

July 18 2018

From: Nancy J. Bozzato, Town Clerk

Clarification on Restricted Acts Provisions of the Municipal Act (Lame Duck), s. 275.

The purpose of this communication is to clarify matters as they relate to the Restricted Acts (known as Lame Duck) provisions as contained in the Municipal Act, 2001, s. 275 which take effect following Nomination Day, or following Election Day.

Section 275 of the Municipal Act, "Restricted Acts After Nomination Day", is often referred to as the "lame duck provision", and prohibits municipal councils from taking certain actions after the first day during the election for a new council on which it can be determined that, in accordance with s.275(1):

*If the new council will have the same number of members as the outgoing council, the new council **will** include less than three-quarters of the members of the outgoing council. [emphasis added]*

Subsections (2) and (3) are not relevant to the Town of Pelham Council as they are relevant only if changes in the number of elected officials that will comprise the new council are implemented. No changes to the size or composition of the Council for the Town of Pelham are forthcoming for the 2018 municipal election.

The Clerk, following Nomination Day, is required to make an analysis to determine whether or not it will be necessary to implement the provisions of the Act and restrict the actions of Council. As such, the appropriate determinations following the close of Nomination Day, July 27, 2018, will be made, and if it is found that 75% of the current council **will not** be returning, the restricted acts will be imposed in accordance with the Act.

Of important note is the stipulation under Section 275(2) which sets out the basis for determination. **It is only when it becomes mathematically impossible for three-quarters of the members of the outgoing Council to be re-elected that the Council will be subject to the limitations.** This could be as early as July 27th, or as late as the announcement of the declaration of the results after Election Day, October 22nd.

From the Clerk's Department



Administration
Services

Restrictions that would apply are set out below, as contained in Subsection 275(3):

(3) *Restrictions – The actions referred to in subsection (1) are:*

(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 has a value exceeding \$50,000 at the time of disposal; and*

(d) *making any expenditures or incurring any other liability which exceeds \$50,000.*

(4) *Exception – Clauses (3)(c) and (d) do not apply if the disposition or liability was included in the most recent budget adopted by the council before nomination day in the election.*

(4.1) *Emergencies – Nothing in this section prevents a municipality taking any action in the event of an emergency.*

Scenarios Following Nomination Day:

Pelham Council is comprised of seven (7) members. In determining 75 percent of the membership, for a council consisting of seven members this is 5.25. Therefore, five members are less than 75 percent, and six members are more than 75 percent.

Council is NOT a lame duck council in the following situations:

- Six members are running in the election and one is not running for office on this Council or retiring; or
- Two members are acclaimed and four are running for office, one is not seeking re-election on this council.

In these situations, it is not with mathematical **certainty** that at least 75 percent of the former members will be returning, so Council is not subject to the restricted acts provisions.

Council IS a lame duck council in the following situations:

- Six members of council decide not to run in the Pelham council election and one is in the election; or
- Four members of the existing council run for the office of head of council, one member does not run in the Pelham election, and two members run for their existing seats; or

- Two members are not returning and five are in elections for their current office.

In these examples, there is certainty that less than 75 percent of the current members will return to the new council, thus the new council will include less than 75 percent of the outgoing council and lame duck provisions apply.

Scenarios Following Election Day:

A second analysis is to be conducted by the Clerk following election day once the election results are known, based on the same question as to whether the new council will be composed of 75 percent or more members of the outgoing council. If yes, council is not lame duck. If the answer is no, council would be subject to the restricted acts provisions.

Council is NOT lame duck if:

- Six members are returned in the election, but there is one newcomer; or
- Two members are acclaimed four are elected, one newcomer.

Based on these examples, it can be determined with certainty that 75 percent of the old council are returning, so the old council is not in lame duck during the period between the election to the end of term. Council's powers are thus not restricted.

Lame Duck provisions DO apply if:

- Five members of the outgoing council are returning and there are two newcomers; or
- Two members of the old council are acclaimed, three are returning and there are two newcomers.

In these scenarios, it is certain that less than 75 percent of the current council (less than 6) will return and thus, the outgoing council is a lame duck council from the date of election to end of term. Council powers are thus restricted pursuant to s. 275(3). The Delegation of Authority by-law would be implemented.

Nancy J. Bozzato
Town Clerk