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Unless he's incarcerated...

Convicted councillor can keep his seat

By LOUIE ROSELLA
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Despite Cliff Gyles' conviction on several criminal offences, he doesn't have to resign from office — and, hypothetically, he could run in the Nov. 10 election, according to the Ministry of Municipal Affairs and Housing.

The Ward 5 councillor, found guilty Wednesday on two counts each of municipal corruption and breach of trust by a Superior Court judge, insists he will not give up his seat on City Council.

Madam Justice Bonnie Wein ordered Gyles be relieved of his duties as both a city and regional councillor until his sentencing Aug. 28.

But, the Ontario Municipal Act (OMA), which establishes rules and regulations for elected officials, contains no provisions for ousting an elected official if convicted of a criminal offence.

Peter-John Sidebottom, manager of governance policy for the Ministry, said Gyles will be disqualified from holding office only if he serves a jail sentence.

Under the Municipal Elections Act, a person is not eligible to vote if he/she is serving a jail term. In turn, a person cannot hold office if he/she is not eligible to vote, according to the OMA.

"If (Gyles) is imprisoned for a sentence, he loses his right as an elector," said Sidebottom. "Once that happens, (he's) lost one of the qualifications for

being a council member."

However, a jail sentence can be delayed by appeal and, in theory, a convicted party could continue to serve on council until the appeal decision has been made, said Sidebottom.

Nothing in the OMA can prevent a convicted criminal from running in a municipal election, he added.

"We've looked at the rights of the individual for this legislation," Sidebottom said. "You don't want to trample on due process. If a person has a right to an appeal, you don't want to trample on that sanction."

The Act also states a councillor's seat can be declared "vacant" through "any" judicial proceeding. Some ambiguity exists, said Sidebottom, and it's not clear whether a judge in a criminal case has the authority to order a councillor's seat vacant for being convicted of a criminal offence.

A judge does have this power under the Municipal Elections Act, under which Gyles faces two charges — exceeding the maximum campaign expense limit in 2000 and filing a financial statement and auditor's report that doesn't reflect his election campaign expenses.

Gyles and his lawyer want those charges "quashed." That case comes back to court Aug. 25.

The OMA also states a councillor's seat becomes vacant if he/she is "absent from the meetings of council for three successive months without being authorized to do so by a resolution of council."



Gyles gestures at photographers outside his home shortly after he was arrested and charged.