

Comments on the Proposed Procedural Bylaw

Good evening members of Council, Media and the Gallery.
I am Bryan Lambert, a resident of Cobourg living at 230 King St. E.
This presentation is being made as a concerned private citizen.

Purpose:

To provide a framework and context for consideration of the proposed Procedural bylaw.

The first consideration is why we need this procedural bylaw. The short answer is that it is required by statute:

OMA 2001 Sec 238(2)

Procedure by-laws respecting meetings

(2) Every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings. 2001, c. 25, s. 238 (2).

We also need to consider the big picture.

How does the way Council governs itself fit in?

Primacy

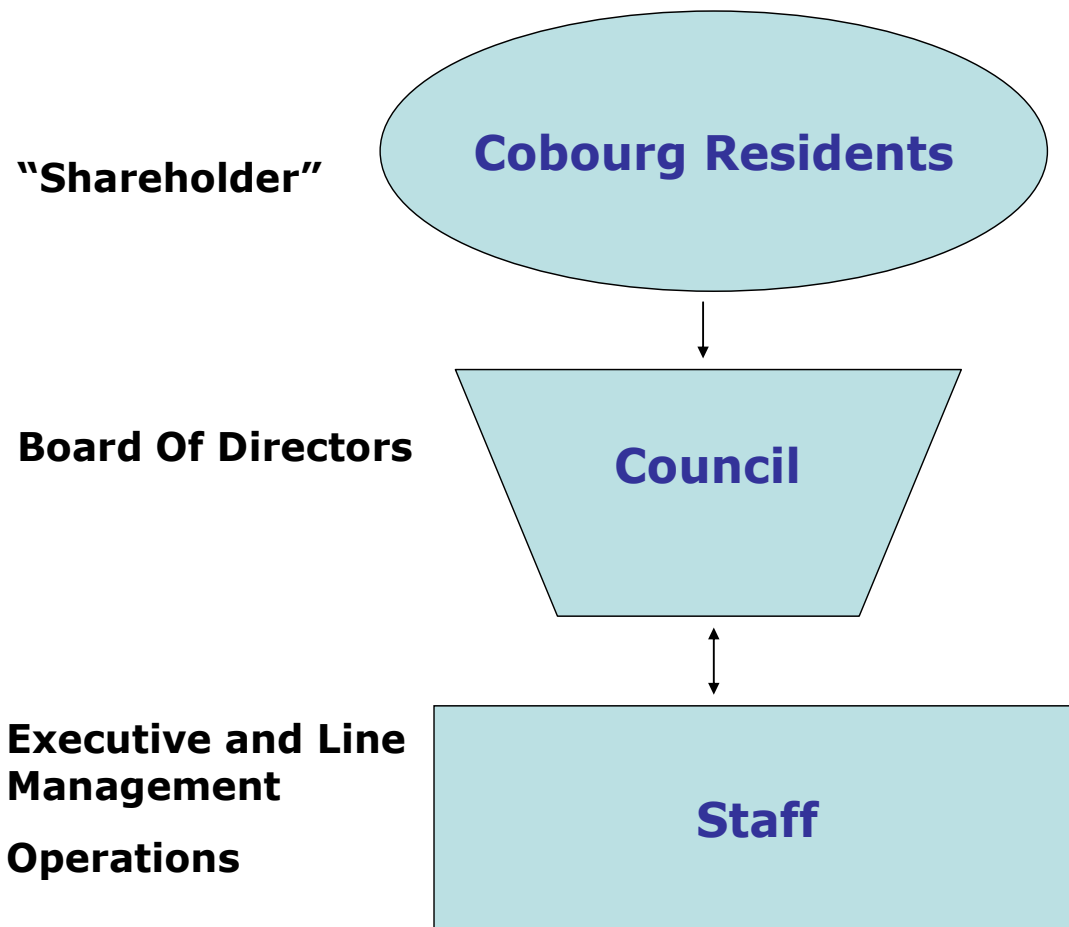
- the fact of being primary,
- pre-eminent, or more important.

- Chain of Command

The importance of the concept of Primacy will hopefully become clear as the information on the next pages is considered.

The basic components of the Town's corporate structure

PP2



The Town of Cobourg is a not for profit Ontario Corporation and except for a few exceptions, is very similar to a private sector corporation.

The exceptions include several statutes such as the:
Ontario Municipal Act 2001,
Planning Act.

As a Not For Profit corporation, the Town does not have shareholders.....
But it does have residents, voters, and a variety of "stakeholders"

It has a Board of Directors: "Council", elected by the "voters" (residents) just as a private sector company has a board of directors elected by the shareholders.

The respective roles and responsibilities for council and “staff” are set out in the Ontario Municipal Act.

PP3

Role of Council, Sect 224

- **to represent the public;**
- to ensure the **accountability** and **transparency** of the operations of the municipality, including the activities of the senior management of the municipality;
- to **maintain the financial integrity** of the municipality;
- to determine which services the municipality provides;
- to develop & evaluate the policies & programs;

Job 1 is “**To Represent the Public**”

Job 2 is ‘To Ensure the **Accountability and Transparency** of the Town’s operations’

Municipal Administration Sect 227

- to **implement council's decisions**
- to **undertake research** and **provide advice to council** on the policies and programs of the municipality;
- to establish administrative practices and procedures to carry out council's decisions;

Job 1 for staff is somewhat self evident....**Implement Council's Decisions**

Job 2 should be self evident but sometimes this seems to be lacking, particularly the "research" aspect, leaving Council to pick up the slack above and beyond their oversight function.

So how does the Procedural Bylaw fit in?
PP5

Procedural Bylaw

- OMA 2001 Sect 238(2)
- **RULES OF ORDER AND PROCEDURES FOR MUNICIPAL COUNCIL AND COMMITTEE MEETINGS**

As the Clerk, Mr. Larmer has indicated, one of his main reasons for proposing the new Procedural Bylaw was to promote the efficient operation of Council; specifically with regard to meetings.

The proposed Procedural Bylaw sets out a wide range of "rules" which for the most part, restrict and Council's ability to act.

Over the past few weeks there have been numerous comments about the "Danger to Democracy" posed by some sections of the proposed bylaw. During the past Committee of the Whole, Council examined numerous sections of the bylaw and deleted or amended many.

There remain a number of sections that warrant Council's attention as noted by the written submissions from Messrs. Burd, Fowlie, Williams and Nabieszko, as well as the people who address Council in this Public Meeting.

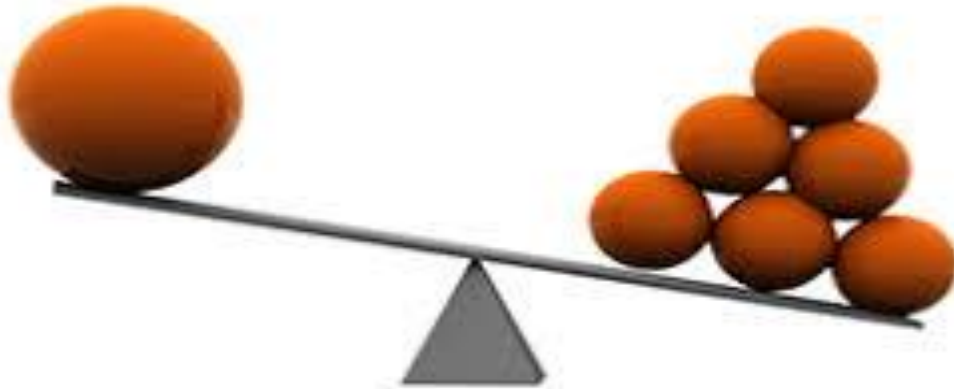
Finding a Balance Point

PP6

Procedure Bylaw Balance

**Bureaucratic
Rules**

**Democratic
Degrees of Freedom**

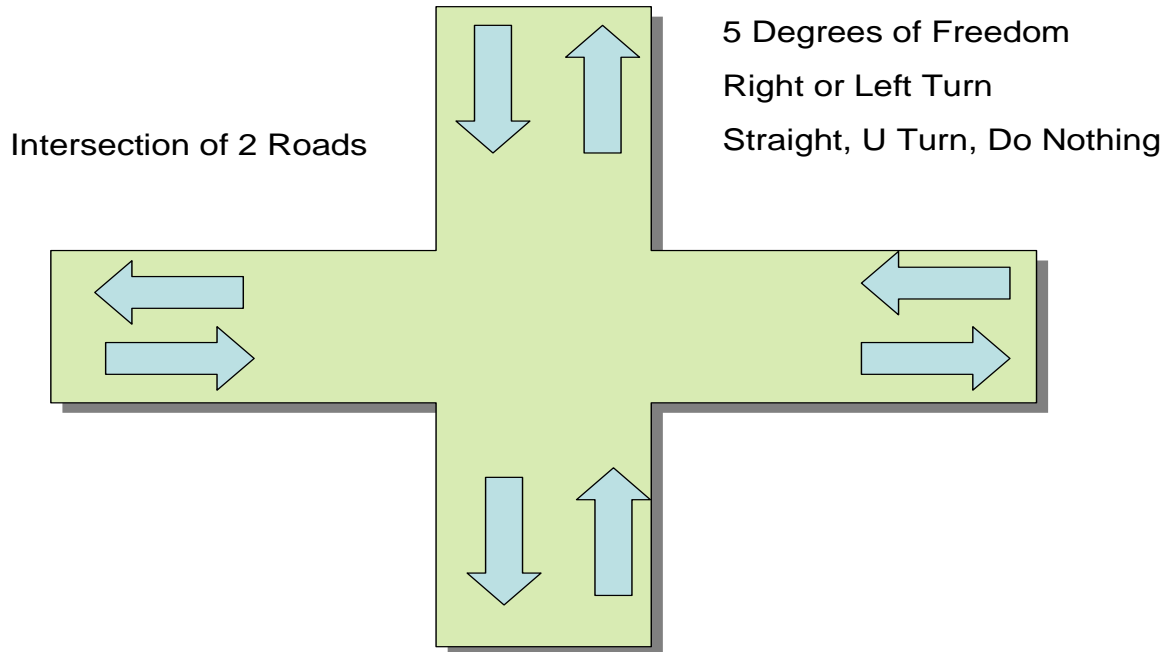


The process of reviewing, modifying and approving the proposed Procedural Bylaw requires council to establish a balance between bureaucratic efficiency and Council's freedom to act: its "Degrees of Freedom".

Note that the point of balance is a point of equilibrium and not necessarily a point of equality.

I believe that council must maintain and preserve its ability to act...its degrees of freedom... at the expense of "efficiency".

Degrees of Freedom



This diagram shows the degrees of freedom, action choices at the intersection of two roads:

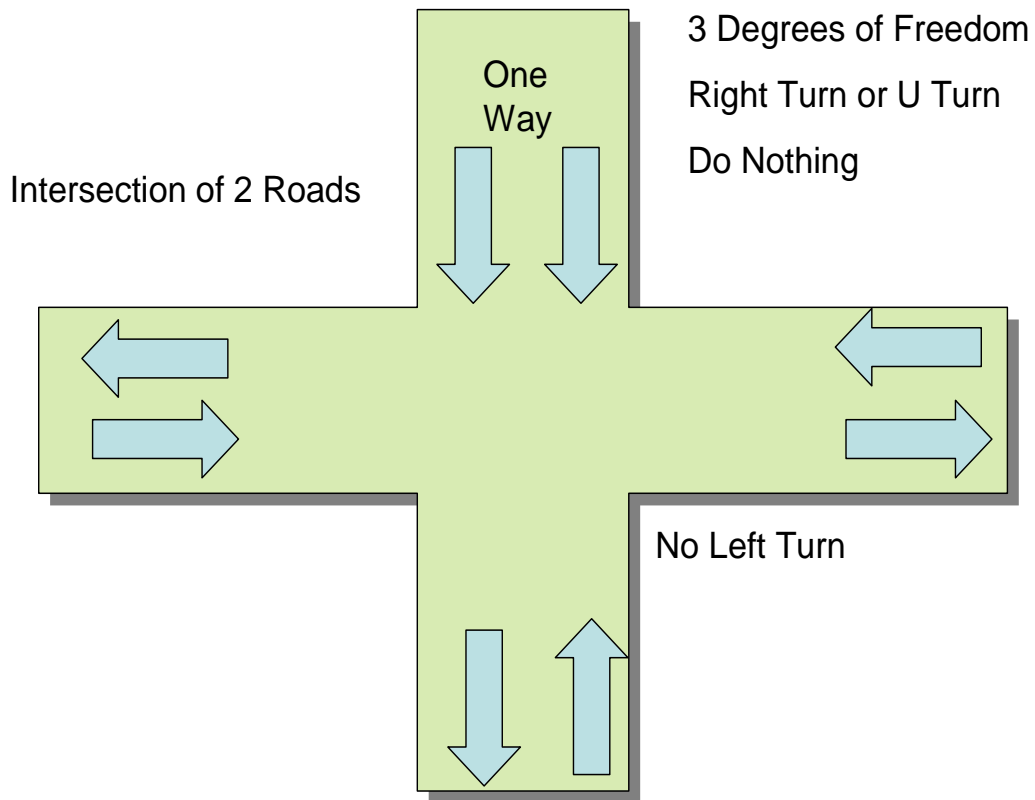
- Proceed straight ahead,
- Left or Right turn
- Reverse (U turn)
- Do nothing

This diagram shows the same intersection with 2 rules:
No Left Turn
One Way Traffic

This reduces the choices by 2: from 5 to 3

PP8

Degrees of Freedom



Some comments on the importance of "language" and word choice as they pertain to Council's motions, bylaws, minutes and documentation.

I congratulate Councillor Darling for bringing to Council's attention the need to correct some of the words and acronyms used in some of Councils recent documentation. Spelling mistakes, poor word choices and incorrect acronyms all contribute to an impression of lack of professionalism and care.

Thanks You Councillor Darling!

PP9

Language

- **Shall** indicates an absolute requirement
- **Must** also indicates an absolute requirement and is the "trending preference" in legal language
- **Must Not** indicates an absolute prohibition

- **Should** and **May** are generally permissive (can be done, but does not have to be done)
- Both must be considered within the context.

- the Federal Rules of Civil Procedure no longer use the word "**shall**." The US Supreme Court ruled that when the word "**shall**" appears in statutes, it means "may." Sep 5, 2013

I suggest that **Must, Must Not** and **May** should be used as required by the context in motions and bylaws.

Care must be taken to understand what is meant when someone says:

The Municipal Act says, or provides.....

Best practice is, or indicates, or suggests.....

Both of these phrases are used to lend authority to the speaker's argument. Care must be taken that the references do, in fact, provide support.

Reference to a statute should contain the section and preferably the actual wording.

Reference to "Best Practice" is somewhat more troublesome because there are no universal arbiters of "best practice". It is most often a matter of limited consensus and personal experience.

To make "best practice" a useful reference, it is necessary to know the source (the centre of excellence) and the specific situation that is being held out as a best practice example.

For example, Mayor Henderson, through his years of experience in municipal government has developed a list of "go to" organizations that he considers to be centres of excellence. DM Seguin most likely also has a list. There is likely some overlap, but who knows.

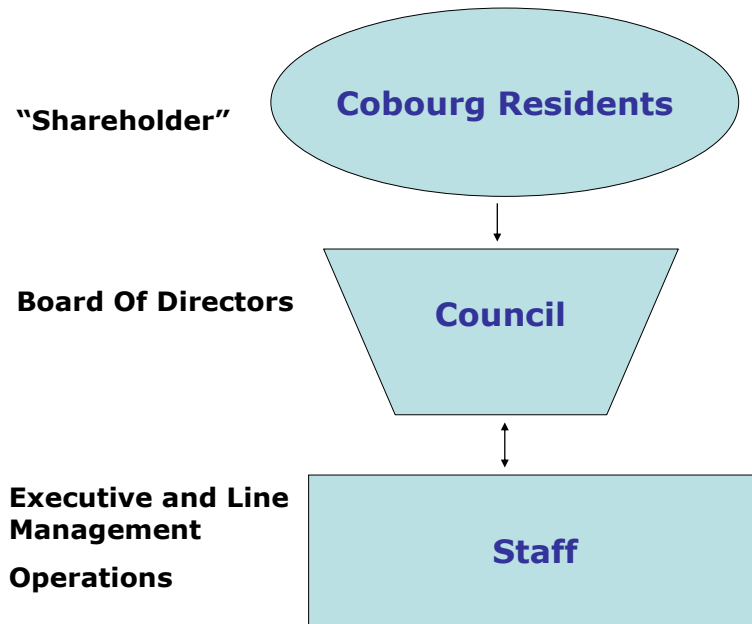
Get it in WRITING

At the previous Committee of the Whole, a section of the proposed procedural bylaw provided for a limit of 4 delegations at a meeting. There was objection to this and Mr. Larmer explained that it was just a guideline and that his intent was to use his judgement on a case by case basis and not to limit the number of delegations unduly.

Sounds reasonable, but it relies on Mr. Larmer being the Clerk. If the Clerk was instead someone who "went by the book", resulting in a max of 4 delegations per meeting, Mr. Larmer's good intentions discarded to the wayside.

In closing, I leave you with two thoughts:

Primacy: The Chain of Command



And

Procedure Bylaw Balance

