

Strong mayor weak democracy

By Bill Kilpatrick

Speaking to his new Strong Mayor Powers that were granted to him on May 1, Hastings Highlands Mayor Tony Fitzgerald said that the new powers equated to having 'no rules on the playground' adding 'if you're a bully take advantage of it.' He was not encouraging bullying by making this statement, rather he was illustrating a point that for those who want nothing more than power and enjoy bullying the new strong mayor powers will become a tool of that bully. Similar comments could be heard among other councillors who stated the importance of having a democratically minded mayor when it comes to exercising these new powers, but as we know not all people are democratically minded. Many people hold grudges, many people are petty, and many many people prefer to retaliate and seek payback when they are wronged as opposed to taking the higher road and turning the other cheek. Power in the wrong hands can cause all sorts of problems.

As we watch President Donald Trump, who criticized the Democrats for weaponizing the government against him, turn around and use those same powers to attack those he views as enemies, we should take this as a warning. Lord Acton's now clichéd statement that 'power corrupts and absolute power corrupts absolutely' is often cited as the reason that we need to have checks on power because, as the argument goes, all people, no matter their motives, if given too much power, will in the end, abuse it. However, William Gaddis has a different take on power pointing out that 'Power doesn't corrupt people, people corrupt power.' Meaning that who the person is before they gain power will determine how they wield that power.

I'm not entirely sure that either Acton or Gaddis is 100 per cent correct, but I do believe that Heraclitus was on to something when he said that 'character is destiny.' Like water people tend to take the easiest route available to them when it comes to making decisions. If someone hurts us emotionally or physically our initial response is to hurt them back. If people can avoid uncomfortable debates or conversations they often do. It takes discipline and control to not be ruled by emotions such as retribution, anger, and sadness. There is no doubt that power, like alcohol, often exacerbates existing character flaws that may have been deeply hidden behind a façade of politeness. With these new strong mayor powers we have to be more careful than ever about who we give power too.

One of the really concerning things about the Strong Mayor Powers is the lack of accountability. Sure, strong mayors have to be transparent and put everything in writing, but the legislative language allows so much leeway in terms of when they can apply those powers, it's as if corruption was built into the law. During the presentation by municipal land use and planning lawyer, John Mascarin, he pointed out that terms such as 'mayor's opinion,' 'organizational structure,' 'division heads,' 'potentially' are all terms that are not easily defined and were in Mascarin's opinion designed to have 'maximum elasticity' when it comes to achieving the goals that the province has set out. Mascarin pointed out that organization structure and division heads are not defined even within other legislation and that wording like 'mayor's opinion' and 'potentially' mean that a mayor does not need to have to have quantifiable empirical evidence to support a decision. For example under section 284.11.1 of the Strong Mayors legislation entitled 'bylaw enactment power' it reads 'despite the procedural by law, if the mayor is of the opinion that any bylaw under the municipal act, the planning act or the development charges act may potentially advance a provincial priority' a mayor can bring forward a bylaw and pass it with a one-third vote, which includes the mayor's vote. Mascarin called the language deliberately 'loosie-goosey.'

This is important when it comes to holding the mayor accountable for questionable decisions made using the Strong Mayor Powers. It's also important to ask on whose behalf he is making those decisions and drafting those bylaws. Mascarin said that he has seen a bylaw come before a council that was drafted by a developer's lawyer with 'minimal explanation as to how it advances a provincial priority.' Would this by law be made in the best interest of the municipality and its constituents or in the interests of the developer under the guise of a provincial priority? This opens the door for corruption in terms of political favoritism and political influence.

The strong mayor powers also open the door for the disregarding of environmental laws and environmentally protected areas. If a housing developer wants to develop land on environmentally protected area it would not be hard to justify a zoning change under the provincial priorities. Is there an endangered turtle, bird or other animal stopping 'development'? Sorry, provincial priorities will have to take precedence. And they will take precedence, as the strong mayor powers have to be used and cannot be disregarded

despite the attempts by many municipalities to do so. Projects could potentially be expedited ignoring environmental laws and local concerns and planning goals under the auspices of provincial priorities. Strong Mayor Powers equal less people power in terms of having a say at the municipal level.

The deliberate loose-goosie elastic language ensures that mayors cannot easily be held accountable by the public or even by council for that matter. Under section 284.14 of the strong mayor legislation entitled "immunity" it states that "a decision made, or a veto power, or other power exercised legally and in good faith under this part shall not be quashed or open to review in whole or in part by any court because of the unreasonableness or supposed unreasonableness of the decision or exercise of the veto power or other power." The law firm BLG interprets this as meaning "Any decision made in the exercise of the special powers and duties under this part of the Municipal Act, 2001 is generally immune from judicial oversight." This is why the loose-goosie language is important. How does one challenge the opinion of the mayor or their judgement about whether or not something "potentially advances a provincial priority"? You can't, unless it's illegal or done in bad faith. So even when a mayor acts in a way that goes against municipal bylaws, environmental laws, and the wishes of their constituents, the excuse will always be "but that was my opinion" and as long as that opinion potentially advances provincial priorities and was done legally and in good faith the strong mayor will not be held accountable, except on election day.

The previous system forced the mayor to be a consensus builder using their character and social skills as a basis for dialogue since they were an equal among equals. Does that make the job difficult, hell yes it does. To balance multiple competing interests of six other people on difficult and complex subjects is no easy task, but that's democracy and democracy is no easy task. I fear that the strong mayor powers will bring the worst character traits out in people especially amongst council members and will erode civil democratic dialogue ultimately pushing good people away from public office. The result will be people seeking office not for the good of their constituents but only to have power over others. Mayor Fitzgerald said that this legislation was not well thought out and he's right.