



Request to Make a
Deputation/Presentation to
Council/Committee
City of Kawartha Lakes
City Clerk's Office
26 Francis Street, PO Box 9000
Lindsay, ON K9V 5R8
705-324-9411

Name: *

Joan Abernethy

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There can be maximum of two speakers for each deputation. Please list the name(s) of the individual(s) who will be speaking. The names that are listed here will be included on the Council Meeting Agenda: *

Joan Abernethy

Please provide details of the matter to which you wish to speak: *

February 19, 2019 agenda item 14.1.1
CAO2019-003 Committees/Boards/Task Forces
- Policy and Code of Conduct

What action are you hoping will result from your presentation/deputation? *

- ① An extraction of 14.1.1 so it is not adopted,
- ② A follow-up motion to further amend policies
CP2018-017 and CP2018-018

Signature:

John A. McNeely

Date:

13 February 2018

Please complete this form and return to the City Clerk's Office:
Fax: 705-324-8110 Email: agendaitems@kawarthalakes.ca

The personal information is being collected by the City of Kawartha Lakes for the principal purpose of a request to make a deputation to Committee or Council pursuant to Section 10 of City of Kawartha Lakes By-law 2014-266. This information may be circulated to members of Council, staff and the general public. Questions about the collection of this information should be directed to the City Clerk or Deputy Clerk at 705 324-9411 ext. 1295 or 1322.

Materials to Support a Deputation to Council
re. 19 February 2019 Council Meeting Agenda item 14.1.1 CAO2019-003
17 February 2019

Dear Mayor/Councillor,

I will address the proposed revisions of the City's policy on the Expulsion of Members of Committees, Boards and Task Forces, detailed in CAO2019-003, at Appendices A and B.

My comments are about how a specific City policy impacts the role of mayor and council as elected representatives of the people and are not about this or any other specific mayor or council. The matter at issue is not partisan. It affects all of us equally.

On 11 December 2018, Council passed two new policies - CP2018-017 and CP2018-018. They replaced Council Policy 028 CAO 002. CAO2019-003 proposes revisions to those policies.

The old policy protected the Constitutional right of accused persons to answer and to be heard.

It required the City to send Members accused of an offense notice of a proposal to terminate, along with any supporting documentation, by registered mail, prior to Council deliberation.

It explicitly prohibited the waiver of such notice.

It required the accused Member be apprised of 1) his/her/their right to submit materials in response to the proposed termination, and 2) his/her/their right to an oral hearing before Council.

It required Council provide an accused Member the opportunity to be heard before them.

The new policies passed on 11 December 2018 remove these rights.

They deny Members the Charter right to "be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal" (*Constitution Act*, 1982, Section 11.(d)) - that is, they remove from accused Members the right to be presumed innocent until proven guilty according to City policy in a fair and public hearing before Council.

The new policy allows anyone, including any member of the public - an estranged spouse, a disgruntled neighbour, a business competitor - to complain to the Mayor about a Member and for the Mayor and the complainant to determine how to investigate and to investigate, in concert and entirely in secret, without notifying the accused Member, Council or anyone else.

The amendments to CP20180-017 and CP2018-018 proposed at Appendices A and B of CAO2019-003 have made a start at correcting these problems with procedural fairness, but they do not go far enough, in my view, to protect the City from liability.

They allow the complainant to determine the form of investigation. The complainant is an interested party. If the mayor investigates the accused, in secret and in concert with the complainant, the public may reasonably perceive it as a conspiracy to witch hunt.

The only concession the proposed amendments make to the Charter right to procedural fairness is to require the Mayor to "disclose and discuss" the alleged contravention with the accused Member and to give the accused Member "an opportunity(s) to respond accordingly".

But as there is no definition of "discuss" or "opportunity(s) to respond accordingly", it can be interpreted to mean just about anything and does not protect the public interest in fairness.

There is also no requirement that the accused Member be given an opportunity to be heard by the tribunal that will decide the recommendation for expulsion, that is to say, by Council. A hearing by a mayor acting in concert with a complainant who will then share with Council his/her/their recommendation to terminate invites bias and courts injustice.

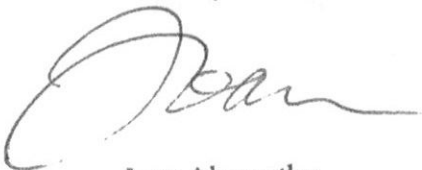
Finally, there is no provision to prohibit waiver of procedural fairness. I think the right of accused persons to answer their accusers is so fundamental a justice right in our democracy that sound policy requires a provision to specifically prohibit waiver.

In addition, I think the policy on the expulsion of Members of Committees, Boards, and Task Forces should all be in CP2018-017 at Section 6 and not require cross-reference to an unnumbered and unidentified paragraph on page 7 of CP2018-018.

For these reasons, I ask Council to extract Agenda item 14.1.1 CAO2019-003 to allow further amendment of CP2018-017 and CP2018-018 to bring them into compliance with the Constitutional right of accused Members to be notified of full particulars of complaints, in writing, to submit materials in answer to the complaint, and to be orally heard by Council.

Please find attached a copy of Council Policy 028 CAO 002 Section 7, so you can compare its provisions to its replacement at Section 6 of CP2018-017 and CP2018-018 on page 7 in the paragraph entitled "Compliance/Contravention" at Appendices A and B of CAO2019-003.

Thank you for your kind consideration of my submission.



Joan Abernethy

- 6.07 The recommendation to Council for termination of appointment of a member of a Committee appointed by Council requires a two-thirds vote of the Committee for approval.
- 6.08 Upon approval of a recommendation to Council for termination of appointment of a Committee member, the Secretary or Department Liaison of the Committee shall prepare a written report outlining the recommendation and all documentation presented concerning the recommendation.
- 6.09 The Clerk shall place the report with the recommendation for termination of the Committee member on the agenda of the next scheduled regular meeting of Council. The Clerk shall invite the attendance before Council of:
1. the member(s) who provided notice for termination of appointment;
 2. the Committee member whose appointment has been recommended for termination; and
 3. any other member of the committee, municipal officer or Person the Clerk may deem necessary to be in attendance.
- 6.10 The comments of those invited pursuant to Section 6.09, the report with the recommendation for termination of the Committee member and all other documentation received with respect to the matter, shall be considered in a meeting of Council closed to the public if permitted under section 239 of the *Municipal Act 2001*.
- 6.11 The Committee member identified in the recommendation for termination of appointment shall be given the opportunity to make a final presentation to Council prior to a vote being taken on the matter.
- 6.12 Adoption of the recommendation for termination of an appointment by Council to a Committee requires the affirmative vote of a simple majority of members of Council.

7.0 Termination of Appointment Initiated by Council

- 7.01 A proposal to Council to terminate the appointment of a Committee member shall not be considered at any meeting of Council unless notice of the proposal to terminate the appointment has been given to the individual being considered. The waiving of this notice is prohibited. The notice shall state both the proposed recommendation to Council for termination of the appointment of the Committee member in question and the reasons advanced in support of the recommendation.
- 7.02 The notice for the termination of the appointment, along with any supporting documentation, shall be sent by the Clerk directly to the Committee member identified in the motion, by registered mail, at least seven (7) days prior the meeting at which the issue will be presented.

- 7.03 A Committee member identified in any notice for termination of appointment shall be advised of his/her entitlement to forward a written response to the Clerk within seven (7) days of receipt of the notice and the aforementioned supporting documentation.
- 7.04 After the period for response, as set out in Section 7.03 has expired, the Clerk shall place the matter and provide Council with any supporting documentation and any written response received on the closed session agenda of the next scheduled regular meeting of Council, or on the agenda of any Special Meeting of Council called for the purpose of its consideration.
- 7.05 The Committee member identified in a notice for termination of appointment shall be given the opportunity to make a presentation to Council prior to a vote being taken on the matter.
- 7.06 The termination by Council of the appointment of a Committee member appointed by Council requires the affirmative vote of a simple majority of Council for approval.
- 7.07 Council has the sole discretion to terminate any City Committee, established by Council, if Council determines that the Committee, is no longer required. No prior notice is required.
- 8.0 Terms of Reference**
- 8.01 The Terms of Reference of any Committee shall be developed using the template as attached to this policy as Appendix "A". Any amendments or revisions to the Terms of Reference are required to be submitted to the relevant Standing Committee for approval by both the Committee and ultimately Council.