

Council Orientation Manual	Community Management Series	
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Distribution of Legislative Powers in Canada

The Canadian Constitution assigns “sovereign” powers (the power to make laws) to the federal government and provinces. For example, the provinces are assigned these powers in the areas of health and education while the federal government is assigned domain over foreign affairs and the military. The federal government has geographical “jurisdiction” (areas where the constitution has granted authority) over all of Canada, whereas the provinces only have jurisdiction within their provincial boundaries. The federal government has been assigned all “residual” powers (those not specifically assigned to any government). This gives them powers that have been assigned to the provinces in areas of Canada that are not within a provincial boundary. All laws that each government makes within their “jurisdiction” are valid and enforceable by the applicable government.

“Local Government Authorities” which include Northern Affairs communities, rural and urban municipalities (cities), education and health authorities are creations of provinces. This means they have **no** sovereign powers. The only powers they have are those delegated to the local government authority by the province. The province may take away these powers whenever they choose. These powers are delegated by an act of the legislature, which delegates powers to a local government authority directly; or as in a majority of the cases, indirectly through a minister of the government.

In the case of Northern Affairs communities, their power has been delegated through the minister of Aboriginal and Northern Affairs.

Community Council

The minister of Aboriginal and Northern Affairs has the municipal authority to act on behalf of unincorporated communities. The minister is advised by the locally elected community council. In practice, councils may actually manage many of their own affairs, including the preparation of the annual budget and the authorization of certain expenditures. The minister is still ultimately responsible for the actions of communities.

The Northern Affairs Act provides for the incorporation of communities and the delegation of local government powers and responsibilities to duly elected community councils. This allows incorporated councils to achieve a higher level of independence in the management of their local affairs.

Definition of Community Council

A community council consists of a group of representatives of the community, elected by the residents of the community to meet the municipal needs of that community.

Council is directly responsible to manage and provide municipal services to local residents. All council decisions are made by the majority of council.

The number of members on council is set by regulation. The maximum rate of pay (honorarium) for members is set by regulation and cannot be exceeded by council. Mayor and councillor terms are for a period of four years and are staggered, so that not all terms expire in the same year. This provides continuity on council. Members of council are expected to take an active role in making decisions that are in the best interests of the community and operating in an open and transparent manner. Some of the duties required to fulfil these obligations are listed later in this manual.

Legislation, Regulations and Reference Material

Some of the main documents council will refer to are listed below. Those listed are available at the council office, through the Aboriginal & Northern Affairs regional office or on the Manitoba government website.

Legislation

The Northern Affairs Act

This is the most important piece of legislation for community councils. It is the legal authority under which councils exist and function. Community councils operate under the legislation contained in this act.

Regulations

Regulations have the same authority as an act of the legislature.

- **Community Councils Election Regulation 71/2009**
The regulation that governs the procedures and process for holding community elections.
- **Status and Boundaries – Unincorporated Communities and Settlements Regulation 67/2009**
The regulation that describes the legal boundary and status of the community.
- **Council Compensation Regulation 252/2006**
The regulation that states the maximum rate of pay for council member honorariums and per diems.

- **Procedures and Delegation of By-law Making Powers Regulation (Communities that are not incorporated) 253/2006**
The regulation that delegates the passing of specified by-laws to unincorporated community councils.
- **Conflict of Interest Regulation 254/2006**
The regulation that sets out the rules required to be followed for conflict of interest.

Reference Material

- **Local Government Development Manual of Policies and Procedures (LGDMPP)**
Outlines the policies and procedures under which councils are expected to operate.
- **Financial Management Guide**
Provides guidance to the community administrative officer on financial and administrative matters.
- **A Safe Workplace**
Provides guidance to council on their roles and responsibilities when it comes to workplace safety and health.

The **Local Government Development Community Management Series Manual** contains reference material on:

- **Running for Council**
Provides information to residents interested in running for a position on council on local governance and the election process.
- **Council Orientation**
Prepares newly elected council members for their new roles and responsibilities.
- **Employee Management Guide**
Provides guidance on personnel matters with respect to the hiring and supervision of staff.
- **Capital Project Planning and Delivery**
Provides guidance for the planning and delivery of capital infrastructure through the Aboriginal and Northern Affairs capital program.
- **Community Management Plan Development**
Provides a framework and template for completing the Community Management Plan.
- **Managing Your Own Affairs**
Provides information on the community incorporation process.

- **Subdivision Process Guide**
Provides information on the planning processes required for subdivisions.
- **Land Use Planning Guide**
Provides information on community planning for land use.
- **Community Development Corporation (CDC) Manual**
Provides information to the community on how to start and operate a CDC in Manitoba.

Duties of Council Members

As a newly elected council member, it is important that you are aware of the responsibilities in your new role, pursuant to section 102 and 103 of the Act. The community administrative officer can assist in orientating you, as required. The departmental Municipal Development Consultant is also available to assist.

Duties (includes Mayor):

- Promote good government
- Act in the best interest of the community
- Know council limitations and departmental policies
- Attend all council meetings and participate in council discussions and decisions
- Make objective and unbiased decisions and accept responsibility for council decisions
- Be aware of financial limitations in decision making
- Accept responsibilities for assigned “portfolio”
- Protect community assets, including protection from theft, misuse and fraud
- Ensure staff are adequately trained
- Adhere to “Conflict of Interest” regulation
- Keep matters confidential until they are discussed at a meeting open to the public
- Seek and distribute information to community residents
- Serve on committees
- Adhere to workplace safety and health requirements

Additional Duties of the Mayor:

- Council representative
- Chair council meetings
- Ensure all council decisions are legal
- Guard against “Conflict of Interest”

Council establishes the community’s organizational structure to be followed when conducting council business. This includes: establishing council committees and their role and membership, how your deputy mayor is appointed. This is done by by-law, if incorporated or by resolution if unincorporated.

Duties of Community Administrative Officer

The community administrative officer, pursuant to section 134(1)&(2) of the Act, acts as an information resource and principal advisor to council on legislation, regulations, policies, procedures and finances. Council is the decision-maker and is ultimately responsible for all its decisions. The community administrative officer is responsible for implementing council decisions. Open, trusting and professional interaction between council and the community administrative officer is vital to the smooth operation of your community.

Duties:

- Attend all council meetings
- Prepare minutes of all regular and special meetings
- Present financial statements to council on a monthly basis
- Manage revenues and ensure accounts for authorized expenditures are paid
- Maintain council files
- Respond to correspondence as directed by council
- Provide records for council inspection and audit purposes
- Advise council on programs, policies and procedures
- Participate in training programs
- Maintain records necessary for “Conflict of Interest” regulation
- Manage and supervise employees, except as council may direct otherwise
- Report to council on monies spent or invested contrary to a by-law or resolution
- Report to minister if council does not address monies spent or invested contrary to a by-law or resolution where previously reported to council

Communities can have their own community administrative officer or can share a community administrative officer with a neighboring community. Sharing a community administrative officer is often an effective option for smaller communities that do not have the resources to attract and retain a qualified community administrative officer or that do not require a full time community administrative officer.

Consultative Services Available from Department

Following are the consultative services available to communities. The roles and responsibilities of each departmental consultant are in summary form.

Municipal Development Consultant

- Facilitate increased financial management and administrative capacity through council and administrative staff development.
- Facilitate the process of developing a Community Management Plan with council and assist with trouble shooting on financial matters.
- Provide information on available resources and training and assist with interpretation

of various legislation.

- Advise on services available from other government services/agencies.

Recreation and Wellness Consultant

- Promote recreation and wellness programs within communities.
- Promote healthy active living for individuals and communities through community initiatives in wellness.
- Provide support, resources and networking opportunities:
 - *Support* – work closely with community recreation directors and assist community representatives and recreation staff in finding resources to support program planning and delivery. Promote the benefits of recreation and wellness opportunities to community leaders and administer the Community Wellness and Recreation Fund.
 - *Resources* – develop and distribute recreation and wellness resources.
 - *Networking Opportunities* – help build a strong province-wide network.

Technical and Public Works Consultant

- Assist communities plan, deliver, operate and maintain various public works and infrastructure projects. The three major operational areas are:
 - *Project Planning* – assist with preparation of capital applications, preparing designs and cost estimates. Arrange job-site meetings with community councils to plan project delivery and arrange for engineering assistance and advice.
 - *Project Delivery* - work closely with community councils during actual project delivery and responsible for overall project management.
 - *Operation and Maintenance* – help communities establish a preventative maintenance program and assist with trouble shooting.

Workplace Safety and Health Consultant

- Assist communities comply with workplace safety and health requirements.

Environmental Consultant

- Assist communities plan, deliver, operate and maintain municipal service infrastructure with respect to water treatment plants & distribution systems, wastewater treatment plants & collection systems and solid waste disposal grounds.
- Assist councils with the preparation of capital applications, designs, cost estimates and request for proposals (RFP's). Arrange job-site meetings with councils to plan project delivery and arrange for engineering services. Work closely with community councils during actual project delivery and responsible for overall project management.

Protective Services Consultant

- Work with communities to help improve their capacity to respond to public safety concerns such as fire, personal safety and community emergency situations. Assist with the following program areas:

- *Fire* – through support of community-based training and proper maintenance of fire equipment/infrastructure.
- *Constable* – work closely with the community to promote constable training.
- *Emergency Planning* – help to ensure that communities update their community emergency plan and assist with community risk assessment.
- *Ambulance* – available to assist communities upon request.

Community and Resource Development Consultant

- Promote, assist and facilitate the process for communities to improve social and economic conditions. Facilitate the process of developing a community economic development (CED) strategy. This strategy may address economic and/or social issues.
- Work with the community to build partnerships as well as determine the best structure for the community to use to address the issues and opportunities identified in the CED strategy.
- Assist existing and potential entrepreneurs and mentor community development staff.
- Assist and facilitate the process for the development of land use planning documents that will allow the community to develop in an orderly fashion, using a consistent organized approach.

Meeting Management

Council determines the date and time of regular meetings in their rules of procedures (or by-law if incorporated). The mayor or any two members of council may call special meetings. If you are unable to attend a meeting, it is a courtesy to the other council members to notify the community administrative officer.

Where a council member misses three consecutive meetings without prior authorization by council resolution, the member is deemed to have resigned per section 86(2) of the Act. At the regular meeting following the third missed meeting the position becomes vacant.

Council meetings are open to the public, however the public cannot take part in any of the discussions or decisions. A community resident wishing to address council can contact the community administrative officer to be added to the agenda.

Discussions regarding personnel issues should be held in-camera. The decision(s), if any, are made at the reconvened meeting.

Members of council cannot use their position for direct personal gain and must excuse themselves from the meeting if there may be a conflict of interest (explained further under conflict of interest section). You must disclose your interest each and every time the matter in which you have an interest is brought before council. Your disclosure of an interest in one meeting does not carry over to the other meetings or last for your full term on council. If you

are absent from a council meeting at which a matter you have an interest in is discussed, you must disclose your interest at the next council meeting.

Duties of Community Administrative Officer:

- Prepare and distribute council meeting agendas and supporting documents in a timely manner
- Prepare and present monthly financial statements (includes A/R, A/P and bank reconciliation) that provide a snapshot of the financial position of the community
- Request approval to pay accounts
- Present correspondence
- Provide well-researched and easy to understand reports that contain options to address issues, and a recommended course of action for council's consideration
- Record minutes and resolutions

Re-occurring invoices are approved by blanket resolution at the start of the new fiscal year. The community administrative officer presents these paid invoices for council ratification. Non re-occurring bills are listed by the community administrative officer and presented for approval.

The community administrative officer must ensure minutes of all regular and special meetings of council are recorded, contain all decisions made and distributed in a timely way. Minutes are the legal documentation of council's affairs.

Duties of Council Members (includes Mayor):

- Attend all council meetings
- Participate in discussions
- Represent concerns and views of the community
- Conduct themselves in an orderly manner
- Respect opinions of others

Additional Duties of Mayor:

- Ensure there is a quorum
- Conduct an orderly meeting
- Ensure everyone has a chance to voice their opinion
- Ensure decisions are made by resolution and carried by majority vote

As chair of the meeting, the mayor is responsible to ensure the speakers remain on topic and to control lengthy discussions. The chair should encourage all council members to participate in the discussions.

Council makes decisions by passing by-laws and resolutions approved by a majority vote of council members at a meeting open to the public. No decision is legal without council majority. Every member of council present at a meeting must vote on a motion put forward, unless excused from voting by a majority of the other members present, is prohibited from

voting by a provision of the Act or a regulation or has a conflict of interest as defined in the regulation, in respect of the motion. If there is a tie vote, the vote is defeated.

A by-law is necessary when legislation specifies that a by-law is required. Generally, by-laws are needed for matters that have a long-term or broad impact on the public. By-laws are passed by giving three separate “readings” at a minimum of two council meetings, along with any other stipulations required by legislation (ie. holding a public meeting). Resolutions are a formal expression of council’s decisions. Resolutions usually deal with routine or administrative matters, such as approving monthly financial statements or accounts for payment. A resolution requires a mover, seconder and a vote.

Financial Management

Council has overall accountability for the financial position of the community. Council must ensure that the community’s finances are responsibly managed, so that service and program priorities can continue to be delivered at a reasonable cost. Council achieves this by monitoring the financial position of the community throughout the year and reporting on the community’s financial position at the end of the year.

As a council member, you are not expected to be an accountant or an auditor. Your community administrative officer will provide you with the information you need.

Financial management is making economic and efficient use of limited resources (including financial) and protection of community assets from theft, fraud or neglect. Financial management involves planning (includes budgeting), implementing and controlling.

Planning

As a council member you must participate in the development of a Community Management Plan which is to be submitted to the department by January 31 of each year. This plan includes, but is not limited to, the preparation of:

- an operating budget,
- a five-year capital expenditure program,
- a capital budget;
- staff training plans, and
- any other component prescribed by the minister.

Funding to communities is obtained from two sources:

- Government Grants (conditional and unconditional)
- Locally Generated Revenue

To assist communities in the budgeting process, the department provides a funding schedule each year. This funding is approved annually through the departmental estimates process. Council must submit a balanced budget (expenditures must equal revenues).

It is important to begin the planning process early – in December. Starting early recognizes that the planning process takes time to complete. The community administrative officer will prepare a draft community management plan and provide information for council’s review, to support council’s budget discussions.

Implementing

Throughout the year, all decisions are made in relation to the Community Management Plan. Any deviations from the plan (ie. change in council priorities, emergencies) requires council to identify and implement changes which will ensure that council does not incur a deficit. The community administrative officer will provide explanations of large differences in budgeted expenditures compared to actual expenditures, at that point in time. For example, if training becomes available for a council employee which council feels is important for the employee to attend and the training budget is already spent or planned training will use it up; council must identify cost savings or additional revenue prior to approving the unplanned expenditure.

Controlling

In order to have financial control, council requires current and accurate financial information. The main sources of this information are the community monthly financial statements and if applicable, cash flow projection till year-end. A thorough understanding of these statements is required to make good financial decisions. The community administrative officer provides advice and interpretation to council as required.

Conflict of Interest

As a member of council, you are in a position of trust. The public expects you to act in the best interests of the community. A conflict of interest can be defined as a situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties as an elected official.

A conflict of interest arises when a council member takes advantage of their position on council for personal (including members of their immediate family) and/or financial gain. “Immediate family” usually refers to spouse, common-law partner, or dependent child who resides with you. See the *Conflict of Interest* regulation 254/2006 for further detail.

Council members are in conflict if they:

- Participate in a matter before council or use their influence as a council member to influence the community to enter into a contract or transaction where they, or their spouse or dependent child, have a direct or pecuniary (financial) interest
- Use “insider” information that they have acquired in the performance of their official duties

- Receive compensation from any person, business or organization for the services they provide as a council member, or receive compensation to influence another council member

It is the policy of the department to set out the manner in which council can legitimately acquire goods or services from a member of council. This policy enables the council member to avoid conflict of interest situations. This means putting the interests of the community ahead of personal interest. It also means performing duties and the affairs of the community in such a manner that promotes public confidence and trust in the integrity, objectivity and impartiality of the council. See Policy G3 – Community Elected Official Providing Services to the Community on a Contracted or Purchase Basis of the LGDMPP for further detail.

Each council member is required to complete a Statement of Assets and Interests prior to taking office and file the statement with the community administrative officer. There is no requirement to disclose the value of your assets and interests. Policy G9 – Conflict of Interest of the LGDMPP contains the statement. Once filed it is a public document and can be viewed by the public at any time during council office hours. It cannot be photocopied or publically distributed. It must be kept up to date and any changes noted within 30 days.

Following is a list of commonly asked questions to help you understand the rules and your responsibility to report and disclose a conflict of interest when it occurs.

Does disclosure apply to council meetings only?

No. It applies also to committee or subcommittee meetings, or an agency, board or commission where you serve as an elected official.

How is the disclosure recorded?

The community administrative officer or recorder must record the nature of your disclosure and your withdrawal from a meeting. A central record is required to be kept by the community administrative officer to show compliance.

Can the public see the record?

Yes. The record will reflect your statement regarding the disclosure, withdrawal from, and time of your return to the meeting.

What do I have to disclose in my Statement of Assets and Interests? Do I have to provide all my private financial details?

You must disclose real estate holdings in the community and personal financial interests that you, or your spouse or dependent child have. Only the nature of the financial interest must be disclosed, not the financial details. You also do not have to disclose certain things. You do not have to disclose your primary residence, personal bank accounts, Canada Savings Bonds, or retirement investment savings plans. Your income, your spouse's income or your child's income also does not have to be disclosed – you only need to record the employer's name.

Do gifts have to be disclosed?

Yes. You must declare any gift valued at \$250 or more. Gifts received continue to be part of the list of assets until the asset or interest is disposed of.

What does the community administrative officer do with the statement?

The community administrative officer will examine your statement to make sure you have completed the form. They do not verify the accuracy of your statement; all council members have an obligation to accurately disclose their assets and interests.

Fraud Awareness

One of the duties of each member of council is to protect community assets from misuse, theft or fraud. It is important to also be aware of the CAO's obligation per section 134(1)(e) and 135(1) of the Act which read as follows:

CAO's responsibilities

134(1) The community administrative officer is the administrative head of the community and is responsible for (e) notifying the council if money of the community is spent or invested contrary to a by-law or resolution or this or any other Act.

Duty of CAO if money not lawfully used

135(1) If a community administrative officer gives notice to the council under clause 134(1)(e) and the council does not within a reasonable time rectify the matter, the officer must give the minister written notice of the matter as soon as is reasonably possible.

In order to assist council members in fulfilling their duty in this area the following information is provided.

Fraud Related Facts:

- Cases of fraud have occurred in Northern Affairs communities.
- Fraud is often a result of tolerated poor council practice.
- Honesty is impacted by opportunity, pressure and attitude. Reducing opportunity and reflecting an attitude that perpetrators will be prosecuted to the full extent of the law will reduce the likelihood of theft or fraud occurring in the first place.
- In most cases, fraud is done by those we trust.
- Initial council response to suspected wrongdoing is often denial. This denial often derails needed investigation.
- **Willful Blindness** has been identified as a significant contributing factor in many cases.
- Early detection reduces losses, whereas delay increases them.

Warning Signs:

- Lack of council meetings.

- Lack of approval of prior minutes, expenditures and financial statements in council minutes.
- Unapproved expenditures.
- Inadequate support for expenditures.
- Late bank reconciliations.
- Financial difficulties as evidenced by late payments, significant late payment charges, penalties, inability to complete projects on a timely basis and non-deposit of reserve funds into reserve investments on a timely basis.

Preventing Fraud in your Community – Duties as a Member of Council:

- Attend council meetings and ensure they occur at least monthly.
- Ensure resolutions are passed approving all payments (non-reoccurring) to be made and payments made (re-occurring) each month, both matching the total on the applicable list.
- Ensure a resolution is passed approving the latest financial statement. The bank reconciliation should be attached.
- Ensure minutes of past meetings are complete prior to approval, with all lists attached.
- Ensure all payments presented for approval are adequately supported. This may be delegated to an individual council member without signing authority who reports that he or she has verified this prior to passing the expenditure resolution. Any significant interest charges should be noted in the minutes with council’s plan to investigate/ correct the situation.
- Ensure cheque recipients are not an authorizing signature on the cheque and **do not** pre-sign cheques. Before signing a cheque, delegated signing officers must ensure there is evidence that the transaction for which payment is being made is complete, accurate and authorized.
- Ensure all travel advances are within departmental policy and adequately accounted for.
- Ensure a full accounting is received from any individual who is handling cash on behalf of council. This includes situations where an individual is running a social or fundraising event in council’s name.
- Take any complaint or rumor of misuse of community assets seriously.
- Ensure “immediate family” as defined under “Conflict of Interest”, are not sole signatories on a cheque.

Report any cases immediately, where council fails to adequately address any of the above deficiencies, to the department (Municipal Development Consultant or Regional Director).