



The Marrocco-Collingwood inquiry (Part 3)

The impact on the municipal management profession



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The last two articles have explored the findings of the Marrocco Judicial Inquiry with an eye to what they mean – or should mean – to municipal governments (and their local utilities).

In his exhaustive review, running to nearly 1,000 pages and over 300 recommendations, Associate Chief Justice Frank N. Marrocco unpacks the issues in Collingwood, Ontario that led to a judicial inquiry.¹ More importantly for a wider audience, he also offers concrete and detailed suggestions for improving municipal government and enhancing local democracy.

Like inquiry jurists before him, Marrocco proposes reform through new statutory provisions and better procedural by-laws. It is not surprising that a judge would seek corrective action through more and better rules, but rules are not enough. Marrocco's innovative approach is to use rules as a vehicle for inculcating values – values that most citizens expect from those in public life and, ideally, should not need to be codified and legislated. These values include:

- prioritizing the public interest;
- respecting an impartial public service;
- accountability to residents and taxpayers; and
- modeling transparency and “good governance” practices in public decision making.

As Marrocco says: “The importance of maintaining and enhancing a culture of integrity for council, staff, and those who wish to deal with municipalities is fundamental to good government at the local level.”²

Marrocco's long years on the bench have given him a keen insight into human nature – the role that people and personalities play in the life and culture of organizations, especially those in positions of leadership and trust. A notable centrepiece of his proposals is to redefine and prescribe the roles of the mayor (or head of council), municipal council members, and the CAO or city manager. On reviewing his findings, however, his logic is inescapable. In the commercial world, this would be described as adopting “good governance” practices.

Recommendations for Good Governance

The focus on the political and managerial leaders in a municipality is not new. Justice Marrocco repeats (and acknowledges) similar conclusions of the Bellamy³ and

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1 Associate Chief Justice Frank N. Marrocco, Commissioner, “Transparency and the Public Trust: Report of the Collingwood Judicial Inquiry,” Vol. I-IV. Available at www.collingwoodinquiry.ca.

2 Marrocco, Vol. IV, p. 3.

3 Hon. Madam Justice Denise E. Bellamy, Commissioner, “Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry,” Vol. 2: Good Government, https://www.toronto.ca/ext/digital_comm/inquiry/inquiry_site/report/pdf/TCLI_TECI_Report_Good_Government.pdf.

Cunningham⁴ judicial inquiries. Most refreshing is his call for specific statutory reforms. The question of the hour is whether municipal, community, and business leaders will support the practical reforms he recommends to the Ontario government as being necessary to enhance the bruised confidence in today's municipal government. The other, equally compelling question is whether the Government of Ontario will give serious thought to these recommendations – the latest in a series of indicators that change is needed.

Better rules-based guidance and “good governance” practices will help, but rules may not alter behaviour among those who do not subscribe to the values those rules represent. As soon as “acceptable” behaviours are codified, both the shrewd and the unwilling will seek paths around them, or even ignore them entirely. By contrast, principles-based shared values enlist the subtle and powerful pressures that the law cannot: peer pressure, public obloquy, workplace disciplinary actions, or risk of electoral defeat.

Marrocco focuses some of this ethical burden on the members of municipal council:

Like the head of council, members of council are trustees of the public interest. Council members must ensure that this trust governs all their actions and decisions. Members of council must also respect the need for a neutral and impartial public service, which gives its best advice based on the merits of the question before it. When this respect is lacking, staff's work risks becoming politicized and staff are in danger of failing to fulfill their obligations to the public, which in turn creates the risk of loss of public confidence.

*The council as a whole is the directing mind of the municipality, not individual members. It is responsible for setting policies and priorities, allocating resources, and providing direction to staff on the material, operational, and financial business of the municipality.*⁵

Recommendations for the CAO

Justice Marrocco places particular emphasis on the role and professionalism of the municipal CAO or city/town manager:

The CAO is a full-time position that comes with significant responsibility. Someone with the education and experience required to maintain a culture of integrity and to provide the best information and advice to council should always fill the CAO role. The CAO must operate independently, advising council and carrying out council's direction while remaining unaffected by political influence ...

*... It was apparent in the matters I examined in Parts One and Two of the Inquiry that the importance of the chief administrative officer (CAO) in the proper functioning of the town was not appreciated. This lack of appreciation manifested itself in the manner that the role was treated publicly and in the approach to the role taken behind closed doors. This failure weakened a key pillar in the structure of the municipality, contributed to the blurring of the boundary between council and staff, and made it easier to avoid proper procedure in the pursuit of council's goals. It was also detrimental to the staff's confidence and morale and interfered with their efforts to provide objective information to council.*⁶

How would Justice Marrocco bolster the role of CAO, which he calls “a key pillar in the structure of the municipality”? He has a slew of recommendations:

- give the CAO clear responsibilities and accountability for managing the administration of the municipality;
- make the tenure of CAOs more secure;
- provide a transparent mechanism to resolve any disputes that arise with the mayor or council;
- preserve the paramountcy of the CAO position in relation to other municipal staff; and
- make the CAO responsible for leading and fostering a “culture rooted in the highest ethical standards” for staff.⁷

This last role of the CAO mirrors similar provisions in provincial and federal public service legislation, making the deputy minister or agency head the designated “ethics executive.” In addition to Marrocco's suggestions for reform of the municipal integrity commissioner process, there is real merit in having an in-house “first recourse” before engaging outside intervenors, like officers of parliament, the legislature, or their municipal equivalents.

First Recourse to the CAO

A “first recourse” to the CAO reinforces the principles of managerial responsibility and, ultimately, democratic accountability of the municipal public service. That creative tension can quickly be lost with external complaint mechanisms that grant wide authority with limited accountability. Justice Marrocco's recommendations on the role of the CAO build on the findings of Madam Justice Bellamy in the City of Toronto Judicial Inquiries, where she observed:

The mayor and the city manager should acknowledge each other's roles and respect each other's spheres of authority.

*The relationship between council and the city manager is a very important one. The city manager is a leadership position, the head of the Toronto Public Service. Council should give the city manager clear and unequivocal responsibility and accountability for the overall management of the administration of the city. Not doing so undermines the city manager's effectiveness. A detailed description of the mechanism of authority should be set out as between the city manager, department heads, and the mayor and council.*⁸

Rather than leaving these fundamental goals to be implemented according to the discretion of individual councils through a municipal by-law or employment contract, Marrocco proposes that Ontario join most other Canadian jurisdictions by amending “the *Municipal Act* to describe fully the role and responsibilities of the chief administrative officer.”⁹

4 John Lorinc, “Mississauga mayor McCallion had ‘real and apparent’ conflict of interest in land deal, inquiry finds,” *The Globe and Mail*, October 3, 2011.

5 Marrocco, Vol. IV, pp. 7-8.

6 Marrocco, Vol. IV, p. 22.

7 Marrocco, Vol. IV, recs. 73-79, pp. 23-24.

8 Bellamy, Vol. 2, p. 72.

9 Marrocco, Vol. IV, rec. 71, p. 23.

In addition, after reviewing the Collingwood cases, Marrocco prescribes that those acting on behalf of the municipal corporation should be employed by that municipality and be directed by council, working through the CAO – leaving special-purpose bodies, like utilities, to manage their own affairs with their own staff and officers, within council-imposed accountability parameters.

Trust and Integrity in Local Government

The Marrocco Inquiry report expands the discussion of ways to achieve trust and integrity in local government. He focuses on improved conflict-of-interest definitions and codes, as well as expanding the scope and effectiveness of integrity commissioners and council-staff relations policies now required by statute.

Marrocco reinforces the central role of the CAO, arguing that the CAO

should never be bypassed or “frozen out” in municipal decision making. He concludes by proposing that all of the principles that he has identified should be the subject of ongoing training, covering both incumbents and those new to their positions, whether on council or in senior staff roles, and to involve integrity commissioners: “In my recommendations I have also emphasized the need for leadership and education.”¹⁰

In a global era of populist politics and unrestrained social media, respect for professional expertise, evidence, and even integrity can be casualties. Noting this, Marrocco says that a municipal code of conduct should proscribe council members from making comments “that falsely or maliciously ‘injure the professional or ethical reputation’ of any staff member.”¹¹

A century ago, the council-manager plan and the position of city manager

(or CAO) were created to be a bulwark against recurring threats to good municipal government. They can be again.

When things go very wrong in municipal governments – large and small – they can lead to extensive (and expensive) public inquiries. To avoid repeating the mistakes of the past, we would be wise to look to the sage advice of the judges who conducted those inquiries.

Among other findings, inquiry jurists have concluded that if municipal government is to thrive, there needs to be clear accountability and a recognition of the stewardship responsibilities of the CAO/city manager. That begins with clarity of roles and responsibilities.

We need to distinguish the legitimate place of political leadership and political accountability from the proper role of the managerial executive and policy adviser, as the Marrocco Public Inquiry does so very well. **MW**

10 Marrocco, Vol. IV, p. 3.

11 Marrocco, Vol. IV, rec. 25, p. 13.

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