One Year In

Presentation to Council of the
Town of the Blue Mountains

Fred Dean
September 2019
Introducing Fred Dean

- Municipal Lawyer & Coach
- Former Sudbury City Solicitor
- Acts exclusively for municipalities and municipal associations
- Chair ROMA Question Box Panel
- Chair OGRA Last Word Panel
- OGRA 2019 Eleanor Robinson Volunteer of the Year

- AMO
  - Facilitator & Trainer
  - Named to Honour Roll in 2007
- Amberley Gavel
  - Closed Meeting Investigations
  - Integrity Commissioner
  - Staff Training

Serving Local Government
The times they are a changing’
Bob Dylan
This Term is Challenging

- There is a lot to learn
- Recent legislative changes are substantial
- Impact your personal and public roles
- And there will be surprises
THE AGENDA ...

- Powers
- Roles, Responsibilities & Relationships
- Accountability & Transparency
- Council Policies
- Meetings
- Procedure By-law
- Safe Drinking Water Act - WCWC
- Dialogue
Municipal Powers

- Powers come from the Province
  - Acts and Regulations
- No inherent jurisdiction
- Size does not matter
  - Types of Municipalities
Basic Principles

- Municipal Powers
  - Complex, technical, multi-faceted
  - Section 5 Municipal Act
    - Shall be exercised by Council
    - Exercised by By-law
How Powers are Exercised

Powers are exercised at a duly constituted meeting

- Open to the public
- Notice to the public
- Quorum
- Majority vote
- All members vote
What have you been elected to do?

- Job description?
- Duties/responsibilities that come with your office?
- Scope of your duties?
- Limitations?
Statutory Roles & Responsibilities

- Municipal Act, 2001
- Updated in 2007
  - Council
  - Head of Council
  - CAO
  - Municipal Staff
Roles & Responsibilities

- Members of Council
- Staff
- Public
- Media
Council

It is the role of Council to...

- represent the public and to consider the well-being and interests of the municipality
- develop and evaluate the policies and programs of the municipality
- determine which services the municipality provides
Council

It is the role of Council to...

- ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council
Council

It is the role of Council to...

- ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality
It is the role of Council to...

- maintain the financial integrity of the municipality
- carry out the duties of council under this or any other Act
In Summary... Council

- Exercises corporate powers
- Acts collectively, publicly & with advanced notice
- No management functions by Council, Members or the Head of Council
- Council sets the Course, Staff row the boat
Head of Council

- “Mayor”
- “Reeve”
- “Warden”
- “Chair”
- “Lord Mayor”
Role of the Head of Council to:

- preside over council meetings so that its business can be carried out efficiently and effectively
- provide leadership to the council
- represent the municipality at official functions:

Serving Local Government
Role of the Head of Council to...

➢ provide information / recommendations to council with respect to the role of council
  ➢ respecting the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality
  ➢ respecting the administrative & controllership policies, practices and procedures in place to implement the decisions of council
It is the role of the Head of Council to...

- act as chief executive officer of the municipality (CEO)
- carry out the duties of the head of council under this or any other Act
As CEO
the Head of Council shall...

✓ uphold and promote the purposes of the municipality
✓ promote public involvement in the municipality’s activities
As CEO
the Head of Council shall...

✓ act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally, and
As CEO
the Head of Council shall...

☑ participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents
Head of Council

- Leadership to council
- Advisor to council on key matters
- Effective chair
- Influence
- No management powers
- Municipal “Champion” as CEO
- Deputy
Chief Administrative Officer

- Council may appoint a CAO who reports to Council and shall be responsible for:
  - exercising general control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality
  - performing such other duties as are assigned by the municipality

- Council has “one employee”
Municipal Staff

It is the responsibility of Administration to:
➢ undertake research & provide advice to council
➢ implement council’s decisions
➢ establish administrative practices & procedures to carry out council’s decisions
Statutory Officers

- Appointed by council by-law
- Have duties under a provincial statute or regulation
- Council or other staff cannot interfere with the exercise of those powers
- Examples –
  - Clerk / CBO / Treasurer
Councillor

- Public Official
- Limited individual powers
- No management powers
- Member of Council that
  - Sets Policy
  - Makes decisions
- In effect, sets the "course" for the ship of state
The Public

- Provide input to members
- Observe meetings of council
- Appear as delegation
The Media

- What makes news?
- What is Media’s role?
  - Report what observed
  - Sell papers
- Councillors do not speak on behalf of council
- The Head of Council does
- Be prepared before being interviewed
- Members require media training
Roles Summary

Issue identification (All)

Analysis and Recommendations (Staff)

Decision (Council)

Implementation and Measurement (Staff)

Evaluation (Council)
Council should steer the boat rather than row it

- Council should decide what services and programs the municipality will offer and leave to staff the “how to”
- Osborne and Gaebler (*Reinventing Government*)
Things to Consider...

- Council Exercises Power
- Micromanaging
- Unique role of Head of Council
- Being on a local board or upper tier
  - Other legislation, regulations
  - Other accountability
  - Fiduciary responsibility
Accountable and Transparent Government

- Policies
- Duly constituted meetings
- MFIPPA
- Code of Conduct
- Integrity officers
- Open meetings
Council Policies
Section 270 MA

- Council Policies that shall be adopted & maintained -
  - Notice
  - Accountability & Transparency
  - Delegation

- Sale & Disposition of Land
- Hiring of Employees
- Procurement
- Pregnancy & Parental Leave
- Relationship between Members & Employees
Council Members/Employee and Officer Relations Policy

- Council is the Employer
- Statutory duties of officers
- CAO has general management duties
- Respect for chain of command
- Comments and questions at Council

- OHSA Policies on Workplace Violence and Harassment and training
- Personal relationship disclosure
- Information/action requests and sharing of responses
- And more.....
Meeting Defined

“meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where

a) A quorum is present, and

b) Members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.
Electronic Participation

- New provision
- Procedure by-law may provide for a member to participate electronically
- Must be an open meeting
- Member not counted in quorum
- Recorded votes
- There are some concerns
Procedure By-law

- Along with the annual budget it is the most important document in your municipality!
- Governance model
- Rules of procedure for all meetings
- Look to the Clerk for advice
Procedure By-law

- Defines relationships
  - with public
    - eg rules for delegations
  - With staff
  - With each other
- Review it every term
Agendas

- Prior to the meeting, Staff
  - Set the time for meeting
  - Prepare the reports
  - Draft Motions
  - Create the agenda

- Review agenda with the Chair
  - Agenda format set out in Procedure By-law
  - Adding items to an Agenda
  - The importance of Notice to the Public
Chairing a Meeting

- Chairs meeting
- Preparation is key
- Review agenda with staff
- Maintain order
- Keep meeting focused

- Knowledge of Procedure By-law
- Rule on Procedural matters
- Maintain order
- Deputy chair acts when Chair is away or otherwise not available
Minutes

- Required for all meetings of council, local boards and committees, open or closed
- Duty of Clerk, recording secretary
  - “without note or comment”
- Minutes are a record of corporate acts, not a story.
Predictable and Transparent Meetings

- Predictable meetings?
- Transparent meetings?
- No additions to published agenda
- How can you be surprised?
- A matter of trust
Municipal Governance

- How does Council make decisions?
- Staff
- Committees
  - Types
  - Purposes
- Local Boards
- Meetings and more meetings...
- Procedure By-law
Committee Structure

- Purpose of Council Committees
- Committees
  - Committee of the Whole
  - 13 Advisory Committees
- Decision making process
- How many steps before Council makes a decision?
Meetings – Open or Closed?

- Key element of Accountable and Transparent Government
- Members and staff must know legislated rules for holding closed meetings
- Closed meetings
  - Limited ability to hold closed meetings
  - Subject to review by an Investigator
Basic *Principles*...

- All meetings of council, local boards and committees *shall* be open to the public!
- Meetings may only be closed in circumstances set forth in section 239, Municipal Act
- Rules apply to council, committees and some local boards
Closed Meetings

- Possible subjects
- Required procedures
- Governing legislation
- Errors to avoid
- FAQs – coffee shop, road tour, electronic...
Subject Matters at Closed Meetings

Section 239

- Security of property
- Personal matter about an identifiable individual
- Acquisition or disposition of real property
- Labour relations or employee negotiations
Subject Matters at Closed Meetings
Section 239

- Litigation or potential litigation
- Advice that is subject to solicitor-client privilege
- Under another Act
  - Emergency Management Act
  - MFIPPA
Subject Matters at Closed Meetings

Subsection 239 (3.1)...

Meeting may be closed if –

- for the purpose of educating or training the members AND
- no member discusses or deals with a matter in a way that materially advances the business or decision-making
Subject Matters at Closed Meetings
Section 239 (New)

- information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
- a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization
Subject Matters at Closed Meetings
Section 239 (New)

- a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
- a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.
Public Resolution Required

- Required before closed meeting can occur
- Must be passed at an open meeting
- The Resolution must
  - Acknowledge fact of closed meeting
  - Indicate the general nature of the matter to be considered
- No additional items!!
Votes at Closed Meetings

- Votes are only permitted for the following -
  - Procedural Matters
  - Direction
  - Adjournment

- Why are written Resolutions important?
Closed Meeting Investigations

- Any person may request an investigation whether municipality, local board or committee has complied with s. 239 or the procedure by-law in respect of a closed meeting
- Independent investigation
- Amberley Gavel Ltd.
Personal Responsibilities

✓ Municipal Conflict of Interest
✓ Water – WCWC training
✓ Occupational Health and Safety
✓ Criminal Code
✓ MFIPPA
✓ Council Members Code of Conduct
✓ Integrity Commissioner
Bill 68 Changes

• Includes mandatory Code of Conduct for Council members & Local Boards
• Integrity Commissioner responsibilities are expanded
• Questions should be directed to your IC
Workplace Incivility

- A relatively new term
- Not harassment
- May have emerged slowly in a workplace
- But where it has the impact is serious
- So, what is it?
Definition

- **Workplace incivility** has been defined as low-intensity deviant behavior with ambiguous intent to harm the target. Uncivil behaviors are characteristically rude and discourteous displaying a lack of regard for others.
Subtle/Covert Examples

• asking for input and then ignoring it
• "forgetting" to share credit for a collaborative work
• giving somebody a "dirty look"
• interrupting others
• not listening
• side conversations during a formal business meeting/presentation
• speaking with a condescending tone
Overt Examples

- disrupting meetings
- emotional put-downs
- giving dirty looks or eye rolling
- giving public reprimands
- giving the silent treatment
- Insulting others
- making accusations about professional competence
- not giving credit where credit is due
- overruling decisions without giving a reason
- sending a nasty and demeaning note
- talking about someone behind his or her back
- Repeating gossip
- Undermining credibility in front of others
Workplace Incivility

• Does not extend to the level of violence or harassment
• But it is corrosive and leads to workplace distress, lower productivity and higher turnover, all costly and undesirable
• Left unchecked it can easily lead to harassment
In the general workplace

• It is the duty of managers to be aware of it and to deal with it before it becomes harassment.
Incivility in Council Meetings

• It is rare in some Councils, but rampant in others.
• It is **never** positive, and has a very negative impact on staff and on the public image of the Council.
How to Deal with Incivility

• “Decorum” is in almost all procedure by-laws for a reason
• Role of the Chair
• Role of other Councillors
• It is not acceptable to say “everyone knows what Tom/Joe/Mary is like”
• If unchecked it becomes the norm for the individual and the body
Possible Impacts of Bill 68 Changes

- Greater scrutiny by public
- Greater ease of complaints
- Costs for all code violations will be borne by municipality
- Court costs will be borne by public where IC begins court process
Safe Drinking Water Act, 2002

✓ Section 19
✓ Personal liability of decision makers
✓ Congratulations on WCWC training
Stewardship

- **Budget**
  - Current
  - Capital
  - Timing

- **Asset Management**
  - Will drive senior government funding and hence municipal capital budgets
Training

- Multi-faceted, highly regulated public organization
- Training plan for
  - Members
  - Staff
  - Committee and local board members
- Hold training in public when possible
Council Training

- Meetings
- Policies
- Harassment
- Water & other personal responsibilities
- Finance & Budgeting
Making a Difference

Key Attributes of Successful Municipalities?
Making a Difference

✓ Know each other’s roles
✓ Know and follow the Procedure By-law
✓ Well constructed agendas
✓ Comprehensive staff reports
✓ Come to meetings prepared
✓ No surprises at meetings
Making a Difference

✓ Commit to accountability / transparency
✓ Create a culture of ongoing training
✓ Respect and decorum
✓ Have a well defined relationship with the public
✓ Public will be watching more closely
✓ Inappropriate behavior will cost the municipality and you personally
Summing up

- Municipal government is complex and regulated
- Municipal Powers rest with Council
- Understand the role you are elected to fulfill
- Do your homework!
- Understand your personal obligations
- Have fun and don’t forget your role is to “set the course”!

The content of this presentation is intended to provide a general guide to the subject matter and is not legal advice. Specialist advice should be sought about your specific circumstances.
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Bob Dylan
Congratulations!