

# The Municipal World

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In the interests of every department of the Municipal Institutions of Ontario.

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*If the number on your address label is 156 your subscription ends with this issue.*

We will be pleased to receive renewals of subscriptions from all, and from those who may be retiring, a recommendation to their successors.

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Mr. George E. Smeaton has been appointed clerk of the Town of Sandwich to succeed Mr. C. H. Ashdown, deceased.

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Mr. James Ross has been appointed clerk of the Village of Waterford and the Township of Townsend to succeed Mr. Samuel Cunningham, deceased.

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During the year we have published answers to 1298 questions submitted by our subscribers. This is a decided increase over any previous year. The character of the questions has also improved.

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No other publication does as much for its subscribers as we are doing. Appreciation of our efforts can best be expressed by patronizing the supply department, which is most complete in every particular.

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On Oct. 31st last the ratepayers of the village of Bolton carried a by-law by a vote of 76 to 9 to raise \$5,000 by the issue of debentures to pay for the construction of bridges, abutments, cement concrete sidewalks, and for the repair of highways.

## Appointment and Dismissal of Municipal Officers.

One of the important duties devolving on a municipal council, and which it is often called upon to discharge at its first meeting, is the appointment or dismissal of the executive officers of the municipality. Judging from the questions submitted to us bearing on this subject, we are led to the conclusion that considerable doubt exists as to whether such officers as the clerk and treasurer should be appointed for a time certain, or indefinitely, and if appointed in the former way, whether the council has power to dismiss the officer at its pleasure, as is provided by section 321 of the Consolidated Municipal Act, 1903. We therefore deem it timely and advisable to give a synopsis of the law on the subject as it exists at present. The older cases, relating to this matter, hold that a council cannot dismiss an officer appointed for a year or other time certain, in the absence of sufficient cause, without rendering the municipality liable for damages.

In *Broughton vs. Brantford*, 19 U. C. C. P., p. 434, a municipal officer was held entitled to damages for wrongful dismissal. He was dismissed in the month of September. Hagarty, J., at page 437, said: "Assuming then that plaintiff, in 1867, continued an officer of the corporation appointed under their seal, and that his office was such as was usually the subject of a yearly hiring, could he be dismissed during the year at the defendants' pleasure? My impression is, that unless he held the appointment at the yearly salary under the corporation seal, he could be so dismissed, and that his claims would be limited to compensation for services actually rendered. As I consider that plaintiff remained up to the date of his dismissal the defendants' officer under their corporate seal, I think he is entitled to compensation for a wrong dismissal, in like manner as if employed by an individual."

Again, in the case of *Davis vs. Montreal*, 27 S. C. R., p. 539, it was held, under a statute substantially the same as the above provision, that when the engagement has been made indefinitely as to duration the council has power to dismiss summarily and

without previous notice, upon payment only of the amount of salary accrued to such officer up to the date of such dismissal. The language used indicates that such power does not exist in the case of a definite engagement, and we think that a contract with municipal officers, engaging them for a year, is a definite engagement.

The subsequent case of *Vernon vs. The Corporation of Smith's Falls*, decided by the Chancery Divisional Court (21 O. R. 331), decides this point in the contrary direction, and may be taken as the latest interpretation of the law bearing on the question. In this case, the plaintiff was appointed by the defendants' council, chief constable for the municipality, under section 445 of the Municipal Act (now section 493) which section provides that such a council shall make such an appointment and that the person so appointed "shall hold office during the pleasure of the council." It was held that this officer could only hold office during the pleasure of the council, and this, *although he may have been appointed for one year by a by-law passed by the council*. In this connection the following remarks of the late Mr. Chief Justice Armour, in reference to section 279 (now section 321) of the Municipal Act, in the case of *Willson vs. York* (46 U. C. R. 299) are worthy of observation: "The effect of this is, that all such officers hold their offices during the pleasure of the council and may be removed by the council at any time, without any notice of such intended removal, and without any cause being shown for such removal, and without the council thereby incurring any liability to such officers for such removal. There is no hardship in this, for such officers accept their offices upon these terms; and were it otherwise, councils might be greatly embarrassed in the transaction of their public duties by the forwardness of an officer, whom they would have no means of immediately removing without subjecting themselves to the liability of an action."

The month of December is usually one of the busiest for municipal officers and councillors, the former have to prepare for the election and the latter to secure election. This always increases the demand for legal and other special information. Subscribers should take advantage of the "Question Drawer" in preparing for the canvas or Nomination Day. THE WORLD office will be kept open evenings from December 28th to January 2nd, so that all who may desire to communicate with us by telegraph or telephone at the reduced rates, may do so and receive prompt attention.