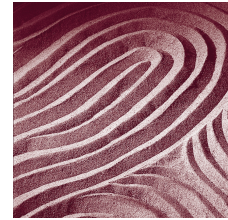
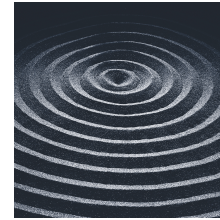


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Municipal Election 2003: The “Lame Duck” Period

Steven J. O’Melia
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Municipal Election 2003: The “Lame Duck” Period

By Steven J. O’Melia

We are in the midst of that magical period that occurs every three years when the municipal clerks of each of the local municipalities in this Province become responsible for the conduct of their municipal elections. On top of their already burgeoning workloads is thrust the additional duty of ensuring that the integrity of our local democratic process is maintained. Fulfilling this role can involve a myriad of tasks such as accepting and certifying nominations, monitoring campaign finances, policing sign by-laws, preparing ballots, certifying the final voters’ list, appointing deputy returning officers, establishing polling stations, notifying the public, determining the method of vote-counting, operating the polls, determining the results of the election, conducting recounts, and generally maintaining peace and order in connection with the election. Given that the process will result in the determination of a clerk’s political masters for the next three years, it is not a responsibility that can be taken lightly.

Another issue for municipal clerks to consider while they are carrying out their electoral duties is the degree to which their current councils may become restricted in the actions that they can take in the period leading up to and following the election. The “lame duck” provisions under Section 275 of the *Municipal Act*, 2001 are different from those that were in place under the old *Municipal Act*. The old Act provided for the lame duck provisions to take effect only from the polling day and they were very restrictive in prohibiting almost every corporate act. Under the new Act, the lame duck provisions can potentially take effect as early as the close of nominations, but they permit more acts to be carried out during the lame duck period.

Whether or not the new lame duck provisions take effect depends on whether or not an incoming council will contain less than 75% of the members of the outgoing council. The theory behind the provisions is that if the new council will be substantially the same as the old council, there is no reason to curb the old council’s permitted activities prior to the council changeover. Conversely, where a new council will have a significantly different composition than the old council, there should be limits upon the degree to which members of the old council can affect matters that will be inherited by the new council.

The lame duck provisions are triggered only when it can be determined that the new council will include less than 75% of the members of the outgoing council and not if this only may be the case. Whether or not an incumbent councillor is running for re-election can only be determined as of the close of nominations. If he or she chooses not to run, then it is certain that his or her council position will be held by a different person. If instead he or she chooses to run, then that determination can only be made once the election results are known. The mere fact that all council seats are being contested does not trigger the lame duck provisions provided that enough incumbent councillors are among the contestants.

The 75% threshold should therefore be reviewed after 5 p.m. on September 26, 2003 (nomination day), at the time of any nomination withdrawal after that date (as late as October 2, 2003, depending on the method of nomination) and on November 10, 2003 (voting day) or as soon thereafter as the election results can be determined. If on any of these dates a sufficient number of incumbents have either chosen not to run or have been defeated in the election, the lame duck provisions will take effect.

The new Act contains a list of permissible actions that are exempted from the lame duck provisions. These include incurring expenditures and liabilities that are less than \$50,000 or that were included in the most recent municipal budget and acts that have been delegated by a municipal council before it achieves its lame duck status. The ability to make such a delegation would have to be individually examined and, in some cases (such as appointing or removing an officer of the municipality), the restricted power could not properly be delegated.

These new provisions were designed to be less restrictive than the old section, which more or less prohibited all corporate acts in the period from the polling day until the installation of the new Council however, the price of this greater latitude is less certainty, at least until some case law develops on the appropriate breadth of the section. For those harried clerks that are focussed on getting their new Council in place, we recommend that an appropriate goal would be to avoid becoming the subject of one of the court cases that will establish that certainty.