

Bill 50
Amendments to the Municipal Government Act and Halifax Regional Charter
Law Amendments Committee

Thank you, and I appreciate the chance to speak to you today, especially in this pioneering new virtual forum.

I applaud the intent behind these amendments to the Municipal Government Act and Halifax Regional Charter, and I think they have the capacity to address some serious deficits in NS democratic system.

I'd like to start by saying that Bill 50 is described as instituting a code of conduct for local elected officials. I can't actually find that limitation in the legislation, but will have to assume it's in there somewhere, and I'm going to speak as if these amendments are intended to apply solely to elected officials. This is a question that could be clarified though.

Watching representations to this committee on Monday I was struck yet again by how easily we are polarized, and the depth of mutual mistrust that can be evoked by any given legislative proposal. There was lots of talk, as there always is, about shortcomings in the consultation process, real or perceived, and a sense of "Us" and "Them".

That division starts at the elected level, and there's a long history, which I won't go into now, but let me just say it's not surprising. A code of conduct, done right, can go a long way to addressing some of the trust deficit that keeps our province from being its very best.

So, why is it so important to have a Code of Conduct that includes everyone, even elected officials?

(1) A code of conduct will give a baseline and a set of objective standards:

There's no such thing as a professional licence for being an elected official, and it's a good thing there isn't. Someone would have to administer that, and before you know it, you'd have a professional licencing body that prevailed over the wishes of the electorate in choosing their own representative.

Councillors, like MLA's take an oath of office. They are, as we say, "sworn in" to office. But that oath is pretty vestigial, and it doesn't give a lot of guidance. Definitely treason is out of order, and impartiality is required, but not much else. A code of conduct will give these local officials some guidance.

(2) Councillors represent the most intimate level of governance in the province.

We don't elect people to a Town Planning Board or a Library Board, and we don't elect people to a Solid Waste Commission or a Sewers and Stormwater Commission, but we do elect mayors and councillors (or wardens or aldermen), and we depend on them to hire or appoint the people they consider appropriate.

Those delegates make the decisions for the councillors, although ultimately it's the council who are responsible for those decisions.

In NS, the size of the unit varies enormously: You might live in Annapolis Royal, where 5 councillors represent 500 inhabitants, or you might live in Halifax Regional Municipality, where 16 councillors represent 450,000 inhabitants, and oversee around 5000 employees.

Your chances of talking to your elected representative are a lot better in Annapolis Royal.

(3) Elected representatives' words and actions have an impact. Their attitudes shape the attitudes of subordinates and other elected officials alike. And that shaping of attitudes can have very serious consequences for the citizenry.

If a certain landlord has a good relationship with a certain councillor, or a certain councillor has a less-than-open mind about certain classes of people, then complaints about health and safety issues will fall on deaf ears if they come from the wrong tenant, or the wrong kind of tenant.

It's up to councillors not to create or perpetuate a culture in which racism, and sexism, and personal dislike are tolerated, and to ensure that personal prejudice doesn't become the basis of official action.

Elected officials have a lot to do with the prevailing culture in any given town, or region of a city. So a code of conduct matters.

What should that code of conduct include?

(1) SANCTIONS

The range of sanctions really needs to be prescribed by the province.

Any sanctions imposed need to respect the constitutional rights of the elected official and the need to be very aware of the **constitutional rights of their elected peers, and of their constituents:**

The people of the place have the right to elect their officials, and they can't be lightly deprived of that. Criminal convictions will do it, but unless there's some specific legislation permitting removal of elected officials by their peers (as there is in the House of Assembly Act), it would be an unexpected move to add that capacity.

Usually removal happens through what I call "electoral discipline" — it's up to the electors to do that job. In the case of municipal officials, there's not supposed to be any partisan loyalty to influence or add an extra layer of control of decisions or behaviour.

(2) CLARITY IN PROCEEDINGS ON ALLEGED BREACHES

Elected officials are vulnerable, and in the world of social media, they're even more so. An elected official's most important asset is his or her reputation. Any model code of conduct should make some provisions for documenting allegations, except perhaps in specific situations; it's too easy to throw shade and then hide.

One thing that will make it a lot easier though, is to have an objective requirement for local officials to document their official actions at least, and a provision that there will be sanctions for failure to document decisionmaking processes, and to document the **existence** of individuals' input into the councillor's official process.

I would also add, that in fairness to the official whose conduct has been called into question, and for the stability of the local government unit, there should be a strict timeline on investigations and decisions.

It doesn't need to be too short, but whenever there are allegations, they need to be substantiated and disposed of in a reasonable period of time, so as not to hamstring a person who may be entirely effective and in fact excellent representative, who will in time be cleared of whatever allegations, and so as not to damage the next election in the cycle.

I'd suggest two to three months should be more than adequate, and probably alleged breaches should be handled differently if they occur within two - three months of an election. I haven't had time to consider exactly how.

(3) DUTY TO DOCUMENT:

Transparency, and accountability aren't luxuries, and they're not afterthoughts.

The Municipal Government Act includes a set of Freedom of Information and Protection of Privacy Provisions in Part XX, which also applies to the Halifax Regional Municipality.

It's good to have such provisions, and the intention is laudable. But there's no point having access to records, if they were never created.

And records aren't always created. It's vital that there be requirements to record official actions and decisions, so there is meaningful accountability. For all the reasons above, that matters.

And, where there is a history of disenfranchising certain groups or individuals, it's all the more important. They don't become disenfranchised without conversation, and without social licence from leadership.

But leadership is sometimes visible by its absence. In examining a given series of events, everyone may have created records, and followed rules, all leading in one direction, and suddenly they veer off in the opposite direction, inexplicably, as if some spectral presence has been at work.

This might seem fanciful, but I've provided you with two illustrative responses from HRM, both documenting the absence of records, in fundamental contexts:

The first, you'll see, came in response to my request for attendance lists for certain *in camera* meetings of Council, concerning unidentified litigation by the municipality. Apart from the fact that to this day, HRM really, really doesn't want to talk about its role in this lawsuit—what I find most striking of all is this:

In camera minutes, like public minutes, include the names of elected officials present, as well as the names of the Chief Administrative Officer, Municipal Solicitor, Municipal Clerk and Legislative Assistant present. **There are no records of names of other solicitors, staff or other parties present, unless they speak to a matter before Council, which is then recorded in the minutes.**

If I interpret this correctly, then Councillors - and Council - entertain the presence of unlogged outsiders at their inmost meetings — the confidential meetings, the ones that taxpaying, law-abiding citizens are forbidden to attend— and that the presence of those people isn't recorded, anywhere, and their presence will never be known, even through the most liberal FOIPOP interpretation possible.

A duty to document will eliminate this possibility.

And the second letter attached came in response to my request for records of when and how Council became aware the Municipality was involved in a lawsuit against my husband and myself. It's been made additionally clear since that there also no records to be found with the Mayor or CAO.

The lesson here is that HRM denies to this day that Council ever knew it was involved in this adventure, tho it certainly has policies requiring Council to be notified of litigation, and to approve any large settlements (which, for the record, was not the case in relation to my husband myself, although it did apply to the party which apparently launched this case).

I've sometimes heard from media of HRM defending lawsuits that I'd have real questions about: results of negligence, or racism, or other discrimination.

Local elected officials are in charge, and they retain legal counsel to advise them. They are responsible to decide when the Municipality participates in litigation, and when it doesn't.

Without a duty to document the existence of these decisions, discussions, even if it's ultimately protected by the legitimate application of FOIPOP provisions, we as citizens have no ability to know what's being done in our name.

FOIPOP is intended to protect the confidentiality of records, where there's a recognized reason to keep their contents from the public. The FOIPOP defense mechanism in Nova Scotia is a notoriously powerful one, to the degree that third parties have a veto over an applicants right of access to the courts, until after the provincial privacy commissioner has made recommendations, a process which, in NS, can take years to complete.

So FOIPOP is a very effective buttress against embarrassment. The one thing FOIPOP does not do, is to say there are circumstances in which records must or must not be created.

There is no circumstance in which public officials are not supposed to keep records. And I would argue that if the very existence of a record of an event or a conversation is an embarrassment, then the event or conversation shouldn't have taken place.

A duty to document, with an attendant sanction for failure to document, means the records will be created, and that too is an incentive not to do those things which ought not to have been done.

As part of this, there should be a duty to retain records. I'll note quickly that HRM has in recent years created a records retention policy which provides for prompt destruction of so-called non-records and that it doesn't apply to the "personal or political records of councillors". This is open to broad interpretation, and the province may want to provide a duty to retain records.

IN CONCLUSION:

I'm very glad to see there will be a model code of conduct, provided by the province, and I hope it won't take too long for this to be fleshed out and the amendments to the Act proclaimed in effect.

It needs three basic components however;

- (1) Sanctions, in a range prescribed by the Province;
- (2) Clarity about proceedings on allegations;
- (2) Duty to document officials' decisionmaking processes and actions, and to retain records, with sanctions for failure to document or retain records.

With these provisions in a code of conduct for elected officials at the local level, I hope we can make real progress towards preserving, and where necessary establishing, the mutual trust the province needs to thrive.

Thank you, and I'd be happy to answer any questions.

—Michele H. Raymond
Halifax, Nova Scotia

31 March 2021

May 31st, 2017

Michele Raymond

Dear Ms. Raymond,

**Re: Application No. AR-17/18-026
Freedom of Information and Protection of Privacy Request
Records relating to In Camera Meetings held by Regional Council**

This application for access under Part XX of the *Municipal Government Act (MGA)* was initially received by the Halifax Regional Municipality's (HRM's) Access & Privacy Office on May 2nd, 2017.

The request was for the following: "Full attendance lists for In Camera meetings of Regional Council on 10 December 2013, 15 April 2014, 16 April 2014, 29 April 2014 including name of solicitor/s and any staff or other parties present."

The records which would be responsive to your request would be the in-camera minutes for the dates noted in your request. In camera minutes, like public minutes, include the names of elected officials present, as well as the names of the Chief Administrative Officer, Municipal Solicitor, Municipal Clerk and Legislative Assistant present. There are no records of names of other solicitors, staff or other parties present, unless they speak to a matter before Council, which is then recorded in the Minutes.

This letter is to advise that access to the records requested has been denied in accordance with Subsection 465(2) of the Act and access to this information has been refused for the following reason:

- **Section 473(1)** - The responsible officer may refuse to disclose to an applicant information that would disclose the minutes or substance of the deliberations of a meeting of the council ... held in private, as authorized by law.

You have the right to ask, within 60 days of being notified of this decision, for a review of the decision by the Office of the Information & Privacy Commissioner for Nova Scotia. If you wish to ask for a review, you must do so on Form 7; a copy is attached. This completed form should then be sent to:

Ms. Catherine Tully

Nova Scotia Information & Privacy Commissioner
PO Box 181, Halifax, NS B3J 2M4

Tel: 902-424-4684; Fax: 902-424-8303; Toll-free: 1-866-243-1564; TTD/TTY: 1-800-855-0511

Should you require further information, please do not hesitate to contact me at (902) 490-4390.

Yours truly,



Nancy L. Dempsey, MPA, CIPP/C

Access & Privacy Officer
Access & Privacy Office
Halifax Regional Municipality
Tel 902.490.4390
Fax 902.490.4454
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HALIFAX

Halifax Regional Municipality
PO Box 1749, Halifax, Nova Scotia
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halifax.ca

August 26th, 2019

Michele Raymond

Dear Ms. Raymond,

**Re: Application No. AR-19/20-408
Freedom of Information and Protection of Privacy Request
Records in relation to Hope Estate lands and/or Boscobel**

This application for access under Part XX of the *Municipal Government Act (MGA)* was received by the Halifax Regional Municipality's (HRM's) Access & Privacy Office on August 6th, 2019.

The request was specifically for the following:

- *(1) Record of first notification to Regional Council or any Council committee of possibility of litigation associated with Hope Estate lands (PID #00271692, later various PIDs/Boscobel-on-the-Arm subdivision); and/or with Boscobel (PID #40774127), from January 2012 forwards;
- (2) Record of authorization for HRM to defend/participate in litigation related to same (filed as #HX423696).
- (3) Record of notification to Council of commencement of defense of this proceeding (see HRM Charter s 35).*

This letter is to advise that a thorough search has been conducted by HRM's Legal Services and the Office of the Municipal Clerk and staff from both departments have advised that they were not able to locate any responsive records relating to all three parts of this request. We therefore confirm that we have not found any records that would be responsive to the above noted request.

You have the right to ask, within 60 days of being notified of this decision, for a review of the decision by the Office of the Information & Privacy Commissioner for Nova Scotia. If you wish to ask for a review, you must do so on Form 7; a copy is attached. This completed form should then be sent to:

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