



George B. Cuff



CONFRONTING THE DILEMMA

Where is Allegiance Owed?

Every municipality has a wide range of boards and committees to which the members of a council may be appointed. This process of appointing is generally performed immediately after a civic election – and far too soon, in my opinion, to enable anyone to grasp the essence of why they are being appointed, and to what. Tragically, most municipalities have no dossier on each board/committee or agency (referred to hereafter as ABCs); and thus, every council member appointed walks in oblivious to the circumstances, history, legal standing, impact on council's agenda, right to make decisions, right to direct staff, or council expectations. In short, and again based solely on my experience, most municipal councils are totally ill-prepared for any connection with their ABCs – and some may remain so for the full term.

As a result, there are councils who appoint members based on who wants to sit on which ABC, rather than any assessment as to what principles ought to guide those decisions or who could best serve the municipality. There are councillors who feel they should serve for a term(s) of their personal choosing; there are ABCs that are comprised of a majority of council members (sometimes reflecting a majority of the members

of council – i.e., four of seven councillors serving on the same committee); there are council-appointed committees who file their reports with the office of clerk and the minutes are never seen by council. All of these practices call local democracy into question.

There are also, in many communities, unanswered questions as to whom the council appointee is expected to serve/represent. Is it the expectation of council that the councillor appointed to the library board will reflect council's wishes on the board? *Or*, is the councillor a "free agent?" *Or*, is the councillor expected to make decisions at a board meeting based on what is right/best for the board? These questions were addressed in an article authored for *Municipal World* by Professors Kushner and Siegel (September 1997) and seven years later (September 2004) by Professors Siegel, Tindal, and myself. As noted in the first of those two articles, "The expectation is that the councillor will act as any other member of the board and vote in the best interest of that board. In fact, legally, a board member's first allegiance (regardless of how selected) is owed to that board."

This not a difficult premise to support when there does not appear

to be any conflict between what a council may desire and that which is being supported by a local board. However, this is a far more heated question when the council has publicly stated its opposition to a particular course impacting an issue on the board's agenda and the board has the issue on their agenda together with a staff report arguing quite the opposite (for reasons that support the "agenda" of the board). What then?

It seems to me that any council would be wise to be stay informed as to what significant issues are coming to the attention of the various bodies to which they appoint members. While this seldom happens, it *could* ... if everyone understood their jobs and the meaning of "reasonable expectations." Councillors appointed to ABCs should be expected to

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highlight agenda issues to the mayor or clerk and to ask if the council is aware that such an issue is likely to be debated. Does the council have any preferred course that could be verbalized by the appointed councillor to that ABC? Is there some rationale to support council's concerns? This does not conflict with the earlier statement about the independence of thinking required of a councillor ap-

pointed to an ABC. It simply underlines the importance of the sending council to make its position known *before* the issue is to be debated and not long after the horse has left the proverbial barn.

Every councillor should feel an obligation to let others on the ABCs to which they have been appointed know what they believe the council's perspective may be. That is not to

suggest that the ABC has to follow the direction of the council; rather, it simply means that the council actually has an opinion on the matter. Whether or not the ABC is one designated by provincial legislation or is created by a local council, the ABC should be expected to consider every matter on their agenda with the motive of meeting its mandate. **MW**
