



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-415

Appeal M-9300577

Township of Temagami



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Township of Temagami (the Township) received a request for access to:

- copies of the minutes of meetings of the Temagami Non-Profit Housing Corporation (the Housing Corporation) for a specified period of time;
- the by-law incorporating the Housing Corporation; and
- a letter sent from a solicitor to the Housing Corporation.

Pursuant to section 18 of the Act, the Township transferred the request to the Housing Corporation.

The Housing Corporation responded to the request by stating that it was not an institution as defined in the Act and was, therefore, not subject to any of the provisions of the legislation. The requester appealed this decision.

During mediation, the appellant withdrew his request for access to the solicitor's letter. He is continuing to seek access to the other two categories of information on the basis that the Housing Corporation is subject to the Act.

Notice that an inquiry was being conducted to review the decision of the Housing Corporation was sent to the Housing Corporation, the Township and the appellant. Representations were received from all three 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 Housing Corporation does not qualify as an "institution" under clause (c) of the definition. However, the appellant maintains that the Housing Corporation is subject to the Act on two grounds.

The appellant's first contention is that the Housing Corporation is a local services board and thus falls under clause (b) of the above definition. In the alternative, he maintains that the Housing Corporation could be deemed to be a part of the Township (which is an institution under clause (a) of the definition) by virtue of section 2(3) of the Act. This provision states:

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.** [my emphasis]

I will first consider the application of section 2(3) of the Act.

In this case, there is no doubt that the Housing Corporation qualifies as a "corporation" under section 2(3). However, the issue which I must now determine is whether all of the **members or officers** of the Housing Corporation were "appointed or chosen by **or under the authority of the council of the municipal corporation**", i.e. Township Council. If I find that this is the case, section 2(3) of the Act will apply and the Housing Corporation will be deemed to be part of the Township (and thus an institution) for the purposes of the Act.

In order to address this issue, I will consider the following matters:

- (1) a review of the general background of the Housing Corporation in the context of section 2(3) and the relevant provisions of the Corporations Act;
- (2) the definition of the term "officers" as found in section 2(3) of the Act;
- (3) the meaning of the phrase "under the authority of ..." as found in section 2(3) of the Act; and
- (4) the meaning of the phrase "municipality itself" as found in section 9 of By-Law No. 1 of the Housing Corporation.

(1) **General Background**

The Housing Corporation is a corporation without share capital which was created by Letters Patent issued by the Lieutenant-Governor on October 2, 1987. This type of corporation is governed 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 such a corporation is to be run "without the purpose of gain for its members" (sections 118 and 126 of the Corporations Act). In this case, the original objects of the Housing Corporation included providing and operating housing accommodation for persons of low or moderate income at rentals below the "median current rental market".

(2) The Definition of the Term "Officers" as Found in Section 2(3) of the Act

Section 2(3) of the Act does not refer to directors; as I have noted above, it speaks of "members" and "officers". For the purposes of this order, I will first consider whether the directors of the Housing Corporation can be considered to be "officers" within the meaning of section 2(3).

The terms "members" and "officers" are nowhere defined in the Act. However, the term "officer" has been very broadly defined in law, particularly in the public law context. For example, the Dictionary of Canadian Law defines "officer" as including the position of a corporation director.

In my view, the use of the term "officers" along with "members" in section 2(3) is intended to identify the principal directing or controlling minds of a wide variety of entities, including "every agency, board, commission, corporation or other body not mentioned in subsection 2(1)(b)". A purposive interpretation of the Act suggests that the term "officers" should encompass the controlling or directing minds of a non-profit corporation, namely its board of directors, whether or not directors are otherwise described as "officers" in the corporate documents.

In my opinion, to interpret the term "officers" narrowly to include those positions commonly referred to as officers in a business law context, such as president, secretary, treasurer, would be inconsistent with the purpose of section 2(3). The purpose of this section is to include within the definition of "institution" those bodies controlled by municipalities in the most direct way, that is by virtue of the power to appoint the body's "members" or "officers." This result would not necessarily be achieved if this test were applied at a secondary level of management. Accordingly, it is my view that the threshold established in section 2(3) should be applied to those positions which can be said to be the "directing minds" of the corporation.

Section 7 of the incorporating by-law (By-Law No. 1) of the Housing Corporation states:

The affairs of the Corporation shall be managed by a board of six directors of which at least one must be a member of the municipal council, who may exercise all such powers

and do all such acts and things as may be exercised or done by the corporation and are not by the by-laws or any special resolution of the corporation or by statute expressly directed or required to be done by the corporation at a general meeting of members.

The Housing Corporation has advised that this by-law has never been amended.

In my view, it is clear from section 7 of the by-law that the directors are the "directing mind" of the Housing Corporation. Accordingly, I conclude that, in the circumstances of this appeal, the term "officer" should be interpreted as including "directors" for the purpose of section 2(3) of the Act.

(3) The Meaning of the Phrase "Under the Authority Of ..." As Found in Section 2(3) of the Act

As previously stated, in order for the Housing Corporation to be deemed to be a part of the Township, all of its members or officers must be appointed or chosen by **or under the authority of the council of the municipal corporation**. Having determined that "officers" includes directors for the purposes of section 2(3) of the Act, I will now examine the selection of the directors.

As noted previously, section 7 of By-Law No. 1 requires that at least one director must be a member of municipal council. The Housing Corporation states that this director is appointed **by** the municipality, thus satisfying the provisions of section 2(3) with respect to one director.

I will next consider the selection of the remaining five directors. In my view, whether this process also satisfies the terms of section 2(3) turns on the meaning of the word "authority".

The Letters Patent of the Housing Corporation contain the following special provision:

No person shall be elected or appointed as a director unless this election or appointment has the prior approval of the municipality itself.

These Letters Patents have never been amended.

The incorporating by-law also speaks to the selection of directors. Section 9 states:

The first director's term of office shall, subject to the provisions, if any, of the Letters Patent or Supplementary letters patent of the corporation, shall be for a period of (4) four years and thereafter one half of the directors shall be elected to hold office for a term of (4) four years and the remaining one half of the directors shall be elected to hold office for a term of

(2) two years, or until their successors are elected or appointed. Provided that no person shall be elected or appointed as a director unless this election or appointment has the prior approval of the municipality itself.

Section 11 of the by-law states:

The members of the Corporation may, by resolution passes [sic] by at least two-thirds (2/3) of the votes cast at a general meeting of which notice specifying the intention to pass such a resolution has been given, remove any director before the expiration of his term of office and may, by a majority of votes cast at that meeting, elect any person in his stead for the remainder of his term.

In its submissions, the Housing Corporation provides the following explanation of the operation of these provisions:

The five **directors** of the Housing Corporation are **chosen by the Board of Directors**. The newly appointed director is then **approved by the municipality**. Following the municipality's approval, the new member is **appointed by a resolution of the Board**.
[original emphasis]

The position of the Housing Corporation is, therefore, that the selection of its directors is a process undertaken by its own members. In my view, this submission fails to accord sufficient weight to the power of the municipality itself to approve the election or appointment of a director.

Black's Law Dictionary defines "authority" as "permission" or "control over". In my opinion, based on either definition, the municipality can be said to have the authority to determine who may or may not serve as a director of the Housing Corporation, notwithstanding that the municipality does not actually choose all of the directors. Because the approval of the municipality is a necessary condition for the appointment of a director, I am satisfied that the municipality has "control over" who is eligible to be elected or appointed to the board of directors. Accordingly, I find that the directors are appointed or chosen "under the authority" of the municipality.

I am of the view that this is the case not only with regard to the appointment or election of first-time directors, but also directors of the Housing Corporation who are elected or appointed to fill a vacancy according to the provisions of section 11 of By-Law No. 1.

The appellant has provided me with a copy of the minutes of Township Council dated December 10, 1992. I note that, at that meeting, council went beyond mere approval and actually appointed two directors to the Housing Corporation for a period of two years. Neither of these individuals appeared to be a council member at that time.

(4) The Meaning of the Phrase "Municipality Itself" as Found in Section 9 of By-Law No. 1 of the Housing Corporation

The final issue which I must determine is whether the phrase "municipality itself" as found in section 9 of By-law No. 1 may be equated with the term "council of the municipal corporation" as found in section 2(3) of the Act.

The provisions of the Municipal Act generally require that all decisions and other acts of a municipality must be made by the municipal council, unless expressly delegated in the legislation to another official or agency of the municipality. There is no such delegating provision respecting approvals of the sort contemplated by section 9 of By-Law No. 1 of the Housing Corporation.

Therefore, I conclude that the phrase "municipality itself" as found in section 9 of By-Law No. 1 of the Housing Corporation means the "council of the municipal corporation" as found in section 2(3) of the Act.

Accordingly, I find that all the requisite elements of section 2(3) of the Act have been satisfied and that the Housing Corporation is deemed to be part of the municipal corporation of the Township of Temagami for the purposes of the Act.

ORDER:

1. I find that by virtue of section 2(3) of the Act the Temagami Non-Profit Housing Corporation is deemed to be part of the municipal corporation of the Township of Temagami for the purposes of the Act.
2. I order the Township to make a decision under the Act on access to the records requested by the appellant in his letter dated August 30, 1993.
3. I order the decision referred to in Provision 2 to be made in accordance with sections 19 and 22 of the Act considering the date of this order as the date of the request and without benefit of a time extension under section 20 of the Act.
4. In order to verify compliance with this order, I order the Township to provide me with a copy of the decision letter referred to in Provision 2 within thirty-five (35) days of the date of this order. The decision letter should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Anita Fineberg
Inquiry Officer

November 2, 1994