

Memorandum to the Council of Corporation of the Municipality of Temagami

Subject: Revision of the Current Flag and Proclamation Policy

Memo No: 2025-M-054

Date: March 13, 2025

Attachment: None

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Recommendation

BE IT RESOLVED THAT Council receives Memo 2025-M-054 as presented;

AND FURTHER BE IT RESOLVED THAT Council accepts the repeal of By-Law No. 24-1772 and passes By-Law No. 25-1801.

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Executive Summary

This report recommends that the Municipality of Temagami discontinue issuing proclamations while maintaining the flag policy outlined in By-Law No. 24-1772. Legal precedents and expert opinions indicate that issuing proclamations exposes municipalities to significant legal risks, including potential discrimination claims under the Ontario Human Rights Code. The administrative burden associated with evaluating and issuing proclamations further justifies discontinuing this practice.

The No Proclamation Policy aligns with best practices in other Ontario municipalities while ensuring that the Flag Policy remains in place, limiting municipal flag displays to National, Provincial, Municipal, and Indigenous/First Nations flags.

Background

Currently, the Municipality of Temagami issues proclamations and considers flag-raising requests under By-Law No. 24-1772. Recent legal decisions highlight the risks municipalities face when issuing proclamations or approving flag displays. These risks include potential claims of discrimination and legal challenges under the Ontario Human Rights Code. Municipalities must maintain neutrality to avoid perceived favoritism or endorsement of specific groups. The following legal cases demonstrate the complexities of municipal proclamation policies:

- *Oliver v. Corporation of the City of Hamilton et al.* (1995, BOI 95-010) – The Ontario Human Rights Tribunal (OHRT) ruled that issuing proclamations is a municipal service, and refusals based on group affiliation may constitute discrimination.
- *Hudler v. City of London* (1997, BOI 97-023) – The Ontario Board of Inquiry ruled that Mayor Dianne Haskett’s refusal to issue a Pride proclamation was discriminatory, resulting in a \$10,000 penalty for the city. The decision reaffirmed that municipalities must ensure equal treatment in services, including proclamations.
- *Borderland Pride v. Township of Emo* (2024 HRTO 1651) – A tribunal found that a municipality discriminated against an LGBTQ2+ organization by denying a proclamation request, ordering financial compensation and human rights training for officials.

Legal Risks and Personal Liability for Council Members

Recent legal rulings have reinforced that municipal council members may be held personally liable if proclamation decisions result in discrimination. The Ontario Human Rights Tribunal has ruled that issuing proclamations is a municipal service, making refusals subject to legal challenges and financial penalties. Legal Implications include, but are not limited to:

- Human Rights Complaints - Denying a proclamation request based on an organization's cause or identity can be found to be discriminatory under the Ontario Human Rights Code.
- Personal Liability - Individual council members may be held personally accountable for discriminatory decisions, as seen in past tribunal rulings.
- Financial Penalties - Recent cases have resulted in fines, restitution payments, and mandatory training for municipal officials.
- Municipal Act Limitations - Section 448 of the Municipal Act provides only limited protection to council members in human rights matters, increasing legal exposure.

Guidance for Council Members

To mitigate risk, council members should avoid making discretionary decisions on proclamations. The recommended approach is to adopt a No Proclamation Policy, eliminating subjectivity and potential legal liability. By maintaining neutrality and avoiding selective proclamations, the Municipality can ensure compliance with human rights legislation while reducing administrative burdens.

Administrative Challenges

Beyond legal risks, issuing proclamations and managing flag displays present administrative challenges, including:

- Inconsistencies in approvals, which could lead to accusations of bias.
- The potential for reputational damage and legal costs from human rights complaints.

- Handling politically or socially sensitive issues that may place municipalities in difficult positions.

Practices in Other Ontario Municipalities

A survey of other Ontario municipalities by civic administration determined that at least nine cities, including Mississauga, Hamilton, Kitchener-Waterloo, and others, have discontinued issuing proclamations to mitigate legal risk. London recently decided to end official proclamations due to administrative and legal concerns.

Considerations for Council

To mitigate legal, administrative, and reputational risks, it is recommended that Council:

- Adopt a No Proclamation Policy and repeal proclamation-related provisions of By-Law No. 24-1772.
- Maintain the current Flag Policy, allowing only the National, Provincial, Municipal, and Indigenous/First Nations flags at municipal facilities.
- Communicate policy changes via the municipal website and official notifications.

Conclusion

By enacting By-Law No. 25-1801, the Municipality of Temagami will align with best practices, reduce legal risks, and maintain a neutral and legally sound municipal recognition policy. This policy will ensure that the Municipality can operate effectively without facing unnecessary legal challenges, while also reflecting a fair and impartial approach to municipal recognition.