



A Guide to Writing Procedural By-laws

OEMC

Thursday September 13, 2011

Quick Backgrounder

- Cumulative 35 years business experience
- 17yrs in Municipal Sector
- 13 yrs in Clerk's Department / Legislative realm
- Past AMCTO Board Member / Zone 5 Chair
- Past AMCTO Legislative Committee Member (3 terms)
 - Ad Hoc Committee Member
 - *New Municipal Act 2005 - Fees & Charges Review*
 - *Watertight – Report on Water Strategy Expert Panel / AMCTO Submission to the Province*
 - *Livestock / Honey Bee Act Compensation Program Review Work Group*

Agenda

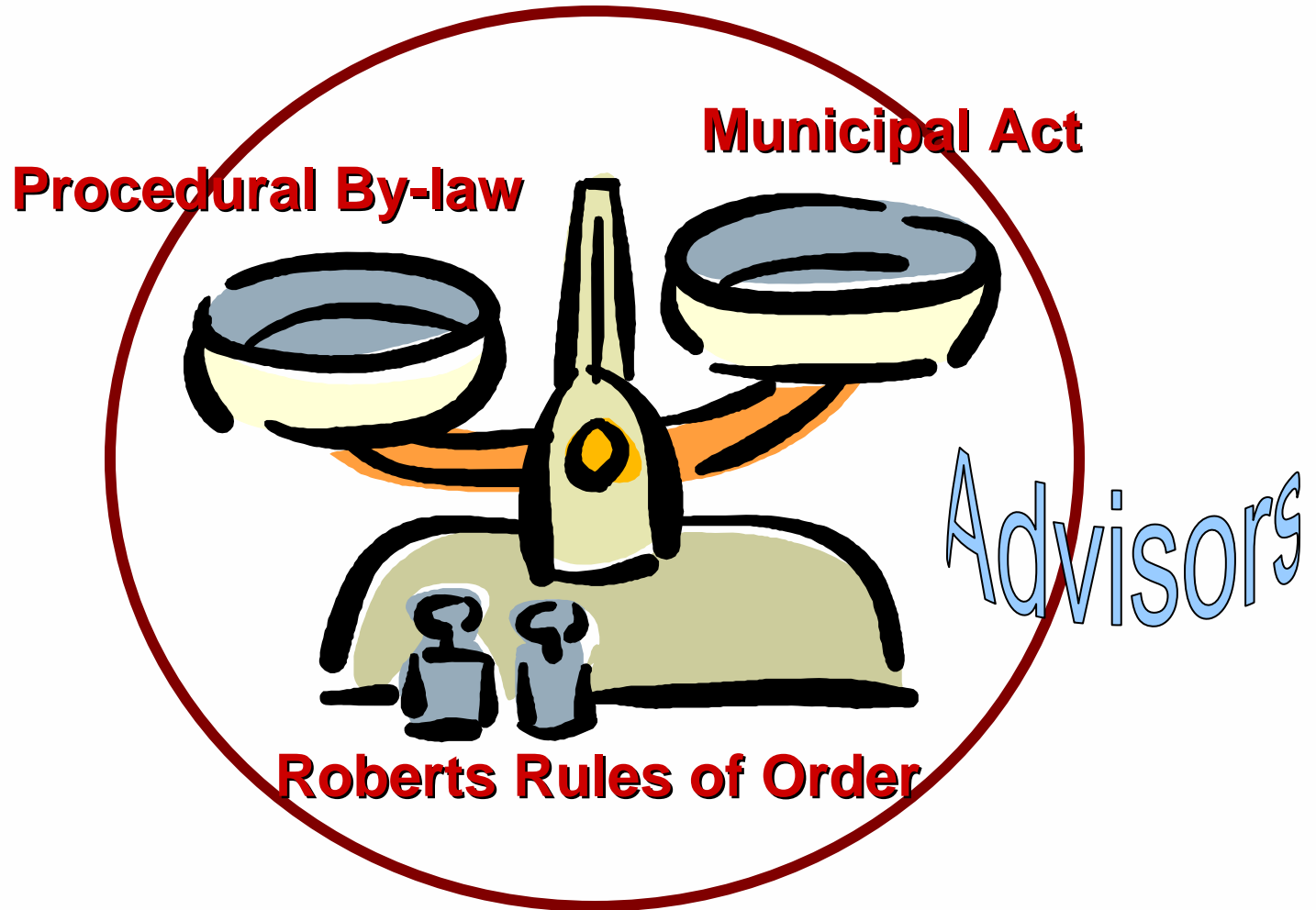
- Define the Procedural Bylaw
- Provide overview of Municipal Act requirements for Procedural bylaws
- Highlight key considerations
- Emphasize Authority / Legislation
- Recommendations
- Spur thought



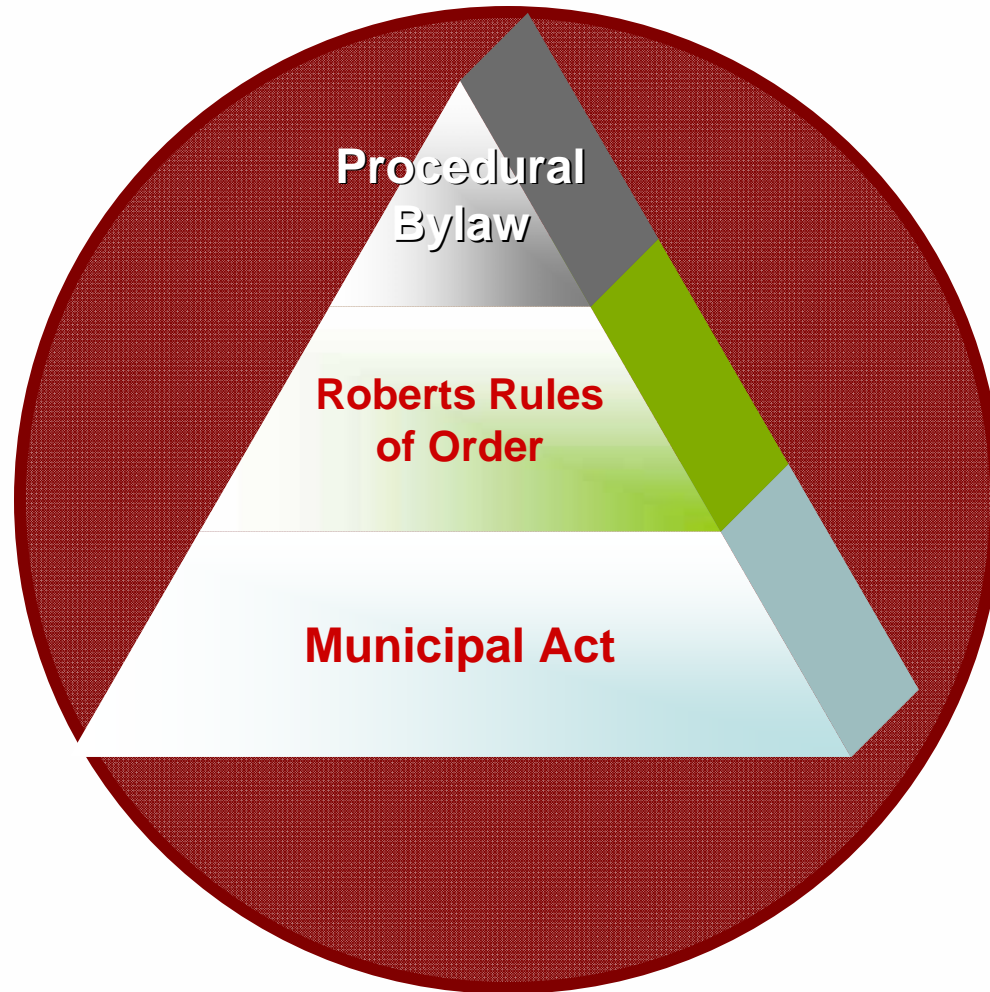
Every Clerk Uses...

- Municipal Act = right hand
- Procedural By-law = left hand
- Stands on Roberts Rules of Order
- Encircled by Expertise of colleagues / Municipal Advisors / solicitors
- These are the tools of every good Clerk and every Municipal Council

Strike Balance...



What Tool takes Precedence?



- **Procedural By-law**
= *is a Clerk's bible*

Definition

- Aspect of a legal system that deals with the technical aspects (practices and procedures) and prescribes the steps for enforcement.

What does a Procedural Bylaw Do?

- establishes rules of procedure for council meetings, including the manner by which resolutions may be passed, and the manner by which bylaws may be adopted;

Identifies protocol for the handling of Council business in a formal setting

Does Municipal Governance Structure Affect the Procedural By-law?

- Three types of municipalities based on census divisions:
 - Regions (mostly urban areas)
 - Counties (mostly rural areas)
 - Single Tiers
 - Includes “Districts”
 - » mostly Crown land
 - » ≠ Incorporated
 - » Varied size, spanning entire “regions” / “counties”, several municipalities

Legislative Bodies Defined...

- Standing Committee System
- Committee of the Whole System
- “**Select**” or “**Ad Hoc**” or “**Task Forces**”
 - special committees of Council established for a specific purpose, finite duration and mandate set by Council

In short...

- Regardless of governance model or municipal structure...

All have Procedural By-laws and the considerations are the same...

- ✓ **Fundamental rules to ensure fair and transparent processes and operations**

Municipal Act Requirements

- Part VI of the M.A. defines rules for municipalities in conducting day-to-day business of Council and municipal administration
- Defines roles:
 - Council (S. 224)
 - Head of Council (S. 225)
 - Administration (S. 227)
 - Clerk (S. 228(3))

Role of Council...

- 224. It is the role of council,
- (a) to represent the public and to consider the well-being and interests of the municipality;
- (b) to develop and evaluate the policies and programs of the municipality;
- (c) to determine which services the municipality provides;
- (d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
- (d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- (e) to maintain the financial integrity of the municipality; and
- (f) to carry out the duties of council under this or any other Act. 2001, c. 25, s. 224; 2006, c. 32, Sched. A, s. 99.

Role of Head of Council

- **Role of head of council**
- **225.** It is the role of the head of council,
 - (a) to act as chief executive officer of the municipality;
 - (b) to preside over council meetings so that its business can be carried out efficiently and effectively;
 - (c) to provide leadership to the council;
 - (c.1) without limiting clause (c), to provide information and recommendations to the council with respect to the role of council described in clauses 224 (d) and (d.1);
 - (d) to represent the municipality at official functions; and
 - (e) to carry out the duties of the head of council under this or any other Act. 2001, c. 25, s. 225; 2006, c. 32, Sched. A, s. 100.

Role of Administration

- **Municipal administration**
- **227.** It is the role of the officers and employees of the municipality,
 - (a) to implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
 - (b) to undertake research and provide advice to council on the policies and programs of the municipality; and
 - (c) to carry out other duties required under this or any Act and other duties assigned by the municipality. 2001, c. 25, s. 227.

Role of the Clerk

- **Clerk**
- 228. (1) A municipality shall appoint a clerk whose duty it is,
 - (a) **to record**, without note or comment, all resolutions, decisions and other **proceedings of the council**;
 - (b) if required by any member present at a vote, **to record the name and vote of every member voting** on any matter or question;
 - (c) to **keep the originals or copies of all by-laws** and of all minutes of the proceedings of the council;
 - (d) to perform the other duties required under this Act or under any other Act; and
 - (e) to perform such other duties as are assigned by the municipality. 2001, c. 25, s. 228 (1).
- **Deputy clerks**
- (2) A municipality may appoint deputy clerks who have all the powers and duties of the clerk under this and any other Act. 2001, c. 25, s. 228 (2).

Municipal Act

Requirements cont'd...

- Defines Policy and Procedure:
 - Quorum (S. 238)
 - Records (S. 253 – 255)
 - Vacancies on Council (S. 259 – 267)
 - Adopt policies for accountability / transparency as stand alone policy (S. 270, 271)
 - (Hiring / Procurement Policies / **Public Notice** / Sale of Surplus Lands)
 - Restricted Acts (S. 275 – “Lame Duck”)

Municipal Act

Requirements cont'd...

- Holding first meeting after regular election(S.230)
- Open and Closed Meetings (S. 239)
- Public Notice (S. 270)
- “Code of Conduct” (S. 223(2))**
- Conflict of Interest (S. 6 Municipal Conflict of Interest Act)

Typical Structure of Procedural By-law

- Name of the Corporation
- By-law Number
- Pre-amble = name of the by-law and purpose
- Definitions / Interpretations or Recitals
- Reference to Statute law, as amended from time to time
- Motions of Council / Order of Debate
- Voting on a Question / Recorded Votes
- New / Other Business
- Point of Order / Point of Privilege**
- Force and Effect on the date of passage
- Severability
- Signature lines

Typical Structure of Procedural By-law cont'd...

- Place of the Meeting
- Roles of Council and Staff
- Disclosure of Interest / Pecuniary Nature Thereof
- Meetings of Council
 - When, where
 - Agenda Structure, notice and distribution
 - Order of Proceedings
 - Holidays
 - Exceptions
 - Closed Session
 - Resolution Required?
 - Special Meetings / Emergency Meetings
 - Adjournment
 - Identify Chair, Temporary Chair

Other Considerations?

- Accessibility of Meeting Places (AODA)
- Meeting Notice Provisions (Public Notice Policy)
- Matters not provided for in Bylaw
- Decision Making powers = binding
- Creation of Task Forces / Special purpose committees
- Direction to Staff
- Voting in Closed Session
- Closed Session Record / Minutes
- Preservation of Confidentiality
- Ex-officio Status of Committee members?
- Business of Meetings**

Other Considerations?

- Task Force Meetings / Information Sessions
- Statutorily Required Meetings
- Council as an Administrative Tribunal
- Public Meetings
- Public Input to Council Agendas
- Addressing Matters on the Agenda Process (Question Period?)
- Delegations in Urgent Matters?
- Denial or Request to Speak or Distribute Material?
- Rules of Conduct? **
 - Delegations / Council / Public
- Time Extensions
- Petitions
- Expulsion
- Exemption or Suspension of the Rules?

Who should be involved in drafting a Procedural By-law?

- Clerk
- CAO
- Council
- Advisors:
 - Solicitor review
 - Peer review
 - Look to Associations/ Organizations that regularly work with topic matter (AMCTO, AMO)

Process for Approval

- Consult the Municipal Act
- Consult with relevant stakeholders
- Consult with advisors
- Draft by-law and obtained consensus (CAO / Clerk / Mayor)
- Provide public notice of Council consideration of a new Procedural Bylaw (recommended)
- Presentation to Council for approval
- Post to municipal web site
- Post Notice of passage (recommended)

Carswell – Ontario

Municipal Law User Manual

- This edition houses the basic pieces of legislation Clerk would require and use most in day-to-day operations:
 - Municipal Act
 - Municipal Conflict of Interest Act
 - Municipal Freedom of Info / Privacy Act
 - Municipal Elections Act
 - Checklists for various aspects of governance:
 - General Municipal powers
 - Local board powers / duties
 - One specific – Checklist 21 Procedure Bylaw Contents

Sample Procedure Bylaws?

- City of Kawartha Lakes (single tier)
- Region of Durham
- City of Mississauga
- City of Toronto
- City of Ottawa
- City of Thunder Bay (district)
- AMCTO web site / search feature of municipalities

Procedural bylaw 101

- Regular review process for municipal legislation recommended
- Procedural Bylaw, minimum once per Council term of office for currency
- Review PBL in terms of other municipal legislation and ensure they speak to one another
- Be receptive to constructive criticism
- Always work towards simple solutions, use clear language, use reader level grade 6 to ensure its easily understood



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QUESTIONS?

