

For Information

DATE: August 5, 2010

REPORT TITLE: **MUNICIPAL ACT, 2001 - RESTRICTED ACTS AFTER NOMINATION DAY ("LAME DUCK" PROVISIONS)**

FROM: Patrick O'Connor, Regional Solicitor

**OBJECTIVE**

The purpose of this report is to remind Regional Council members of possible restrictions on Council's authority that may apply during the 2010 Municipal Election period.

**REPORT HIGHLIGHTS**

- Under the *Municipal Act, 2001* s.275, restrictions upon the authority of Council may arise by operation of law as early as Nomination Day, September 10, 2010.
- The restrictions, if arising, would be upon Council's authority regarding:
  - Appointment/hiring or removal/firing of officers/employees
  - Property dispositions, expenditures and incurring of liabilities exceeding \$50,000
- A determination with respect to restrictions that may apply will be made at the close of nominations on Nomination Day, Friday September 10 2010
- There is an unlikely but theoretically possible onset of "lame duck" restrictions as late as September 16, 2010 which would call for a determination on that date
- A final such determination will take place when the election results are finalized after the October 25, 2010 Municipal Elections
- The determination is based upon whether in light of i) the identity of the candidates nominated or acclaimed prior to the election; and ii) the identity of the candidates elected and acclaimed following the election, it can be determined with certainty that the new Council will include less than 75% of the membership of the outgoing Council.

**DISCUSSION****1. Background**

The actions of the current Council can be restricted by operation of law after Nomination Day September 10, 2010 through to the end of Council's term upon the organization of the newly elected Council at the 2010 Council inaugural meeting.

The theory behind the provisions is that if the new Council will be substantially the same as the outgoing Council, there is no reason to limit the outgoing Council's permitted activities prior to the installation of the new Council. Conversely, where a new council will have a

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significantly different composition than the outgoing Council, there should be limits on decisions that are inherited by the new Council.

**2. Findings**

Section 275 of the *Municipal Act, 2001* takes effect when it can be determined that the new Council will include less than 75% of the members of the outgoing Council. This section is designed to apply only when a clear determination can be made taking into consideration the number of acclamations; those Council members not running for re-election; nominations certified; and vacant seat(s).

The first opportunity for determination to be made is after Nomination Day September 10, 2010. Nomination Day normally represents the deadline for both nominations and withdrawals. A final determination may be made once the election results are declared after the October 25, 2010 election.

There is a theoretically possible but most unlikely scenario under which the first determination would be deferred until September 16, 2010. This would arise only in certain circumstances where for one or more seats no certifiable nominations are in hand on Nomination Day. If this were the case for a sufficient number of seats to make a difference in the determination, the resulting extension of the deadline for such nominations to the following Wednesday September 15, 2010 and the possible certification of such nominations under an extended deadline as late as the following Wednesday September 16, 2010 could affect the determination.

If it is determined that the current Council is subject to s.275, Council shall not take any of the following actions:

- a) the appointment or removal from office of any officer of the municipality;
- b) the hiring or dismissal of any employee of the municipality;
- c) the disposition of any real or personal property of the municipality which had a value exceeding \$50,000 when it was acquired by the municipality\*; and
- d) the making of any expenditures or the incurring of any other liability which exceeds \$50,000\*.

\*Restriction not applicable if the disposition or liability was included in the most recent budget adopted by the Council before Nomination Day.

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**CONCLUSION**

At the time of writing this report no clear determination can be made under s.275 as to whether fewer than 75% of current Council members will be serving on the newly elected Council. The Regional Clerk will assess the situation after Nomination Day September 10, 2010. If a clear determination cannot be made at that time that fewer than 75% of the current Council members will be returning in the new term s.275 will not apply to limit Council's authority. In the unlikely event of a necessity to do so, a determination would be made at the time of the last possible date for the certification of a nomination on September 16, 2010. A final assessment regarding the application of s.275 will be made if necessary when the election results are finalized after the October 25, 2010 election.



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**Approved for Submission:**



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D. Szwarc, Chief Administrative Officer

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c. Legislative Services

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