

MUNICIPAL LAW UPDATE

Tony Fleming

Topics

- Municipal Act Reform
 - Municipal Act
 - Municipal Conflict of Interest Act
 - Municipal Elections Act
- OMB Reform
 - What can be appealed?
 - Appeal process
 - How it changes everything



Municipal Act

- Codes of Conduct
 - Will now be mandatory as of March 1, 2019
 - Content will be prescribed by regulation
 - Take this opportunity to review and update your code of conduct
 - More and more harassment and bullying complaints
 - Make sure the investigation process is clear and useful and does not mandate external investigators for every complaint – phased process or discretion as to when external is needed may be appropriate
 - Is dispute resolution appropriate?



Municipal Act, 2001

- Integrity Commissioners
 - All municipalities will need to provide access to an integrity commissioner by appointing their own, keeping one on retainer, or working with another municipality through a shared services agreement – in force March 1, 2019
 - Role will be changed and expanded in a number of ways
 - Expanding authority to include investigations under the Municipal Conflict of Interest Act
 - Power to provide advice to councils about their codes of conduct and Municipal Conflict of Interest Act obligations
 - Explicit power to refer investigations to the courts
 - Explicit power to initiate investigations into Municipal Conflict of Interest Act or code of conduct violations
 - Broader responsibility for public education
 - Municipalities required to indemnify integrity commissioner

Municipal Act, 2001

- Integrity Commissioners
 - New section 239.2(12) requires a municipality or a local board to pass a resolution stating how it intends to address a report from a person reporting his or her opinion that a meeting or part of a meeting that was the subject of an investigation by that person appears to have been improperly closed to the public



Municipal Act

- Closed, Open, and Electronic Meetings
 - Clearer definition of “meeting”
 - Expanded number of discretionary exemptions where councils can meet in closed session
 - Councillors can now participate in public meetings electronically, as long as there is an in-person quorum of councillors
 - Councillors will not be able to participate electronically in meetings that are closed to the public

Municipal Act, 2001

- Fiscal Sustainability
 - Changes to allow tax sales to start faster (the time period would be shortened to two years), and be easier to complete – in force May 30, 2017
 - Escheated property
 - No more payments out of court for excess



Municipal Act, 2001

- Administrative Monetary Penalties
 - Municipalities given authority to use AMPs for a breach of any by-law passed under the Municipal Act - no longer simply parking – in force May 30, 2017
 - Fee cannot be “punitive”
 - But it can be large enough to “promote compliance”
- Cannot charge with an offence and impose an AMP
- Constitutes a debt – may be added to the Tax Roll and collected in the same manner as taxes – not a priority lien



Municipal Elections Act, 2006

- Section 6(1) amended to change the beginning of terms of all offices from December 1st to November 15th in the year of the regular election
- Change of individual contribution limit from \$750 to \$1200
- Nomination day changes to the fourth Friday in July – effective May 30, 2017
- Under provisions of section 33 that are not in force, the nomination must be endorsed by at least 25 persons. Amendments are made to provide that the requirement, once in force, would not apply in a municipality if the number of electors is less than the number prescribed by regulation. In force April 1, 2018



Municipal Conflict of Interest

- Expansion of Penalties
 - Changes permit an elector or a **person demonstrably acting in the public interest** to make an application to a judge (includes integrity commissioner)
 - Range of penalties expanded, and requirement to declare seat vacant removed
- Conflict of Interest Registration
 - Individual required to file a written statement after they disclose a pecuniary interest.
 - Municipalities required to create a registry that tracks all registered conflict of interest
 - Registry keeps copy of written statements as well as the declarations recorded under section 6 of the Act.



OMB REFORM

- Empowering local government
- OR empowering NIMBY's
- Amendments:
 - Create 2-tier appeal system
 - Restrict grounds of appeal
 - limit the length of hearings and the evidence at a hearing
 - give more weight to decisions of Councils



What can be Appealed?

- First instance appeals
 - Does the decision conform with the OP and is it consistent with PPS/Provincial Plans
 - If not, the decision goes back to the Approval Authority
- After the Approval Authority decides (again) that decision can be appealed
 - Grounds of appeal are the same
 - No open house/shortened time periods





What can be Appealed

- New OP and ZBL – 2 tier appeals
- OPA/ZBA – 2 tier appeals BUT with a twist
- Subdivision – 1-tier appeal and no limits on grounds of appeal
- Consent - 1-tier appeal and no limits on grounds of appeal
- Minor variance - 1-tier appeal and no limits on grounds of appeal
- CIP – 2 tier appeals



What can be Appealed

- OPA/ZBA – appeals with a twist:
 - the part(s) of the OP/ZBL being amended is inconsistent with PPS/conflicts with Provincial Plan/fails to conform with upper tier OP; AND
 - the amendment is consistent with PPS/does not conflict with Provincial Plan/conforms with upper tier OP
- When the municipality has received notice that a new decision is required:
 - No open house
 - Shortened time periods and no extension of time
 - The basis for the decision is the same grounds as in the initial appeal



What Cannot be Appealed?

- **Climate change policies**
 - mandatory in OP's
 - appeal by the Minister only
- **Higher order transit policies**
 - Height limits in zoning cannot be appealed
 - Amended only with consent of municipality
- **Interim control by-laws**
 - Minister's appeal only
 - Residents can appeal a time extension only
- **Section 26 OPA where the approval authority is the Minister**
- **Inclusionary zoning policy (affordable housing)**





Interim Control By-laws

- The only appeal avenue is political – attempt to get the Ministry to take an interest
- Judicial Review is the only legal challenge mechanism
- Equity Waste Management test
- The OMB test is no longer relevant
- Municipalities need to use this tool carefully
 - Law of unintended consequences
 - Human Rights and Constitutional challenges
 - Once used, it can't be used again



Cunningham Swan

Appeals

Process

- For OP/ZBL/OPA/ZBA at first instance (not a second appeal after a re-decision is made)
 - Case management is mandatory – may discuss settlement options
 - Participant must provide written submissions to the Tribunal
 - Was the decision inconsistent with PPS
 - Did the decision fail to conform with OP/Provincial Plan
 - Submitted 30 days before case management conference
 - Copy approval authority and appellant – no right to respond provided in the LPAT Act
 - The Planning Act amendments continue to establish a test for who may appeal – the LPAT Act deals with additional parties/participants only



Appeals

- For OP and subdivision appeals for failure to make a decision
 - Case management is mandatory – may discuss settlement options
 - Participants must provide written submissions to the Tribunal as to why they should be allowed to participate
 - Time for submission provided in the Tribunal's rules (as well as service requirement) – will submissions be served on the approval authority and appellant?
 - No requirements set out for grounds that would entitle someone to participate – Planning Act continue to apply





Appeals

- Where an oral hearing is held for OP/ZBL/OPA/ZBA (at first instance) or for OP/SD (failure to make a decision)
 - Parties may make oral submissions – time limits to be provided in the regulations
 - No party can adduce evidence
 - No party can call or examine witnesses





Appeals

- Where the appeal is of a decision made by the municipality after the Tribunal referred it back (second tier appeal)
 - No limits on evidence
 - No limits on examining witnesses
 - No mandatory case conference
 - Grounds of appeal will be the same as the basis for decision in the first appeal



QUESTIONS?