

Notice

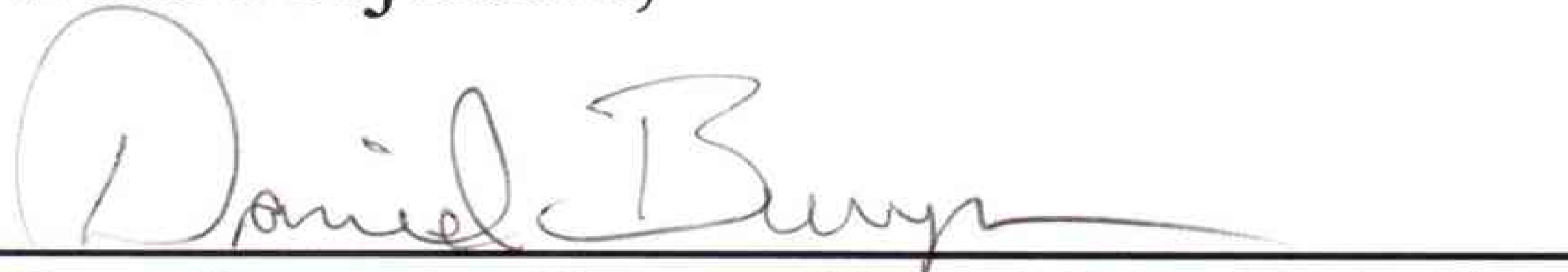
To the Legislative Assembly of Alberta

Take notice that Municipalities have been victimized by an Illegal and Unlawful Municipal Inspection process contrary to the principles of Natural Justice and Procedural Fairness.

Due to the recent discovery of the *Bellamy*, *Cunningham*, and *Barclay* Reports, I believe the Municipal Inspection Report of Thorhild County, as well as many other Municipalities, need to be tested by these precedent setting Reports and rescinded by the Minister of Municipal Affairs.

It is the duty of Municipal Affairs to act fairly and promptly to remedy these unjust and defamatory Municipal Inspection Reports throughout Alberta.

With Prejudice,



Dan Buryn, Councillor, Thorhild County

TABLE OF CONTENTS

1. Baker v. Rural Municipality Of Sherwood No. 159 pp. 1-5, 25-26

This gem was discovered in January and led to the discovery of the Barclay Report which referenced the Bellamy and Cunningham Reports

2. Manitoba Law Reform Commission –

Modernizing The Municipal Council Conflict Of Interest Act: Accountability, Enforcement, & Oversight – Final Report January 2016 - pp. 42-47; Very well presented summary of the Bellamy, Cunningham, and Barclay Reports

3. Municipal Inspection Reports –

List from Alberta Municipal Affairs website containing nearly 30 inspections since 2009 – I believe that most, if not all, municipal inspections conducted in Alberta (MGA 1994) are illegal and unlawful as they do not provide for Natural Justice and Procedural Fairness as the Bellamy, Cunningham, and Barclay Reports

4. Procedural Fairness In Ontario

The Parameters Of The Right To Be Heard: An Overview; Janice Payne and Jessica Fullerton; Nelligan O'Brien Payne, Ottawa, Ontario; pp. 1 of 9; Excellent information

5. “LexisNexis” Reference Card: Administrative Law,

Extracted from “Halsbury’s Laws of Canada” – Administrative Law (2013 Reissue) Authors: Guy Regimbald & Mathew Estabrooks, pp. 1 of 5, Excellent information

6. Administrative Law I & II –

Similar course material should be provided for Councillor orientation as knowledge along with emphasis of Natural Justice and Procedural Fairness would prevent ultra vires acts

7. Councillor Report January 26, 2015 –

Clarification of Public Inquiries Act and Investigation process. – Report presented to Council January 27, 2015

8. January 27, 2015 Minutes pp. 8 & 9, Councillor Report and Resolution 032-2015

9. February 10, 2015 Minutes p. 18 – Resolution 077-2015,

My colleagues chose to ignore the abuses of the Inspector and the need for competent legal assistance to protect the interests of the County - I made this motion because the written legal advice we received (075-2015) was botched as the lawyer disregarded the basics of Natural Justice and Procedural Fairness - I am not legally trained as lawyers are and they have huge research resources at their disposal unlike myself that has to travel to the University of Alberta law library – The Canadian Encyclopedic Digest (CED) was very useful and helped me learn about Public Inquiries in detail which confirmed the deficiencies in the written legal advice received on February 10, 2015 - This written legal advice should be made available to the public so the public is aware of the facts - Another concern, the Inspector's father is a lawyer at the very same law firm as the lawyer that provided the written advice

Lawyer 2 from law firm 2 was engaged in October 2015 to make application for Judicial Review of the Inspector's report – Instead of proceeding with the application for JR Council received a multipage opinion from lawyer 2 in early November 2015 and this written legal advice was also botched as the basics of Natural Justice and Procedural Fairness were also disregarded to a cost of approximately \$12,000 – Council could have used this \$12,000 to purchase the (CED) which would have correctly informed Council rather than the expensive pages of cognitive dissonance received – This written legal advice should also be made available to the public so the public is aware of the facts

Several lawyers from law firm 3 have been engaged to make application for JR of the Inspector's report in December 2015 – This experience has been very negative with lack of communication, repeated delays and constant changes – Law firm three has received approximately \$137,000 to date and Council does not have a written brief of the matter – Council recently resolved to change law firms however the Official Administrators (Minister Larivee's appointed henchmen) have disallowed resolutions to engage a new firm that will help resolve this matter – This matter could be resolved very easily by challenging the Inspector's report on the basis of Natural Justice and Procedural Fairness by using the Bellamy, Cunningham, and Barclay reports as evidence a very simple matter – Ask yourself why a rookie on Council figured this out and heavy-weight lawyers could not? – Where is my \$750 per hour?

I will now provide a remedy because as you have seen the lawyers are not helpful in this matter and unfortunately profiting from this chaos - Remedy: "Motion for Mandamus" – This would be a motion that a Councillor could make at any time during a Council meeting or in writing. Once such a motion is made it is recorded in the minutes without a vote and becomes an order - (mandamus = writ = order) – This order would be a common law protection for Natural Justice and Procedural Fairness, statutory and common law correctness etc. - When a Councillor has a concern about the business at hand this remedy could be used to order oversight and competent advice – If this motion was available in Alberta I could have used it on January 27, 2015 where my Councillor report would be supplied to a competent individual like Commissioner Barclay in Saskatchewan – Such a competent individual could have exposed the human rights abuses and stopped the illegal and unlawful municipal inspection process. All of the torture I have experienced could have been prevented for pennies in cost compared to the system of lawyers that has yet to resolve the matter.

10. Notice to Minister Bilous –

Presented to Council in a report on September 22, 2015 and resolution was passed to print in local newspaper – I wrote to ADM Gary Sandberg on two occasions regarding this Notice and he confirmed that both Minister Bilous and later Minister Larivee were informed – The ministerial order mentioned in the Notice is concerning as I set up a meeting November 2015 with Minister Phillips and Staff regarding the MO and the Minister had to cancel resulting in a meeting with the ADM and Staff. There has been no follow-up from the Ministry regarding our concerns

11. Province responds to Thorhild County concerns March 10, 2016

This media release is very condemning of Minister Larivee especially if you read the first 23 pages of the Barclay Report – See item 12, for what I believe the Minister meant by "normal county operations" – "irregular, improper and improvident" are not defined in the MGA and if you check a few inspection reports you will find where Inspectors have used their dictionary of choice to determine a definition

12. Email by Interim CAO Mr. Vincent sent on behalf of Official Administrators, Friday March 11, 2016 – The day after 3 Councillors were fired by Minister Larivee

I believe Minister Larivee and her henchmen were in conflict with Ministerial Order 29/2013

13. Ministerial Order 29/2013, May 10, 2013

Approximately 6 additional pages in legalese that need clear definition of which we requested during our meeting with the department November 2015

14. Agenda for the special meeting Monday, March 14, 2016

The Injunction received by three Councillors prevented the Official Administrators from taking control of the County

15. Exhibit 2, Gary Sandberg, March 23, 2016; Preliminary Review Thorhild County September, 2014

False information has been provided in this document, see page 7, 3. Finances and p.8 "Examples of specific incidents include:" – The grader and bus accusations are 100% debunked and the debunking research of approximately 80 pages was provided by CAO – The \$200,000 water system repair is 100% fiction and not located in County records

16. Town of Athabasca Municipal Corporate Review, March 2013, pp. 1,2,3,13,14

The financial advisor of this Corporate Review appears to be the same individual noted in the Preliminary Review of Thorhild County, previous item 15 – Appears to be differing levels of concern related to finances p. 1 & 14

17. Letter from Municipal Affairs regarding FOIP Request Number 2016-G-0079

Municipal Affairs has deleted records once again. During the spring/summer of 2016 I presented a Councillor report explaining a resident's similar experience where ADM Gary Sandberg deleted emails between himself and 2 Thorhild County Councillors claiming they were transitory – I believe the "69 pages in total" contains very serious defamatory statements made about me

18. Thorhild County Report pp. 34-35

The Inspector creates copious quantities of rhetoric in these two pages about recording Council meetings and then compare that rhetoric to Item 19

19. FOIP Letter of Findings December 7, 2015

20. Directives imposed for pecuniary interest Thorhild County compared to Town of Fort Macleod –

See both inspection reports for details however I believe the Town of Fort Macleod report was conducted illegally and unlawfully, contrary to Natural Justice and Procedural Fairness just the same as the Thorhild County report and most if not all municipal inspection reports conducted in Alberta

21. Thorhild County Report pp. 7,8,11,43,51,52,53

I would like to see the Procedural Fairness template used by the inspector that guided him through the inspection process

22. Letters from Bullies Larivee & Pickering – September 2016 & March 2017

After receiving a CBC News article via email I was concerned that someone would be victimized by the inspection process so I shared Item 15, Preliminary Review and debunking research with Westlock County Council. Minister Larivee's letter records for history her unfortunate behavior as a Minister – Glad to see DM Pickering has acknowledged his repeated threats in writing

QUEEN'S BENCH FOR SASKATCHEWAN

Citation: 2015 SKQB 301

Date: 2015 09 23
Docket: QBG 903 of 2015
Judicial Centre: Regina

BETWEEN:

RICHARD ALBERT BAKER, DEAN BEATTY,
BRIAN GARY BROWN, JOHN DAVID DUNCAN,
ROBERT ANDREW DUNLOP, JAMES PAUL FARLEY,
ALLAN WAYNE GANSHORN, GARY ROSS HOWLAND,
ROY WILLIAM KLYM, HERBERT STANLEY MARTIN,
JOHN RICHARD MCALLISTER, JOAN ANN PRATCHLER,
JAMES DOUGLAS TANNER

APPLICANTS

- and -

RURAL MUNICIPALITY OF SHERWOOD NO. 159

RESPONDENT

Counsel:

J. Paul Malone
Karen M.T. Prisciak, Q.C.

for the applicants
for the respondents

JUDGMENT
SEPTEMBER 23, 2015

GUNN J.

[1] The applicants, Richard Albert Baker, Dean Beatty, Brian Gary Brown, John David Duncan, James Paul Farley, Allan Wayne Ganshorn, Gary Ross Howland, Roy William Klym, Herbert Stanley Martin, John Richard McAllister, Joan Ann Pratchler and James Douglas Tanner are voters and own

property in the Rural Municipality of Sherwood No. 159 [RM]. The applicant, Robert Andrew Dunlop, is a voter in the RM and the corporation, of which he is the Chief Executive Officer, owns land in the RM. The applicants challenge the validity of a bylaw passed by the Council of the RM on October 18, 2014, No. 17/14 [Bylaw]. They seek an order quashing the Bylaw pursuant to s. 358 of *The Municipalities Act*, SS 2005, c M-36.1 [Act].

THE CONTEXT

[2] The information referenced here has been obtained from the evidence filed by the parties and from their briefs of law and submissions to the court. They do not disagree in any fundamental way with this summary of events.

[3] The RM was the subject of an Inspection pursuant to s. 396 of the *Act* ordered June 16, 2014 by the Minister of Government Relations [Minister]. The Terms of Reference provided in part the following (p. 2):

Terms of Reference

1. The Inspector will inspect the following matters connected with the management, administration or operation of the Rural Municipality of Sherwood No. 159 (“the municipality”):
 - (a) the full history, background, process, facts and circumstances which led to the approval by the Council of the municipality (the “Council”) of the amendments to the official community plan and zoning bylaws and subsequent concept plan(s) for the proposed Wascana Village development;
 - (b) the appropriateness of the directions, actions or inactions of any employee or agent of the

municipality or member of Council relating to the proposed Wascana Village development;

- (c) whether the mechanisms in place in the municipality for the identification, disclosure and addressing of pecuniary interests in matters brought before Council are appropriate and effective.

- 2. The Inspector shall prepare a written report in relation to the matters under his inspection outlining his findings of fact, conclusions and any recommendations and provide the report to the Minister and to the Council as soon as reasonably possible.

[4] The Inspector issued an Interim Report on July 10, 2014 in which he recommended that the Minister issue a new order for an Inquiry pursuant to s. 397 of the Act.

[5] On July 24, 2014, the Minister issued an Order for an Inquiry. The Order for the Inquiry provided in part the following (Saskatchewan, *Final Report of the Inspection and Inquiry into the R.M. of Sherwood No. 159*, (Saskatchewan: Minister of Government Relations, 2014) [*Barclay Report*]):

...

- 3. I consider it necessary to appoint the Honourable R.L. Barclay, Q.C. as an Inquiry Officer pursuant to subsection 397(3) of The Municipalities Act to inquire into the conduct of members of council and agents of the municipality and the affairs of the municipality in relation to the matters identified in the terms of reference set out in Schedule "A" attached hereto, concurrently with his duties as an Inspector.

(p. 5 of the *Barclay Report*)

[6] The terms of reference were the following:

1. The Inquiry will inquire into the appropriateness of the conduct of members of council and agents of the Rural Municipality of Sherwood No. 159 (the "municipality") and the affairs of the municipality in relation to the developments proposed for section 33, township 16, range 19 and the northern half of section 28, township 16, range 19 (the "proposed development"), including, without limiting the generality of the foregoing:
 - (a) whether members of council or agents of the municipality had or have pecuniary interests in the proposed development, and if so whether such interests were appropriately identified and disclosed; and
 - (b) whether members of council or agents of the municipality, directly or indirectly, inappropriately attempted to influence, promote or advance the proposed development to benefit any such pecuniary interests.
2. In conducting the Inquiry into the appropriateness of conduct and affairs, the Inquiry Officer shall consider the relevant standards applicable to members of municipal council by virtue of The Municipalities Act, (the "Act"), the Official Oath prescribed in Form A of The Municipalities Regulations, the municipality's Code of Conduct and the common law in relation to conflicts of interest as it relates to the duties of members of council to the municipality and the public.
3. In the event the Inquiry Officer is considering making an adverse finding in relation to conduct, the Inquiry Officer will provide reasonable notice of the substance of the allegation and the individual(s) would have a reasonable opportunity during the Inquiry to be heard in person or by counsel. Any notice of such alleged conduct will be delivered on a confidential basis to the person(s) to whom the allegations relate.
4. The Inquiry Officer shall prepare a written report with the results of the Inquiry outlining his findings, conclusions and any recommendations and provide the report to the Minister, the Council, and any person who receives a notice pursuant to section 3 of the

Terms of Reference. The written report will be provided on or before December 31, 2014, unless otherwise extended by the Minister.

5. To conduct the Inquiry, the Inquiry Officer shall have the powers provided for in section 397 of the Act which includes the power to:
 - (a) require the attendance of any officer of the municipality or of any other person whose presence the Inquiry Officer considers necessary during the course of the Inquiry;
 - (b) require a person to give evidence under oath or after making any affirmation or declaration, orally or in writing, for the purpose of the Inquiry, and for that purpose may require a person to attend at any location; and
 - (c) require a person to produce to the Inquiry Officer, or to a person designated by the Inquiry Officer, all records and other property in his or her custody or control that may relate in any way to the matters that are the subject of the Inquiry.
6. The Inquiry Officer may determine the rules of, as well as the process and procedure for, the Inquiry as he sees fit, subject to the requirement that the Inquiry proceedings will not be open to the public.
7. The Inquiry Officer may consider any document, including electronic record, or any other evidence, verbal or written, that he considers relevant and reliable.
8. The Inquiry Officer will provide interim progress reports on the Inquiry to the Minister and the Council.
9. The Inquiry Officer shall carry out this Inquiry concurrently with his mandate to perform an Inspection of the municipality pursuant to the Minister's Order of June 16, 2014, including, to the extent possible, utilising the same proceedings, records and evidence to fulfill both mandates.

(pps. 6-7 of the *Barclay Report*)

- ii. Paying any damages or costs awarded against such person as a result of such action or proceeding; ...

[42] Section 355(3) uses the word "may" whereas the Bylaw uses the word "shall". The *Act* limits the circumstances to those where there is an action or proceeding in which liability is claimed against the member of council (or other named categories of individuals) for acts or omissions done or made by the person in good faith in the course of his or her duties. The Bylaw applies to all actions or proceedings arising out of acts or omissions done or made by the member of council (or other named categories of individuals) if the person acted honestly and in good faith with a view to the best interests of the RM. There is no requirement in provision 4(a) of the Bylaw that the person to be indemnified be named as a defendant in the action or a respondent in the proceeding.

[43] The potential liability for the ratepayers is significantly greater if Bylaw 14/17 is found to be *intra vires* than it would be on a simple interpretation of s. 355 of the *Act*.

[44] Considering the context in which this Bylaw was passed, the RM was highly critical of the fact that the Inspector and Inquiry Officer had the benefit of publicly funded counsel and that individual councillors did not. The *Barclay Report* makes reference to this issue at p. 11:

In addition to the submissions on disclosure and adjournment, various parties also made submissions - both oral and written - requesting an order in relation to the reimbursement of legal fees associated with their participation in the Inspection/ Inquiry. As I was provided no jurisdiction to make any orders as to funding, these applications were all dismissed.

[45] The RM points to the process followed by the Inspector and Inquiry Officer in conducting his investigation and inquiry as being very like a superior court trial. In the view of the respondent, this would be persuasive to a councillor that counsel would be advisable.

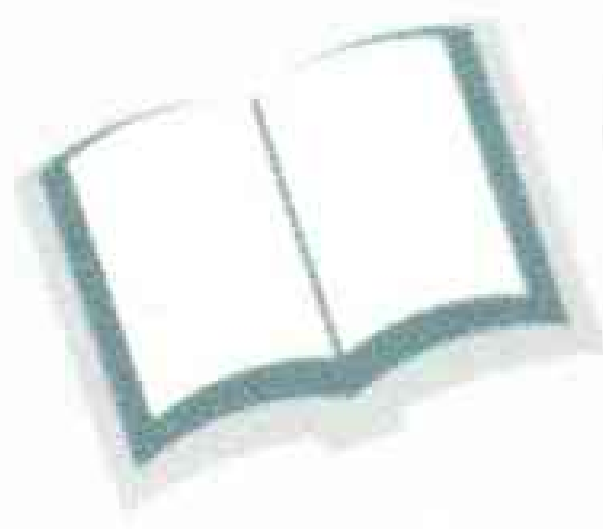
[46] However it might be said that the formality of the process and the procedures put in place by the Inquiry Officer served to promote the fairness of the process. A review of the *Barclay Report* makes it clear that the hearings were not open to the public, that all witnesses were provided with information on how to claim immunity and that they were entitled to have counsel present.

[47] The RM also provided for the court's review the legal opinion provided to the RM. This was done, I presume, to show that the RM considered its position thoughtfully prior to passing the impugned Bylaw.

[48] Even taking a purposive approach to the interpretation of the relevant provisions of the *Act* and the terms of the Bylaw, I cannot conclude that the Bylaw was *intra vires*. Council has exceeded its authority in purporting to provide for indemnification of councillors in circumstances where they are not the subject of a claim for liability.

RE: 5. Is the Bylaw authorized under any other section of the *Act*?

[49] Even though the Bylaw references s. 355 of the *Act*, it is clear that the recital of authority pursuant to which a bylaw is enacted is not a necessary component to a bylaw; the authority of the council is presumed until the contrary is proven (*Rogers* at 416). When a bylaw does not list any authority, a judge must regard the bylaw as having been passed from the



Manitoba Law
Reform Commission

**MODERNIZING *THE MUNICIPAL
COUNCIL CONFLICT OF INTEREST ACT:*
ACCOUNTABILITY, ENFORCEMENT &
OVERSIGHT**

Final Report

January 2016

B. Judicial Inquiry Reports

Three recent judicial inquiries, two from Ontario and one from Saskatchewan, have examined ethics and conflict of interest at the municipal level. The recommendations contained in the reports from these inquiries help to inform this report.

a) The Bellamy Report (Ontario)

The Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry was conducted between 2002 and 2005. The purpose of the inquiry was to examine all aspects of transactions related to the acquisition of computer equipment and to ascertain the circumstances surrounding the retaining of consultants to assist in the creation and implementation of the tax system of the former City of North York.²⁵⁶ The report of the Honourable Madam Justice Denise Bellamy (“Bellamy Report”),²⁵⁷ made more than 200 recommendations in relation to City of Toronto decision-making and administration.

In her report, Justice Bellamy stressed the importance of promoting an ethical culture within municipal government. She noted that “servant” in “public servant” is “meant in the most admirable sense of contributing to something greater than one’s own self-interest.”²⁵⁸ She accordingly made recommendations to improve the ethical culture of the City of Toronto, such as expanding its code of conduct, promoting awareness of the code of conduct and instituting mandatory training on code of conduct provisions, to name a few.²⁵⁹

Justice Bellamy also recommended the establishment of a full-time integrity or ethics commissioner for the City of Toronto.²⁶⁰ She noted that, while elected officials can informally consult with peers or mentors on ethical questions, it is necessary to ensure there is a more formal source of ethical guidance, advice, surveillance, and enforcement.²⁶¹ Some of the reasons to support her recommendation are set out as follows:

- An integrity commissioner can help ensure consistency in applying the City’s code of conduct;
- An integrity commissioner sends an important message to constituents about the City’s commitment to ethical governance;
- There will be occasions where there is no clear ethical answer and an elected official will need authoritative advice and guidance; and

²⁵⁶ The Honourable Madam Justice Denise E Bellamy, *Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry Report* (The City of Toronto, 2005) [Bellamy Report] at Appendix A(i) (Terms of Reference), online: < https://www1.toronto.ca/inquiry/inquiry_site/report/index.html >.

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid* at 26.

²⁵⁹ *Ibid* at 33-37.

²⁶⁰ *Ibid* at 43. The City of Toronto established an Integrity Commissioner in 2004.

²⁶¹ *Ibid* at 44.

- Without enforcement, the rules are only guidelines. Where the public interest is involved, there should be a deterrent in the form of consequences for “bad behaviour.”²⁶²

Justice Bellamy noted that an effective integrity commissioner system provides both an advisory component and an investigative or enforcement component to examine allegations of a breach.²⁶³ To this end, she made several recommendations as to the role of the integrity commissioner. She recommended that the integrity commissioner should be empowered to offer his or her opinion, in confidence, to all members of council who request it.²⁶⁴ She noted that “[u]pfront advice that avoids a problem is therefore far better than enforcement action taken after the damage has already been done.”²⁶⁵

In the report, Justice Bellamy also contemplated the potential for conflict where one person is providing both an advisory and investigative service. She suggested that, if such conflict should occur, another person, such as an integrity commissioner from another jurisdiction, should be retained to conduct the investigation.²⁶⁶

In terms of investigation and enforcement, Justice Bellamy recommended that members of the public should be able to make anonymous complaints to the integrity commissioner, and that the complaints should not be pre-filtered by any elected official.²⁶⁷ She further recommended that the commissioner be given summons powers,²⁶⁸ and that sanctions for withholding cooperation should be equal to the sanctions for ethical breaches.²⁶⁹ The commissioner should have the ability to dismiss frivolous complaints at the outset, should be able to identify individuals who have launched bad faith complaints, and should be allowed to recommend to council that bad faith complainants reimburse the City for expenses of the investigation.²⁷⁰

In her report, Justice Bellamy considered the integrity commissioner’s role in enforcement. Rather than the ability to impose sanctions directly, she recommended that the City give the integrity commissioner broad powers to recommend an appropriate range of sanctions to council, including: public reprimands; public apologies; expulsion from one or more committee meetings; removal from committee posts or committee chair positions; expulsion from one or more council meetings; or a fine or declaration of a vacancy in the councillor’s seat.²⁷¹ She further

²⁶² *Ibid* at 44.

²⁶³ *Ibid* at 46.

²⁶⁴ *Ibid* at 47.

²⁶⁵ *Ibid* at 47-48.

²⁶⁶ *Ibid* at 46.

²⁶⁷ *Ibid* at 48.

²⁶⁸ *Ibid* at 49.

²⁶⁹ *Ibid* at 48.

²⁷⁰ *Ibid* at 48.

²⁷¹ *Ibid* at 49.

recommended that council be required to rule within a fixed time on the integrity commissioner's recommendations.²⁷²

Justice Bellamy pointed to the strict sanctions under Ontario's *Municipal Conflict of Interest Act*, noting that there is no allowance for a "mere suspension". In her view, a more "finely tuned gradation" of penalties should be available to council, so that the integrity commissioner can make recommendations that are fair and proportionate to the ethical misconduct.²⁷³

The Bellamy Report also made recommendations respecting education and outreach. Justice Bellamy recommended, for example, that the integrity commissioner be given the mandate and resources to provide education and outreach for City staff and councillors. She noted that outreach is an important part of ensuring a strong ethical culture.²⁷⁴

Many of Justice Bellamy's recommendations were adopted by the City of Toronto. In 2006, the Ontario Legislature amended *The City of Toronto Act* to provide for the office of the integrity commissioner.²⁷⁵ The integrity commissioner has both an advisory and investigatory role. However, the Act does not contain a broad range of penalties as was contemplated by Justice Bellamy in her report; city council may impose a reprimand or a suspension of remuneration for a period of up to 90 days on a member if the integrity commissioner reports to council that the member has contravened the code of conduct.²⁷⁶

There are several similarities between Justice Bellamy's recommendations with respect to an integrity commissioner and this Commission's recommendations in its Report on *The Legislative Assembly and Conflict of Interest*.²⁷⁷ Both the Bellamy Report and the Commission's Report identify that the role of a commissioner would include providing advice, conducting investigations, and education.

b) The Cunningham Report (Ontario)

In 2009, the Mississauga Judicial Inquiry was launched to inquire into issues connected to the City of Mississauga's acquisition of land in the city centre, as well as issues in connection with the December 2000 Enersource Shareholders Agreement to which the City was a party. The inquiry involved examining whether any conflict of interest or misconduct might have influenced the actions of any existing or former elected or administrative representatives of the City of Mississauga, including the Mayor, Hazel McCallion.²⁷⁸

²⁷² *Ibid* at 49.

²⁷³ *Ibid* at 50.

²⁷⁴ *Ibid* at 50.

²⁷⁵ *City of Toronto Act*, *supra* note 171, s 158, as amended by 2006, c. 11, Sched. A, s. 160 (5).

²⁷⁶ *Ibid*, s 160(5).

²⁷⁷ 2000 Commission Report, *supra* note 208.

²⁷⁸ City of Mississauga, resolution 0271-2009, (11 Nov 2009).

In his *Report of the Mississauga Judicial Inquiry: Updating the Ethical Infrastructure*²⁷⁹ (“Cunningham Report”), the Honourable J. Douglas Cunningham, found that the mayor was in a conflict of interest when she used her influence as mayor to further the interests of World Class Developments, a company in which her son had a financial interest. Justice Cunningham assesses the mayor’s conduct with regard to the common law concept of conflict of interest as well as Ontario’s *Municipal Conflict of Interest Act*.²⁸⁰

The Cunningham report made 27 recommendations to improve conflict of interest rules in Ontario. Some of the recommendations addressed the enforcement and remedial provisions of Ontario’s *Municipal Conflict of Interest Act*.²⁸¹

With respect to enforcement, Justice Cunningham was critical of the unavailability of any process outside of court for an elector alleging a conflict of interest. He pointed out that for most electors, an application to the Ontario Superior Court of Justice would be cost prohibitive.²⁸² With respect to the remedial provisions, he found that the “quasi-penal” nature of the Act was “outdated and out of step with the modern municipal accountability regime.”²⁸³

Justice Cunningham called the sanctions available under the *Municipal Conflict of Interest Act* “draconian.”²⁸⁴ He recommended that lesser sanctions be made available where a judge finds a contravention, including:

- Suspension of the member for a period of up to 120 days;
- A form of probation of the member, with oversight by the integrity commissioner or auditor;
- Removal from membership of a committee of council;
- Removal as chair of a committee of council;
- A reprimand publicly administered by a judge; and
- A formal apology by the member.²⁸⁵

Justice Cunningham asserted that court is still the appropriate place to have conflict of interest allegations heard. He pointed out that court procedures allow for greater procedural safeguards for members of council. In his opinion, judges of the Superior Court of Justice should continue to

²⁷⁹ The Honourable Justice Douglas Cunningham, *Report of the Mississauga Judicial Inquiry: Updating the Ethical Infrastructure* (City of Mississauga, 2001) [Cunningham Report], online: < <http://www.mississaugainquiry.ca/>>.

²⁸⁰ *Ibid* at 151.

²⁸¹ The Cunningham Report also made recommendations with respect to other areas of Ontario’s *Municipal Conflict of Interest Act*, such as who is captured by the Act, expanding the types of interests captured by the Act beyond pecuniary interests. (See Cunningham Report, *ibid*, at 166-171.)

²⁸² *Ibid* at 158.

²⁸³ *Ibid* at 159.

²⁸⁴ *Ibid* at 171.

²⁸⁵ *Ibid* at 171-172. Justice Cunningham also recommended that section 13 of Ontario’s Act be amended so that restitution is no longer an available remedy. He notes that Ontario’s Act should not be “construed as precluding civil actions for restitutionary recovery” (at 171-172).

have responsibility for removing municipal politicians from office under Ontario's *Municipal Conflict of Interest Act*.²⁸⁶

With regard to municipal codes of conduct, Justice Cunningham noted that Ontario's *Municipal Conflict of Interest Act* does not occupy the entire legislative field of conflict of interest. Therefore, in his view, there would be no legal impediment to including conflict of interest provisions in a municipal code of conduct.²⁸⁷ The benefit to including conflict of interest provisions in a municipal code of conduct would be that enforcement of conflict of interest can also take place outside the court process and without the associated costs, albeit with less severe sanctions.²⁸⁸ However, Justice Cunningham concluded that an application to court should not proceed concurrently with an investigation by the integrity commissioner.²⁸⁹

c) The Barclay Report (Saskatchewan)

In 2014, an inquiry was launched to inspect and report on the matters connected with the management, administration or operation of the Rural Municipality of Sherwood and to inquire into the conduct of members of council and agents of the municipality.²⁹⁰ Allegations had been made that the reeve, Kevin Eberle, had engaged in inappropriate conduct in relation to the proposed Wascana Village Development. While it was apparent that the reeve had made a declaration of a pecuniary interest to Council regarding the development and had recused himself from voting on any Council decisions relating thereto, there were allegations that the reeve may have had other undeclared pecuniary interests in relation to the development.²⁹¹

In his report, the Honourable R. L. Barclay, former Justice of the Saskatchewan Court of Queen's Bench and current Conflict of Interest Commissioner for the Province of Saskatchewan, recommended, among other things, the establishment of a municipal conflict of interest ombudsman.²⁹² He pointed out that, based on the nature of municipalities, council members are often important members of the community and have significant land holdings or other business interests in the municipality. Therefore, council members frequently find themselves assessing their pecuniary interests and making decisions about their obligations under the conflict of interest provisions of Saskatchewan's *Municipalities Act*. In his view:

Municipal council members and staff should not be expected to reach determinations on what are often nuanced legal issues. Outside of scenarios where there is a clear conflict of interest,

²⁸⁶ *Ibid* at 159.

²⁸⁷ *Ibid* at 159-160.

²⁸⁸ *Ibid* at 160.

²⁸⁹ *Ibid* at 160.

²⁹⁰ The Honourable R L Barclay, *Final Report of the Inspection and Inquiry into the RM of Sherwood No 159*, (Saskatchewan, 30 December 2014) [Barclay Report], online: <https://www.saskatchewan.ca/government/municipal-administration/municipal-inquiries>.

²⁹¹ *Ibid* at 4.

²⁹² *Ibid* at 147.

the municipality should have access to expertise on the matter which does not come at a significant expense to the municipality and its ratepayers.

[...]

Regardless of the nomenclature applied to the position, a conflict of interest ombudsman would fill a meaningful gap in the resources currently available to municipalities and their council members. The legal advice that would become available by virtue of this position would be an effective and efficient medium for municipalities to resolve the often complex issues they are faced with in regards to conflicts of interest among their council members.²⁹³

The Honourable Mr. Barclay recommended that the conflict of interest ombudsman be empowered to conduct an investigation in respect of a breach of Saskatchewan's *Municipalities Act* or the Code of Ethics, and should further be able to convert his or her investigation into an inquiry, should the situation warrant it, exercising the powers available under Saskatchewan's *Public Inquiries Act*.²⁹⁴

In terms of enforcement, the Honourable Mr. Barclay recommended that the ombudsman be authorized to issue either a reprimand or suspend the salary of a council member for up to 90 days, if he or she determines that the member has violated the Code of Ethics or Saskatchewan's *Municipalities Act*.²⁹⁵

The Honourable Mr. Barclay also suggested that the mandate of Saskatchewan's Ombudsman could be expanded to include the provision of advice and the conduct investigations under the conflict of interest provisions of the *Municipalities Act* as well as codes of ethics.²⁹⁶

The Honourable Mr. Barclay did not discuss in his report, what effect, if any, the establishment of a conflict of interest ombudsman would have on the provisions of Saskatchewan's *Municipalities Act* which allow an elector to bring an application to court alleging a member of council to be in a conflict.

²⁹³ *Ibid* at 148.

²⁹⁴ *The Public Inquiries Act, 2013*, c P-38.01.

²⁹⁵ Barclay Report, *supra* note 290 at 148.

²⁹⁶ *Ibid* at 148-149.

Municipal Inspection Reports

| | |
|----------------------------------------------------------------------|----------------|
| Village of Lougheed Inspection Report | May 2016 |
| Town of Rocky Mountain House Inspection Report | August 2016 |
| Town of Fort Macleod Inspection Report | August 2016 |
| Brazeau County Inspection Report | March 2016 |
| Summer Village of West Cove Inspection Report | February 2016 |
| Village of Acme inspection report | November 2015 |
| Thorhild County inspection report | September 2015 |
| Town of Peace River inspection report | August 2014 |
| Municipality of Crowsnest Pass inspection report | August 2013 |
| *Additional explanatory note for Crowsnest Pass | August 2013 |
| Town of Smoky Lake inspection report | July 2013 |
| Town of Penhold inspection report | July 2013 |
| Town of Redcliff inspection report | May 2013 |
| Town of Coronation inspection report | April 2013 |
| Town of Lamont inspection report | March 2013 |
| Town of Daysland inspection report | December 2012 |
| Village of Champion inspection report | September 2012 |
| Town of Irricana inspection report | August 2012 |
| Town of High Prairie inspection report | August 2012 |
| Village of Bawlf inspection report | December 2011 |
| Village of Heisler inspection report | September 2011 |
| Village of Empress inspection report | July 2011 |
| Village of Donalda inspection report | July 2011 |
| Town of Spirit River inspection report | January 2011 |
| Village of Rycroft inspection report | January 2011 |
| Village of Vilna inspection report | July 2010 |
| Cold Lake inspection report | April 2010 |
| Kneehill Regional Water Commission inspection report | January 2010 |
| *Kneehill RWC Inspection report Appendix A-W | January 2010 |
| Clear Hills County inspection report | December 2009 |

- Date modified: 2017-01-11

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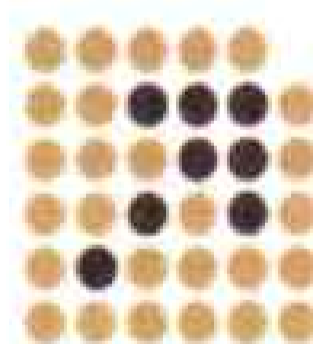
**PROCEDURAL FAIRNESS IN ONTARIO
THE PARAMETERS OF THE RIGHT TO BE HEARD:
AN OVERVIEW**

submitted by:

**Janice Payne and
Jessica Fullerton**

**Nelligan O'Brien Payne
66 Slater Street, Suite 1900
Ottawa, Ontario K1P 5H1**

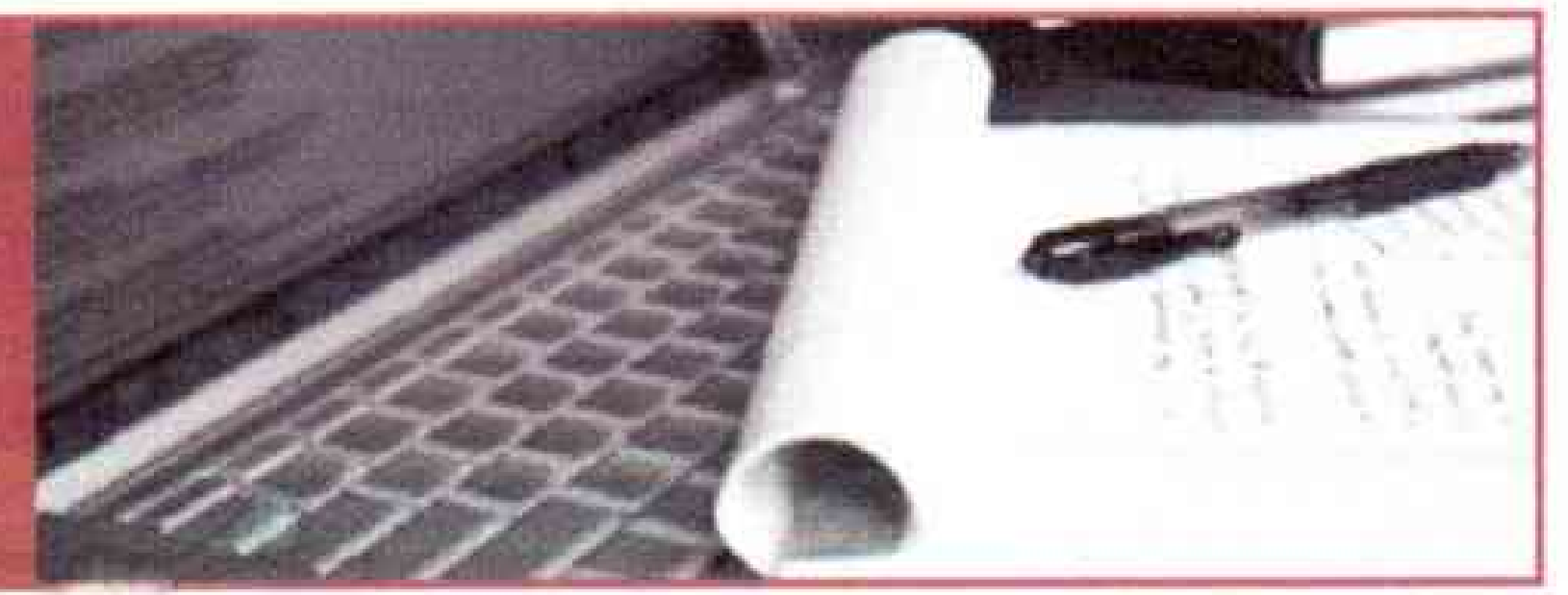
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Lawyers/Patent and Trade-Mark Agents
Avocats/Agents de brevets et de marques de commerce

LexisNexis® Reference Card: Administrative Law



Extracted from:

[Halsbury's® Laws of Canada – Administrative Law \(2013 Reissue\)](#)

Authors: Guy Régimbald, B.S.Sc., LL.B., B.C.L. (Oxon.) & Matthew Estabrooks, LL.B.

Referenced as HAD in this document

[Click here to search this volume on the Quicklaw® service](#)

▼HAD-1▼ **Objects of administrative law.**

Generally speaking, administrative law is a subset of public law, and its objective is to regulate the relationships between the government and the governed – the population. The responsibility of administrative law is to control the governmental powers and it represents the body of general principles which shape the exercise of these powers by public authorities. Given that any statutory authority or discretion must be delegated by legislation and that Parliament and the legislatures are sovereign within their jurisdictional spheres, it is the duty of administrative law to ensure that agencies and decision-makers stay within the boundaries of their competence. One of the main objects of administrative law is to protect individual rights and to provide a remedy for decisions which are outside the competence of the decision-maker, or an abuse of the legislative scheme. However, given the complexity of governmental action, administrative law must also ensure effective performance of tasks and duties assigned by statute to public bodies. Administrative law must then allow certain flexibility but, in turn, must also ensure governmental accountability in the decision-making process.

Delegation of authority. The scope of administrative law includes not only governmental activity, but the structure of government. Rule-making is not only the prerogative of Parliament and the legislatures: while any delegation of rule-making or regulatory authority must originate in Parliament or a legislature, the regulation-making itself may be sub-delegated to another body. Such bodies include the Executive or the Governor-in-Council, a municipal body, or non-elected bodies such as a federal board, tribunal or commission. Any delegation of authority, however, is subject to legal limitations provided by statute. Any decision-

maker only has the jurisdiction to make decisions within the four corners of his or her delegated authority. First, a decision-maker will have to interpret exactly what its authority is, and then undertake the difficult task of determining whether the conditions precedent to the decision-making process are present. If they are, then the decision-maker will be allowed to make a determination. Consequently, the scope of administrative law will be, in such cases, to ensure that the decision-maker correctly interpreted its jurisdiction (the legal bounds of the competence to decide).

Protection against abuse of power.

Administrative law is concerned with the abuse of power. Even if the decision-maker is rightfully within its competence in considering an issue, there are a variety of actions that may be taken which may be considered to be abusive. There is no such thing as an unfettered or absolute administrative power. In this regard, administrative law functions as a shield protecting citizens, and acts to constrain governmental powers within their legal bounds. For example, it may be that a negative decision was taken without following the basic rules of natural justice or procedural fairness. Principles of administrative law may, depending on the nature of the decision and the statutory power involved, quash the decision and send the matter back to the public authority to be reconsidered.

(1) General

▼HAD-2▼ **Meaning of jurisdiction.** Jurisdiction is a "term of art" which has been both confusing and elusive. Jurisdiction simply means the authority to embark into an inquiry and make an order. Essentially, all statutory grants of authority may be expressed in the following manner: if "X" may be established, then the decision-maker may or shall do "Y". "X" may consist of a number of different elements, factual, legal and discretionary.¹ Hence, a court can intervene if a decision-maker has improperly interpreted the scope of its jurisdiction and commenced a specific activity which is outside its competence. If, for any reason, a decision-maker was to embark on a specific inquiry for which it has no authority, a court would quash the decision, as it was *ultra vires* its jurisdiction. The history of administrative law demonstrates that courts have often interfered with this type of decision on the basis of correctness, a concept known to most jurists today.

Losing jurisdiction. On the other hand, the term jurisdiction has also been interpreted in a much wider sense. The definition above excludes

factual errors, breaches of natural fairness, the consideration of irrelevant evidence or the reaching of an unreasonable decision from the realm of "jurisdictional errors". Throughout history, there have been many judicial dilemmas on how to treat this problem. The Supreme Court of Canada has now resolved this dilemma by indicating that jurisdiction should be used in the narrow sense of whether or not the tribunal had the authority to make the relevant inquiry. Thus, true jurisdiction questions will only arise where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter.² This approach has had a huge impact in that, since *Dunsmuir*, the Supreme Court of Canada has not identified a single question of true jurisdiction.³

Preliminary or collateral question. The result of this evolution was the creation of a concept: the "preliminary or collateral question". This test was used to determine whether the decision-maker properly interpreted its discretion in the "narrow" sense. The question is "preliminary" because the decision-maker may not even start the substantive inquiry before it has properly decided this matter. If the decision-maker correctly⁴ addresses the preliminary or collateral question, it may then consider the substance of the inquiry.

Other jurisdictional errors. The other errors that could make any decision-maker lose its jurisdiction (*i.e.*, acting in bad faith, basing the decision on extraneous matters, failing to take relevant factors into account, breaching the provisions of natural justice) are related to both the "X's" and the "may/shall do Y" in the above-mentioned formula. Since the decision-maker has the authority to consider the issue, but makes an error in its weighing of the evidence, a court should be able to intervene, but should be much more deferential in doing so. The rationale for allowing the intervention of the courts is that, through statutory interpretation, courts determine that it could not have been the intention of Parliament to have the jurisdiction exercised in that manner.

Deference to public bodies. In reviewing the jurisdiction, or in answering the preliminary or collateral question, a reviewing court deals with basic statutory interpretation, a legal concept. The application of jurisdiction, by the delegated authority, is merely an exercise of construing the statutory language of the provision and applying it to the facts. On the other hand, when reviewing the rationality or the weighing of various factors, a reviewing court is tasked with the review of

Alberta ■

Administrative Law I
for
Assessment Review Board Clerks
and the
Municipal Government Board
Administrator

Government of Alberta ■
Municipal Affairs

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Administrative Law II
for
Assessment Review Board Members
and the
Municipal Government Board
Members

Government of Alberta ■

Municipal Affairs

Councillor Report January, 26 2015

Clarification of Public Inquiries Act and Investigation Process

During my session with Mr. Farmer January 26, 2015, I asked some questions as to the process of the investigation.

Mr. Farmer informed me that there were no specific concerns or accusations, also, no specific process to the investigation.

He informed me that he was operating under the Public Inquiries Act.

As our discussion progressed, Mr. Farmer referred to Section 5 of the Act, where the word "compel" is used.

This was quite the shocking experience, as I was not aware that I would be forced to answer questions.

Mr. Farmer sent the Act to me by email from his device.

When reading this Act, I found in Section 11, "Right to Counsel."

I wonder why Mr. Farmer did not inform me of this "Right to Counsel" in Section 11? If someone is compelled to give evidence according to Section 5, should they not be informed of their "Right to Counsel"?

This experience has been a very rude surprise in the investigation process. I wonder why this investigation process, was not questioned and reviewed by CAO & Reeve, in order that council, be fully informed and legally protected?

Edward LeBlanc, Community Economic Development Officer, joined the meeting at 10:10 a.m.

Janelle Cornelius, Director of Corporate Services, left the meeting at 10:11 a.m.

New Business
Adoption of a
Revised Uniform
Quality Management
Plan

Edward LeBlanc, Community Economic Development Officer, presented a recommendation for adoption of a revised Uniform Quality Management Plan.

Resolution 029-2015

Moved by Councillor Larry Sisson that Council approves the Uniform Quality Management Plan as presented.

CARRIED

Edward LeBlanc, Community Economic Development Officer, left the meeting at 10:13 a.m.

Janelle Cornelius, Director of Corporate Services, rejoined the meeting at 10:14 a.m.

New Business
Painting Office
Interior

Betty Kolewaski, CAO, presented a recommendation for the painting of the interior of the administration building.

Resolution 030-2015

Moved by Reeve Wayne Crosswell that Council authorize Administration to proceed with retaining a contractor to paint the total interior of the administration building to a maximum cost of \$24,000.

CARRIED

Financial

Janelle Cornelius, Director of Corporate Services, presented the Director of Corporate Services Financial Report, Legal Fees Summary by Department and Approved Amendments from Budget.

Additional discussions included:

- 2015 budget presentation set for February 27, 2015 at 9:30 a.m., which is open to the public
- Setting 2015 budget and millrates
- Clarification on bus budget
- Clarifications on the Statement of Revenues & Expenditures for the period ending November 30, 2014
- Auditors will be in the office in mid March
- Legal fees may change if new invoices come in with 2014 services
- Thorhild Elementary School demolition will be included in 2015 budget, abatement was included in 2014

Resolution 031-2015

Moved by Councillor Shelly Hanasyk that the Director of Corporate Services Financial Report, Legal Fees Summary by Department and Approved Amendments from Budget be approved as presented.

CARRIED

Councillor Reports
Councillor Dan Bury

Councillor Dan Bury initiated discussions regarding the process of the investigation by Municipal Affairs and Mr. Farmer. He spoke about the Public Inquiries Act and in particular "Right to Counsel" covered in

Handwritten initials: M.L. B.

Section 11 and being compelled to give evidence covered in Section 5 of the Act. Further discussions regarding these Sections of the Public Inquiries Act took place.

Resolution 032-2015

Moved by Councillor Dan Buryn that Council authorize Administration to contact legal counsel regarding clarification on Council and Staff's rights under the Public Inquiries Act.

CARRIED

Recess Reeve Wayne Croswell declared a recess at 10:55 a.m.

Reconvene Reeve Wayne Croswell reconvened the meeting at 11:00 a.m.

**Delegation
Thorhild County
Library Board** Reeve Wayne Croswell welcomed Krista Perry from the Thorhild County Library Board to the meeting at 11:00 a.m. Krista Perry provided Council with Thorhild County Library Overview including statistics regarding Thorhild, Newbrook and Radway libraries.

Krista Perry left the meeting at 11:13 a.m.

**Delegation
Waste Management
of Canada** Reeve Wayne Croswell welcomed Paul Burns, Rina Blacklaws, Terry Johnson, Jeff Altman, Marc Leduc and Dave Blackburn of Waste Management of Canada to the meeting at 11:13 a.m. Introductions of Administration were made. Paul Burns advised advertisements will be placed recruiting members for the CAC and a committee will be chosen. Reeve Wayne Croswell inquired about the shortage in Community Investment Fees. Rina Blacklaws advised that Waste Management donated \$74,500 to the community, supporting 19 organizations. Discussions were had regarding the Emergency Response Plan and meetings with residents regarding same. There are four meetings scheduled for 2015 which will include such topics as odor control and the Emergency Response Plan. Paul Burns provided information regarding concerns about odor control, the odor control monitoring plan and odor monitoring equipment in place. Mr. Burns advised that the 5 community meetings held in 2014 have helped Waste Management address the concerns of residents and they have been incorporated into the Operations Manual. Paul Burns provided information regarding the daily cover requirements of soil and tarps which Waste Management will be using as well as information regarding final caps on the landfill site. Reeve Wayne Croswell asked Juliana Tang to attend a future Council meeting to summarize the findings of the Associated Engineering Regional Surface Water Assessment. Juliana Tang advised she has reviewed the Operations Manual from Waste Management and has submitted some questions to Waste Management on behalf of Thorhild County Council. Waste Management advised they will provide their response to the inquiry.

Janelle Cornelius, Director of Corporate Services, left the meeting at 11:28 a.m.

Janelle Cornelius, Director of Corporate Services, rejoined the meeting at 11:30 a.m.

Betty Kolewaski left the meeting at 11:34 a.m.

Betty Kolewaski rejoined the meeting at 11:42 a.m.

Paul Burns, Rina Blacklaws, Terry Johnson, Jeff Altman, Marc Leduc and Dave Blackburn of Waste Management of Canada left the meeting at 11:58 a.m.

*W.C.
B.K.*

Betty Kolewaski, CAO, left the meeting at 5:02 p.m.

Betty Kolewaski, CAO, rejoined the meeting at 5:05 p.m.

Resolution 074-2015

Moved by Councillor Larry Sisson that Council come out of camera at 5:25 p.m.

CARRIED

Confidential Items
Legal
Resolution 032-2015

Resolution 075-2015

Moved by Councillor Shelly Hanasyk that Council accepts the legal opinion on Resolution 032-2015 as information.

CARRIED

Resolution 076-2015

Moved by Councillor Dan Buryn that Council direct Administration to contact Municipal Affairs regarding the inspection/inquiry process.

CARRIED

Resolution 077-2015

Moved by Councillor Dan Buryn that Council approve the services of a lawyer with experience to explain any and all obligations related to the Municipal Affairs inspection.

Councillor Dan Buryn requested a recorded vote.

In Favor
Councillor Dan Buryn

Opposed
Reeve Wayne Crowell
Councillor Kevin Grumetza
Councillor Shelly Hanasyk
Councillor Larry Sisson

DEFEATED

Confidential Items
Legal
Resolution 678-2014

Resolution 078-2015

Moved by Councillor Larry Sisson that Council accepts the legal opinion on Resolution 678-2014 as information.

CARRIED

Confidential Items
Personnel
I.U.O.E.
Negotiations
Update

Resolution 079-2015

Moved by Councillor Kevin Grumetza that Council accepts the I.U.O.E. negotiations update as information.

CARRIED

Confidential Items
Personnel
2015 Cost of
Living Adjustment

Resolution 080-2015

Moved by Councillor Larry Sisson that Council give all management and non-union staff a 2.0% cost of living increase, effective January 1, 2015.

CARRIED

Handwritten initials/signature

NOTICE TO
THE HONOURABLE DERON BILOUS
MINISTER OF MUNICIPAL AFFAIRS
REQUEST FOR ASSISTANCE

TAKE NOTICE that as a County Councillor and Reeve of THORHILD COUNTY it is prudent and in the interest of the COUNTY as a whole to issue NOTICE as I and members of the public have serious concerns related to process of the inspection resulting in the denial of Natural Justice, content of the report, and drastic measures taken by your office especially at harvest time. As a Councillor I was excluded from the process and my concerns were not heard by the inspector. This exclusion continues with politically active members of the public being denied access to the process as well. Council meeting minutes reflect my concerns some time ago: a Councillor Report and two resolutions regarding legal advice. I am preparing a rebuttal to the inspector's report, also a report of my concerns. I hope you will acknowledge my input along with others mentioned. Referencing Justice Irving, J. from REX v. SUNG CHONG, clearly amplifies the concerns at hand; "Among the normal rights which are available to every British subject against all the world are (1) personal safety and freedom ; (2) one 's good name ; (3) the enjoyment of the advantages ordinarily open to all the inhabitants of the country, e.g ., unmolested pursuit of one's trade or occupation and free use of the highways ; (4) freedom from malicious vexation by legal process ; and (5) to one's own property." Myself and the remainder of Council are focusing on your directives and have no intention of thwarting the process. Also, a very serious matter that I was unable to present to the inspector was: a Ministerial Order issued in relation to the findings of the EAB hearings related to a landfill project. The MO was filed at Court of Queen's Bench, which I was informed makes it a court order. The appearance exists that several breaches of this order have occurred and we need your prompt assistance in this matter. I wish to thank Mr. Gary Sandberg for his professional character during his presentation September, 8, 2015, and AAMDC representatives for their encouragement and common sense advice during a routine visit September, 15, 2015. To the electorate and residents of THORHILD COUNTY I encourage all to be patient and focus on marketing our community, as we are open for business with lands available for development, just outside of the Capital Region. We are in a unique position and have much opportunity for the future. Sincerely, Dan Bury

🕒 Mar 10, 2016

Province responds to Thorhild County concerns

Municipal Affairs Minister Danielle Larivee is taking action to ensure responsible and accountable governance for Thorhild County residents.

Three Thorhild County councillors have been removed from office as a result of an inspection ordered by Municipal Affairs. The inspection was carried out in 2015 in response to a public petition.

Minister Larivee has also appointed an Official Administrator to fulfill the responsibilities of council until a byelection can be held.

"It's unfortunate when actions like this are required, but the provincial government has a duty to ensure the Municipal Government Act is being followed, so trust and integrity can be maintained at the local level. The circumstances in this case are extreme and action had to be taken to protect the interests of Thorhild residents."

- Danielle Larivee, Minister of Municipal Affairs

The Official Administrator will focus on maintaining normal county operations until a byelection can be held to elect three new councillors and re-establish a full council. The byelection will take place within 90 days.

The Thorhild inspection was launched in early 2015 after Municipal Affairs received a petition from county residents. The scope of an inspection, as set out in section 571 of the *Municipal Government Act*, can include any matter connected with the management,

administration or operation of the municipality or any assessment prepared under Part 9 (Property Assessment). The work was done by an independent consultant with significant experience in this field.

The inspector found substantial evidence of irregular, improper and improvident actions on the part of Thorhild County council. As a result, the Minister issued a series of directives in September 2015, requiring council to make various corrections and adopt good governance practices.

Council has made progress to date in implementing those directives, but certain councillors opposed council's efforts to achieve compliance. As a result, three councillors have been dismissed from council.

Related information

Municipal Inspection Reports

Media inquiries

✉ **Shannon Greer**

☎ 587-594-0132

Press Secretary, Municipal Affairs

→

From: Pat Vincent [mailto:Pat.Vincent@thorhildcounty.com]
Sent: Friday, March 11, 2016 3:55 PM
To: Blacklaws, Rina <rblackla@wm.com>
Subject: change on COuncil

Rina,

Not sure if you have been following the news but as a result of a Ministerial Order issued yesterday by the Minister of Municipal Affairs three members of Council – D. Bury, W. Croswell and L. Sisson - were all dismissed as elected officials.

In speaking with the Official Administrators who now act in the capacity of Council until the municipal by-election in June they have indicated the need for Thorhild County at the Council level to rebuild the relationship with Waste Management. I have indicated that on an administrative level we have enjoyed a tremendous and positive relationship with you, Marc and Paul. I am expecting that they will be agreeable to meeting with yourself very shortly to introduce themselves (Kevin Robins and Douglas Lagore) and discuss any unresolved issues in moving forward on a positive footing.

There is a discussion of the possibility of withdrawing the violation ticket set for prosecution in September 2016 as the first step and as a good faith gesture by the County.

Please let me know if the reconciliation that is being proposed would be embraced by Waste Management and that we could schedule a meeting in the very near future of the respective parties to act upon this golden opportunity to strengthening the relationship between Waste Management and Thorhild County.

Pat Vincent CLGM

Acting CAO

Thorhild County

Direct 780 398-2800

Cell 780 919-2924

Toll free 1 877 398-3777

<http://www.thorhildcounty.com>



ALBERTA

ENVIRONMENT AND SUSTAINABLE RESOURCE DEVELOPMENT

*Office of the Minister
MLA, Drayton Valley-Devon*

Ministerial Order

29 / 2013


*Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12.*

Water Act, R.S.A. 2000, c. W-3.

Order Respecting Environmental Appeals Board Appeal Nos. 11-025 et al.

I, Diana McQueen, Minister of Environment and Sustainable Resource Development, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal Nos. 11-025 et al.

Dated at the City of Edmonton, in the Province of Alberta, this 10th day of May, 2013.


Diana McQueen
Minister

204 Legislature Building, 10800 - 97 Avenue, Edmonton, Alberta T5K 2B6 Canada Telephone 780-427-2391 Fax 780-422-6259
5136B - 52 Avenue, Box 7272, Drayton Valley, Alberta T7A 1S5 Canada Telephone 780-542-3355 Fax 780-542-3331

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THORHILD COUNTY
SPECIAL COUNCIL AGENDA

AGENDA FOR THE SPECIAL MEETING OF THE COUNTY COUNCIL TO BE HELD ON
MONDAY, MARCH 14, 2016 AT 10:00 AM IN THE COUNCIL CHAMBERS OF THE COUNTY
ADMINISTRATION BUILDING.

AGENDA

1. **CALL TO ORDER**
2. **ADOPTION OF THE AGENDA**

Moved by the Official Administrator XXX to adopt the agenda as presented.

3. **ADOPTION OF THE PREVIOUS MINUTES**

A. **March 8, 2016 Regular Council Meeting**

Moved by the Official Administrator XXX to adopt the minutes of March 8, 2016 Regular Council meeting as presented.

4. **NEW BUSINESS**

A. **By-election**

i. **Returning Officer**

Moved by the Official Administrator XXX to appoint Acting Chief Administrative Officer Pat Vincent as Returning Officer for Thorhild County Municipal By-election

ii. **By-election Date and Nomination Date:**

Moved by the Official Administrator XXX that the dates for the by-election are set as follows:

1. *Nomination day – Monday, May 9, 2016 between 10:00 am and 12:00 noon at Thorhild County Administration Office.*
2. *Advanced poll days –
Saturday, May 28, 2016 9:00 am - 1:00 pm and Tuesday, May 31, 2016 from 4:00 pm - 8:00 pm and Thursday, June 2, 2016 4:00 pm – 8:00 pm at locations to be determined.*
3. *Election day – Monday, June 6, 2016 from 9:00 am - 8:00 pm locations to be determined.*

B. 2016 Cost Of Living Adjustment

Moved by Official Administrator XXX to approve a 2% Cost of Living Adjustment effective January 1, 2016 to non-union active employees who continue to be employed with the County as of the date this resolution is passed and subsequently and add \$52,186 to the 2016 operating budget with funds to come from accumulated surplus and that the 2016 FTE (Full Time Equivalency) amendments are approved as follows:

| | |
|------------------------------------------|-------------|
| add Executive Assistant 0.8 to 1.0 | 0.20 |
| add Accounting Clerk 0.5 to 0.6 | 0.10 |
| add Literacy Coordinator 0.6 to 1.0 | 0.40 |
| add Parent Link 0.6 to 0.67 | 0.07 |
| add Ag Assistant 0.7 to 1.0 | 0.30 |
| reduce PW Clerk 1.0 to 0.6 | -0.40 |
| reduce Casual Transfer Station Operator | -0.28 |
| reduce Summer Coordinator | -0.17 |
| Increase in FTEs from 2015 Budget | 0.22 |

* Literacy Coordinator able to perform duties of Summer Coordinator

C. Legal

i. Application for Disqualification

Moved by Official Administrator XXX direct the administration to instruct legal counsel to abandon the application filed at Court of Queen's Bench seeking the disqualification of Councillor Larry Sisson.

ii. Application for Judicial Review

Moved by Official Administrator XXX direct the administration to instruct legal counsel to hold in abeyance any action on the matter of the application for a judicial review of the municipal inspection report until after the municipal by-election and that the newly elected council for Thorhild County review and make a decision in the matter.

D. Appointments

i. Municipal Planning Commission

Moved by Official Administrator XXX that Official Administrator Kevin Robins, under By-Law 1203-2014 Establish the Municipal Planning Commission, be appointed to the Municipal Planning Commission.

ii. Subdivision and Development Appeal Board

Moved by Official Administrator XXX that Official Administrator Douglas Lagore, under By-Law 1211-2015 Establish the Subdivision and Development Appeal Board, be appointed to the Subdivision and Development Appeal Board.

iii. Newthorad Seniors Housing Foundation

Moved by Official Administrator XXX that Official Administrator Kevin Robins and Douglas Lagore be appointed to the Newthorad Seniors Housing Foundation board.

E. Signing Authority

i. Thorhild County

Moved by Official Administrator XXX that Official Administrators Kevin Robins and Douglas Lagore have all the signing authorities authorized to the Reeve, Deputy Reeve and Councillors under Thorhild County Policy 318 "Signing Authorities" until such time as the 2015 by-election is held and council quorum is restored.

ii. Newthorad Seniors Housing Foundation

Moved by Official Administrator XXX that Official Administrators Kevin Robins and Douglas Lagore are the authorized signing officers for the Newthorad Seniors Housing Foundation board. Cheques and other official documents must be signed by the Lodge Administrator and one of either Kevin Robins or Douglas Lagore.

F. Chief Administrative Officer Recruitment

Moved by Official Administrator XXX direct the administration to instruct Davies Park Executive Search to resume the search for a new Chief Administrative Officer by re-advertising the position.

G. Acting Chief Administrative Officer Contract Extension

Moved by Official Administrator XXX approve the extension of the Acting Chief Administrative Officer contract with P. Vincent, as amended, until June 30, 2016.

H. Rescheduling Meetings

i. March 22, 2016 Regular Council Meeting

Moved by the Official Administrator XXX the Regular Council Meeting of March 22, 2016 at 9:30 am is rescheduled to March 29, 2016 at 9:30 am.

ii. March 22, 2016 Agriculture Service Board Meeting

Moved by the Official Administrator XXX the Agriculture Service Board Meeting of March 22, 2016 is rescheduled to March 29, 2016 following the Council Meeting.

5. ADJOURNMENT

CANCELLED

Preliminary Review

Thorhild County
September 2014

Background

The Minister received a sufficient petition from the residents of Thorhild County, as per Section 572 of the *Municipal Government Act (MGA)*, requesting that the Minister undertake an inquiry into the conduct of council and the Chief Administrative Officer of the county citing concerns with management and governance.

Description of Municipality

Thorhild County is a relatively small rural municipality in North Eastern Alberta with seven hamlets, but no incorporated urban municipalities within its boundaries. Primarily an agricultural community, the county is also in close proximity to oil and gas activities and as such has access to a moderate linear assessment base.

Internal Research Findings

Financial Indicator Graphs

The following points were noted from the county's 2012 financial indicator graphs:

- While residential equalized tax rates were slightly lower than the median, non-residential rates were significantly above the median.
- The county's revenue sources are disproportionately high to the comparison group with respect to sales and user charges, likely as a result of the municipally owned natural gas operations.
- With respect to the other indicators, Thorhild County was close to the median of the comparison group.

Financial and Statistical Information Returns

Thorhild County's 2013 financial statements indicate a fairly strong financial position for the county as of December 31, 2013, including:

- Net financial assets of more than \$8 million.
- Very small amount of long term debt (\$870,423).
- Operational revenues in excess of expenditures of \$1,887,735.
- Overall revenues in excess of expenditures of \$6,219,624.
- Investment in tangible capital assets of more than \$6 million.
- Available cash and equivalents in excess of \$5 million.

This is Exhibit "2" referred to in the Affidavit of

Bary Sandberg

Subscribed before me this 23 day of March A.D., 2014

Commissioner for Oaths in and for Alberta

MARK T. TALAGA
BARRISTER & SOLICITOR

Thorhild County

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PLEASE NOTE: This record constitutes advice, recommendations, or policy considerations that have been created for submission to the Minister and is to be kept confidential.

Preliminary Review

Municipal Financial Clarification Regulation Compliance

Thorhild County has been in compliance with the Municipal Financial Clarification Regulation since its inception in 2009. Currently, as noted in the analysis of the Municipal Sustainability Strategy Key Measures below, the county maintains an accumulated surplus, net of equity in tangible capital assets, of more than \$10 million.

Tax Rate Bylaw

A review of the 2014 Tax Rate Bylaw identified a number of concerns:

- The amounts included in the bylaw with respect to budgeted expenditures and resulting revenue requirements do not agree.
- The county applies a varied rate of taxation with respect to residential properties.
 - According to the tax rate bylaw, residential assessment classes are set based on location: county, resort, Thorhild, and hamlet.
- Residential rates are as follows:
 - county and resort residential: 3.2445
 - hamlet residential: 4.3260
 - Thorhild (the former village, now hamlet): 6.3260
- Discussions with the Chief Financial Officer indicated that there is no budgetary or service level basis on which to justify the varied rates of taxation.

Action Request History (Two years)

This review identified a significant number of documents that have been broadly summarized in two categories:

County Residents

- Numerous letters have been received from residents of Thorhild County that identify concerns with council decisions, procedure for formal FOIP requests, Chief Administrative Officer (CAO) termination/payout/hiring, councillor disqualification, hamlet operations, and the resident petition.

Letters from the Municipality

- Concerns with changes to the Municipal Sustainability Initiative (MSI) (operating), Assessment and Tax of Carbon Capture Storage, Municipal Wildfire Assistance, Request for a formal name change, and time extension requests.

Grants Information

To date the county has been allocated \$7,680,111 under the MSI Capital Program and an additional \$1,837,109 under the MSI Operating Program. The county has submitted all statements of funding and expenditures (SFEs) up to 2012 but both the capital and operating SFEs for 2013 (due May 1, 2014) remain outstanding.

Preliminary Review

The county has been approved for nine projects that are ongoing under MSI Capital totalling \$13,155,986 in total project costs and \$6,087,838 in approved MSI Capital funding to be applied to those projects. The county has yet to receive its 2014 MSI Capital allocation as it has not submitted any capital projects for 2014.

Planning Information

The most significant planning issue for the municipality has been the controversial development of the landfill. This project is ongoing and will continue to provide financial benefits and planning challenges for the municipality into the future.

Planning advisory staff recently visited Thorhild County on a new CAO visit. They noted a bias when discussing the new Waste Management facility with the CAO and a lack of neutrality. Prior to employment with the municipality, the CAO served as the lead on the citizens group opposing the landfill development.

Municipal Election Results

Council is comprised of five members with the reeve elected from within council. The 2013 election brought in two new and three returning councillors. It should be noted that there is a consistent 3-2 division on council which will be further discussed in this report.

News Clippings

A general online search of media coverage resulted in the following finding: Westlock News – Former CAO severance figure – The former CAO of Westlock County is now employed by Thorhild County in an Economic Development capacity and also as the Interim Land Use and Taxes Director.

Contact with Municipal Affairs

Numerous staff members have been contacted by a variety of stakeholders of Thorhild County. These contacts include general advisory calls, complaints, and legislative and internal procedural clarifications from residents, administration, and council. The primary concerns have been with the current council dynamics and subsequent council decisions, alleged legislative contraventions, petition sufficiency, and the replacement of the previous CAO with an inexperienced CAO who has personal ties to the Reeve and Deputy Reeve.

Internet Search/ Municipal Website

An internet search of 'Thorhild County' displays the official county website and other routine information sites. The county's website appears to be adequate. The information provided is not entirely up to date, and is incomplete in some cases. A review of the council meeting minutes was undertaken and, while a few procedural discrepancies were spotted, numerous legislative contraventions were identified. Examples include a councillor declaring a pecuniary interest after a discussion and the vote is taken, and a councillor not voting on motions put forward.

A review was also conducted of the available on-line bylaws. Legislative non-compliance and discrepancies were noted earlier with respect to the 2014 Tax Rate Bylaw.

Preliminary Review

Municipal Sustainability Key Measures

The Municipal Sustainability Strategy (MSS) outlines key measures of sustainability for municipalities in Alberta. The measures are intended to be used as a means of revealing local circumstances that might merit further attention.

When a municipality triggers three measures, or measure #3, the municipality will be flagged for further review. If flagged, Municipal Affairs staff will contact the municipality to review the cause(s) of the trigger(s) and to discuss options for assisting the municipality.

A review of the key measures had the following results:

1. Has the municipality reported an accumulated deficit, net of equity in tangible capital assets, for the past three fiscal (calendar) years?

YES NO

Accumulated surplus, net of equity in tangible capital assets:

2011: \$7,964,594 2012: \$8,234,645 2013: \$10,331,540

2. Does the municipality have less than a 1:1 ratio of current asset to current liabilities?

YES NO

Current Assets: \$11,186,765

Current Liabilities: \$2,854,428

The 2013 audited financial statements indicate that current assets exceed current liabilities. The ratio of current assets to current liabilities is 3.92:1

3. Has the municipality received a "qualified audit opinion", "denial of opinion" or an "adverse opinion" with respect to your most recent annual financial statements?

YES NO

The audit report states that the 2013 financial statements are free from material misstatement.

4. Has the municipality reached 80 per cent of its debt or debt service limit?

YES NO

2013 Debt: 4 per cent of limit

2013 Debt Service: 3 per cent of limit

5. Based on the annual audited financial statements, have provincial and federal grants accounted for more than 50 per cent of the municipality's total revenue in each of the past three fiscal (calendar) years?

YES NO

2011: 27.8 per cent

2012: 19.4 per cent

2013: 33.3 per cent

6. Has the municipality's non-residential assessment base declined over the past 10 years?

YES NO

There has been a 101 per cent increase in non-residential assessment since 2003

Preliminary Review

7. Does the municipality have more than 5 per cent of current property tax unpaid for the most recent completed fiscal year?

YES NO

The municipality had 2 per cent of property tax unpaid for the 2013 fiscal year.

8. Has the municipality experienced a decline in population of the municipality over the last 20 years?

YES NO

1993 population: 2,912*

2013 population: 3,417

Over the past 20 years the municipality's population has increased by approximately 17 per cent.

*Note: In 1993 the county had 3 villages within its boundaries (the Villages of Egremont, Radway, and Thorhild). Had their populations been included in the calculation for Thorhild County's population, the county would have seen a decline in population of 498 or 13 per cent. These villages have since dissolved and therefore are a part of the 2013 population results.

9. Is the remaining value of the tangible capital assets less than 30 per cent of the original cost?

YES NO

2013: 30 per cent

10. Has the municipality missed the legislated May 1 reporting date for the annual audited financial statements in each of the last 2 years?

YES NO

Based on the above summary, Thorhild County has not triggered any of the key measures.

Interview Findings

Interviews were conducted on September 10 and 11, 2014, at the county office in the hamlet of Thorhild with;

Reeve Wayne Croswell;
Councillors - Dan Bury, Kevin Grumetza, Shelly Hanasyk, and Larry Sission;
Chief Administrative Officer - Betty Kolewaski;
Director of Corporate Services - Janelle Cornelius;
Director of Public Works - Rick Nietupski;
Community Economic Development Officer - Ed Leblanc;
Manager of Human Resources and Payroll - Laurie Andrushchyshyn;
Utilities Foreman - Ken Reil;
Welder - Kelsey Pasay; and
Petition Representative - Angela Zilinski.

Thorhild County

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PLEASE NOTE: This record constitutes advice, recommendations, or policy considerations that have been created for submission to the Minister and is to be kept confidential.

Preliminary Review

The following is also noted;

- A number of staff specifically requested that their interviews be kept confidential for fear of losing their job.
- Several recently dismissed staff requested interviews, which were denied as only interviews with current staff is within the scope of the Preliminary Review process.
- Several community members requested interviews, which were also denied as only an interview with the Petition Representative is within the scope of the Preliminary Review process.

Those interviewed were asked the same questions and were advised that comments made during the interview would be confidential and that the collective information gathered in the interview process would be summarized in a report to the Minister.

1. Administration

The administration for Thorhild County has seen five CAO's in the last five years; three since the October 2013 election. The hiring of the current CAO was extremely controversial. The CAO is well known in the community as being the chair of the Concerned Citizens of Thorhild County and actively working towards the demise of the Waste Management Landfill for a number of years. The CAO is also a personal friend of the current Reeve and Deputy Reeve of Thorhild County. Many comments were made questioning the CAO's ability to be impartial and neutral in her role as the CAO given her previous community involvement and personal relationship with two of the council members on the majority side of the 3-2 split council.

Since the CAO's hiring a number of staff have either been terminated, have resigned, or have taken a medical leave. Staff commented that they did not feel trusted and are not consulted regarding information brought to council concerning their particular area of expertise. The staff are afraid for their job, and are disappointed and frustrated that they are often publicly berated at council meetings with no intervention/support from the CAO to encourage council to take these matters in-camera.

Comments were also made that communication within administration has deteriorated significantly. This is the primary contributor to the lack of trust, and fear of losing employment.

The CAO and recently hired senior management provided a differing perspective on the current situation, indicating the county was progressing along well and expressed the belief that the situation with staff was improving. An acknowledgement was made that there was, and still remains a steep learning curve for the CAO considering her lack of experience in a municipal environment.

When asked what could remedy these concerns, most responded that a new CAO would be required. However, it was also suggested that mediation, training and team building exercises may also be helpful.

In addition to the issues identified above regarding the administration of the county, concerns were also expressed regarding the administration of the Highway 28/63 Regional Water Commission, of which Thorhild County is a member.

Preliminary Review

Current commission bylaws state that Thorhild County is to provide for the management and administration of the commission. Prior to the position being restructured by the new CAO, the county utilities director was responsible for management of the commission. With the restructuring of the county's utilities department and resulting elimination of the position of utilities director, some commission directors expressed interest in hiring the former utilities director to be the manager of the commission independently from the county. County council disagreed with this option, citing commission bylaws that specify the county as the commission's manager.

County staff discussed concerns they had heard from other commission member municipalities regarding the county's lack of involvement in the management and operations of the commission since laying off the utilities director, citing the new CAOs absence at key meetings and inability to address commission issues in a timely manner. There are four other municipalities that are members of the commission (Smoky Lake County, Town of Smoky-Lake, and the Villages of Vilna and Waskatenau) and impacted by the county's commission management decisions.

2. Governance

Communication between council and the CAO is inconsistent in that not all councillors are included in CAO correspondence and information updates. Council is not adhering to the provisions of the MGA when conducting its meetings and making decisions. Examples of legislative contraventions include pecuniary interest, not voting, inappropriate behavior/comments during council meetings, and erroneous reasons for moving a meeting to in-camera.

Each side of the council split is responsible for the breakdown of good governance. Even though council is in the midst of the development of a strategic plan, the focus of the municipality has been lost on the endeavor to prove the other side wrong. Several councillors and staff noted that the division on council has halted the counties progress on several key projects and initiatives.

There is a strong relationship between the majority of council and the new CAO and this is reflected in the communication and correspondence that is distributed to members of council as well as in an inequitable access to municipal documents and information. This also contributes to the council dysfunction.

The responses we received to address these issues focused on the removal of all or a portion of county council. Some believe that all of council should be removed and a new election should be held. Others, depending on their allegiances on council, believe that only one side or the other of the division on council should be removed. There was little to no confidence in the ability of team building or mediation procedures to bridge the divide on council.

3. Finances

While it was noted on several occasions that the county is in a relatively strong financial position several interviewees identified concerns with council's management of the county's finances. Those concerns seemed to focus on council making ad-hoc financial decisions without supporting documentation. Several comments were also made regarding council's lack of involvement of key administrative staff with respect to financial decisions and discussions.

Preliminary Review

Examples of specific incidents include:

- The purchase of an approximately \$600,000 grader to address road concerns without consulting public works staff. The grader was purchased despite the availability of current leased equipment and insufficient staff resources to operate the additional equipment.
- Approval of \$200,000 in additional costs for a water system repair without consulting the CFO regarding budgetary implications.
- Purchasing a new seniors' bus to replace the current one based on comments from the public of a "bumpy ride". Public works staff had a full safety inspection conducted on the current bus, which was only two years old, and despite its clean inspection council voted to go ahead with the purchase of a brand new bus.

Comments were also made with respect to inequitable treatment of projects and budget requirements between divisions. The needs of the electoral divisions represented by the minority faction of council appear to be superseded by the needs of the electoral divisions represented by the majority of council regardless of the urgency or number of residents impacted by those needs. Furthermore, council has expressed an interest in moving to divisional budgets as opposed to one municipal budget. The provisions of the *MGA* regarding municipal budgets speak to the municipality having a singular budget upon which the tax rate bylaw is developed in conjunction with the municipality's assessment information. Section 153 of the Act lists the general duties of a councillor, including the responsibility to consider the welfare and interests of the municipality as a whole (153(a)). Divisional budgets focused on the needs and interests of each councillor's individual division would be contrary to that responsibility.

4. General Comments

Each individual interviewed commented on the divisiveness of council with the consensus being that the source of the divide started with the onset of the landfill debate and the key role those on council played in it. The unrest within administration appears to have begun with the hiring of the new CAO and her perceived lack of impartiality with respect to the divide on council.

The lines between the role of administration and council are blurred and a clear understanding does not exist.

The residents of Thorhild County have difficulty accessing information from the municipality as each request is treated as a formal FOIP request. A municipality should facilitate the sharing of information, not impede it.

Preliminary Review

Conclusion

The working environment in Thorhild County is highly dysfunctional. Based on the interviews and a cursory review of the council meeting minutes, it is clear the county has a split council. While split councils are not uncommon, the contribution of the CAO's lack of impartiality heightens and almost encourages this division

There appears to be a noteworthy lack of understanding of what council's role and purpose is. In addition to the interviews, the review of the council meeting minutes shows blatant misuse of power through the lack of transparency perpetrated through the abuse of in-camera sessions, and direct contraventions of the *Municipal Government Act*.

It appears that county staff are underutilized and are not consulted when information is gathered to assist council in their decision making. This has led to council decisions that have fallen outside of the budget and legislative requirements. In addition, the staff allegedly received inappropriate and unprofessional treatment from the CAO and some members of council leading them to fear for their positions within the organization.

There is a strong stance by the CAO on how information is provided to some of council and the residents of the county in that the use of formal FOIP requests appears to be the rule as opposed to the exception.

Council and new CAO have demonstrated a clear lack of understanding with respect to their legislated roles and responsibilities. This, in conjunction with the other matters brought forth in this review, highlights the seriousness of the issues Thorhild County is currently experiencing with respect to the governance and management of its affairs.

Reviewers: Desiree Kuori, Travis Nosko

Submitted: September 23, 2014

Alberta ■ Municipal Affairs

**Town of Athabasca
Municipal Corporate Review**

Reviewers:

Tony Sykora
Faye Sheridan
Travis Nosko

INTRODUCTION

On June 8, 2012 the Chief Administrative Officer of the Town of Athabasca, on behalf of the mayor and council, sent a letter to Municipal Affairs requesting a Municipal Corporate Review (MCR). On June 26, 2012 the Assistant Deputy Minister responded indicating that an MCR would be conducted in the Town of Athabasca.

Process

The purpose of the MCR is to help improve local governance in Alberta by:

- facilitating open communication between municipalities and Municipal Affairs;
- providing professional advisory services regarding municipal governance and municipal operations;
- sharing information on current and emergent trends and issues; and
- understanding local issues and relaying them back to the ministry.

The MCR process presents an opportunity to evaluate a municipality's strengths and to identify further potential for improvement. This evaluation is a cooperative effort of the council and the administration of the municipality and the Municipal Services Branch of Alberta Municipal Affairs. The following broad areas were addressed during the review: governance, administration, and financial management practices.

Methodology

The MCR visit was conducted in the Town of Athabasca on December 3 and December 4, 2012. The reviewers assigned to conduct the MCR were Municipal Advisors, Tony Sykora and Faye Sheridan, and Financial Advisor, Travis Nosko.

During the visit, interviews were conducted with the town council and administration:

Those interviewed were provided with a brief overview of the review process being undertaken, assured of the anonymity of the discussion, and given an opportunity to ask questions and clarify any points. The reviewers engaged in an analysis of municipal documents in the town office and later in the offices of Alberta Municipal Affairs in Edmonton. Documentation reviewed included policies, agendas, minutes, bylaws, and financial documents. The reviewers also attended a regular council meeting on Tuesday, December 4, 2012 as members of the gallery to observe the council proceedings.

Council Practices

To obtain information about council practices and procedures, each councillor was interviewed by the reviewers using a predetermined set of questions. Questions asked included opinions about their roles on council, relationships with administration and other councillors, goals as a councillor, and recommendations for improvements. Each councillor was also provided an opportunity to add any additional information they wished to convey to the reviewers.

GOVERNANCE

Council

In the 2010 general municipal election, the mayor was elected from two nominated candidates and the six councillors were elected from seven nominated candidates. The Mayor served as a councillor for a portion of the previous term. Of the six councillors, four councillors are returning incumbents, one was a member of the town council in the past, and one was newly elected. A by-election was held in February, 2012 due the resignation of a council member and the elected councillor has served as a member of town council in the past.

Council Meetings and Minutes

The council of the Town of Athabasca holds regular council meetings on the first and third Tuesday of each month, and municipal planning commission meetings are held before the regular council meetings, if required. The council and committee meeting dates and any changes to the dates are shown on the town calendar.

Council chambers are easily accessible by the public. The seating arrangements are such that the public can clearly hear and see the proceedings of council. The meeting agenda is projected onto a screen at the rear of the chambers so that the public is able to view information about the meeting.

The reviewers attended the regular council meeting held on Tuesday, December 4, 2012 as part of the MCR. Mayor Roger Morrill chaired the meeting, and councillors Lionel Cherniwchan, Paula Evans, George Hawryluk, Colleen Powell, and Richard Verhaeghe were in attendance. Councillor Timothy Verhaeghe was absent.

The council meeting addressed the agenda items with participation from all councillors in attendance. Administration provided information as required. Reporters from local media and 11 members of the public were in attendance.

The reporter for the paper was allowed to record the meeting digitally to promote accuracy of quotes in the newspaper.

Members of council receive a meeting agenda and information package electronically. It is a municipal best practice to provide confidential information to the councillors at the in-camera sessions and to retrieve the information for destruction at the end of the in-camera session. Council may consider using various methods to distinguish confidential information from public information for the purposes of information management.

The press receive a copy of the package without any in camera information at the same time as the councillors, the Friday before the meeting. The agenda is also posted on the town website before the council meeting; however, the December 4, 2012 council meeting agenda had not been posted prior to the meeting. The method of displaying the agenda on screen was well received, and a paper copy of the meeting agenda was available to those in attendance.

Recommendation:

- #1 That the town ensure that the website is updated with current agenda documents and meeting minute documents.

The reviewers noted that a public hearing for an amendment to the Land Use Bylaw was held at 7:00 pm with the council meeting to follow. Section 230(2) of the MGA specifies that a public hearing must be held during a regular or special council meeting. Section 230(3) of the MGA also prescribes that council may, by bylaw, establish procedures for public hearings.

Recommendation:

- #2 That council ensure that requirements of Section 230(2) of the MGA, which are that the meeting be held in public and during a regular or special council meeting, are followed when holding public hearings.

The council meeting was called to order after the public hearing was completed and opened with the adoption of the minutes from the previous meeting, adoption of the agenda, and the introduction of the new Bylaw Officer to council. The next

Recommendation:

- #22 The CAO, through regular reporting to council, informs council about the role that staff plays in town operations. The CAO may consider including senior staff when reporting to council from time to time.

Certain people interviewed made reference to individual councillors dealing with town staff on a regular basis in regards to their duties. This practice is contrary to the roles of council and administration as described in the *MGA* and should be discouraged. Section 201(2) of the *MGA* clearly states that council must not assume the administrative role of the CAO or designated officer.

Recommendation:

- #23 That councillors refer staff direction issues to the CAO.

Staff Development

Staff stated that they felt the previous administration and council was not supportive of training opportunities for staff. The new CAO has indicated that staff is encouraged to attend courses and programs. The reviewers commend administration for supporting ongoing professional development for staff.

Council / Administration Relationship

During the interview process, councillors and administrative staff made reference to a difficult relationship between council and the previous administration. The lack of stable administrative leadership, according to those interviewed, contributed to growing mistrust between council and administration.

Both council and staff recognize the value of a competent Chief Administrative Officer in the organization, and that a working relationship between council and staff had been lacking.

At the time of the review, there was a positive outlook of both council and administration that, with the hiring of the new CAO, the relationship has noticeably improved.

FINANCIAL MANAGEMENT

Overview

During the review of the Town of Athabasca's financial position, comments pertaining to financial items from the interviews with staff and council were analyzed. In addition, a more in-depth discussion of the town's financial position with the Chief Administrative Officer provided additional detail. Finally, a review of the town's financial statements and Financial Indicator Graphs (FIGs) was

conducted. Information gathered from these sources consistently indicates the Town of Athabasca is in a relatively strong financial position.

Financial Statement Summary

The town is in good shape financially. Variation between budgeted and actual revenues was minimal; the town collected \$40,000 more revenue than was budgeted. Expenses were over budget by \$643,659 (about 10% over) with the majority of additional expenses attributed to water/wastewater, road infrastructure and recreation.

The most significant budgeted expense variance was water/wastewater treatment and disposal. Budgeted expenses were \$332,678, while actual expenses were \$689,531; \$356,853 over budget representing half of all budget overruns. The town relined a length of sanitary sewer main for \$338,000 that was unbudgeted, as well as paid an unbudgeted capital contribution on the new water treatment plant of \$175,000. Overall the town received \$2.5 million in excess revenue over expenditures once grant funding and contributed assets were factored in.

The town has relatively low long term debt; only 13% of the town's debt limit has been accessed. In contrast, the town has high debt servicing relative to long term debt; 36% of the town's debt servicing limit has been accessed. The relatively high debt servicing is due to demand loan payments and short term lines of credit accessed for operational purposes.

Reporting to Council

Administration's financial reporting to council at regular council meetings appears strong. Comprehensive reports are presented that cover all areas of the town's finances including an up to date general ledger monthly trial balance report, cash flow updates and bank reconciliations. While thorough, this report may be somewhat lengthy and excessively detailed for council's purposes. It is recommended that this report be replaced with a budget variance report that is detailed enough to provide a clear picture of the town's current financial situation but not so detailed that council members are overwhelmed with excessive information.

The reports presented to council also demonstrate council's and administration's successful cash flow management.

Recommendation:

- #24 That administration provides council with a more concise financial report at monthly meetings.

September 7, 2016

Dan Buryn


Dear Mr. Buryn,

Subject: Freedom of Information & Protection of Privacy Act Request
Request Number: 2016-G-0079

This is further to your request for information made under the *Freedom of Information and Protection of Privacy (FOIP) Act* for **meeting notes from September 2014 and January 25, 2015, and any records created by Russell Farmer or other individuals during the municipal inspection process of Thorhild County naming you.**

Municipal Affairs does not have in its custody and/or control the notes taken from your September 2014 meeting with Ms. Kuori that resulted in the Preliminary Review report. We have confirmed with the Program Area that as the notes taken were **deemed transitory** in nature, they had been **deleted** following the finalization of the preliminary report and the Minister's approval of the report. The authority to determine whether a record needs to be retained as an official record of the ministry or that a record can be deleted as transitory rests with every ministry employee, and as such, Ms. Kuori and Mr. Nosko made the determination that the meeting notes were transitory in nature, in accordance with the Government of Alberta's Transitory Records Schedule.

As it relates to the records created by Russell Farmer or other individuals during the inspection process naming you (**69 pages in total**), and after considering all relevant factors, we have made the decision to withhold these records in their entirety, subject to limited and specific exceptions and/or exclusions to disclosure as follows:

- **Section 17(1)(a) & (4)(b):** The disclosure would be harmful to the personal information of a third party. Additionally, the personal information is an identifiable part of a law enforcement record.
- **Section 20(1)(a) & (d):** The disclosure would be harmful to law enforcement. Section 20(1)(a) is applied to withhold information related to the formal **administrative investigation of Thorhild County carried out to enforce compliance or remedy non-compliance with standards, duties and responsibilities.** Section 20(1)(d) is applied to protect the identity of confidential sources who provided information to a public body with the reasonable expectation that their identity would be protected.

If you have any concerns or questions about the processing of your request or severing decisions made by the ministry, please contact me so that they can be addressed. I can be reached at my direct line (780) 415-2633 or by writing to me at the address noted above.

If we are unable to resolve your question or concern, under section 65(1) of the *FOIP Act*, you may ask the Information and Privacy Commissioner to review the decisions made in respect of your request. To request a review, you must complete and deliver a Request for Review form within 60 days from the date of this notice to the Commissioner at 410, 9925-109 Street, Edmonton, Alberta, T5K 2J8. The form is available under the Resources tab on the Commissioner's website www.oipc.ab.ca or you can call 1-888-878-4044 to request a copy of the form.

Yours truly,



Helen Chow
Access & Privacy Advisor

Attachments

Recording of Council Meetings and FOIPP Compliance

On May 13th, 2014, Council adopted an amendment to their Procedural Bylaw – Bylaw 1155-2012, which read:

The use of video and recording devices to record meetings of Council is permitted.

Following the adoption of the amendment, members of the public along with one member of Council, Councillor Dan Buryn, began to record Council proceedings on a number of electronic devices. This policy amendment has created issues related to governance practices and compliance with the Freedom of Information and Protection of Privacy Act (FOIPP)

With respect to members of the public, the practice of recording Council meetings has resulted in a form of conduct in Council meetings which we deem to be unacceptable. Two Councillors, Hanasyk and Grumetza, sit together on one side of the Council table. These two Councillors are in the minority faction on Council, and are opposed by some segments of the public. A member of the public puts a video recorder on a tripod on the delegation table in Council Chambers. This video camera records only Councillor's Grumetza and Hanasyk. This not a case of the public recording "Council". These members of the public are recording only two Councillors for the purpose of opposing their positions and identifying conduct, opinions, and motions which these members of the public find objectionable. We view this as a form of harassment which creates a hostile environment during Council meetings. This form of recording should be prohibited.

Councillor Buryn records Council meetings on the audio recorder on his mobile device. A Councillor making recordings is different from a member of the public. These recordings are being made while the Councillors in working within his role as Councillor. As a result, the following considerations should apply:

- The recordings created by the Councillor should be deemed municipal records, and are therefore subject to considerations of records management and FOIPP.
- These records should be available to the Public, and are subject to FOIPP requests.
- These records may not be destroyed, except in accordance with the County's records management policies.

We have confirmed that the Councillor is, appropriately, disabling his recording device during in-camera discussions. However, we are unable to identify if any of his records are being retained, or if they are being deleted by the Councillor following meetings.

On March 11th, 2014, a request for documents was made by a member of the public which cited FOIPP and identified the requested documents as all recordings of the Councillor beginning February 24th, 2014 and extending to "present". The Councillor, and the County, failed to reply

to this request within the 30 days allowable to respond to the applicant. As a FOIPP request is pending, Section 92 of the Act would apply with respect to the offenses and penalties associated with destroying the identified records. An investigation is currently pending with the Office of the Information and Privacy Commissioner of Alberta. In this matter, the Commissioner is in a better position to consider the legal implications of the recordings and to take any required action.

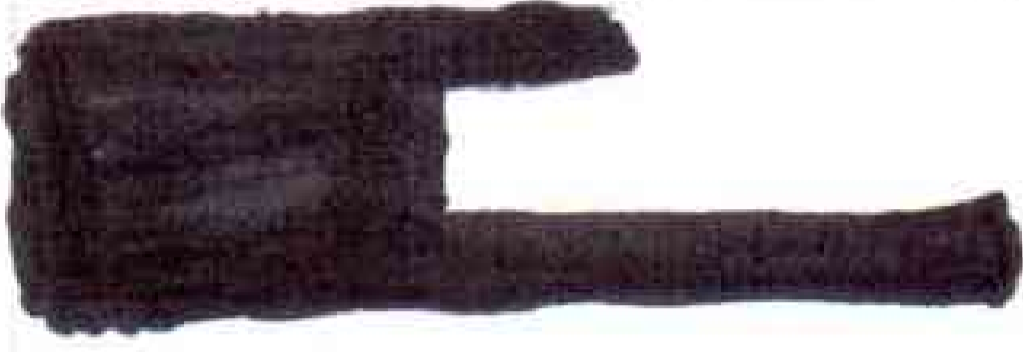
As a mechanism to address issues with the recording of Council meetings, it would be preferable for the County to make an official recording or transcript. If the County determines that recording of Council meetings is desirable, it should be done by the County, and should be made available to the public.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FOIP Act)

Letter of Findings

December 7, 2015

BACKGROUND

| | |
|------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Applicant |  |
| Public Body | County of Thorhild |
| File Type | Complaint <input type="checkbox"/> Request for Review (RFR) <input checked="" type="checkbox"/> Third Party RFR <input type="checkbox"/> |
| File Number | OIPC #F8043 |
| Date Request for Review Received by OIPC | April 16, 2014 |
| Summary of Findings | <p>I find that the records are not subject to the FOIP Act, because they are not in the custody or under the control of the Public Body.</p> <p>I find that the Public Body did not meet the expected standard of its duty to assist the Applicant, because the decision letter did not include reasons for refusal or the provision of the FOIP Act on which the refusal is based.</p> |
| Background | The County of Thorhild bylaws permitted anyone to audio or video record open proceedings with written permission from the Reeve or presiding officer. On February 25, 2014, and at subsequent meetings, Councillor Buryne, with permission, audio recorded proceedings using his own cell phone and microphone. No reason was given to request permission, and no conditions were attached to this consent to record the open meeting. The County does not record the meetings but produces written minutes. |
| Request to the Public Body | The Applicant made an informal request to Councillor Buryne for the February 25th recording but he did not respond to the request. On March 11, 2014, the Applicant made a FOIP request to the Public Body for copies of the recordings of these meetings from February 25, 2014 onward. |
| Public Body Response to the Applicant | The Public Body responded to the Applicant on April 14, 2014 and advised that it had contacted Councillor Buryne several times but he had not given them a copy of the audio recordings from February 25, 2014 onward. |
| Subsequent events and information | I spoke to Councillor Buryne and he orally confirms that he has some audio recordings, but did not record all meetings. |

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| | <p>A previous Reeve wrote a Letter to the Editor to correct remarks attributed to him by the newspaper. He is thankful that Councillor Buryn audio recorded the meeting.</p> <p>The Minister of Municipal Affairs appointed Russell Farmer and Associates to inspect the administration of the County of Thorhild under Section 571 of the <i>Municipal Government Act</i>. A report was produced dated June 19, 2015 which touched on the practice of audio recording open meetings. I read the report but am not relying on any of its findings.</p> |
| The Applicants request OIPC review | [The Applicant] would like copies of the recordings that have been made and are still being made by Councillor Buryn at the Thorhild County Council meetings starting Feb 25/14. He refuses to give these recordings to the County. He was informed at the meeting on Mar 11/14 that these are county property and if requested he would have to turn them over. |
| Issue(s) | <p>Issue #1: Jurisdiction: Are the records subject to the FOIP Act?</p> <p>Issue #2: Did the Public Body meet its duty to assist the Applicant?</p> |
| Issue #1: JURISDICTION | |
| Are the records in the Custody or under the Control of the Public Body, subsection 4(1)? | <p>Subsection 4 (1) says the FOIP Act applies to "all records in the custody or under the control of a public body", and then lists a number of exceptions.</p> <ul style="list-style-type: none"> ◦ Does the Public Body have custody or control of the records? <p>If the public body does not have custody or control, then the <i>FOIP Act</i> does not apply to these records.</p> |
| If the records are in the care or custody of the Public Body, are they nevertheless excluded records under clause 4(1)(m)? | <p>One of the exception clauses of subsection 4(1) is "a personal record or constituency record of an elected member of a local public body".</p> <ul style="list-style-type: none"> ◦ Are the records "personal records" or "constituency records" of the elected member of the local public body? <p>If so, then the FOIP Act does not apply to these records.</p> |
| INFORMATION GATHERED RE JURISDICTION | |
| The Public Body's Submission | <p>The Public Body's position is (paraphrased):</p> <ul style="list-style-type: none"> ◦ The records are not currently, nor have they ever been, in the custody or control of Thorhild County. ◦ While the County requested the records from the Councillor, the records are the personal property of the Councillor and it is the position of the County that it does not have jurisdiction to demand its release. ◦ The Councillor requested and received permission to make an audio recording of the open meeting. No terms or conditions were attached to this permission. |

- The recording was made on the Councillor's personal cell phone, using a microphone purchased by the Councillor.
- The county bylaw about audio and video recording has been since amended to permit recording without requiring permission.

An investigator of our office asked the Public Body questions regarding custody and control. The Public Body's answers and my analysis are listed below.

Throughout the mediation, in October of 2015, the Public Body amended its position. The Public Body says the Councillor is an 'employee' and the records are Public Body business. The Public Body says that the audio recordings are in the custody and control of the County, but the records are "constituency records", therefore exempt from the FOIP Act under clause 4(1)(m).

ANALYSIS & FINDINGS RE JURISDICTION

Applicable sections of the FOIP Act

4(1): This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

(m) a personal record or constituency record of an elected member of a local public body;

Analysis: custody or control over the records

Previous orders of this Office have set out ten non-exhaustive factors, or questions, to consider in determining whether a public body had or has custody or control of a particular record. Order F2008-023 is a good precedent example of applying these considerations. Not every one of the ten factors is determinative of whether a public body has custody or control.

Ten factor consideration of whether records are in the custody or under the control of a Public Body

Here are the ten factors, the Public Body's position, and my analysis

| Consideration in assessing whether records are in the custody or under the control of a public body | Public Body position | Analysis |
|-----------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. Was the record(s) created by an officer or employee of the Public Body? | Yes. The amended position of the Public Body is that the Councillor is an employee | No. The Alberta Queens Bench has been unequivocal that an elected councillor is not an officer or employee or servant of a municipality. [Examples: <i>Olaf (Town of) v. McDonald</i> , 2003 ABQB 682 (CanLII) and <i>Broda v. Edmonton (City)</i> , 1989 CanLII 3341 (AB QB)]. The Councillor is not an officer or employee of the Public Body. |
| b. What use did the creator | Personal | Although he provided access to |

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| | intend to make of the record(s)? | use, intention unknown. | audio recording(s) to other(s). Councillor Buryn confirms that the recordings were for his personal use. His intention was to, by example, encourage others to make recordings. His intention was to foster others to make recordings for their own community discussions, media comment, and ultimately greater public participation in decisions of municipal government. |
| c. | Does the Public Body have possession of the record(s) either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement? | No | No. Although the Councillor is alleged to have shared a recording with another Councillor(s) and a member of the media, and perhaps others, I have no evidence that the Public Body has possession of any copies of the audio recordings. These individuals may have listened to an audio recording without obtaining a copy. I have no evidence that the Public Body has a copy of the recordings. The Public Body has been consistently willing to process the request of the Applicant, and I accept that the Public Body would have processed the request if it had a copy of the audio recordings. |
| d. | If the Public Body does not have possession of the record(s), is it being held by an officer or employee of the Public Body for the purpose of his or her duties? | No | No. A councillor is not an officer or employee of the Public Body. |
| e. | Does the Public Body have a right to possession of the record(s)? | No | No. I have no submissions or evidence that the Public Body can compel records from Councillor Buryn on any statutory or contractual basis. |
| f. | Does the content of the record relate to the Public Body's mandate and function? | No | Yes. The presumed content is of open council meetings. |

| | | |
|-------------------------------------------------------------------------------------|----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| g. Does the Public Body have the authority to regulate the records used? | No | No. Although the Councillor received permission from the Reeve, to make the first few audio recordings, no terms or conditions were attached, e.g. specifying the use, or requiring the Councillor to produce the audio recordings on request. There are also no conditions under the revised bylaw regarding recording open meetings. |
| h. To what extent has the record(s) been relied upon by the Public Body? | None | No known reliance for official council business, but minor or peripheral reliance by another councillor to clarify alleged misquotes attributed to him by a newspaper |
| i. How closely is the record integrated with other records held by the Public Body? | The minutes of the meeting are available on the website. | Not integrated. As noted above, I accept that the Public Body does not have a copy of the audio recordings. |
| j. Does the Public Body have the authority to dispose of the records? | No, they are not our records to dispose of. | No authority. As noted above, I accept that the Public Body does not have a copy of the audio recordings. |

Supreme Court of Canada considerations of control

In assessing whether the Public Body has custody or control, I also considered the two-part test adopted by the Supreme Court of Canada in *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25 on the question of whether an institution has control of records that are not in its physical possession:

- (1) Do the contents of the document relate to a departmental matter?
- (2) Could the government institution reasonably expect to obtain a copy of the document upon request?

I find that the first part of the test has been satisfied, but not the second. The content of the records relate to a "departmental matter", the open council meetings. The Public Body has not advised our office of any means to compel the councillor to provide the audio recordings to it. At least one councillor, a previous Reeve, listened to or received a recording of one meeting, but this is not enough to establish a reasonable expectation that the Public Body will obtain a copy of the audio recordings upon request.

Finding

I find under both analysis, that the Public Body does not have custody or control over the records.

Remarks in passing about personal or constituency records

In light of my finding that the records are not in the custody or under the control of the Public Body, it is not necessary to continue the analysis of whether the records are personal or constituency records under section 4(1)(m), but I make the following remarks to assist the parties.

Clause 4(1)(m): are the records personal records or a constituency records?

Clause 4(1)(m) exempts "personal records" or "constituency records" of elected members of local public bodies. Clause 4(1)(m) recognizes that an elected official could have 3 types of records:

- Personal records which are not subject to the FOIP Act (e.g. records about volunteer activities, private business, family or medical information);
- Constituency records which are not subject to the FOIP Act (e.g. records to or from the people he represents, election and campaign records); or
- Records dealing with the business of the local public body (municipality), which are subject to the FOIP Act.

I have not reviewed the audio recordings at issue. I have no evidence that there is any personal component to the records relating to Councillor Buryr or anyone else as an individual. The sole content of the records are of the open meeting proceedings, which are records dealing with the business of the local public body.

If I found that the records were in the custody or under the control of the Public Body, (which I did not find) I would have found that the records are neither "personal records", nor "constituency records" of the elected member of the local public body, and as such, the records would have been subject to the FOIP Act.

Findings

As the records are not in the custody or control of the Public Body, the FOIP Act does not apply.

RECOMMENDATIONS RE JURISDICTION

Based on my finding that the records are not in the custody or control of the Public Body, I have no recommendations.

Russell Farmer & Associates Consulting Ltd. produced a report dated June 19, 2015 as a result of its inspection. It suggests at page 35 that, if the County determines that recording of Council meetings is desirable, it should be done by the County, and should be made available to the public.

The desire to be more transparent is admirable. If the County proceeds with the inspection recommendation, the County needs to be mindful of the statutory limitations on collecting, using and disclosing personal information, not only of the Councillors and the public attending and speaking at the meetings, but also of others about whom they are speaking. This is not an obstacle to accepting the inspection recommendation for council to record their open minutes. Many municipal councils offer recordings of their open meetings, and some municipalities broadcast their meetings.

Issue #2: DUTY TO ASSIST

Has the Public Body responded to the applicant openly accurately and completely?

Section 10 establishes the quality of a response required by the FOIP Act [open, accurate and complete] and section 12 establishes the formal content requirements of a response. A failure to comply with section 10 does not necessarily mean that a public body has contravened section 12. However, if a public body fails to meet the requirements of section 12, the response will, in most cases, fail to meet the requirements of completeness, openness and accuracy under section 10.

Applicable sections of the FOIP Act

10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

12(1)(c) If access to the record or to part of it is refused:
(i) the reasons for the refusal and the provision of this Act on which the refusal is based,
(ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and
(iii) that the applicant may ask for a review of that decision by the Commissioner or an adjudicator, as the case may be

Finding

The response of the Public Body complied with the time framework set out in the FOIP Act, and with content provisions of section 12(1)(c)(ii) and (iii): the contact information of the FOIP Coordinator, and information about the Applicant's right to seek a review of their decision. However, the response of the Public Body does not provide a decision, reasons for the refusal, or the provision of the FOIP Act on which the refusal is based. I find that this is a failure to meet the requirements of subclause 12(1)(c)(i) and a failure to meet the requirements of subsection 10(1).

RECOMMENDATIONS RE DUTY TO ASSIST

The Public has come to expect individuals who are discharging statutory duties are familiar with the Public Body's obligations under the legislation. I recommend that the Public Body ensure the individual designated to discharge the Public Body's obligations under the FOIP Act is familiar with the legislation and receives continuing education.

REQUESTING AN INQUIRY

Requesting an Inquiry

If the Applicant believes that my investigation has not resolved their issue(s) or you have any questions, I encourage you to contact me at (403) 355-5262 to discuss the above.

- The Applicant or Public Body may ask that their matters proceed to inquiry [section 69 of FOIP].
- The Commissioner's decision to hold an inquiry is discretionary, meaning the Commissioner may or may not decide to hold an inquiry.
- My analysis or conclusions are not used in the inquiry process. The inquiry

process is a new evaluation of the issues.

- You will be required to provide a separate submission for the inquiry process to our Adjudication Unit.
- The Commissioner would consider submissions of both parties and then decide questions of fact and law independent of this investigation process.
- The facts from the Applicant's and Public Body's submissions submitted for this investigation may be used in the inquiry process.

The mediation/investigation phase of this file will conclude on January 5, 2016. If you believe that the matter is still not settled or resolved and you wish to request an inquiry, please ensure you do so by this date.

Failure to submit a request for inquiry by this date may require you to provide an explanation to the Commissioner. It will be at the Commissioner's discretion to accept the request for inquiry.

The request for inquiry form can be found at our website as follows:

http://www.oipc.ab.ca/Content_Files/Files/Publications/RequestforInquiry_fm.pdf.

Further information on the inquiry process can be found at:

http://www.oipc.ab.ca/pages/FOIP_Inquiries.aspx

Maria MacDonald
Senior Information and Privacy Manager

| # | Directive | Due Date |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 1. | I direct the Council to direct administration to publish the Thorhild County Inspection Report on the county website and to provide printed copies of the report, on request, subject to the county's fees for photocopying. | Immediate |
| 2. | Section 153 of the <i>Municipal Government Act (MGA)</i> specifies the duties of councillors and Sections 207 and 208 specify the major administrative duties of the chief administrative officer (CAO). I direct council to discontinue exercising a power or function or performing any duties that are assigned to the CAO. | Immediate |
| 3. | Section 208 of the <i>MGA</i> requires that the CAO ensure that all minutes of council and council committee meetings are recorded in the English language, without note or comment. I direct the CAO to ensure that this requirement is met for all council and council committee meetings. | Immediate |
| 4. | Sections 169 to 173 of the <i>MGA</i> set out the requirements that apply when a councillor has a pecuniary interest in a matter. Section 174 of the <i>MGA</i> sets out reasons for disqualification from council. Section 175 requires a councillor who is disqualified to immediately resign from council and where the councillor fails to do so, sets out a process to apply to the Court of Queen's Bench for an order declaring the person to be disqualified from council. If Councillor Larry Sisson does not voluntarily resign, I direct council to obtain a legal opinion from independent legal counsel to determine if there is sufficient evidence to support an application to a judge of the Court of Queen's Bench for an order declaring Councillor Larry Sisson to be disqualified from council for contravention of Section 172 of the <i>MGA</i> , and that Council instruct the lawyer to provide my ministry with a copy of the legal opinion. | November 30, 2015 |
| 5. | a) Section 206 of the <i>MGA</i> sets out provisions for the appointment, suspension and revocation of a person to the position of chief administrative officer. I direct council to immediately suspend the chief administrative officer with pay. | September 8, 2015 |
| | b) I direct council to revoke the appointment of the chief administrative officer after first having obtained appropriate legal advice to ensure that action is completed in a manner that complies with section 206 of the <i>MGA</i> , all other applicable legislation and the terms of the existing employment agreement. | September 15, 2015 |
| | c) I direct that the vote on the resolution to revoke the appointment of the chief administrative officer be noted in the council meeting minutes as a recorded vote and a copy of the minutes be provided to my ministry. | September 30, 2015 |
| | d) I direct that, concurrent with the revocation of the appointment of the chief administrative officer, council must, in accordance with section 205 of the <i>MGA</i> , appoint a person to carry out the powers duties and function of chief administrative officer on an interim basis until a permanent replacement is appointed. | September 15, 2015 |
| | e) I direct that council engage the services of a reputable recruitment firm to assist with the recruitment of a replacement chief administrative officer. | October 30, 2015 |

| # | Directive | Due Date |
|------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| 1. M | I direct the council to direct administration to publish the Town of Fort Macleod Inspection Report on the municipality's website and to provide printed copies of the report, on request, subject to the town's fees for photocopying. | Immediate |
| 2. | Section 208 of the <i>MGA</i> requires that the Chief Administrative Officer (CAO) ensure that all minutes of council and council committee meetings are recorded in the English language, without note or comment. I direct the CAO to ensure that this requirement is met for all council and council committee meetings and the motions of council are effectively documented. | Immediate |
| 3. | Section 205.1 of the <i>MGA</i> provides for the performance evaluation of the CAO. I direct council to approve a policy that addresses the evaluation process, timeline and criteria for the annual written performance evaluation of the CAO and to provide a copy of the approved policy to my ministry. I further direct council to confirm in the council minutes when the CAO has been provided with the next annual written performance evaluation and provide a copy of those minutes to my ministry. | October 28, 2016 |
| 4. | Section 191 of the <i>MGA</i> requires amendments or bylaw repeals to be made in the same way as the original bylaw. Amendments and bylaw repeals are subject to the same consents or conditions or advertising requirements that apply to the passing of the original bylaw, unless an enactment provides otherwise. Section 692(1) sets out the required process for adoption of planning bylaws. | December 16, 2016 |
| | a) I direct council to undertake a review of the town's current bylaws and take the necessary steps to ensure all bylaws, including schedules to bylaws, are enacted and amended in accordance with the <i>MGA</i> , starting with a review of traffic bylaws, the Council Procedural Bylaw and the Land-use Bylaw. | |
| | b) I direct council to provide a copy of the town's bylaw index to my ministry with the first monthly report, and thereafter I direct council to provide my ministry with a monthly status report of the bylaw review. | Immediately |
| 5. | Sections 169 to 173 of the <i>MGA</i> set out the requirements that apply when a councillor has a pecuniary interest in a matter. Section 174 of the <i>MGA</i> sets out reasons for disqualification from council. I direct councillors to become familiar and comply with the pecuniary interest provisions of the <i>MGA</i> and consult legal counsel as needed to ensure continued compliance with the <i>MGA</i> s. 170 and when a councillor has a pecuniary interest, to comply with Section 172 of the <i>MGA</i> . I further direct that when a council member discloses a pecuniary interest the CAO ensure that the disclosure is recorded in the minutes as a pecuniary interest in accordance with Section 172(5) the <i>MGA</i> and the use of the terms "conflict of interest" be discontinued. | Immediately |
| 6. | Section 153 of the <i>MGA</i> specifies the duties of councillors and Sections 207 and 208 specify the major administrative duties of the CAO. I direct council to discontinue exercising a power or | Immediately |

31. That Thorhild County immediately discontinue any objection to, or obstruction of, 28/63 Commission managers and staff in engaging with County staff below the level of the CAO in completing their duties for the Commission.

Chief Administrative Officer

The position Chief Administrative Officer (CAO) has been a contentious issue for Thorhild County. Our inspection identified significant concerns with the performance of the CAO and with Council's role with respect to the CAO. Some points of concern include:

- The termination of the County's last CAO, and Council's failure to comply with principles of procedural fairness and the requirements of legislation.
- The hiring process for the current CAO, Council's decision making process, and the relationship of the current CAO with Council.
- A recent court ruling stating that the CAO has failed to act in good faith while performing her role for the County.

As a result of our identified issues, our Inspection report makes the following recommendations:

32. Thorhild County comply with Resolution 595-2013 by adopting a CAO hiring policy that defines the hiring process, roles, and responsibilities
33. That Council obtain a legal opinion on the process for dismissing a CAO, and that Council comply with the requirements of Section 206 of the Municipal government Act in all future CAO dismissals.
34. That Ms. Kolewaski cease to be engaged as the CAO of Thorhild County. This may be accomplished through Ms. Kolewaski's voluntary resignation, or as the result of a Council process.
35. In the event that Ms. Kolewaski does not voluntarily resign; that Council complete a review of the employment of Ms. Kolewaski which complies with Section 206 of the MGA. This review should be completed in light of the divisive nature of her employment, her inability to work effectively with all members of Council, her inability to effectively guide a struggling Council in effective governance practices and the requirements of the MGA, and her demonstrated inability to perform her duties without bias or in good faith.

36. That, in the future, Council engage an independent third party to complete CAO searches, and that a high priority be placed on demonstrated effectiveness in senior municipal administration, and knowledge of the MGA.

Human Resources Practices

Our Inspection assessed the County's practices in the area of human resources management. With respect to most administrative practices, the County performs well. However, with respect to issues of progressive employee discipline and employee termination we identified significant issues and areas where the County deviated from a reasonable standard of **procedural fairness**.

Our Inspection report makes the following recommendation:

37. The County adopt a human resources policy to guide employee dismissals.
38. The County adopt a human resources policy to guide the process of employee discipline that reflect principles of **procedural fairness**.

Financial Matters

Our Inspection identified that the County is generally financially sound and engages in good accounting and financial management practices. Three key concerns related to the County's decision to implement significantly higher taxes for the Hamlet of Thorhild than for other hamlets, poor communication practices regarding land sales, and Council spending practices that resulted in a higher than normal number of budget amendments.

Our inspection report makes the following recommendations:

39. Council establish a single mill rate for all hamlets in the County in future taxation bylaws
40. The County provide a report, available to residents, on land sales which identifies sales which have been completed during the current calendar year.
41. The County comply with its new policy to guide land sales.

Other Matters

Two additional matters discussed in the inspection report relate to poor Council decision making practices. The first matter was the decision to demolish a school building owned by the County. In this matter we identify poor decision making processes, poor policy and resolution compliance, and poor project management practices. The second matter is Council's decision to

the inspection. Interviews with representatives from partnering municipalities in the regional water Commission were also undertaken.

The review focused on three key areas within the organization:

- Governance:
 - To review the functioning of Council as a leadership body providing strategic direction;
 - To review decision making processes;
 - To assess understanding of roles and responsibilities;
 - To evaluate current working relationships amongst Council and between Council and administration.

- Operations:
 - To assess the budgeting process, financial operations, and financial controls;
 - To assess the municipality against best practices for efficiency and effectiveness;
 - To assess administrative processes and policies;
 - To review the current financial position of the municipality;
 - To evaluate Council meetings for efficiency and effectiveness.

- Structure:
 - To identify whether current municipal employees have the capacity to carry out their duties as required;
 - To assess the overall organizational model looking at size, reporting relationships, and responsibilities;
 - To evaluate the use of committees and determine if they are operating effectively.

It is important to place some context to the Inspection process. Municipalities have “natural person powers”, meaning that they have the ability and discretion to make and enact decisions on their own behalf; subject to the limitations of legislation. In addition, checks already exist on the power of Council and the municipality through the election process, and through existing legal remedies. It is therefore important to acknowledge that:

- Inspections are not a “balance of opinion” process. This is not a vote. Hearing the same concern from multiple people does not make it right. Nor does hearing that people are happy with a decision of Council necessarily make it a “good” decision.
- This is not a referendum on Council. Residents elect their Council for a period of four years. At the conclusion of the four year term, residents may choose to retain or change their elected officials based on the perceived performance of Council.

(3) The notification and reasons must be in writing and be served personally on the officer or sent by regular mail to the last known address of the officer.

(4) If requested by the officer, council must give the officer or the officer's representative a reasonable opportunity to be heard before council.

There is, therefore, a standard of **procedural fairness** which must be met. The CAO must be provided with reasons, and must be given a reasonable opportunity to respond. Thorhild County's Council failed to meet the requirements of legislation or of **procedural fairness**. The minutes for Council meeting provide the following resolutions and supporting details:

Resolution 544-2013 – Moved by Councillor Larry Sisson that Council goes in-camera at 2:23 pm to discuss a governance issue, excluding all members of administration.

Councillor Kevin Grumetza and Councillor Shelly Hanasyk stepped out of the meeting at 2:30 pm.

Resolution 545-2013 Moved by Councillor Larry Sisson that Council comes out of Camera at 2:35 pm.

Resolution 546-2013 – Moved by Councillor Dan Buryn that Council approves Schedule "A" dated November 19, 2013 and remain private pursuant to Sections 16, 17, 19, and 24 of the Freedom of Information and Protection of Privacy Act. (3 in favour, 0 opposed)

Reeve Wayne Croswell, Councillor Larry Sisson, and Councillor Dan Buryn left the meeting at 2:36 pm.

Reeve Wayne Croswell, Councillor Larry Sisson, Councillor Dan Buryn, Councillor Kevin Grumetza, and Councillor Shelly Hanasyk rejoined the meeting at 2:48 p.m.

Angela Bilski, Recording Secretary, rejoined the meeting at 2:50 p.m.

These minutes, and supporting interviews, provide the following observations.

- When Reeve Croswell, Councillor Sisson and Councillor Buryn left the meeting at 2:36 pm, they met with Mr. Squire and notified him of the decision of Council to terminate his employment with cause in accordance with Schedule A.
- A review of minutes shows that Council had made no previous efforts to discuss the performance or employment of the CAO. It is apparent that the decision to proceed with the dismissal occurred in a single meeting. Mr. Squire was not provided with reasons for his dismissal, nor was he provided with an opportunity to respond. It is noteworthy that a

Commission. The role of manager of the Commission was generally held by the County's CAO, but was delegated following the hiring of Ms. Kolewaski.

Ms. Pierce was terminated by a motion of Council on August 6th, 2014.

Resolution 538-2014 – Moved by Reeve Wayne Crosswell that Administration proceeds with elimination of the director position discussed, in accordance with legal advice

It is the position of Council and the CAO this this position was eliminated due to a proposed restructuring wherein the position would be replaced by a new Director of Infrastructure position. A review of this process reveals the following:

- The resolution of Council was unnecessary for an organizational restructuring. As the elimination of the position did not require a budget amendment, Council had no reason for involvement. The CAO has absolute authority over her administration including staffing and organizational design, subject to approval of budget.
- The proposed restructuring did not occur. Almost a year following Ms. Pierce's termination, the individual who reported to the Director of Utilities is filling the role of Utilities Department Manager reporting directly to the CAO. Unless the restructuring was imminent, there was no reason to proceed with a termination.
- There appears to have been a pre-existing conflict between Ms. Pierce and Ms. Kolewaski along with some members of Council. This is the result of perceived mismanagement by the County of certain matters associated with Ms. Pierce, including the waste management facility opposed by CCTC.
- Past performance reviews of Ms. Pierce identify no issues which could be seen as grounds for dismissal.
- As discussed elsewhere in this report, the impact of the termination of Ms. Pierce on 28/63 was never appropriately considered or managed. The animosity between Ms. Pierce and Ms. Kolewaski continues now that Ms. Pierce is employed by the Commission.

Both the Director of Corporate Services and the Personnel Manager report that they have not been engaged in any termination processes undertaken by Ms. Kolewaski, and only were informed after the fact. Human resources and finance should be engaged to ensure **process fairness** and to address changes to payroll functions and employment records.

Disciplinary Process

It is an expectation that municipalities will demonstrate human resources practices that reflect procedural fairness and that adhere to principles of natural justice. With respect to employee discipline, this requires:

- Demonstration of an unbiased process;
- Ensuring full information before action is taken;
- Allowing employees to make representation on their own behalf to address accusations; and
- A process of proportionate and progressive discipline.

In July, 2014, a complaint was made to the CAO about an employee in Public Works having an inspection petition on the worksite. The CAO responded to this accusation by:

- Directing the Director of Public Works to relieve the employee of his duties prior to any investigatory process. The employee was asked for his keys and escorted off County property.
- The employee was initially notified that they were suspended without pay. This was subsequently changed in a letter from the CAO to suspended with pay.
- A week later, the employee was told to return to work without being provided with any documentation regarding the results of the investigation.

In this matter, the Director of Public Works and the Director of Corporate Services conducted an investigation, and found no substantiation for the accusation. Some basic questions remain:

- Why was possession of a petition before and after work, or in the lunch room, an offense significant enough to initiate an investigation? It is unclear what policy or employment standard this violates.
- For what reason was the employee suspended? The matter clearly had no health, safety, legal, or job performance implications.
- Why wasn't the employee provided with a clear process and, at the conclusion, a clear document outlining the result of the investigation?

The overall process in this matter was entirely inappropriate.

It is recommended that:

37. The County adopt a human resources policy to guide employee dismissals.
38. The County adopt a human resources policy to guide the process of employee discipline that reflect principles of **procedural fairness**.

Financial Matters

Section 208 of the MGA assigns responsibility for the financial affairs of the municipality to the CAO. Maintaining financial records, ensuring revenues are collected, managing deposits, paying for expenditures, budgeting and tracking performance against budgets, applying for and managing grants, and investing municipal reserves are all responsibilities of the CAO. Council has a responsibility to ensure accurate reporting to Council on the financial affairs of the municipality occurs, to review and approve budgets and tax rates, and to ensure an effective audit process occurs.

In order to develop a better understanding of the financial position of Thorhild County and the financial processes used by administration, our firm obtained copies of the financial records of the County. Using these financial records our consultants:

- Reviewed current year financial statements;
- Reviewed audited annual financial reports; and
- Reviewed available policies and procedures relating to financial transactions.

Our review did not identify any issues with the financial records and policies of the County. The County's budget is set and reported to Council on a regular basis. The report to Council is detailed, includes a report on revenue/expenses and balance sheet and includes variances between the current year budget and actual revenues and expenditures in each report for the County. The County has a well-established finance group within Corporate Service with extensive knowledge of public sector accounting and supporting accounting designations.

As part of the inspection we reviewed recently audited financial statements. The County engages in a reasonable and independent audit process. The auditor indicated there were no major issues with the financial system and that that County's financial records are an accurate representation of the County's financial position. The Auditor identified no deficiencies in the County's accounting practices.



ALBERTA
MUNICIPAL AFFAIRS

*Office of the Minister
MLA, Lesser Slave Lake*

AR86949

Reeve Don Savage
info@westlockcounty.com

Dear Reeve Savage and Council,

I received a copy of an email sent to you with misleading and inflammatory statements from Mr. Dan Buryn regarding preliminary reviews and the municipal inspection process. In light of Westlock County council's recent request for an inspection, I wish to respond to the email.

I continue to be disappointed that Mr. Buryn devotes his efforts to attempts to defame Alberta Municipal Affairs processes and staff, instead of working productively to address the governance challenges that persist in Thorhild County. **These actions, such as the email you received, serve to validate the need for provincial action to ensure sound governance is restored in Thorhild County.**

I wish to assure you that the Thorhild County preliminary review process was conducted with integrity and professionalism, and that the Westlock County preliminary review process will be conducted with that same integrity and professionalism.

The preliminary review process is carried out by qualified and experienced staff from my ministry. It involves a collection of background information about the concerns and issues that led to council's request and includes interviews with council and key administrative staff. The review is intended to provide context for my decision in responding to your request for an inspection. It is not intended to be a verification process, and cannot result in the issuance of directives.

Each municipality, and each inspection request, is unique. In a number of municipalities, the preliminary review did not identify issues significant enough to warrant an inspection. In these cases, my ministry provided other assistance to effectively address the municipalities' issues and concerns.

.../2

In the case of Thorhild County, the preliminary review did identify potential concerns; therefore, an independent, third-party inspector was appointed. The inspector found significant evidence of major concerns that resulted in a Ministerial Order containing various directives. Thorhild County council and the chief administrative officer have been required to implement these directives.

As I move towards a decision on your request for an inspection, my staff will continue to work with your council and administration to complete the preliminary review in a timely, objective, and professional manner. The preliminary review is a voluntary process, and your council members and administration have the choice to participate or not. However, I would encourage your full cooperation and participation in order to assist me in making an informed decision on your request. Once I have reviewed the background you provide, I will advise you of my decision.

If the email you received from Mr. Buryn has raised any questions or concerns about this process, please do not hesitate to contact my office, or you may contact Coral Murphy, Manager of Municipal Advisory, by calling toll free by first dialing 310-0000 then 780-422-8452.

Sincerely,



Hon. Danielle Larivee
Minister of Municipal Affairs

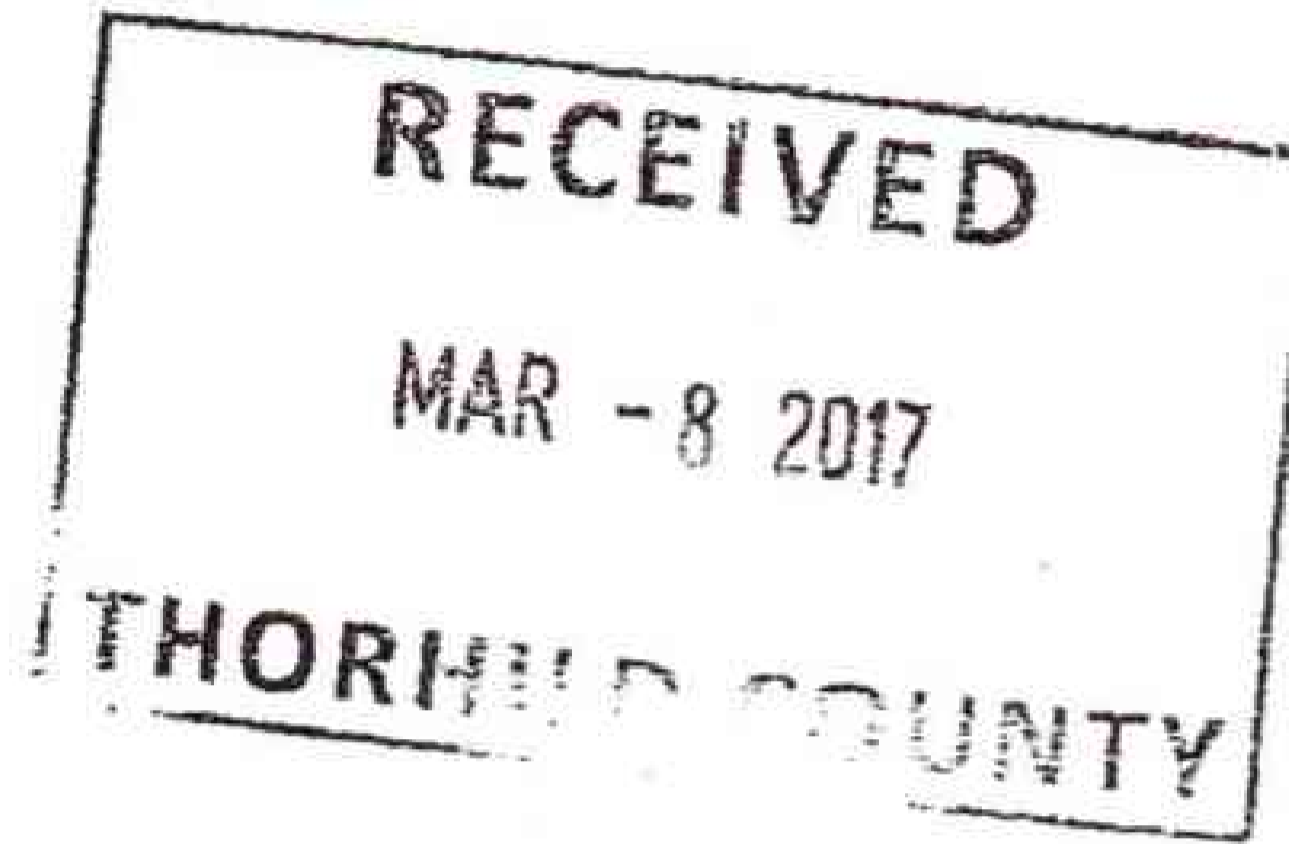
cc: Reeve Dan Buryn



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MAR 06 2017

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Thorhild County Council
Box 10
Thorhild AB T0A 3J0

Dear Thorhild County Council:

Thank you for your letter of February 15, 2017, to the Honourable Shaye Anderson, Minister of Municipal Affairs, from Wayne Franklin, Chief Administrative Officer (CAO), with the monthly report as required in Directive 14 of Ministerial Order No. MSL:119/15.

I appreciate your responding to the matter raised in my January 12, 2017, letter regarding the process by which the November 9, 2016, special council meeting was called. Please provide a copy of the corrective changes to Procedural Bylaw 1225-2016 in your report for March or April 2017.

Directive 12 of Ministerial Order No. MSL:119/15 was due on November 16, 2016. Although the policy was approved by council on January 10, 2017, I noted deficiencies with the policy in my letter of February 10, 2017. Your continued failure to satisfactorily comply with this directive within the ordered due date has been noted.

*** I also note that Councillor Buryn voted against Resolution 078-2017, which adopts the Communication and Working Relationship Plan for Council and the CAO as required by Directive 11 of Ministerial Order No. MSL:119/15. By voting against the resolution, Councillor Buryn has made a conscious decision to not comply with the directive.

As noted in several letters you have received, if directives are not completed to the satisfaction of the Minister, the Minister may issue further directives, dismiss council or any member of council, or dismiss the CAO. Recognizing that a judicial review of the municipal inspection is before the court, the Minister's response to these matters of non-compliance will be deferred.

Sincerely,

Brad Pickering
Deputy Minister

cc: Wayne Franklin, Chief Administrative Officer