



The New Council Reality: Bill 68's Amendments to Ontario's Municipal Accountability Framework

Presentation for Ontario Small Urban Municipalities: OSUM 2017 Conference

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Overview

- evolution of Ontario's municipal accountability framework
- status of Bill 68: *Modernizing Ontario's Municipal Legislation Act, 2017*
- proposed amendments to the *Municipal Conflict of Interest Act*
- proposed amendments to the *Municipal Act, 2001*
- implications for Ontario Small Urban Municipalities

Evolution of Ontario's Municipal Accountability Framework

- **1972:** *Municipal Conflict of Interest Act* (“MCIA”) enacted - has not undergone significant amendment since
- **2006:** Part V.1 – Accountability and Transparency added to the *Municipal Act, 2001*
 - Modelled after Part V of the *City of Toronto Act, 2006* which was included as a direct consequence of Justice Bellamy's recommendations in the *Toronto Computer Leasing Inquiry*
- **October, 2011:** Justice Cunningham's *Report of the Mississauga Judicial Inquiry: Updating the Ethical Infrastructure*, set out recommendations for amendments to the *Municipal Act, 2001* and MCIA

Evolution of Ontario's Municipal Accountability Framework

- **2012-2013:** *Magder v. Ford* highlighted issues with the MCIA
- **June-October 2015:** Municipal Legislation Review public consultations
- **September, 2016:** *Di Biase v. City of Vaughan; Integrity Commissioner of the City of Vaughan* is the first case to consider the scope of the integrity commissioner's investigative authority and discretion

Bill 68: *Modernizing Ontario's Municipal Legislation Act, 2017*

- introduced on November 16, 2016
- proposed amendments intended to update and modernize a number of municipal statutes
- received second reading on March 23, 2017
- referred to the Standing Committee on Social Policy on March 23, 2017
- Standing Committee met for 8 days in April and May, 2017
- AMO's submissions focused on the new integrity commissioner regime
 - a number of suggested amendments to Bill 68 were made by Standing Committee
- ordered for third reading (date of third reading TBD)

MCIA: Proposed Amendments

Principles (s. 1.1)

- addition of a principles section to guide interpretation:
 1. the importance of integrity, independence and accountability in local government decision-making
 2. the importance of certainty in reconciling the public duties and pecuniary interests of members
 3. members are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny
 4. there is a benefit to municipalities and local boards when members have a broad range of knowledge and continue to be active in their own communities, whether in business, in the practice of a profession, in community associations, and otherwise

MCIA: Proposed Amendments

Exception, consideration of penalty (s. 5(2.1))

- where the matter under consideration at a meeting is whether to suspend the remuneration paid to the member for contravention of a code of conduct:
 - the member would be able to take part in the discussion of the matter, including making submissions to council or the local board, and may attempt to influence the voting on any question in respect of the matter, whether before, during or after the meeting
 - the member would not be permitted to vote on any question in respect of the matter
 - in the case of a meeting that is not open to the public, the member may attend the meeting or part of the meeting during which the matter is under consideration

MCIA: Proposed Amendments

Influence (s. 5.2(1))

- where a member has a pecuniary interest in any matter that is being considered by an officer or employee of the municipality or local board, the member would not be permitted to use his or her office to influence any decision or recommendation that results from consideration of the matter
 - expands MCIA beyond council, committee and local board meetings
 - the above would not apply where the matter being considered is the imposition of a penalty for contravention of a code of conduct

MCIA: Proposed Amendments

Written statement re disclosure (s. 5.1)

- where a member has declared a pecuniary interest, that member would be required to file a written statement of the nature of the interest

Registry (s. 6.1)

- every municipality would be required to establish and maintain a publicly accessible registry of:
 - a copy of each statement of disclosure
 - each declaration recorded in meeting minutes

MCIA: Proposed Amendments

Application (s. 8)

- in addition to an elector, the amendment would permit an Integrity Commissioner of a municipality or a person “demonstrably acting in the public interest” to bring an application to a judge to determine whether a member breached the MCIA
 - the original version of Bill 68 proposed to permit “any person” to bring an application however this provision was amended at Standing Committee
- no application could be made after the sixth anniversary of the alleged contravention

MCIA: Proposed Amendments

No application by Integrity Commissioner during regular election (s. 8(4.1))

- no application shall be made by an Integrity Commissioner during election period
 - this provision was added to the Bill by Standing Committee

MCIA: Proposed Amendments

Penalties (s. 9(1))

- if the judge determines that the member or former member contravened the MCIA, the penalties that could be imposed would be expanded to include any or all of the following:
 1. reprimand the member or former member (**NEW**)
 2. suspend the remuneration paid to the member for a period of up to 90 days (**NEW**)
 3. declare the member's seat vacant
 4. disqualify the member or former member from being a member during a period of not more than seven years after the date of the order
 5. if the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, if the party's identity is not readily ascertainable, to the municipality or local board, as the case may be

MCIA: Proposed Amendments

Considerations (s. 9(2))

- in exercising his or her discretion to impose a penalty, the judge may consider, among other matters, whether the member or former member:
 - a) took reasonable measures to prevent the contravention;
 - b) disclosed the pecuniary interest and all relevant facts known to him or her to an Integrity Commissioner in a request for advice from the Commissioner under the *Municipal Act, 2001* or the *City of Toronto Act, 2006* and acted in accordance with the advice, if any, provided to the member by the commissioner; or
 - c) committed the contravention through inadvertence or by reason of an error in judgment made in good faith

Municipal Act, 2001: Proposed Amendments

Code of Conduct (s. 223.2(1) and 223.2(4))

- all municipalities would be required to establish codes of conduct for members of council and local boards
- the Minister could make regulations prescribing one or more subject matters that a municipality is required to include in a code of conduct

Municipal Act, 2001: Proposed Amendments

New Functions may be assigned to the Integrity Commissioner (s. 223.3 (1))

- the application of the code of conduct
- the application of any procedures, rules and policies governing ethical behavior of members
- the application of the MCIA (**NEW**)
- ~~the conducting of, on the integrity commissioner's own initiative, inquiries about whether a member has contravened the code of conduct (this was in the original version of the Bill but was **STRUCK** by Standing Committee)~~
- requests from members for advice respecting obligations under the code of conduct (**NEW**)
- requests from members respecting obligations under a procedure, rule or policy of the municipality or local board governing ethical behavior of members (**NEW**)
- requests from members for advice respecting obligations under the MCIA (**NEW**)
- provision of educational information to members, the municipality and the public about codes of conduct and the MCIA (**NEW**)

Municipal Act, 2001: Proposed Amendments

If no Integrity Commissioner is appointed (s. 223.3 (1.1))

- municipalities that have not appointed an Integrity Commissioner would be required to make arrangements for all of the responsibilities of an integrity commissioner to be provided by a commissioner of another municipality

Provision for functions if responsibility not assigned (s. 223.3.(1.2))

- requires municipalities that have appointed an Integrity Commissioner but have not assigned functions with respect to one or more of the responsibilities set out in subsection 223.3 (1), to make arrangements for those responsibilities to be provided by a commissioner of another municipality

Municipal Act, 2001: Proposed Amendments

Indemnity (s. 223.3 (6))

- new provision requiring the municipality to indemnify and save harmless the Integrity Commissioner or any person acting under instructions of that officer
- for costs incurred in connection with the defence of a proceeding
- if the proceeding relates to an act done in good faith in the performance or intended performance of a duty or authority or a by-law passed under it or an alleged neglect or default in the performance of the duty
- provision was not part of Bill 68 as originally drafted – this government amendment was carried at Standing Committee
 - response to AMO's submission

Municipal Act, 2001: Proposed Amendments

Termination of inquiry when regular election begins (s. 223.4(7) to (9))

- investigations not completed before election day shall terminate
- another inquiry with respect to the matter can only be commenced if, within six weeks after voting day if person or entity that originally made the request makes a written request to the Integrity Commissioner to commence the inquiry
- during election period:
 - no requests for inquiries shall be made
 - the Integrity Commissioner shall not report to council or the local board about whether a member breached the code of conduct
 - council or the local board shall not consider whether to impose penalties on the member

Municipal Act, 2001: Proposed Amendments

Inquiry by Integrity Commissioner re MCIA (s. 223.4.1)

- in addition to an elector, the amendment would also permit a “person demonstrably acting in the public interest” to apply in writing for the Integrity Commissioner to carry out an inquiry concerning an alleged contravention of the MCIA
 - the original version of Bill 68 proposed to permit “any person” to request an inquiry however this provision was amended at Standing Committee
- application must set out reasons for belief that MCIA was contravened and must include a statutory declaration attesting to the fact that the applicant became aware of the contravention not more than 6 weeks before the date of the application

Municipal Act, 2001: Proposed Amendments

Inquiry by Integrity Commissioner re MCIA (s. 223.4.1)

- ~~commissioner can carry out an inquiry on his or her own initiative (this was in the original version of the Bill but was struck by Standing Committee)~~
- Integrity Commissioner would have broad powers under the *Public Inquiries Act*
- upon completion of inquiry, Integrity Commissioner decides whether or not to apply to a judge for a determination as to whether member contravened MCIA - must give notice to applicant if no application will be made
- 180 days to complete investigation

Municipal Act, 2001: Proposed Amendments

Meetings (s. 238)

- the definition of "meeting" would be changed to mean any regular, special or other meeting of a council, or a local board or a committee (current definition) of either where:
 - a) a quorum of members is present and
 - b) members deal with a matter in a way that materially advances the business or decision-making of the council

Municipal Act, 2001: Proposed Amendments

Additional closed meeting matters (s. 239(2))

- Meetings could be closed to the public if the matter being considered involves:
 - h) information explicitly supplied in confidence to the City or local board by Canada, a province or territory or a Crown agency of any of them;
 - i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the City or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
 - j) a trade secret or scientific, technical, commercial or financial information that belongs to the City or local board and has monetary value or potential monetary value; or
 - k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the City or local board.

Municipal Act, 2001: Proposed Amendments

Requirement to pass resolution re closed meeting investigator report (s. 239.2(12))

- if the municipality or local board receives a closed meeting investigator's report indicating that a meeting or part of a meeting appears to have been improperly closed
- the municipality or local board shall pass a resolution stating how it intends to address the report
- provision added to the Bill during Standing Committee

Municipal Act, 2001: Proposed Amendments

Electronic participation (s. 238 (3.1))

- municipality may provide in its procedure by-law may that a member of council, of a local board or of a committee of either of them, can participate electronically in a meeting which is open to the public
 - member shall not be counted in determining whether or not a quorum of members is present at any point in time
 - members may not participate electronically in closed meetings

Additional policies (amends s. 270(1))

- municipalities will be required to adopt and maintain policies with respect to the relationship between members of council and the officers of the municipality

Implications for Ontario Small Urban Municipalities

- AMO's concerns (April 4, 2017 submission to the Standing Committee on Social Policy):
 - varying capacities across municipalities to implement proposed integrity regime (e.g. costs, resources, expertise)
 - ✓ inquiries by the Integrity Commissioner should not be permitted during election period
 - ✓ too broad to permit “any person” may make a complaint
 - requirement for codes of conduct and Integrity Commissioners should not immediately apply to local boards
 - ✓ Integrity Commissioner's ability to investigate on “own initiative” should be removed
 - explicit reference should be made to Integrity Commissioner's ability to find a complaint frivolous, vexatious or not made in good faith or that there are insufficient grounds for inquiry
 - sharing of an Integrity Commissioner or finding ways to assign Integrity Commissioner functions will require consultation and negotiation of service agreements, not to mention finding an Integrity Commissioner with the necessary qualifications

Implications for Ontario Small Urban Municipalities

- clear avenue for dealing with ethical concerns
- importance of consensus and public participation in the development of the code of conduct
- importance of a complaints protocol

A photograph of the Toronto skyline at dusk, featuring the CN Tower and various skyscrapers reflected in the water. The image is positioned on the left side of the slide.

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