

**Item No. 2**  
**Halifax Regional Council**  
**April 5, 2011**

**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:** Original Signed by Director  
\_\_\_\_\_  
M.E. Donovan, Q.C., Director, Legal Services & Risk Management

**DATE:** March 24, 2011

**SUBJECT:** Elected Officials  
\_\_\_\_\_

**INFORMATION REPORT**

**ORIGIN**

This report originates from the March 22, 2011 request of Regional Council for an information report on elected officials.

**BACKGROUND**

The Mayor is elected at large to be the chair of the Council [s. 3(al)]. The *Charter* requires that the Mayor preside at all meetings of the Council [s. 12(1)]. The Mayor may monitor the administration and government of the Municipality, and communicate such information and recommend such measures to the Council as will improve the finances, administration and government of the Municipality [s. 12(3)].

The Mayor continues to hold office for a four year term unless he or she: (1) resigns; (2) ceases to be ordinary resident in the municipality, (3) is absent for three consecutive regular meetings of Council without the approval of the Council, or (4) is found by a court to have breached the *Municipal Conflict of Interest Act* (“MCIA”), [Charter, ss. 14(1), (3),(4), MCIA, s. 10(1)].

## DISCUSSION

There is no ability under the *Charter* for Council to compel the removal of the Mayor or a member of Council. Council does not have a power comparable to a motion of non-confidence available to members of Parliament. Rather, the *Charter* provides that where the Mayor, without leave of the Council, is absent from three consecutive regular meetings of the Council, he or she ceases to be qualified to serve as Mayor. Also, the Mayor may resign from office at any time by delivering to the Clerk a signed resignation and such a resignation may not be withdrawn once it has been delivered to the Clerk. The resignation is effective on delivery by the Clerk to the next meeting of the Council.

Cabinet may, on the recommendation of the Minister of Service Nova Scotia and Municipal Relations, declare vacant the offices of the Mayor and the Councillors of the Municipality [*MGA*, s. 458(2)]. This provision unseats all the elected members of the Council including the Mayor. This power is exercised when the Municipality fails to pay: (1) the amounts due for principal and interest on any debenture, (2) the amounts into a sinking fund it is required to pay; and (3) any of its other debts or liabilities whatsoever when due. The power may also be exercised where the municipality fails: (1) to levy the amount required to meet the expenditures required for any fiscal year; (2) to comply with any order of the Minister; or (3) has passed a resolution requesting the Governor in Council to do so [*MGA*, s. 458(1)].

The *Municipal Conflict of Interest Act* provides that where a member has any direct or indirect pecuniary interest in any matter and is present at a meeting of the council at which the matter is the subject of consideration, the member shall: (1) as soon as practicable after the commencement of the meeting disclose the interest and the general nature thereof; (2) withdraw from his place as member; (3) refrain from taking any part in the consideration or discussion of the matter and from voting on any question relating to the matter; and (4) refrain from attempting in any way, whether before, during or after the meeting, to influence the decision of the council with respect to the matter.

Where there is an alleged breach of the *Municipal Conflict of Interest Act*, the Attorney General of Nova Scotia or an elector may apply to the Supreme Court of Nova Scotia for a determination of whether a member has contravened the provisions of this *MCIA*, [s. 9(1)]. Where a justice determines that a member has contravened the *MCIA*, the justice will declare the seat of the member vacant unless the justice determines that the contravention is committed as a result of inadvertence or a *bona fide* error in judgment. In such a case, the court may allow the member to continue to hold office [s. 10(1)].

### **BUDGET IMPLICATIONS**

None.

### **FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN**

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

### **COMMUNITY ENGAGEMENT**

N/A

### **ATTACHMENT**

Appendix "A" – Legislative Provisions

---

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: M.E. Donovan, Q.C., Director, Legal Services & Risk Management, 490-4226

---

### **Appendix “A” – Legislative Provisions**

The *Halifax Regional Municipality Charter* states:

3 (al) "Mayor" means the Council member elected at large to be the chair of the Council;

9 (1) The Mayor shall be elected at large.

(2) Every person eligible to vote for a councillor is eligible to vote for the Mayor.

12 (1) The Mayor shall preside at all meetings of the Council.

(2) During the temporary absence of the Mayor, the Deputy Mayor shall preside and, where neither is present, the Council may appoint a person to preside from among the Council members present.

(3) The Mayor may

(a) monitor the administration and government of the Municipality; and

(b) communicate such information and recommend such measures to the Council as will improve the finances, administration and government of the Municipality.

14 (1) The Mayor or a councillor may resign from office at any time by delivering to the Clerk a signed resignation and such a resignation is effective on delivery by the Clerk to the next meeting of the Council.

(2) A resignation may not be withdrawn once it has been delivered to the Clerk.

(3) The Mayor or a councillor who ceases to be ordinarily resident in the Municipality ceases to be qualified to serve as Mayor or as councillor.

(4) The Mayor or a councillor who, without leave of the Council, is absent from three consecutive regular meetings of the Council, ceases to be qualified to serve as Mayor or as a councillor.

(5) When a seat on the Council becomes vacant, the Clerk shall report the facts to the Council.

(6) Notwithstanding subsection (3), where the Mayor or a councillor has the approval of the Council, the Mayor or councillor may be ordinarily resident outside the Municipality but within the Province for one period of not more than six months in a term.

16 (3) Where the Mayor determines that there is an emergency, the Council may meet without notice or with such notice as is possible in the circumstances.

(4) The Clerk shall call a meeting of the Council when required to do so by the Mayor or upon presentation of a written request signed by a majority of the councillors.

The *Municipal Government Act* states:

458 (1) Where a municipality

- (a) fails, or in the opinion of the Governor in Council, is about to or may fail, to pay the amount due for principal and interest on any debenture;
- (b) fails to pay into a sinking fund any amount it is required to pay;
- (c) fails to pay any of its other debts or liabilities whatsoever when due;
- (d) fails, in the opinion of the Governor in Council, to levy the amount required to meet the expenditures required for any fiscal year;
- (e) fails, in the opinion of the Governor in Council, to comply with any order of the Minister; or
- (f) has passed a resolution requesting the Governor in Council to do so,

the Governor in Council may, on the recommendation of the Minister, if deemed expedient to do so, declare vacant the offices of mayor or warden and councillors of the municipality.

(2) Where the Governor in Council has declared vacant the office of mayor or warden and councillors, the Governor in Council shall appoint a mayor or warden and councillors to hold office during pleasure, to be the council of the municipality until the first meeting of a new council elected pursuant to an order of the Governor in Council.

(3) Any vacancy occurring in a council appointed by the Governor in Council shall be filled by the Governor in Council.

(4) A member of a council appointed by the Governor in Council is not required to have the qualifications of a councillor prescribed by the Municipal Elections Act.

(5) Where the Governor in Council appoints a council, the tenure of every municipal employee is during the pleasure of the appointed council.

The *Municipal Conflict of Interest Act* states:

6 (1) Where a member, either on the members own behalf or while acting for, by, with or through another, has any direct or indirect pecuniary interest in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member shall

(a) as soon as practicable after the commencement of the meeting disclose the interest and the general nature thereof;

(b) withdraw from his place as member and

(i) in the case of a closed meeting, leave the room in which the meeting is held for the duration of the consideration of the matter, and

(ii) in the case of a meeting that is open to the public, either leave the room in which the meeting is held or remain in that part of the room set aside for the general public for the duration of the consideration of the matter;

(c) refrain from taking any part in the consideration or discussion of the matter and from voting on any question relating to the matter; and

(d) refrain from attempting in any way, whether before, during or after the meeting, to influence the decision of the council or local board with respect to the matter.

9 (1) The Attorney General or an elector may apply to a judge of the Trial Division of the Supreme Court or a county court for a determination of whether a member has contravened the provisions of this Act.

(2) An application shall be made by originating notice (application *inter partes*) pursuant to the rules of the court.

(3) The application shall state the grounds on which it is believed that a contravention of this Act may have occurred.

(4) An application shall be made within sixty days after the fact comes to the attention of the applicant that the member may have contravened this Act.

(5) No application may be made pursuant to this Section more than ten years after the date of the alleged contravention of this Act.

10 (1) Where the judge determines that a member has contravened this Act, the judge shall declare the seat of the member vacant and direct that the vacancy be filled in the manner prescribed by law, but if the judge determines that the contravention was committed as a result of inadvertence or a *bona fide* error in judgment the judge may relieve against such forfeiture of office.