus on the activities that contribute most to their overall objectives, use their resources effectively, and ensure that they are managed in the best interests of their stakeholders.

Council Authority

- Municipalities are corporations
- Council is the board of directors
- Authority of council resides in the creating statute:
 - Municipalities Act, 1999
 - City of Corner Brook Act
 - City of Mount Pearl Act
 - City of St. John's Act

Roles of Council

- Policy creation
- Legislative function – bylaws and regulations
- Budgeting
- Oversight of Town Clerk and Manager
- Hiring of senior staff
- Strategic Planning

Responsibilities of Council

Mandatory (“Council shall...”)

- Appoint Clerk
- Make regulations under s. 414(1)
- Prepare and adopt an annual budget
- Provide for waste collection
- Impose a business tax

Discretionary (“Council may...”)

- Appoint Manager / Department heads
- Make regulations under s. 414(2)
- Sell or lease property
- Establish departments
- Set staff salaries and benefits
- Impose property tax

Responsibilities of Individual Councillors

- Act in the best interest of the community / electorate
- Financial oversight
- Communication between citizens and council
- Ensure compliance with applicable legislation
- Attend meetings and be prepared
- Vote on all motions unless required to abstain
- Disclose conflicts of interest

Rights of Individual Councillors

Rights

- To notice of meetings
- To attend meeting
- To sufficient information
- To speak and vote at meetings unless disqualified

NO Rights

- To order reports
- To direct staff
- To share information

Limitation of Liability

- 411. (1) An action for damages shall not lie or be instituted against a councillor or ... for anything said or done or omitted to be said or done by that councillor ... in the performance or intended performance of his or her duty or the exercise of a power or for an alleged neglect in the performance or intended performance of his or her duty or exercise of a power under this Act.

Core Policy Immunity



City of Nelson v March, 2021 SCC 41

Core Policy Immunity – the Framework

- 4 factors to consider:
 - level and responsibilities of the decision-maker;
 - process by which the decision was made;
 - nature and extent of budgetary considerations; and
 - extent to which the decision was based on objective criteria.

Relationship with Staff

- Council **as a whole** has oversight of (senior) staff.
- Individual councilors **MUST NOT** interfere with staff responsibilities and administration.

Town Manager / CAO

- **54.** (1) A manager is the chief executive and administrative officer of the council and head of its administrative branch and is responsible to the council for the proper planning, execution, conduct and the proper administration of the affairs of the council.
- (2) A manager shall administer his or her office in accordance with this Act and policies determined by the council.

Town Manager / CAO

- Not a mandatory position but becoming more common.
- Reports directly to council.
- Advises council as a whole on decision-making.
- Responsible for planning, execution, and administration of the town in accordance with policies and direction from council.
- Responsible for managing operations.

Superiority of Council

- 55. (1) A manager shall not disobey, disregard or overrule a decision of the council.
- (2) A manager may advise or make a recommendation to the council which shall receive, consider and make a record of the advice or recommendation in its minutes but is not bound to follow that advice or recommendation, nor is the advice or recommendation of the manager required before an action of the council.

Town Clerk

- 61. (1) A clerk is the secretary to the council and is responsible to it for recording the proceedings and decisions of the council and for the safekeeping of all documents of the council.

Town Clerk

- Mandatory position.
- Reports directly to council.
- Secretary to council.
- Responsible for record-keeping.

Not Council Roles

- Day-to-day administration
- Operational decision-making
- Directing routine staff functions

Good Municipal Governance

- **Lead**
 - Policymaking
 - Legislative function
 - Strategic planning
- **Monitor**
 - Manager / Department Heads
 - Financial / budgetary oversight
- **Stay out of the way**
 - Operations
 - Execution



Questions?



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These materials should not be relied upon as a substitute for consultation with a lawyer with respect to the reader's specific circumstances. Each legal or regulatory situation is different and requires review of the relevant facts and applicable law.

If you have specific questions related to these materials or their application to you, you are encouraged to consult a member of our Firm to discuss your needs for specific legal advice relating to the particular circumstances of your situation.

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