

FIRST REPORT

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Niagara Region Independent External Governance Auditor

1. INTRODUCTION

We are pleased to submit our first of three reports resulting from our work as Independent External Governance Auditor for Niagara Region. This *First Report* follows our *Fact Book*, which was dated 30 September and presented to Regional Council on 4 October 2018. Since that time, we have invited outgoing, continuing, and incoming regional councillors to consult with us during interviews lasting approximately one hour each. All but two of these interviews were face-to-face; the two others were conducted by telephone. When the process was complete, we had met with eleven outgoing regional councillors, seven returning regional councillors, and ten new regional councillors. We also conducted similar face-to-face interviews with nine senior members of regional staff. Finally, we also held a public meeting on 28 November 2018, with approximately 40-50 citizens in attendance.

Based on further direction from Regional Council and from the Regional CAO, the content of this report varies somewhat from our original *Work Plan*. It covers the following subjects.

- Various aspects of the system of **standing and advisory committees** including membership, functions, frequency of meetings, selection and remuneration of chairs and vice-chairs, and desirability of maintaining separate co-chairs for a single standing committee for public health and social services
- Desirability of having a **Deputy Regional Chair**
- Possible further **educational opportunities for regional councillors**
- Appointment process for **regional appointments to the Niagara Peninsula Conservation Authority**.

Subsequent reports later in December and in January will cover the other matters included in our original *Work Plan* as well as a discussion of possible ways of preventing leaks of confidential regional information to local media, a subject added to our mandate by Regional Council on 13 September 2018.

2. STANDING COMMITTEES

Niagara has four standing committees:

- Public Health and Social Services
- Corporate Services
- Planning and Economic Development
- Public Works

As reported in our *Fact Book*, the only regional municipalities using standing committees with memberships smaller than the entire regional council are Durham and Halton. No one with whom we consulted suggested that Niagara would be better off adopting some variant of the

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committee-of-the-whole system, at least not as long as the Niagara regional council remains as large as it is. From 2018-22, Durham plans to establish four standing committees with subject matters very similar to Niagara's. There were very few suggestions during our consultations that the number or subject matters of the four standing committees be changed. We concur; there is no reason to do so.

An unusual feature of Niagara's committee system is that one committee, Public Health and Social Services, has two co-chairs, one for public health and one for social services. Although we encountered some support for this arrangement, many other interviewees either knew nothing about it or did not know the reasons for the arrangement. Although we recognize that public-health officials in the Region have distinct statutory authority stemming from Ontario's *Health Protection and Promotion Act*, we see nothing in this Act that touches on the committee systems of regional municipalities¹ and we see no reason for providing special treatment, especially because there are relatively few items each year related to public health on which the standing committee and Regional Council actually has to make a decision. The opioid crisis was mentioned in our consultations: we see this as a problem in which public health and social services are deeply intertwined.

We recommend:

That Niagara Region's standing committee for Public Health and Social Services be presided over by a Chair and a Vice-Chair in the same way as for the other three standing committees.

Membership rules for the four standing committees are more problematic. No other regional municipality (nor any other Ontario municipality as far as we know) operate a system similar to Niagara's in which regional councillors choose the standing committees on which they wish to be members and membership is adjusted accordingly, as long as each regional councillor agrees to serve on at least one standing committee. The result is that most committees are quite large (Public Works has 25 members as of November 2018; Public Health and Social Services has 17).

Some people we spoke to seemed to believe that Niagara's system was quite normal. These people tended to argue that membership rules should remain unchanged. The system was also defended by some interviewees who suggested that it made it easier for smaller municipalities with few regional councillors to insure that they were represented on all or most committees. A more common position was that there should be a pre-set number for the membership of each committee, making Niagara more similar to Durham and Halton and most other non-regional municipalities. Many of the advocates of this position claimed that "voluntary" membership

¹ Section 1(1) a. of the Health Protection and Promotion Act establishes all six regional municipalities, including Niagara, as a "board of health".

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served the interests of a dominant political group on council that could “pack” membership with enough councillors to elect chairs and vice-chairs of each committee and generally to control the committees’ agendas and decision-making. It was also suggested that this system sometimes led to poor attendance and even a lack of quorum because some members were not much interested in the committee’s business, especially perhaps if they also belonged to two or three other standing committees.

The Regional Chair is an *ex officio* member of all standing committees; he or she will not be included in the calculations that follow. Currently there are 31 regional councillors in Niagara. If each sat on two standing committees, membership on each of the standing committees would vary between 15 and 16. This number could be reduced somewhat if mayors were given the option of serving on only one standing committee because of the heavy demands on their time within their respective area municipalities.

We recommend:

That Niagara Regional Council amend its Procedural Bylaw such that each of the four standing committees have a maximum membership of 16 and a minimum membership of 13.

That each Regional Councillor who is not a mayor be required to sit on exactly two standing committees and that mayors have the option of sitting on either one or two standing committees.

That, at its first meeting after its Inaugural Meeting, Regional Council proceed with electing standing committee members in this way:

Four members to each standing committee with each councillor having four votes for each committee;

Then four more members to each standing committee;

Then, two, three, or four more members of each standing committee, until there are no more candidates;

If there are still further candidates for a committee, then two, three, or four more members of each standing committee until there are no more candidates.

Each regional councillor Regional Councillor must insure (by self-nomination if necessary), that he or she is nominated for two committees (and two committees only) at each stage in the process until he or she has been elected to two committees. As noted above, mayors can opt for being nominated for one or two committees at each stage until they have been elected to the desired number of committees.

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That the order of selecting members for each standing committee be determined by lot as drawn by the Regional Clerk.

This mechanism borrows from Section 7.1 of the Region of Durham's Procedural Bylaw adopted in 2018. The reason for breaking the process down into three or four stages is to enable regional councillors to re-assess their own candidacies and votes after each stage.

We envisage the process working in this way:

1. After placing the names of each of the four standing committees in a container, the Regional Clerk selects one
2. She declares nominations open for the first four positions on that committee.
3. When nominations are closed, each regional councillor votes for up to four candidates
4. Votes are counted; the top four vote-getters are declared elected
5. The Regional Clerk then draws another name and the process described in Steps 2-4 above is repeated for that committee.
6. As soon as a councillor is elected to two committees, he or she is ineligible to be nominated again (a mayor may opt not to be nominated after being elected to one committee)
7. The process is repeated again for the remaining two committees
8. Steps 2-7 are repeated so as to elect four more members to each committee in the same committee order as was determined by the Regional Clerk
9. Steps 2-8 are repeated until every regional councillor is declared a member of two committees (or one in the case of mayors who have chosen to serve on only one committee).

We further recommend:

That committees be elected for two-year terms and that the process described above be repeated at every two-year interval.

That each committee elect a chair and vice-chair at their initial meeting for a term of two years each.

That regional councillors who are not members of a particular committee have a right to attend and speak at that committee, but not to vote.

3. FREQUENCY OF MEETINGS

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Niagara is the only regional municipality in Ontario that operates on a three-week meeting cycle. Others operate on a four-week, or monthly, cycle, although in systems based on committees of the whole, the entire council would meet together twice in a four-week cycle. We believe that the three-week cycle creates too many meetings, which could be another cause of sometimes failing to reach quorum. Staff are under constant pressure to produce new reports for the standing committees or for council.

We recommend:

That Regional Council meet every four weeks. We have no preference as to whether monthly meetings are adopted instead (e.g. meeting the third Thursday of every month) although we suspect such a system might generally be more convenient for all concerned.

Each standing committee meet once in the period between council meetings, presumably on the same day of the week as Regional Council.

Additional meetings of council would be held during annual budget deliberations and at the call of the Regional Chair or Regional Councillors as currently provided for in Niagara's Procedural Bylaw.

4. ADVISORY COMMITTEES

As noted in our *Fact Book*, Niagara appears to have many more advisory committees (or “sub-committees” as they are also called in Niagara) than any of the other regional municipalities. Many of these committees—listed on pp.4-5 of our *Fact Book*—have not met for more than a year. Especially given that a new council is now in place, we see no reason why these dormant committees should continue to exist. Although many of our interviewees had not reviewed our list, none of the ones who had reviewed it suggested that there were any whose existence should be protected.

We recommend:

That Regional Council abolish the following advisory committees and then consider if there are others that should be abolished or new ones that should be established.

**Burgoyne Bridge Replacement Project Taskforce
Chief Administrative Officer Recruitment Committee
Corporate Communications Sub Committee**

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Corporate Labour Relations Strategy
Economic Development Working Group
Federation of Canadian Municipalities 2014 Niagara Committee
Human Resource Taskforce
Inter-Municipal Transit Steering Committee
Investment Committee
Niagara Gateway Economic Zone & Centre Implementation Committee
Niagara Regional Housing Board Structure Committee
Procedural By-law Review Committee
Property Assessment and Taxation Review Committee
Regional Development Charge Policy Task Force
Regional Niagara Active Transportation Sub Committee
Task Force to Recommend a Response to the Expert Panel Report
Water and Wastewater Review Task Force
Humberstone Landfill Site Public Liaison Committee
Niagara Road 12 Landfill Site Citizen's Liaison Committee
Long Term Care Task Force

The only advisory committee on our original list in our *Fact Book* that is not included above is the Greater Niagara Circle Route Committee. This committee received explicit support from at least three of our interviewees, even though it has not met for a year. In our view this committee appears to be doing valuable work and should continue, unless or least until Regional Council decides otherwise.

Among many of our interviewees and at the public meeting, considerable dissatisfaction was expressed about the region's advisory committees. Among the major perceived problems were:

1. Infrequent meetings and frequent difficulties in achieving quorum
2. Staff support from line departments that was sometimes inadequate and frequently inconsistent due to changing personnel
3. Committee minutes that were long-delayed and often too vague
4. In some cases, certain committees were perceived to be dominated by longstanding citizen appointees or councillors for whom particular committees had become "hobby horses" or "retirement projects."

Properly functioning advisory committees can perform valuable functions in municipal government. They can act as a mechanism for encouraging citizen engagement in municipal issues. Indeed, they are often important recruiting mechanisms for new council candidates, which is one reason why they are not always looked on with great favour by incumbent councillors. As their name implies, these committees, if their membership comes from

knowledgeable citizens, can also provide to councillors an alternative source of advice to that provided by staff, which is a reason that they are not always looked on with great favour by staff.

We recommend:

That regional staff, as a corporate-wide objective, commit to fully and effectively supporting the reduced number of advisory committees that remain after Regional Council has acted on our previous recommendation. Such a commitment should be led by the Regional Clerk, but it will require support from all line departments that are in any way connected to the work of any of the remaining advisory committees.

5. DEPUTY REGIONAL CHAIR

During the last term of regional council there were suggestions that the council would benefit from having a deputy regional chair who would serve for at least a two-year term and possibly for the entire four-year term. The main argument seemed to be that this would eliminate inconsistencies and uncertainties resulting from the practice of rotating the position of “acting regional chair” among all regional councillors. As noted in our *Fact Book*, no other region has a deputy regional chair, although many other municipalities have deputy mayors who are directly elected or appointed by the mayor or by the council. Some of our interviewees considered the proposal to be part of a scheme to enhance the political power of the regional chair and/or the dominant political group on council. Many others simply saw no need for such a position. At least one of the new councillors thought that serving a brief term as “acting regional chair” would be a valuable experience and would enable her/him to better perform the job of regional councillor.

We recommend:

That no action be taken on any proposal to create the position of Deputy Regional Chair.

6. EDUCATIONAL OPPORTUNITIES FOR REGIONAL COUNCILLORS

Almost everyone we spoke to was in favour in principle of “more education”. Some seemed to argue that it was the previous council that needed instruction in the principles of good municipal governance and that some of the problems education was meant to correct were in fact corrected by the recent election. It is not our job to assess the validity of such an argument. We do note, however, that some of the newly-elected regional councillors have already sought out education

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in municipal governance, notable examples being AMCTO certification and graduate courses in local public administration at the University of Western Ontario. A member of the previous council had taken a course for new councillors offered by AMO. Some incoming regional councillors, although new to the Region, have many years of experience on the councils of area municipalities.

If Regional Council adopts the four-week meeting cycle recommended earlier, then scheduling educational sessions should be easier than with a three-week cycle. In the early weeks and months of this council's term there will, however, be great pressures on councillors' time: familiarizing themselves with the operations of the Region and preparing to adopt a new budget. In an ideal world, educational opportunities would precede these imperatives, but there is not much in local government that is ideal. If there are to be any educational opportunities for councillors, they will probably not be able to be offered until the Spring of 2019.

During our interviews, many respondents suggested that some of the wider subject matter of our reports would likely be overtaken by impending provincial initiatives to restructure regional governments, especially perhaps the one with the most constituent municipalities and the most councillors: Niagara. If this turns out to be true, then regional councillors will have to be prepared to respond to and/or to advance a wide range of potential structural alternatives. To do so they will need to understand a great many issues that transcend the local policy issues on which most of them were probably elected. Can regional municipalities be dismantled without harming existing regional services? Is complete amalgamation the answer? Is there a middle ground? These are just some of the questions to which regional councillors in this term are likely to be expected to be able to answer.

Other possible subjects for educational sessions include provincial-municipal and council-staff relations, codes of conduct and integrity commissioners, the potential utility of other municipal "accountability officers" (e.g. auditors-general, ombudsmen, closed-meeting investigators, registrars of lobbyists) as well as a wide range of potential cross-corporate policy issues (e.g. homelessness) in which the Region has a potentially important role to play.

In the research we did for our *Fact Book*, we concluded that the courses for new councillors offered by AMO are not offered in convenient locations and would be of limited utility for regional councillors elected to serve only at the regional level (as in Niagara). We found no other potential providers of educational opportunities for regional councillors.

This is where things get difficult. We believe that we are uniquely qualified and experienced to prepare and teach the kind of subject matter referred to in previous paragraphs. We would do so in a similar manner to how we conducted our public meeting, a meeting attended by some current regional councillors. From feedback we received after the meeting and by email, we believe that our interactive way of dealing with the subject matter was much appreciated.

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We believe that any instructors hired to teach such courses should be willing to do so in meetings that are open to the public (including the media), although we would not support holding them in the council chamber or having them recorded or live-streamed. These caveats to the openness of the sessions are suggested so as to help councillors resist the temptation to make speeches or to record their positions “for the record”. It should be noted, however, that under Section 239.3 (1) meetings of councillors “may be closed to the public if the following conditions are both satisfied:

1. The meeting is held for the purpose of educating or training the members.
2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council....”

If the majority of councillors take the position that the any educational sessions held in public would be significantly less useful than if held *in camera*, they have every right to invoke the provision of the *Municipal Act* quoted above. However, because many of our interviewees were concerned that Regional Council had met too often *in camera*, and because we do not believe that the educational experience would be unduly hampered by taking place in public, we recommend:

That any educational sessions held for regional councillors be held in public, but that they not be recorded or live-streamed.

For obvious reasons, we are not going to formally recommend in this Report that we be engaged for this purpose. Indeed, we understand that the Region might want to prepare a Request for Proposals and/or a formal tendering process. We would not be prepared to assist the Region in these tasks because we would prefer to be the people actually teaching the courses.

We recommend:

That Regional Council decide as soon as possible whether or not it wishes to engage instructors to provide educational sessions for councillors that would commence in the Spring of 2019 and, if so, that it provide instruction to staff as to how to proceed.

7. NIAGARA PENINSULA CONSERVATION AUTHORITY (NPCA)

The minutes of Regional Council for 13 September 2018 record the following:

Niagara Region Representation on the Niagara Peninsula Conservation Authority

Moved by Councillor Timms Seconded by Councillor Maloney

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Whereas Hamilton is seeking two additional seats on the Niagara Peninsula Conservation Authority due to the new levy apportionment.

NOW THEREFORE BE IT RESOLVED:

That Niagara Region REQUESTS two additional seats on the Niagara Peninsula Conservation Authority Board to reflect its apportionment of the Niagara Peninsula Conservation Authority general levy, subject to the superior court confirmation of apportionment ruling by the Ontario Commissioner of Mines and Lands; and,

That the two additional seats BE HELD by members of the public appointed by Regional Council through a selection process based on a public notice, application and interview basis, with preference given to subject expertise in the Conservation Authorities Act, and mandate areas....

Moved by Councillor Heit Seconded by Councillor Volpatti

That the motion respecting Niagara Region Representation on the Niagara Peninsula Conservation Authority...BE REFERRED to Andrew Sancton Consulting for consideration as part of the on-going governance review. Carried²

With respect to the first part of the motion, it is not entirely clear what it is that we are supposed to be investigating or making recommendations about. Regardless of what we might say, whatever Regional Council requests concerning the make-up of the NPCA board is obviously subject to relevant provincial legislation. The *Conservation Authorities Act* does state in Section 14 (2.1) that membership of a CA can be changed with the agreement of the participating municipalities. The unusual problem in this case is that there seems to be considerable uncertainty about how the law governs the *current* composition of the NPCA.

The very recent (undated) letter to the Niagara Region CAO from Bruce Bateman (Assistant Deputy Minister, Land and Water Division, Ministry of Environment, Conservation and Parks) is helpful in many respects, but it does not authoritatively state the number of seats on the NPCA to which Niagara Region is entitled. We are not lawyers and cannot give a legal opinion, but it seems possible to us from a careful reading of this letter that the Region is entitled to 24 appointees. It is clear from Mr. Bateman's letter that the NPCA's participating municipalities have the legal authority to negotiate whatever representation arrangements they want. But the obvious problem is that no one seems to know what the starting point is. One might think that the current composition of the NPCA board could be the starting point. The problem with this position is that no one—including current NPCA officials—seem to have been able to find any legal justification for the current state of affairs. Amidst all of this legal confusion one thing is

² <https://www.niagararegion.ca/council/Council%20Documents/2018/council-minutes-sep-13-2018.pdf> , pp.12-3.

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clear: no one has produced any authoritative document that justifies the fact that Niagara Region now has 12 representatives on the NPCA. Even the NPCA website claims only that “The *past practice* [our emphasis] of the regional council has been to offer a single appointment from each of their twelve local municipalities.”³

Given this legal uncertainty, we recommend that

In the short term, Regional Council take advice from the Regional Solicitor as to if or how it should proceed with appointments to the NPCA board.

In the event that Regional Council does choose to make immediate appointments to the NPCA board, it make use of Section 14 (4.1) of the *Conservation Authorities Act* and not appoint anyone for a term longer than six months. During this period, Council should negotiate with the other participating municipalities about NPCA membership and make every effort to insure that the legal basis of its future appointments are clear.

Because the most important immediate business of the NPCA board will be sorting out its own legal status, any short-term appointments made by Region Council should be from amongst its own membership.⁴

A wider issue remains, an issue that relates to the second part of the original council resolution on which the NPCA part of our mandate is based: When legal issues are sorted out, who should be appointed to the NPCA? Regional councillors, ordinary citizens, or some combination of the two? To help answer this question, we investigated the appointment practices of the other five regional municipalities. Unlike Niagara, each of them appoints members to more than one CA. We found that Halton and Peel were the only regional municipalities that appointed anyone *other* than elected councillors. Four of Halton Region’s 14 appointees to the Halton Region Conservation Authority in the last term of council were ordinary citizens; one of Peel’s two appointees to the same CA was such a citizen.⁵ There were six other CAs to which regional municipalities made appointments; *all* were elected councillors.⁶

In the past term of Regional Council, one of twelve Niagara appointees has been an ordinary citizen.⁷ This is one more citizen appointee than were made by the regional municipalities of

³ <https://npca.ca/selection-members-npca-board-director>

⁴ After this report had been written but just prior to its official submission, Niagara Region Council voted to appoint twelve of its members to the NPCA board for a period of three months.

⁵ <https://www.conservationhalton.ca/board-of-directors>

⁶ Determined by examining the relevant parts of the websites of the following CAs: Credit Valley (Peel and Halton); Toronto Region (Durham, Peel, and York); Central Lake Ontario (Durham); Kawartha Region (Durham); Grand River (Waterloo and Halton); and Lake Simcoe (Durham and York)

⁷ <https://npca.ca/npca-board>

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Durham, York, and Waterloo, and it is equal to Peel. It is unlikely that anyone could determine the exact motivations for regional councillors to appoint regional councillors to the boards of conservation authorities. During our consultation process, it was suggested by at least one person that their motives are primarily pecuniary: there is remuneration involved for membership on a CA board. Such a factor is likely at least a partial motivator in many cases. However, we accept that regional councillors generally believe that financial demands on the regional tax base should be under the control of elected councillors. We are in broad agreement with this position.

However, given concerns with recent practices within the NPCA, as articulated in the Auditor-General's special report,⁸ we understand the desire of many to increase the proportion of ordinary citizens who are Niagara appointees to the NPCA board. We therefore recommend that:

When the legal basis of the appointment process to the NPCA board is clarified, between one-third and one-half of Niagara appointees should be ordinary citizens, the remainder being regional councillors.

We recognize, however, that it will be difficult to follow this recommendation if Regional Council does not exert its undisputed ultimate control of the appointment process.⁹ If Regional Council merely rubberstamps recommendations from local municipalities, it would have no control over the proportion of appointees who are regional councillors or ordinary citizens. We therefore recommend that

Regional Council make it clear to local municipalities that, when local municipalities are recommending appointees to the NPCA, they recommend both ordinary citizens and regional councillors, leaving Regional Council to make the final choices.

Many of our interviewees expressed the view that NPCA appointees should have some special knowledge of the issues with which the NPCA deals. Appointees – including regional councillors – should obviously have some interest in the work of the NPCA. But they need not have any of the professional or technical expertise that we would expect to find within the staff of the NPCA. The job of the board of directors is to provide overall direction to the NPCA, including the approval of an annual budget. We recommend that:

In making appointments of ordinary citizens to the NPCA, Regional Council attempt to appoint a mix of people with varying backgrounds and interests who are broadly representative of the population of Niagara Region as a whole and who are willing to commit their time and knowledge to serving their interests.

⁸ http://www.auditor.on.ca/en/content/specialreports/specialreports/NPCA_en.pdf

⁹ Section 4 (1) of the *Conservation Authorities Act*

