

PRIVILEGED AND CONFIDENTIAL

October 14, 2025

File No. 331467

Mayor David Mayville and Members of Council
The Corporation of the Township of Killaloe, Hagarty and Richards
1 John Street, P.O. Box 39
Killaloe, ON K0J 2A0

Mayor Mayville and Members of Council:

**Re: Strong Mayor Powers
Review of Mayor's Directives #1 to #6**

We have been asked to provide a legal opinion to The Corporation of the Township of Killaloe, Hagarty and Richards (the "**Township**") pursuant to a review of six (6) directives issued by Mayor Mayville purportedly pursuant to his "Strong Mayor Powers" under Part VI.1 of the *Municipal Act, 2001*¹ (collectively, the "**Directives**").

Background

Effective May 1, 2025, the Minister of Municipal Affairs and Housing designated 170 additional municipalities to which Part VI.1 of the *Municipal Act, 2001*, setting out the so-called "Strong Mayor Powers", would apply. The Township was one such municipality designated pursuant to section 284.2.²

Despite earlier intimations that the Mayor would refrain from exercising Strong Mayor Powers, on September 18, 2025, Mayor Mayville issued six (6) Directives and one (1) Mayoral Decision, described further below, purportedly pursuant to his power under section 284.3 of the *Municipal Act, 2001*.

The scope of the Directives and Mayoral Decision has raised questions about whether the same can be considered valid exercises of his statutory powers under Part VI.1 of the *Municipal Act, 2001*.

We understand that the Township's solicitor reviewed the directives and provided a legal opinion, and he recommended that the Township obtain an external legal opinion with respect to the Directives. We have not reviewed the legal opinion provide by the Township's solicitor.

At its Special Meeting held on October 2, 2025, Council passed a resolution to retain us to review the Directives and provide our independent opinion to Council.

¹ *Municipal Act, 2001*, S.O. 2001, c. 25.

² See O. Reg. 530/22: "Part VI.1 of the Act", Schedule 1, item 88, designating the Township of Killaloe, Hagarty and Richards.

Executive Summary

In our opinion, each of the Directives exceed the scope of the powers afforded to the Mayor under section 284.3 of the *Municipal Act, 2001*. Thematically, they either fail to give legitimate direction to Township staff and instead purport to direct that Council do some thing in a particular manner, or they exceed the statutory limitations on the types of direction that can be given to municipal employees, which is highly circumscribed. As such, it is our opinion that the Directives are invalid and should not be implemented by Township staff nor followed by Council.

Analysis

A. Applicable Legislation

1. History and Purpose of Strong Mayor Legislation

Before delving into the substance of our opinion, we will provides some preliminary remarks on the genesis and purpose of the Strong Mayor Powers contained in the *Municipal Act, 2001*.

Historically, municipal governments in Ontario have been characterized by a “weak mayor” system: the head of council, although a position that connotes leadership, only had one vote on council, and had very minimal other executive or ministerial-like authority to act unilaterally or bind the municipal corporation.

The role of mayor has traditionally been viewed as a consensus-builder, working in the spirit of co-operation and compromise with other members of council to achieve a desired result.³ Moreover, despite bearing the title of “chief executive officer” of the municipal corporation,⁴ that is a complete misnomer as the head of council does not bear any true executive powers.

This was observed by former Associate Chief Justice Frank N. Marrocco in *Transparency and the Public Trust – Report of the Collingwood Judicial Inquiry*, noting that unlike private corporations, a head of council, as the nominal “CEO” of the municipality, had no power to unilaterally bind the municipality or commit it to a certain course of action.

In fact, Justice Marrocco included a specific recommendation in the report that the Province of Ontario amend the *Municipal Act, 2001* to remove this “inaccurate description.”⁵

In 2022, in response to the developing housing crisis, the Province determined that greater executive authority for heads of council would assist it in achieving provincial housing goals. The Province implemented one of the most significant legislative reforms of municipal powers through Bill 3, the *Strong Mayors, Building Homes Act, 2022*.⁶ The statute added Part VI.1 to the *Municipal Act, 2001*, which introduced new powers and assigned certain existing municipal powers to the heads of council of designated municipalities.

³ John Mascarin and Jennifer Bilas, “Strong Mayor, Weak Plan,” 10 D.M.P.L. (2d) No. 10 at 1.

⁴ *Municipal Act, 2001*, ss. 225(a), 226.1.

⁵ See Frank N. Marrocco, *Transparency and the Public Trust – Report of the Collingwood Judicial Inquiry* (Volume 1 – Executive Summary and Recommendations) at pp. 18-19.

⁶ *Strong Mayors, Building Homes Act, 2022*, S.O. 2022, c. 18 (Bill 3) (assented to September 8, 2022).

The Province introduced one additional power via Bill 39, the *Better Municipal Governance, 2022*⁷ which authorizes the head of council to bring forward a proposed by-law that could potentially advance provincial priorities to their council to consider and vote on it at a meeting and to allow the by-law to be enacted on a vote of more than one-third of council.

While the stated objective underlying the Province's enactment of Strong Mayor legislation was to address the housing affordability crisis, it is clear from statements beyond the Legislature that Premier Doug Ford has long envied the powers possessed by the mayors of some American cities and wished to adopt that model in Ontario.⁸

The legislative debates related to the Strong Mayor legislation clearly elucidate an intent that strong mayors be afforded a greater level of control over governance decisions to align municipalities with provincial priorities.⁹

As with many housing bills from the current government, Bill 3 was aimed at addressing supply-side challenges to creating new housing. In particular, introducing new executive powers for the head of council was aimed at helping "tackle the political logjam in getting approvals" for new housing.¹⁰ Former Minister of Municipal Affairs and Housing Steve Clark stated as follows:

"Today, I think we can agree: Priority projects simply take too long to get through municipal councils and through committees. To be truly effective for their communities, mayors need our support. They need to be empowered. That's why, Speaker, I am so very proud that we're leading off second-reading debate on the proposed Strong Mayors, Building Homes Act. The changes would, if passed, give the mayors of the cities of Toronto and Ottawa the ability to drive policy changes, select municipal department heads and bring forward budgets, and it would help our municipal partners deliver on our shared priorities, including housing."¹¹

While the legislation initially only introduced these powers to the cities of Toronto and Ottawa, at present, Strong Mayor Powers have been extended to 216 municipalities in Ontario.¹²

⁷ *Better Municipal Governance Act, 2022*, S.O. 2022, c. 24 (Bill 30) (assented to December 8, 2022).

⁸ See Rob Ford and Doug Ford, *Ford Nation: Two Brothers, One Vision* (HarperCollins Publishers, 2016):

"If I ever get to the provincial level of politics, municipal affairs is the first thing I would want to change. I think mayors across the province deserve stronger powers. One person in charge, with veto power."

See also *National Post*, "Doug Ford wants to bring in a U.S.-style 'strong-mayor' system for cities: 'one person in charge'" (June 1, 2018); online: <https://nationalpost.com/news/canada/ontario-pc-leader-says-hed-like-to-bring-in-a-u-s-style-strong-mayor-system-for-cities-one-person-in-charge>

⁹ See e.g., Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 43rd Parl., 1st Sess., August 11, 2022, at 1320 (Hon. Steve Clark); see also Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 43rd Parl., 1st Sess., August 11, 2022, at 1320 and 1340 (Hon. Steve Clark); see also Ontario, Standing Committee on Heritage, Infrastructure and Cultural Policy, *Hansard Transcripts*, 43rd Parl., 1st Sess., August 25, 2022, at 900 (Hon. Steve Clark).

¹⁰ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 43rd Parl., 1st Sess., August 11, 2022, at 1320 (Hon. Steve Clark).

¹¹ *Ibid.*

¹² O. Reg. 530/22 "Part V.1 of the Act," Schedule 1.

2. Analysis of Relevant Statutory Provisions

It is trite law that as a creature of statute, a municipality can only exercise those powers expressly conferred on it by the Legislature.¹³ This proposition extends to the exercise of statutory powers by the officers of a municipal corporation, including the head of council. As such, an evaluation of the precise text, context, and purpose of the powers in Part VI.1 of the *Municipal Act, 2001* is required.

In dealing with the question of the meaning of a statutory provision, the courts have consistently directed that the statute must be interpreted in accordance with the “modern approach” to statutory interpretation:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.¹⁴

Critically, the overriding objective of a legislative enactment, or one’s perception of what that objective is, cannot distort the meaning to be given to its express text.¹⁵

Within the scheme of Part VI.1 is the power to give direction to municipal staff. Section 284.3 provides as follows:

Directions to municipal employees

284.3 For the purposes of exercising powers or performing duties under this Part, the head of council may, in writing, exercise the powers of the municipality to direct municipal employees to,

- (a) undertake research and provide advice to the head of council and the municipality on policies and programs of the municipality or of the head of council as they relate to the powers and duties under this Part; and
- (b) carry out duties related to the exercise of the power or performance of the duty, including implementing any decisions made by the head of council under this Part.

We wish to make the following observations about this power.

Principally, and significantly, a strong mayor’s power under section 284.3 to give directions is expressly qualified for a specific purpose: “exercising powers or performing duties under this Part.”

¹³ *R. v. Greenbaum* (1993), 14 M.P.L.R. (2d) 1 (S.C.C.) at para. 20; *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34 at para. 2.

¹⁴ Elmer A. Driedger, *The Construction of Statutes*, 2nd ed., (Toronto, Butterworths, 1983) at p. 87. The modern principle has been frequently applied by the Supreme Court of Canada; see *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 599, at paras. 26-27, and, more recently, in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 117.

¹⁵ See e.g., *R. v. Breault*, 2023 SCC 9, para. 26.

Section 284.3 does not provide a strong mayor the authority to provide municipal employees unilateral or general direction about any matter whatsoever in the same manner that either a council would, at a policy level, or a chief administrative officer may, at an operational level. Nor does section 284.3 vest in a strong mayor the power to exercise general control over municipal operations.

Instead, the Legislature recognized that a strong mayor may be required to call on the advice and counsel of professional municipal staff in exercising their Strong Mayor powers. By way of example, a strong mayor may not necessarily have professional experience in accounting and finance, yet would bear a duty under section 284.16 to prepare the municipality's budget. As such, the strong mayor may require advice and input from finance staff of the municipality to do so properly and in accordance with accounting standards for public sector entities. Further examples abound. Ultimately, any direction must relate to another power or duty of a strong mayor under Part VI.1.

Second, the scope of what specific actions a strong mayor is authorized to direct is also limited by section 284.3.

First, clause 284.3(a) is limited to undertaking research and providing advice on certain specified matters. These actions (i.e., "undertaking research" and "provide advice") do not entail anything further than gathering and analyzing information and providing counsel to a strong mayor. In other words, they are not directed toward implementation or operationalization.

Clause 284.3(b) conceivably entails a broader range of action. It contemplates direction to "carry out duties" related to the exercise of a power or duty under Part VI.1, and expressly includes, as clarification, "implementing any decisions made by the head of council under" Part VI.1. Clause 284.3(b) has its own internal limitation: any direction given pursuant to it must either be related to a power or duty under Part VI.1, or to implementing a valid mayoral decision made under Part VI.1. As such, section 284.3 is inherently linked to the other powers and duties of a strong mayor under Part VI.1.

The legislative debates surrounding the Strong Mayor legislation supports this interpretation of section 284.3. In speaking to Bill 3, former Minister Clark referred to a strong mayor's power to direct items of provincial priority for council consideration, and directing staff to prepare those proposals.¹⁶

On Third Reading of the Bill, Minister Clark remarked that the Bill would empower strong mayors "to direct staff to prepare proposals for council's consideration."¹⁷ The legislative debates did not, however, indicate that such direction would circumvent the ordinary municipal decision-making process, where such proposals would need to be brought before council for a final decision.

¹⁶ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 43rd Parl., 1st Sess., August 11, 2022, at 1320 (Hon. Steve Clark). See also Ontario, Standing Committee on Heritage, Infrastructure and Cultural Policy, *Hansard Transcripts*, 43rd Parl., 1st Sess., August 25, 2022, at 900 (Hon. Steve Clark), where Minister Clark remarked as follows:

"In addition, they would have the power to direct matters of provincial priority for council consideration. They would be able to direct staff to prepare proposals on these matters."

¹⁷ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 43rd Parl., 1st Sess., Sept. 6, 2022, at 900 (Hon. Steve Clark).

The intended operation of the power to give direction is inherent in the scheme of Part VI.1 itself. Section 283.10 authorizes a strong mayor to require council consideration of an item of provincial priority. Furthermore, section 283.11.1 authorizes a strong mayor to propose a by-law to advance provincial priorities and require council consideration of that by-law. Had the Legislature intended that a strong mayor have the power to unilaterally direct municipal staff to do any thing they considered expedient, we surmise these powers would not have included the final step of council ratification of a proposal, given council's general role in exercising the powers of the municipality.¹⁸

Finally, although it is clear in the text of this provision, we wish to note that a strong mayor may only give directions to municipal employees. This power does not, and cannot, extend to giving direction to a municipal council to do some thing in a particular manner.

3. Summary of Interpretation

A proper interpretation of section 284.3 of the *Municipal Act, 2001*, consistent with its text, context, and purpose, indicates the power of a strong mayor to give direction to municipal staff is quite limited. Viewed within the overall context of Part VI.1, it is an ancillary tool to help the strong mayor exercise or implement their other Strong Mayor Powers. Section 284.3 does not, and cannot, circumvent the ordinary decision-making structure of a municipality by allowing a strong mayor to issue broad-ranging edicts that municipal employees are bound to implement.

B. Mayor's Statement

The Directives flow from the Mayor's announcement made at the meeting of Council on August 20, 2025 that he would invoke the strong mayor powers in Part VI.1 of the *Municipal Act, 2001*. We have reviewed the recording of that portion of the meeting¹⁹ and a text of the Mayor's statement wherein the made a number of assertions related to the strong mayor powers.

With respect, it is our view that the Mayor made a number of incorrect comments during the meeting which we believe has misinformed his interpretation of Part VI.1 of the *Municipal Act, 2001*. Amongst the inaccurate statements made by the Mayor are the following:

- That the Township was formally designated as a strong mayor municipality on April 9, 2025 whereas that was the date that the Province issued a media release indicating that 169 municipalities were proposed to have strong mayor powers as of May 1, 2025.
- That the Township has six councillors whereas Council consists of seven (7) members.
- That the CAO "now reports directly to the head of Council."
- That a thorough review and update of all relevant by-laws, policies and procedures is "a matter of compliance, not permission" mandated by Part VI.1.
- That a mayor's responsibility with respect to the municipal budget must reflect provincial priorities.

¹⁸ *Municipal Act, 2001*, ss. 5(1), (3).

¹⁹ Meeting of the Council of the Township of Killaloe Hagarty and Richards on August 20, 2025 available online: <https://www.youtube.com/watch?v=mn9qoXlOG9lb> (starting at timestamp 1:13:01).

- That “effective immediately” all Township hiring would be suspended whereas a direction to municipal employees must be done in writing in accordance with subsection 284.4.
- That the recruitment process for the Township’s Chief Building Official would be suspended because all staffing matters fell within the organizational structure authority of the Mayor whereas decisions related to the hiring and dismissal of a chief building official is specifically excluded from the Mayor’s authority under paragraph 284.6(3) 7 of the *Municipal Act, 2001*.

We do note that some of the inaccuracies in the Mayor’s statements were pointed out by members of Council at the meeting.

Based on the foregoing statements and the ensuing discussion at the meeting, it is clear that the Mayor has expressed that the Township “has no choice” with respect to the *use* of the powers under Part VI.1. While it is true that municipalities have no option as to their designation by the Minister of Municipal Affairs and Housing as strong mayor municipalities, it is incorrect to state that a strong mayor must utilize *all* of the powers and authorities set out in Part VI.1.²⁰

C. Assessment of Mayor’s Directives #1 to #6

We have reviewed each of the following Mayor’s Directives #1 to #6 for the purpose of determining whether the substance of each Directive is consistent with the power under section 284.3 of the *Municipal Act, 2001*:

- Directive #1 – Dissolution of Committees and Establishment of Committee of the Whole
- Directive #2 – Mayor-CAO Working Relationship
- Directive #3 – Agenda Management and Handling of Correspondence
- Directive #4 – In Camera Agenda Management
- Directive #5 – Livestreaming, Recording, and Records Retention
- Directive #6 – Handling of Correspondence at Council Meetings

Overall, the Directives have fundamental flaws and exceed the scope of the Mayor’s authority to give direction pursuant to section 284.3. Thematically, we note that each Mayor’s Directive is addressed to the Township’s Chief Administrative Officer (the “**CAO**”) while seemingly impacting how Council operates, refers to several provisions of the *Municipal Act, 2001*, many of which are not the source of authority to issue directions nor found within Part VI.1, and each misstates what the *Municipal Act, 2001* actually provides.²¹ These issues are examined in greater detail below.

²⁰ The Mayor did state that at the meeting that “there are things that will be delegated” (timestamp 1:30:27). To date, the Mayor has not exercised his authority to delegate any powers back to council or to the CAO in accordance with s. 248.13 of the *Municipal Act, 2001*.

²¹ For example, Directive #1 entirely misquotes s. 284.8. Section 284.8 sets out the authority of a strong mayor with respect to prescribed committees of the municipality, yet Directive #1 indicates that s. 284.8 provides that “*the head of council shall exercise the powers and duties of the head of council in respect of prescribed provincial priorities,*” which is incorrect. In fact, that wording is not found anywhere in the statute.

1. Mayor's Directive #1

Directive #1 is not a valid directive issued pursuant to section 284.3 of the *Municipal Act, 2001*.

The thrust of Directive #1 is to change the Township's committee structure that has been established by Council, including through its procedural by-law.²²

Paragraph 1 purports to direct that all standing committees and *ad hoc* committees of Council be dissolved. Paragraph 2 purports to direct that a new committee of the whole be established and that a certain mandate be assigned to it, and that "in accordance with O. Reg. 530/22," that the Mayor is to preside as chair.²³ Paragraphs 3, 4 and 5 are aimed at implementing this committee structure. Instruction is provided to Township staff to take all necessary steps to implement this committee, including updating schedules and agenda. Staff are also directed to prepare updates to the Procedural By-law, and to provide public notice of the Directive.

In our assessment, Directive #1 is not a proper directive under section 284.3. It purports to change the committee structure of the Township, which is not a matter Township staff have any authority to do. Although Directive #1 does contain some direction to Township staff relating to implementation, the relevant authority under clause 284.3(b) pre-supposes the validity of the overall direction regarding changes to the Township's committee structure.

In our view, it appears that Directive #1 is intended to reflect a strong mayor's ability to make changes to committees of council:

Powers re committees

284.8 Subject to the regulations, if any, the following powers of the municipality with respect to prescribed committees, or committees within a prescribed class of committees, are assigned to the head of council:

1. The power to establish or dissolve committees.
2. The power to appoint chairs and vice-chairs of committees.
3. The power to assign functions to committees.

O. Reg. 530/22 further clarifies that the only committees that can be affected by this power are ones that consist solely of members of council.²⁴ It could not affect, for example, citizen advisory committees, task forces, or other committee and bodies which have one or more members who are not also members of council.

²² Council Procedural By-law No. 16-2023 (the "**Procedural By-law**").

²³ Nothing in O. Reg. 530/22 authorizes a strong mayor to direct that a certain person preside over meetings of a committee. That authority would be contained in a procedure by-law adopted by council for that specific committee – see *Municipal Act, 2001*, s. 238(4). We do acknowledge, however, that section 284.8 would authorize a strong mayor to make a decision to appoint the chair of a prescribed committee.

²⁴ O. Reg. 530/22 "Part VI.1 of the Act," s. 4:

Prescribed committees

4. Committees established under the Act that consist solely of members of council are prescribed for the purposes of section 284.8 of the Act.

While the Mayor does have the power to change the committee structure of the Township, that power cannot be exercised by giving direction to Township staff.

As such, it is our opinion that Directive #1 is not a valid directive made pursuant to section 284.3.

2. Mayor's Directive #2

Directive #2 exceeds the scope of authority under section 284.3 of the *Municipal Act, 2001*.

Directive #2 is largely aimed at prescribing the role of the CAO and their professional relationship with the Mayor. There are multiple issues with Mayor's Directive #2.

First, the Directive purports to direct that the CAO's primary reporting relationship is to the Mayor, referring to clause 224(d.1) and section 229 of the *Municipal Act, 2001* in support of this proposition. This is incorrect. Neither section provides that a chief administrative officer reports to the head of council. Rather, the role of chief administrative officer has been variously described as "Council's sole employee" through which all direction and instruction to municipal administration flows, and through which information is reported to council.²⁵

In any event, section 284.3 does not contemplate a change to the reporting structure of municipal administration. While clause 284.3(1)(a) may serve as a basis to require that a member of staff report on a discrete matter or proposal to a strong mayor instead of to council, this power does not extend to a blanket direction tantamount to changing the role of the CAO.

Nor would section 284.3 authorize a strong mayor to direct the chief administrative officer not to provide information to members of council outside the confines of a meeting, as Directive #2 does. This is a matter that municipal administration has broad discretion to determine, subject to specific policies or decision that may be made by council as a whole.

Directive #2 also appears to rely on "s. 2(1)" of O. Reg. 530/22 for the authority to provide direction to the CAO regarding formal correspondence and updates. Simply, there is no subsection 2(1) in O. Reg. 530/22.

Second, section 284.3 does not authorize a strong mayor to issue general direction about how municipal administration is to undertake various administrative tasks. In our view, the interpretation underlying Directive #2 would be tantamount to a strong mayor fulfilling the role of chief administrative officer, which Part VI.1 of the *Municipal Act, 2001* does not provide for.²⁶ This largely presents potential conflicts with the statutory role of the CAO.

²⁵ See, e.g., David Siegel, "The 'Public Service Bargain' in Local Government: Examining Relations between Council and the CAO," *Canadian Public Administration*, vol. 58, no. 3 (September 2015), pp. 406-25.

²⁶ In our experience, there has been confusion over the nature of the strong mayor power in section 284.5, which provides that "the powers of a municipality under section 229, with respect to the chief administrative officer, are assigned to the head of council." Plainly, this provision does not assign the powers and duties "of the chief administrative officer" to exercise general control over the municipality to a strong mayor. Instead, it allows a strong mayor to exercise *council's* powers under section 229 to appoint a chief administrative officer.

Section 229 of the *Municipal Act, 2001* provides as follows:

Chief administrative officer

229 A municipality may appoint a chief administrative officer who shall be responsible for,

- (a) exercising general control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality; and
- (b) performing such other duties as are assigned by the municipality. [Emphasis added]

This, in our view, is partially recognized in the text of Directive #2:

“Issues requiring policy direction are to be referred to Council; matters of administration remain within the CAO’s authority under s. 229, subject to this directive.”

Under Part VI.1, direction is limited to researching and providing advice, or implementing another valid mayoral decision. While section 284.3 would contemplate that some direction be given to the CAO, Directive #2 purports to direct how the CAO is to perform their statutory role, which was not the intent of the Strong Mayor Powers. In our assessment, this Directive fails to establish any connection whatsoever to the other powers and duties under Part VI.1, which is a critical linchpin for giving directions under section 284.3.

3. Mayor’s Directive #3 (as amended by Directive #6) and Directive #4

Directive #3 (as amended by Directive #6) and Directive #4 are not valid. Both Directives exceed the scope of authority under section 284.3 of the *Municipal Act, 2001*, are not consistent with the other Strong Mayor Powers in Part VI.1, and, in some respects, purport to fetter the statutory discretion of Council.

Given Directives #3 and #4 pertain to substantially similar matters, we have considered them together.

Directive #3 largely deals with the management of Council agendas. It purports to direct that the Mayor retains the final authority to determine what items will be listed on the agenda for a meeting of Council, requiring the CAO to submit draft agendas for the Mayor’s approval, and must do so without seeking or requiring Council approval. If a member of Council wishes to add an item of business, this Directive provides that they must make such request to the Mayor, through the CAO, which request will be reviewed and approved by the Mayor. Astonishingly, Directive #3 also provides that the Mayor’s authority under Directive #3 “is not subject to amendment or repeal by Council resolution or by-law.”

Directive #4 purports to provide for essentially the same protocol, except in respect of closed session meetings. Under it, the Mayor determines the content of closed session agendas, and provides that no matter may be placed on a closed session agenda without the Mayor’s approval. Directive #4 also purports to prescribe protocols for the conduct of closed session meetings.

Lastly, Directive #4 also seeks to give the Mayor authority to publicly report the general nature of the matters discussed during a closed session and confirm whether any direction was given, notwithstanding that “reporting out” is already dealt with in the Procedural By-law.

Simply put, the types of directions that can be given pursuant to section 284.3 do not include, as a going concern, direction about how council agendas are to be prepared or how council meetings are to be conducted. These matters have nothing to do with researching and advising on a proposal that relates to Strong Mayor Powers, nor to implementing a valid decision made under Part VI.1.

In our opinion, Directives #3 and #4 are in direct conflict with the Procedural By-law, which has been adopted by Council and which binds the Township.²⁷ The Procedural By-law generally provides that the CAO is responsible for preparing the agenda for a council meeting.²⁸ While an agenda review process is a common and sensible part of municipal meeting management, the Procedural By-law is silent on the practice, and in any event, does not vest the Mayor with any authority to propose, change, or approve the contents of an agenda. If an item of business not on the agenda is proposed to be considered, the Procedural By-law contemplates a majority vote of the members of Council;²⁹ the Mayor cannot unilaterally add or remove items to the agenda.

We acknowledge that other provisions of Part VI.1 do allow a strong mayor to determine, in part, that a topic or by-law will be considered at a meeting, albeit on a discrete basis. Section 284.10 provides as follows:

Powers re meetings

284.10 (1) Despite any procedure by-law passed by the municipality under subsection 238 (2), if the head of council is of the opinion that considering a particular matter could potentially advance a prescribed provincial priority, the head of council may require the council to consider the matter at a meeting. [Emphasis added]

This power is limited to the consideration of “a particular matter,” meaning a discrete topic or proposal. Nothing in section 284.10 gives a strong mayor the general authority to dictate what items of business will or will not be considered by council. Moreover, the inclusion of the express language “despite any procedure by-law” is a clear indication of legislative intent as to when a strong mayor may override the otherwise binding rules on how business matters are advanced.

Similarly, section 284.11.1 allows a strong mayor to bring forward a proposed by-law that could potentially advance a prescribed provincial priority and require that their council consider and vote on it. This authority is limited to the proposed by-law that potentially advances a provincial priority.

Notwithstanding our opinion above that Directives #3 and #4 exceed the scope of this authority, section 284.3 does not contain such language allowing a strong mayor’s direction to supersede a council’s procedure by-law other than may be permitted by sections 284.10 and 284.11.1.

²⁷ The Procedural By-law is enacted pursuant to the mandatory requirement in s. 238(2) of the *Municipal Act, 2001* that every municipality pass a by-law to govern the calling, place and proceedings of meetings. The requirement is contained in Part VI of the *Municipal Act, 2001* (not in Part VI.1).

²⁸ Procedural By-law, s. 18.1 a).

²⁹ Procedural By-law, s. 18.1 b).

Directive #3 (as amended by Directive #6), also purports to provide direction about the handling of correspondence at meetings of Council. The Directive provides that correspondence addressed to Council is not to be read out during a meeting. Instead, correspondence filed pursuant to section 22.1 of the Procedural By-law is to be retained by “the Clerk,” included in Council’s agenda package, and form part of the public record – which direction is already reflected in the Procedural By-law.

The Directive goes on to provide that during a meeting of Council, correspondence will be noted received without being read into the record, and all items of correspondence will be addressed as a whole as opposed to individually. Part of the rationale for the Directive is explained as follows:

“Strong Mayor Framework (ss. 226.1-226.16 and O. Reg. 530/22): The Mayor directs administrative practices, including how agenda items are presented and received.”

Notwithstanding the incorrect citation of the Strong Mayor Powers, nothing in Part VI.1 of the *Municipal Act, 2001* authorizes a strong mayor to direct the “administrative practices” of a municipality. In contrast, section 227, which outlines the role of municipal administration, does:

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; [Emphasis added]

While the practices contemplated by this portion of the Directive are not necessarily objectionable, in and of themselves, they are entirely beyond the authority of the Mayor to direct pursuant to section 284.3 of the *Municipal Act, 2001*. On balance, this portion of the Directive is aimed at regulating the conduct of meetings, not providing direction to Township staff. These matters are properly the subject of a procedure by-law passed pursuant to section 238 of the *Municipal Act, 2001*, not a strong mayor’s decision or directive. Council, and not the Mayor, has authority to determine this policy matter.

Directive #3 also purports to provide that its contents prevail over any procedural by-law adopted by Council in the future, which would apparently be rendered “inoperative” in the event of a conflict. There is nothing in Part VI.1 that authorizes a strong mayor to provide that a directive supersedes a municipal by-law.

In addition, Directive #4 could also be seen as a colourable attempt to fetter Council’s statutory discretion to determine whether to convene a closed meeting to consider a statutorily-excepted subject matter. A municipality has discretion under section 239 of the *Municipal Act, 2001* to determine if it wishes to conduct part of a meeting in the absence of the public in order to discuss a particular subject matter. Directive #4 effectively provides that the Mayor, not Council, makes this determination. This is inconsistent with the general scheme of the *Municipal Act, 2001*, which provides that such a decision is to be made at the discretion of council.³⁰

³⁰ *Municipal Act, 2001*, ss. 5(1), (3).

4. Mayor's Directive #5

Lastly, Directive #5 is also not a valid directive. It purports to direct how meetings of Council are to be conducted and how municipal records are to be retained, which are topics that are plainly outside of the scope of section 284.3 of the *Municipal Act, 2001*.

Directive #5 deals with two topics: livestreaming and recordings of council meetings, and the retention of records.

First, this Directive purports to deal with the manner in which meetings of Council will be recorded and livestreamed to the public, and directs that closed meetings are to be audio-recorded. While we agree that doing so has become recognized as a "best practice," the authority to make policy decisions about how council meetings are conducted and how they will be made transparent and accessible to the public falls to council, through its procedure by-law, or to municipal staff, in adopting administrative policies for the municipality, not to a strong mayor.

We note that the Procedural By-law already has provisions dealing with livestreaming of meetings, which are generally permissive as opposed to restrictive:

- 12.4 Open Council meetings may generally be presented live for public viewing through webcasting technology and recorded.
- 12.5 If a Council meeting is being held solely using electronic participation, at which time public attendance in the Council Chambers is prohibited or restricted, Open Council meetings shall be presented for public viewing through webcasting technology and recorded.

In effect, Council has already made a policy decision with respect to livestreaming, which Township staff must implement through administrative practices. Despite this, Directive #5 purports to decree how the meetings of Council should be conducted. There is nothing in section 284.3 of the *Municipal Act, 2001* that authorizes the Mayor to give directions to Council. Viewed in this light, this portion of Directive #5 is tantamount to an attempt to amend the Procedural By-law. While there is some ancillary direction to Township staff to make and preserve records of these recordings, this direction can only be validly given in respect of the legitimate exercise of the Mayor's powers under Part VI.1. That is not the case with respect to Directive #5.

Second, Directive #5 also directs the CAO to prepare a records retention by-law pursuant to section 254 of the *Municipal Act, 2001* for future consideration by Council. The preparation of a by-law authorized to be passed under the *Municipal Act, 2001* may form the basis of a valid direction given to municipal staff. However, critically, section 283.4 requires some nexus to a strong mayor's powers and duties under Part VI.1 in order for such a direction to be valid. In our assessment, there is no such connection in this case.

It is not clear, on the face of Directive #5, what other power or duties this direction to the CAO consists of or could be in respect of. A strong mayor could, under section 284.10, require a council to consider the "particular matter" of discussing and adopting a by-law, and more specifically, section 284.11.1 would allow a strong mayor to propose a by-law under the *Municipal Act, 2001*, which may be passed with a more than a one-third plurality vote.

However, both the powers under both sections 284.10 and 284.11.1 have an internal limitation: they must be aimed at a matter that “could potentially advance a prescribed provincial priority.” O. Reg. 580/22: Provincial Priorities fixes these provincial priorities as building housing, and constructing and maintaining infrastructure to support housing.³¹ No justification has been provided in Directive #5 for how the preparation of a new records retention by-law relates to, let alone advances, any prescribed provincial priorities, nor can we surmise any clear connecting rationale.

In contrast, the purpose, as articulated in Directive #5, is to ensure the Town has “a lawful and comprehensive records retention framework that complies with s.254 of the Municipal Act.” While this may be a laudable goal, we fail to see any connection to prescribed provincial priorities.

5. Mayor’s Directive #6

Our opinion respecting the invalidity of Directive #6 (which amended Directive #3) is set out above.

Conclusions

For all of the reasons noted above, it is our opinion that each of the Mayor’s Directives #1 to #6 exceeds the scope of the Mayor’s authority under section 284.3 of the *Municipal Act, 2001*. In our opinion, each of the Directives have not been validly issued. The Directives appear to trench upon Council’s policy-making role and the role of municipal administration in implementing those decisions by, among other things, determining the administrative practices of the Township. The power to direct municipal employees pursuant to section 284.3 is highly circumscribed; a strong mayor does not “step into the shoes” of their council in their ability to direct staff in respect of any matter.

Based on the foregoing, to the extent the Mayor’s Directives purport to instruct members of Township staff to do some thing or take some action, these directions are not valid and binding, and it our opinion that Township staff is not bound to implement them. Moreover, Council need not treat the Mayor’s Directives regarding Council’s authority or the conduct of meetings as having any impact on its ordinary practices and procedures provided for in the Procedural By-law which Council adopted under section 238 of the *Municipal Act, 2001*.

Yours truly,

AIRD & BERLIS LLP



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JM/JGP/avs

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³¹ O. Reg. 580/22: “Provincial Priorities” – the powers under ss. 284.10, 284.11 and 284.11.1 of the *Municipal Act, 2001* can only be used in relation to the enumerated provincial priorities.