



Information and Privacy  
Commissioner/Ontario

Commissaire à l'information  
et à la protection de la vie privée/Ontario

# **ORDER M-343**

**Appeal M-9300131**

**Renfrew Industrial Commission**



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## **NATURE OF THE APPEAL:**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested copies of certain information from the Renfrew Industrial Commission (the Commission). In particular, the appellant seeks access to a list of the local businesses assisted by the Commission and the manner of assistance (whether by loan or guarantee). The Commission has indicated that these records do not exist, but if they did, they would be considered confidential. The Commission also maintains that it is not subject to the Act.

Before I address the substantive decision of the Commission in denying access to the requested records, I must determine whether the Commission is subject to the Act.

Accordingly, a Notice of Inquiry with respect to this preliminary jurisdictional issue was sent to the appellant, the Commission and the Town of Renfrew (the Town). Representations were received from all parties.

## **DISCUSSION:**

### **APPLICATION OF THE ACT**

The access provisions of the Act apply to all municipal "institutions". That term is defined in section 2(1) of the Act as follows:

"institution" means,

- (a) a municipal corporation, including a metropolitan, district or regional municipality of the County of Oxford,
- (b) a school board, public utilities commission, hydro electric commission, transit commission, suburban roads commission, public library board, board of health, police commission, conservation authority, district welfare administration board, local services board, planning board, local roads board, police village or joint committee of management or joint board of management established under the Municipal Act,
- (c) any agency, board, commission, corporation or other body designated as an institution in the regulations; ("institution")

The Commission clearly does not qualify as an "institution" under clauses (b) or (c) of the definition. However, the Commission could be deemed to be a part of the Corporation of the Town of Renfrew (the Town) (which is an institution under clause (a) of the definition) by virtue of section 2(3) of the Act. This provision states that:

Every agency, board, **commission, corporation** or other body not mentioned in clause (b) of the definition of "institution" in subsection (1) or designated under clause (c) of the definition of "institution" in subsection (1) is deemed to be a part of the municipal corporation for the purposes of this Act **if all of its members or officers are appointed or chosen by or under the authority of the council of the municipal corporation.**  
[emphasis added]

In this case, there is no doubt that the Commission qualifies as a "commission" or a "corporation" under section 2(3). However, the issue which I now must determine is whether all of the **members or officers** of the Commission were, on the date the request was made or on the date of the filing of this appeal, "appointed or chosen by or under the authority of the council of the municipal corporation" (Town Council). If I find that that is the case, section 2(3) of the Act will apply and the Commission will be deemed to be part of the Town (and thus an institution) for the purposes of the Act.

In order to address the issue of how its members and officers are appointed or chosen, I will undertake an analysis of the corporate history of the Commission in the context of section 2(3) and the relevant provisions of the Corporations Act.

### **General Background:**

The Commission is a corporation without share capital which was created by Letters Patent issued by the Lieutenant-Governor on July 15, 1955. This type of corporation is governed primarily by Part III of the Corporations Act.

Corporations without share capital are generally set up to pursue objects other than those of a strictly "business" or "for profit" nature; the Corporations Act says that they are to be run "without the purpose of gain for its members" (sections 118 and 126 of the Corporations Act). In this case, the Commission's original objects included promoting industrial, business, educational and residential activity in the Town.

Corporations without share capital do not have shareholders, but rather have "**members**". Each applicant for incorporation automatically becomes a member (section 121).

Corporations without share capital may also have officers, employees and agents. These individuals carry out the wishes of the Corporation as directed by the Board of Directors or indirectly by the members. The word "officer" is defined in section 1 of the Corporations Act as:

president, chair of the board of directors, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, manager or any other person designated an officer by by-law of the corporation.

With this background in mind, I will now consider the three main groups of individuals who collectively constitute the Commission - the directors, officers and members.

## **Directors**

When the Commission was incorporated in 1955, the six original applicants were designated as the "first directors" of the corporation. The 1955 Letters Patent provided that some of the Commission's directors were to be "elected" by the Commission's members, and "approved" by the Town Council, while others were "elected" in the same manner but had to be approved by the Town's Chamber of Commerce. Thus, one had to go through a two-stage process in order to become a director: nomination by the members and approval by either the Town Council or the Town's Chamber of Commerce. The Commission's 1955 By-law No. 1 reflected this procedure.

The 1981 Supplementary Letters Patent amended the 1955 Letters Patent with respect to the selection of directors. The 1981 instrument provided that the Mayor of the Town was to be a director *ex-officio*, while the remaining directors were to be appointed by the Town Council from either the community at large (five) or its own ranks (one).

Supplementary Letters Patent were granted to the Commission again in 1992. These stated that the directors were to be chosen by the members of the Commission.

Accordingly, I conclude that, as of the date of the request and appeal, and indeed at the present time, the directors of the Commission were "appointed or chosen" by the members of the Commission itself.

## **Officers**

According to section 129(1)(h) of the Corporations Act, a corporation without share capital may make by-laws respecting the appointment of officers, as long as the by-laws are not contrary to that Act or to its original or Supplementary Letters Patent. Such a by-law must be confirmed by the corporation's members at a general meeting, or may be rejected at such a meeting (sections 129(2) and (3) of the Corporations Act).

The first reference to the appointment of officers of the Commission appeared in the original December 16, 1955 version of By-law No. 1. That By-law stated that officers were to be "determined by the Board [of Directors] by by-law." It stated:

There shall be a President, a Vice-President, a Secretary and a Treasurer or in lieu of a Secretary and Treasurer, a Secretary-Treasurer and such other officers as the board of directors may determine by by-law from time to time.

The 1981 and 1993 versions of By-law No. 1 reaffirmed this procedure.

Therefore, as of the dates of the request and the appeal, the officers of the corporation were "appointed or chosen" by the Commission's Board of Directors. The situation remains the same today.

## Members

When the Commission was initially granted its Letters Patent, the original six incorporators became members of the Commission by virtue of section 121 of the Corporations Act. In addition, the 1955 Letters Patent provided that the Mayor shall be an ex-officio member of the Corporation. The subsequent admission of members to the Commission was set out in the Commission's By-law No. 1 which provided that:

The **membership** shall consist of the applicants for the incorporation of the Corporation and of such other individuals and of such corporations, partnerships and other legal entities **as are admitted as members by the board of directors.**

In my view, the original Letters Patent and the Commission's first by-law determined who the members were and how they were appointed.

With respect to the appointment of members at the time of the request and the filing of the appeal, the Town submits the following:

As previously stated, the original organizational By-law number 1 of the Corporation provided that the members of the Corporation consisted of the six original applicants and such other individuals as were admitted by the Board of Directors. If this By-law was not repealed or amended until August 31st, 1993 then at the date the request was filed (February 11th, 1993) and, at the date of the appeal (April 1st, 1993) it would have remained in effect.

The corporate documents show that By-law No. 1 was amended on May 12, 1981 as a result of Supplementary Letters Patent dated January 14, 1981. This latter instrument changed the method of selecting directors, and rescinded the provision that the Mayor shall be an ex-officio member of the Commission. Instead, the document stipulated that the Mayor shall be a director. There was no change to the method of selecting members as set out in the original by-law.

It is, therefore, my view that members were admitted to the Commission by the Board of Directors, and that this approach did not change until By-law No.1 was amended on August 31, 1993. Section 38 of this by-law states:

38. Entitlement. Membership in the Corporation, shall be limited to persons interested in furthering its objects and shall consist of those persons as may from time to time be **admitted into membership by the Secretary** in accordance with rules for membership, if any, in the Corporation which have been approved by resolution of the board of directors, **and** those persons as may from time to time be admitted into membership in the Corporation **by resolution of the board of directors.** Each member shall be promptly

informed by the Secretary of their admission as a member. [emphasis added]

I have very carefully reviewed all of the representations, the documents pertaining to the corporate history of the Commission, and those documents compiled as a result of a corporate search ordered by this agency. I find that the members of the Commission were "appointed or chosen" by the Board of Directors both at the date of the request, February 11, 1993 and at the date of the filing of the appeal on April 1, 1993. This is also the current situation.

**Conclusion:**

I have found above that as of the dates of the request and the appeal, neither the "members" nor the "officers" of the Commission were "appointed or chosen by or under the authority of" the Town Council pursuant to section 2(3) of the Act.

Accordingly, I find that the Commission cannot be deemed to be a part of the municipal corporation of the Town by virtue of section 2(3) of the Act. Therefore, the Commission does not qualify as an institution under section 2(1) of the Act and the Act does not apply to the Commission.

**ORDER:**

I find that the Renfrew Industrial Commission is not subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ July 11, 1994

**POSTSCRIPT:**

In his representations, and throughout this appeal, the appellant has alleged that there have been irregularities regarding amendments made to the Commission's constitution. In particular, the appellant claims that a Special Resolution authorizing the 1992 amendments to the Supplementary Letters Patent could not have been passed because there had been "no annual meeting of the members of the Corporation since 1991". As I have previously indicated, it was the 1992 Supplementary Letters Patent which provided that the directors of the Commission were to be chosen by the Commission's members.

All of the Commission documents which I have reviewed in making this decision (including the 1992 Supplementary Letters Patent) have been filed under the Corporations Act with the Ministry of Consumer and Commercial Relations. Accordingly, in analyzing these documents and tracing the Commission's corporate history as it relates to the application of the Act, I must accept the validity of these documents as filed.

The Corporations Act sets out the procedure by which an individual may challenge the validity of Letters Patent or Supplementary Letters Patent. On this basis, I find that I lack the jurisdiction to inquire into whether there was some defect which may have lead to these documents being issued improperly.