

MUNICIPAL INSPECTION 2023 - DIRECTIVE 4

CITY OF CHESTERMERE

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Review of Ministerial Directive 4b of the City of Chestermere Municipal Inspection

The contents of this report were created for the City of Chestermere in summer 2023, with long-term betterment of the city in mind. This process was entered without bias or pre-conceived notion, and this Report was created objectively.

The City of Chestermere accepts responsibility for this report in full, and indemnifies, protects, and defends the report authors, Strategic Steps Inc. as a corporation, and all other third-party members associated with this review process against any potential actions.

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1 INTRODUCTION

On March 14, 2023, then Minister of Municipal Affairs, the Hon. Rebecca Schulz, issued a series of Ministerial Directives in association with the Municipal Inspection that had been conducted on the City of Chestermere earlier the same year.

Directive four stated:

4.	a) I direct council to engage an experienced municipal consultant, who is an independent third party and is not currently an employee or contractor of the city, to review and provide advice on the effectiveness of, and if warranted recommend changes to, the CAO structure and Strategic Advisory Group outlined in the designated officer bylaw.	July 31, 2023
	b) I direct the CAOs to provide the Minister with the municipal consultant's advice described in Directive 4(a).	August 31, 2023
	c) I direct council and the CAOs to provide the Minister with an action plan, which has been discussed in open session of council and approved by council resolution, on the implementation of any recommendations provided, or rationale for not implementing recommendations from the advice from the municipal consultant as ordered in Directive 4(a).	August 31, 2023

Figure 1 - Chestermere Municipal Inspection Report, Directive 4

A significant portion of this Directive evolved from one of the recommendations found in the Municipal Inspection Report:

We recommend that Council reconsider its support for the three CAO model in light of this Report and reinstate a single CAO model; that they engage a recruitment firm (with municipal CAO recruitment clientele) to identify appropriately qualified candidates; that the firm identify the top three to five candidates; that Council conduct such interviews with the guidance of their recruitment specialist who will also provide Council guidance as to contract, compensation/benefits and severance provisions.

Figure 2 - Chestermere Municipal Inspection Report, Recommendation 4.c

Prior to July 31st, as required by the Directive, Strategic Steps Inc. was retained by the City's legal counsel to provide comment and recommendations related to this Ministerial Directive. The bulk of this report contains a review of the Chief Administrative Officer (CAO) model and Strategic Advisory Group (SAG) that Chestermere's City Council created and recommendations on the continuation of these structures.

1.1 Disclaimer

The Ministerial Directive required "an experienced municipal consultant" rather than a lawyer to conduct the review. As such, this report does not constitute legal advice. Appropriate counsel should be consulted for questions of a legal nature.

2 BACKGROUND AND RESEARCH

2.1 Documents

A series of documents were reviewed as part of this report. The key documents included:

- *Alberta Municipal Government Act, RSA 2000, M-26, Alberta King's Printer, April 1, 2023*¹
- *A Report on the Inspection of the City of Chestermere, George B. Cuff and Associates, August 2022*
- Ministerial Order MSD00:23 (Ministerial Directives associated with the Inspection)
- *Chestermere Designated Officer Bylaw 006-22, May 10, 2022*

2.2 Canadian Context

Acknowledging that municipal institutions are the responsibility of the Provinces and Territories according to the Canadian Constitution², research of local government management structures across Canada was reviewed. Municipal structures differ somewhat across the country and inter-provincial reviews provide context based in history, common practice, and what is found to work in various jurisdictions rather than constituting a mandatory structural requirement.

In Canada, most municipalities are governed using a 'weak mayor'³ system, meaning that the mayor has no more real decision-making authority than any other member of Council⁴. There have been some recent changes in places like Ontario which have moved some aspects of city governance towards more of a 'strong mayor' system that is seen more commonly in the United States.

Canada also uses the 'council-manager' system of governance, wherein councils refrain from managing the operations of the city directly in favour of hiring a professional manager to conduct that work. This is typically used to separate the roles of governance (elected officials) and management (administration).

The other item that was researched was whether provincial governments mandate the presence of a CAO (or equivalent), and whether that position must be occupied by a single person or whether the role may be spread around several individuals.

The research showed that six provinces mandate that a single individual hold the CAO role, three provinces were not explicit, and no provinces explicitly said the role may be held by more than one person. The total number of provinces surveyed was

¹ We note that this report references the April 1, 2023 version of the MGA. At the time of the Municipal Inspection, a previous version of the MGA was in effect. There are some differences between the versions in sections relevant to this report.

² *Constitution Act, 1867, s 92*

³ The term 'mayor' is used here, but other largely synonymous terms may include 'warden' or 'reeve'.

⁴ The mayor often has customary or perceptual 'power' beyond what is written in legislation.

nine. Alberta was not included in the table below because it is the baseline rather than a comparator.

The same research showed that three provinces use prescriptive language when identifying that councils 'must' hire a CAO (or equivalent). Six provinces were less equivocal, frequently using the term 'may' or an equivalent.

CAO Role Across Canada

	Act Reviewed	Sec.	Single CAO?	Mandatory to have a CAO?	Comment
BC	<i>Community Charter, Local Government Act</i>	LGA 235, CC 147	Doesn't explicitly say	No	Same text in both Acts
SK	<i>Municipalities Act</i>	s110	Doesn't explicitly say	Yes	Language used is all singular. Term 'administrator' is used
MB	<i>Municipal Act</i>	s125	Yes	Yes	<i>Every council must establish by by-law the position of chief administrative officer and must appoint a person to the position</i>
ON	<i>Municipal Act</i>	s229	Yes	No	<i>A municipality may appoint a chief administrative officer who shall be responsible for....</i>
QC	<i>Cities and Towns Act</i>	s112	Yes	Yes	<i>The council must appoint a director general and fix his salary.</i>
NB	<i>Municipalities Act</i>	s74	Yes	No*	<i>The council of a municipality may appoint a chief administrative officer for the municipality.</i>
NS	<i>Municipal Government Act</i>	s28	Yes	No	<i>Subject to subsection (2), the council may employ a person to be the chief administrative</i>

	Act Reviewed	Sec.	Single CAO?	Mandatory to have a CAO?	Comment
					<i>officer for the municipality.</i>
PE	<i>Municipal Government Act</i>	s93	Doesn't explicitly say	Doesn't explicitly say	CAO role presence seems to be implied
NL	<i>Municipalities Act</i>	s53	Yes	No	<i>A town council may establish the position of town manager and may, by a vote of 2/3 of the councillors in office, appoint a person to the position of town manage</i>

Figure 3 - CAO Role Across Canada

* New Brunswick has one instance of a municipality that has two people sharing the CAO role. The situation in NB has been like that for years in a very small francophone community that always had shared responsibility.

2.3 Municipal Inspection Report

The Chestermere Municipal Inspection was conducted by George B Cuff and Associates Ltd. and submitted to the Minister of Municipal Affairs in August 2022. The report that emerged from the Inspection contained a list of recommendations that were stated with the intent of bringing the City back into alignment with the principles of good governance and with provincial legislation associated with local governments in Alberta.

The Minister agreed with the report in a Ministerial Order dated March 14, 2023, and issued a series of Municipal Directives. In essence, the Directives are used to highlight some of the report's recommendations and make them mandatory for compliance.

One of the Directives, number four, spoke to the structure that City Council had adopted of appointing three *de facto* CAOs instead of the more traditional one. It also noted the creation of a Strategic Advisory Group (SAG). Both topics are considered here.

Following the document review, understanding the Canadian context, and referring to the Municipal Inspection Report, the rest of this report was created.

3 TOPICS FOR REVIEW

The Ministerial Directive that initiated this report requires a review of two aspects of the City's senior management:

- CAO Structure
- Strategic Advisory Group

Relevant to the recommendations in this report are the differences between permissive legislation and prescriptive legislation. Simply because something is not explicitly prohibited in legislation does not implicitly mean that it is a wise idea in practice.

3.1 Chestermere's Chief Administrative Officer Structure

In the City's *Designated Officer Bylaw*, two definitions are of particular relevance:

- *S2(b) "Chief Administrative Officer" or "CAO" means the duly appointed Chief Administrative Officer as defined in the Municipal Government Act;*
- *S2(d) "City Directors" means those officers assigned the duties of chief administrative officer appointed pursuant to this Bylaw and as defined in the Municipal Government Act;*

Further on, the same bylaw identifies how the three City Directors comprise the management team for the City and how it is City Council's responsibility to appoint them.

4. THE CITY DIRECTORS' MANAGEMENT TEAM

- (1) The positions of the City Directors' Management Team are hereby established.
- (2) These positions shall be given the titles of:
 - (a) City Director, Corporate Services;
 - (b) City Director, Growth and Development; and
 - (c) City Director, Community Operations.
- (3) Council shall, by resolution, appoint an individual to each of the City Director positions. In the event a vacancy occurs in any of these positions, Council must appoint an individual to serve as Interim City Director, and in such case, the provisions of this Bylaw shall apply equally to the Interim.

Figure 4 – Chestermere Designated Officer Bylaw, Section 4

The division of duties for the Directors is also laid out in the bylaw. These duties are generally aligned to what would typically be seen in a large municipality that has a traditional CAO and three direct reports, often called General Managers (GM). This

would be different in smaller municipalities, where there are no individuals in the GM role, and functional areas' managers⁵ report to the CAO.

3.1.1 Structural Differences between the City's and Typical Management Hierarchy

What appears on the surface is that City Council in Chestermere has removed the CAO role and has adopted that role for themselves, with the functional areas reporting not to an overall executive manager, but to the group of elected officials.

This has the tendency to blur the lines between governance and management roles; a topic that will be further discussed later. This has been countered with the argument that a single CAO could be a 'gatekeeper' and may keep information from council that a triumvirate would likely not do.

Visually, this is what is different about Chestermere and the typical governance-management hierarchy:

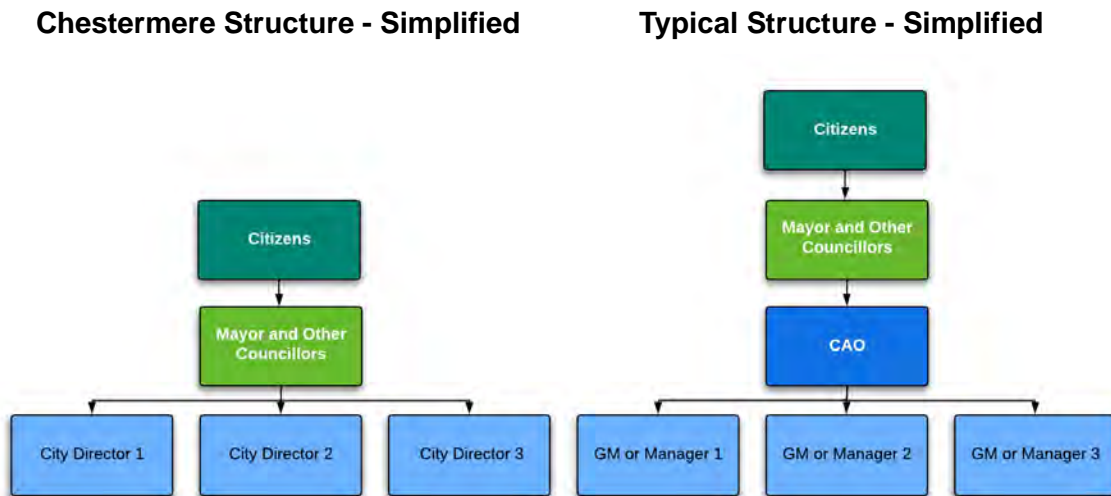


Figure 5 - Chestermere vs Common City Management Structure

Essentially, the top two layers of management appear to have been condensed into a single layer, with all three top managers reporting to City Council.

3.1.2 Legislation and Practise in Alberta Related to Management Appointments

As outlined above, in Alberta, CAO's are legislatively required for all municipalities. The MGA says every council must create "a position of chief administrative officer."⁶ This clause is written in the singular, leading one to argue that the role is to be occupied by a single person. So far as we understand, this is the case in all other municipalities in Alberta.

Further, section 205(2) says, "(e)very council must appoint one or more persons to carry out the powers, duties and functions of the position of chief administrative

⁵ In most municipalities these functional managers are called 'directors'; however, since that term is defined by Chestermere already, this report has avoided the director label for any role other than that defined by City Council.

⁶ MGA s205(1)

officer." This subsection is written in such a manner that the powers of the role may be delegated to more than one person, but it does not require more than one person. The nuance here is that the CAO is responsible for everything in the municipal administration, and the CAO may delegate "*any of the chief administrative officer's powers, duties or functions under this Act.*"⁷ This is where the authority of other managers within the municipal structure comes from.

Chestermere appears to have taken this "more persons" in section 205 (2) literally in how the City Director positions were created and empowered.

Many municipalities separate the role of CAO from that of other designated officers visually through the creation of a specific CAO bylaw that restricts its focus to the single role, while keeping the designated officer bylaw focus on other designated officers identified in the MGA. This separation also highlights the difference in role of the CAO from other municipal staff, illustrating that all staff report to the CAO, and that the CAO then reports to council. This is not required by legislation, but it is a common and wise practice.

A legal opinion may be required to determine whether the singular or plural reference in section 205 takes precedence.

3.1.3 CAO Evaluations

The MGA requires that CAOs be evaluated every year⁸. Chestermere has met this requirement for its direct reports to City Council through section 4(5) of the *Designated Officer Bylaw*. Likewise, the MGA requires that the CAO be the employee of council in that only council may appoint, suspend, or revoke that appointment⁹. The *Designated Officer Bylaw* conflates the term CAO as defined in the *Act* with 'City Director' as defined in its bylaw and aligns itself with the 'sole employee' requirement in section 4(7) of the bylaw.

3.1.4 The Importance of Role Clarity

In all orders of government, it is critical that incumbents, whether elected or appointed, understand their respective roles, and equally as critical that those individuals act within the role which they occupy.

⁷ MGA s209

⁸ MGA s205(1)

⁹ MGA s206

Under section 153 of the MGA, council's role is:

Council's principal role in municipal organization

201(1) A council is responsible for

- (a) developing and evaluating the policies and programs of the municipality;
- (b) repealed 2015 c8 s20;
- (c) carrying out the powers, duties and functions expressly given to it under this or any other enactment.

(2) A council must not exercise a power or function or perform a duty that is by this or another enactment or bylaw specifically assigned to the chief administrative officer or a designated officer.

RSA 2000 cM-26 s201;2015 c8 s20

Figure 6 - MGA section 201

The MGA identifies the responsibility of the CAO to be:

Chief administrative officer's responsibilities

207 The chief administrative officer

- (a) is the administrative head of the municipality;
- (b) ensures that the policies and programs of the municipality are implemented;
- (c) advises and informs the council on the operation and affairs of the municipality;
- (d) performs the duties and functions and exercises the powers assigned to a chief administrative officer by this and other enactments or assigned by council.

1994 cM-26.1 s207

Figure 7 - MGA section 207

The most significant difference between the two roles is that council is responsible for "*developing and evaluating*" what the municipality does, while the CAO is responsible for "*ensuring that the policies and programs of the municipality are implemented.*" This illustrates the difference between council's governance role and the CAO's management role.

The Municipal Inspection Report pointed out in several places that this role clarity was a topic of concern, with reference to the mayor or council as a whole acting more as managers than governors. If Council is truly acting in a management, administration, or service delivery role, they are acting counter to their responsibilities outlined in the MGA.

During council orientations, which are mandatory in Alberta, the roles of council and of CAO are two of the mandatory topics to be covered by that training¹⁰. That the topics are mandatory indicates the importance the province places on those aspects of effective local government. This is reinforced by another clause in section 201 of the MGA that states:

(2) *A council must not exercise a power or function or perform a duty that is by this or another enactment or bylaw specifically assigned to the chief administrative officer or a designated officer.*

Together, requirements of the MGA and the principles of good governance identified in the Municipal Inspection Report, makes the topic of role clarity a salient one, and it is a topic that comes into play when a council removes the single executive manager who acts as the central point in the hourglass between citizens/council and management/administration/service delivery.

This said, the line between governance and management is not black and white. There is an understanding that sometimes the lines are blurred. For example, it is not the governors who physically write bylaws—they leave that up to administrative experts. Likewise, members of council can be seen flipping pancakes at civic events—something that is grassroots service delivery.

The important thing to understand is that the exercise of good governance is critical, and it is usually the primary reason that councils are elected by their citizens.

3.1.5 Role Conflict within the Administration Can Make Governors into Managers

Carrying out the functions of a local government is not a black and white exercise. There are times when the best interests of one municipal department do not align with the interests of other departments.

The Municipal Inspection Report makes several references to these gray areas found between the lines of authority set out in the *Designated Officer Bylaw* that may come into play when two or more of the City Directors do not agree with one another.

This does not occur to the same extent in a hierarchical model where there is a single, final administrative decision maker. Under the three CAO model, disagreements may end up with City Council, likely taking that group of elected officials further into the realm of management and away from their focus as governors.

Chestermere's Council rationale for three City Directors speaks to workload challenges and executive checks and balances. Under the current predominant system of a single CAO, if for whatever reason councils do not have confidence that their CAO is providing them with the best advice possible, or that the CAO is filtering advice for non-objective reasons, they have the MGA to fall back on again.

¹⁰ MGA s201.1(2)

Councils can refer back to the clauses about it being council’s role to essentially hire, evaluate, and replace the CAO as they deem necessary.

3.2 Strategic Advisory Group

The SAG became a topic of interest during the Municipal Inspection. It was described in the Inspection Report as:

(A group of) “experts” whom the Mayor advised would add value by going beyond normal administrative roles and boundaries and by tackling issues and challenges which were not part of a City Director or department head’s role. This group would provide the Mayor with access to those who do the needed research or conduct an investigation without burdening senior managers with the task, which they may be ill-equipped to handle¹¹.

3.2.1 City Rationale and Structural Analysis

The rationale provided by the Mayor and others through the Inspection Report noted that this group of individuals forming the SAG would operate outside the normal restrictions of the City’s management structure and would take on projects that crossed functional lines.

A list of the functions and the reporting structure appears in the *Designated Officer Bylaw*’s section on Supplemental Information¹²:



Figure 8 - SAG Structure and Reporting

Our understanding of the composition of this group is that the members of the SAG are City staff who hold roles with the City’s organizational structure and would eventually report to their respective CAOs through those roles. These people are appointed based on their role. Examples of included roles are the City’s Economic Development Manager and the Economic Development Officer.

¹¹ Chestermere Municipal Inspection Report, 2022, p 128

¹² Bylaw 06-2022, Designated Officer Bylaw, Third Reading, May 10, 2022

In Schedule A of the *Designated Officer Bylaw*, the group's mandate is identified:

The Strategic Advisors will:

- a) provide independent and objective assurance, advisory and investigative services to add value to The City of Chestermere and enhance public trust.
- b) provide independent and objective assurance, advisory, technical, economic development and inter-governmental relations services that add value to The City of Chestermere Council's Special Projects to ensure the progression and alignment of the city's policies, procedures and master plans with special projects goals and objectives.

Figure 9 - Strategic Advisory Group Mandate

The Inspection Report conducts a thorough review of the concept, establishment, authority, and scope of the SAG; and notes that it appears to create a parallel structure responsible to the Mayor rather than all of Council or even to City management.

Harkening back to the role clarity section 3.1.4 above, a group of managers should more properly be accountable to a CAO rather than council. In addition to this, with the authority being the Mayor, this concept reflects more of the 'strong mayor' powers than the 'weak mayor' powers traditionally exercised and legislated elsewhere in Alberta and beyond.

As noted in s207 and s210 of the MGA, the role of council is "*developing and evaluating the policies and programs*"¹³, while the CAO is charged with implementing council's will (i.e., implementing those policies and programs). The CAO is also responsible for "*advising and informing the council on the operations and affairs of the municipality*."¹⁴

Further, s153 of the MGA outlines the general duties of councillors. Within the list of eight 'duties', seven of them are focused on specific aspects of governance, with the eighth duty being the catch all of 'other duties as assigned by the Act or by council'.

The way that the SAG appears to be set up lends itself more to a reporting relationship that existing in the CAO's bailiwick than in Council's. Having a staff member report to the mayor and to the CAO (or another manager) would also be problematic when there is a non-alignment between what the desired outcomes from the political arm of city government wants and what the administrative arm of the city government wants.

¹³ MGA s201(1)a

¹⁴ MGA s207(c)

3.2.2 Other Options

It is not uncommon for local governments to seek out professional or citizen insight into how their local government is operating, or what might be opportunities for either improvement or innovation. There is nothing in legislation stopping City Council from striking a task force or a committee or some other structure to work on the issues of the day. The same could be said for the City's administration.

Bringing cross-functional managers together to work on a problem is a good way of breaking down silos and creating a culture where innovation is fostered. These focused and time-limited 'skunk works' type entities can be very creative as they think about long-term desired outcomes and how to achieve them.

In more of an *ad hoc* fashion, individual members of some councils in Alberta are known to bring together informal groups of individuals as a sounding board on those same issues of the day. These 'kitchen cabinets' have no authority, but if they are formed with people who represent a broad spectrum of opinions, they can be a good route into the opinions and needs of the wider community. Within either of these examples, the primacy of council, particularly around what occurs in Closed Session, must be maintained.

The differences between these groups often relate to the final outcome that whomever initiates the group seeks. These outcomes can meet management and/or political needs. Let's remember the different management and governance roles: Administration brings decisions and options to council based on their objective administrative expertise and it is then up to council to add their political lens and to determine whether what administration recommends actually works from a political perspective. Both roles can utilize citizen or staff committees to make their decisions.

In a well-functioning municipal government, any of these formalized groups would have a clear mandate, terms of reference, and delegated authority provided by council as a whole. The oversight of this body would also be provided through council as a whole, rather than vested in a single individual: the Mayor in the case of the SAG.

4 RECOMMENDATIONS

Within the Ministerial Directive of relevance, the Minister asked for recommendations associated with the City's CAO structure and the SAG as authorized within Chestermere's *Designated Officer Bylaw*.

Some of the recommendations that could be included here were already part of the Municipal Inspection Report. So as not to duplicate that report for the most part, the recommendations here are focused on the two topics covered by the Ministerial Directive – the CAO structure and the SAG.

4.1 CAO Structure

We recommend that:

- 1) Chestermere City Council alter its *Designated Officer Bylaw* to re-establish the role of CAO as a single person accountable to City Council.
- 2) A CAO bylaw be established separate and apart from the *Designated Officer Bylaw*.
- 3) Chestermere City Council remain clear that their role is governance, and that management's role is to ensure that City Council's collective will as expressed in bylaws, policy, and resolutions is carried out.

4.2 Strategic Advisory Group

We recommend that:

- 1) Chestermere City Council does not continue with the Strategic Advisory Group, and instead strike committees, task forces, or other gatherings as appropriate, to approach the management of issues described under the current *Designated Officer Bylaw*.
- 2) Should the SAG continue with its current composition of City staff, that its recruitment, operations, and reporting relationships be to a member of city administration rather than to the Mayor or any other member of Council.
- 3) Any and all groups, committees, and other task-oriented entities be provided with clear terms of reference that includes scope, timing, membership types, delegated authority, decision-making authority, and other aspects of focus on task.

5 CONCLUSION

While this report does not constitute legal advice, it does comment on common practice and on the alignment of Chestermere's three CAO model and its Strategic Advisory Group to relevant legislation and to the principles of good governance that are found throughout Canadian local government structures.

Municipal structures, like those in other entities such as agencies, boards, commissions, have evolved over time to suit the purposes they are designed to carry out. Local governments exist because a group of people chose to live in a geographical area. These people appointed a 'board of directors' to look after their shared interests between elections, and in turn, the board of directors hired an expert to efficiently run the organization and ensure that service and programs are provided efficiently to those who need them.

Cities such as Chestermere which have faced significant internal and structural issues over the years, likely need to foster a culture of innovation to make the community sustainable and attractive to people, businesses and community organizations. That culture has to begin with Council and then cascade through the civic management structure. There is risk that is inherent with any innovation since the desired outcome might not develop.

As the evolution of the structures of governance continues, sometimes they veer away from the initial desire of the group of citizens who chose to call the place home. Realizing that, and getting the municipality performing at its best again, results in increased well-being for citizens, greater transparency for elected officials, and greater focus for staff. Taken together, that helps a community thrive over the long-term.