

AMO President's Speaking Notes to the Standing Committee on General Government on

Bill 8, Public Sector and MPP Accountability and Transparency Act, 2014

**Annex to these Notes Contain AMO's Written Submission and Outlines 16
Recommendations for Amendments**

Public trust is one of our shared values. A municipal government, like any other order of government that lacks public trust has every reason to earn it, and good government is best served when we meet that goal independently.

AMO is here to speak about how to improve and clarify the Bill. Our written submission sets out recommended amendments.

The allotted five minutes for remarks only allows highlights of several of them, however each of the proposed amendments are important.

Municipal Government – Generally:

The Bill requires the Ontario Ombudsman to have regard for the education rights and academic freedoms when investigating school boards and universities. There is no similar reference to municipal governments. The policies and principles that shape elected municipal governments and their governing authorities of the *Municipal Act* must be referenced. The Purpose clause, Section 2 of the *Municipal Act*, should be added to achieve this.

Administrative Fairness and Scope of Authority:

An ombudsman's function is to investigate an individual's complaint related to administrative fairness. The Courts have interpreted "in the course of the administration" broadly to include anything that is "**not a decision of the Legislature, or the courts or is not explicitly excluded by statute.**"

Municipal councils carry out both legislative and administrative functions. Bylaws and other policy decisions and proceedings are legislative in nature and similar to those of the Legislative Assembly or Cabinet. The Bill would benefit from some clarity that this principle applies to municipal governments.

In addition, Recommendation 2 speaks to clarifying that the function of *any* ombudsman is to investigate an individual's complaint about "**fairness in**" any decision, in the course of administration of a public sector body.

The phrase "**fairness in**" needs to be added to Section 14(1) of the *Ombudsman Act*.

It is apparent that there is conflicting interpretations of who does what when it comes to investigative authority.

For example, we understood the government's rationale for setting up the Patient Ombudsman with medically informed professionals to take on the ombudsman role.

Yet we understand the Office of the Ombudsman feels it has some jurisdiction for the Patient Ombudsman, and for Integrity Commissioners.

Auditor Generals already deal with efficiency and effectiveness reviews. Their functions have specialized expertise, and recognized codes of professional conduct.

These officials should be the body that is the final complaint and review investigator and the Bill should be amended to make this explicitly clear. In addition, closed meetings investigations are procedural in nature, and are not matters of administrative fairness.

There has been a lot of talk about 'systemic' reviews, yet no one has been able to offer a definition. We have tried to do this in Recommendation 4.

I would suggest that it would be somewhat irresponsible to not define 'systemic review'. You need to resolve this.

Double Oversight:

The Bill also establishes a 'super' oversight authority by permitting complaints to be 'appealed' to the Office of the Ontario Ombudsman or providing on authority for the Ombudsman on its own decision to reinvestigate another officer's investigation or decision.

A multiple, complex complaint/investigation system will make it unnecessarily challenging if not confusing. As one example, it is not clear that a complainant will need to finish the municipal process first or can they go to the 'super' oversight of the Ontario Ombudsman at any time?

We believe that provincial oversight of municipal oversight officers is unduly complex.

Definition of Meeting:

The role of a closed meeting investigator is, on a complaint basis, to determine procedurally whether a municipal council has complied with the open meeting provisions of the *Municipal Act*. The investigations often hinge on determining whether a meeting has in fact occurred.

The Courts have consistently held that "meeting" in the municipal context is when a quorum of elected officials gather to deal with matters, which would ordinarily form the basis of council or a local board or committee's business " in such a way as to move them materially along the way". The Ombudsman holds a different definition.

As with all other matters, municipal solicitors and administrators advise their councils, boards and committees of their obligations based on documented law.

The use or potential use of multiple, different meeting definitions undermines the ability to be accountable and transparent. This definitional matter is even more critical if the Bill's proposed "super" oversight system is unchanged.

We recommend that there be a common definition of a meeting and that Bill 8 be amended to incorporate the court's definition.

Transition and Jurisdictional Review:

If Bill 8 becomes law, municipalities will need transition time - to align the new framework with their budget cycle, and to review their complaint processes and procedures to support the new framework. In practical terms, a one-year transition period is reasonable.

Given the complexity of this Bill, we recommend that the *Ombudsman Act* be amended to permit municipal governments and others the ability to apply to the courts to ascertain a question of jurisdiction. Having only one side, the Ombudsman, be able to question jurisdiction is unfair. Recommendation 11 will ensure balance and fairness.

This Bill introduces new measures and structures. It is not a simple Bill in its construct. There needs to be some check and balance given some of the interpretive elements raised here and elsewhere.

We also recommend that this Bill be reviewed in three years.

Summary:

Good legislation must offer clarity on who does what.

Clearly outlining the authority and scope of the oversight officers will enable public bodies subject to the law, the oversight officials themselves and the public, a better opportunity to comply with it.

We expect that you will read and give serious consideration to our full written submission and remove some of the Bill's ambiguity and overlap.

ANNEX



Submission to the Standing Committee on General Government

Bill 8, Public Sector and MPP *Accountability and Transparency Act, 2014*

November 26, 2014

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Introduction:

AMO works to make municipal governments stronger and more effective. We support accountability and transparency in local government and the broader public sector. Our aim in this submission is to ensure that both the intention and statutory language in Bill 8 are clear and do not result in ambiguity, confusion and duplication on the implementation side. We have drawn on the expertise of municipal lawyers and senior administrators, representing a cross section of municipalities. The 15 amendments we are proposing will help clarify and improve Bill 8 and maintain some element of the spirit of the *Municipal Act*, which recognizes that municipalities are no longer 'wards' of the Province. The *Municipal Act* does not anticipate that bylaws and other policy statements and procedures will be or are expected to be identical across the province. A 'one-size fits all' approach will stymie the role of municipal government given the diverse needs and priorities of communities across the province – northern and southern Ontario; rural and urban Ontario.

Our comments and recommendations will focus on Schedules 5, 6 and 9.

A. Schedule 9 – Expansion of the Ontario Ombudsman's Jurisdiction in the Municipal Sector:

1. Municipal Governments Generally and the *Ombudsman Act*:

Bill 8 will require the Ontario Ombudsman to have regard for education rights and academic freedoms when investigating school boards and universities. There is no parallel amendment with respect to municipal governments. Municipalities are governed by councils that are elected by their communities. As with any order of government, the decisions of elected officials seldom receive unanimous support. They are made in the best interests of the community at large and the municipal corporation.

The *Municipal Act* states:

2. Municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for the purpose of providing good government with respect to those matters. 2006, c. 32, Sched. A, s. 2.

We believe that an Ombudsman must have regard for the policies and principles that shape the provincial-municipal relationship and which are integral to the role and operation of municipal governments in the same way s/he will be required to respect universities and school boards.

RECOMMENDATION 1: That the *Ombudsman Act* be amended as follows:

Municipalities

31. In exercising his or her authority under this Act with respect to a municipal sector entity, the Ombudsman shall apply section 2 of the Municipal Act, 2001.

2. Scoping Authority:

Bill 8 proposes to give the Ontario Ombudsman broad authority over municipal governments to investigate acts or omissions done “in the course of the administration”. As it relates to provinces, the courts have interpreted this phrase to include anything that is not a decision of the Legislature or the courts or is not explicitly excluded by statute. Municipal governments have a unique legal status. While the legal framework continues to view municipal governments as administrators, the Province has delegated legislative powers to municipal governments in the *Municipal Act* and other pieces of legislation.

Municipal councils carry out both legislative and administrative functions and, as the courts have stated, it is often difficult to distinguish between the two. In the absence of clear language speaking to municipalities’ legislative functions, the Bill may be interpreted as permitting the Ontario Ombudsman to investigate the legislative deliberations and related proceedings of municipal councils. Indeed, the Ontario Ombudsman has said that Bill 8 will give his office oversight of all aspects of municipal governments “at both the administration level and at the council level”. The deliberations and proceedings of municipal councils are not “administration”. Council meetings are no different than deliberations of the Legislative Assembly or Cabinet, where elected officials make policies for the wellbeing of their citizens and communities. The local legislative process should be afforded the same level of deference and respect by the Ontario Ombudsman as that afforded to the Legislative Assembly and Cabinet.

AMO does not believe it is the Province’s intention to make the Ontario Ombudsman the overseer of all aspects of municipal governance, either as the default municipal ombudsman or as an ‘appeal’ ombudsman. If the Ombudsman is to take on a policy role in municipal government, such as commenting on the appropriateness of choosing one policy option over another, the Province should say so.

Scoping the Ontario Ombudsman’s authority will bring clarity to Bill 8. It is commonly understood that administrative fairness is the core of an ombudsman’s role and that an ombudsman is the last place for an individual to go when they need an advocate on a complaint that they feel was not appropriately resolved. Across Canada, this work is guided by principles of administrative fairness, which are clearly outlined and communicated to the public. According to these policies and guidelines, administrative fairness is concerned with the procedures by which decisions are made, such as acting on proper legal authority, complying with rules and procedures, consulting stakeholders and making decisions without bias. If administrative fairness is to be interpreted more broadly to include legislative decisions, then the Province

should give the Ontario Ombudsman the same authority with respect to Cabinet and the Legislature. We do not believe this was the intent. Bill 8 should clarify that the role of the Ontario Ombudsman is to investigate complaints about fairness in any decision, act or omission in the course of administration.

The Bill, as written, is open to various interpretations about who does what. The Ontario Ombudsman has indicated that his office will have jurisdiction over conflict of interest investigations if Bill 8 passes. Our understanding is that conflict of interest is within the purview of integrity commissioners and the courts. Given recent media reports that the Government will be reviewing the municipal conflict of interest regime, the Province must be careful not to create a patchwork of overlapping accountability regimes that are confusing to the public, municipal officials and accountability officers alike. We believe the *Municipal Act* sets out a sensible and workable framework for scoping the roles of accountability officers to avoid duplication and overlap. An ombudsman, whether municipal or provincial, should concern him or herself with maladministration and administrative fairness. Matters of ethics should be left to integrity commissioners who have the expertise to educate and advise elected officials on their ethical obligations and to investigate complaints. Likewise, auditors general who have audit training and professional qualifications should be left to look at matters related to the efficiency and effectiveness of delivery of services, including financial policies and value for money related reviews.

Additionally, during the Second Reading debate on Bill 8, the Government indicated that the value of the Office of the Ontario Ombudsman is in addressing systemic matters. We will address this under Double Oversight.

We have also noted the extraordinary powers permitting the Ontario Ombudsman to enter a dwelling. We are unclear of the parameters of this seemingly intrusive power and why this power is necessary to investigate maladministration at the municipal level. The Ontario Ombudsman already has the power to compel the production of documents and to summon persons for examination under oath. Failure to cooperate with an investigation is a punishable offence under the *Ombudsman Act*. The Ontario Ombudsman also has the ability to refer matters to the police where he or she believes there has been a breach of duties or misconduct. Entering a person's place of residence seems to go well beyond what is required to investigate maladministration in municipal governments. The Standing Committee must ensure that any constitutional and privacy concerns raised by the entry power are addressed before Schedule 9 becomes law.

RECOMMENDATION 2: That the *Ombudsman Act* be amended as follows:

13. This Act does not apply,

...

(1)(c) subject to section 14.1 of this Act, to deliberations and proceedings of the Council of a municipality or local board or of any committee of such Council or local board during a meeting or part of a meeting of the Council or local board or of any committee of such Council or local board that was closed to the public pursuant to the Municipal Act, 2001.

*14 (1) The function of the Ombudsman is to investigate **fairness in** any decision or recommendation made or any act done or omitted in the course of administration of a public sector body and affecting any person or body of persons in his, her or its personal capacity.*

14 (1.1) Nothing in this Act empowers the Ombudsman to investigate any decision, recommendation, act or omission in respect of a decision made by a municipal council, or a delegate of a municipal council, exercising council's legislative authority under ss. 8 and 9 of the Municipal Act, 2001 or Parts 8, 9, 10, 12 and 13 of the Municipal Act, 2001.

3. Double Oversight of Maladministration:

The *Municipal Act* enables municipalities to appoint independent and impartial municipal ombudsmen whose powers and duties largely mirror those of the Ontario Ombudsman. If passed, Bill 8 will make the Ontario Ombudsman the ombudsman for all municipalities, regardless of whether they appoint a municipal ombudsman. The Ontario Ombudsman will have the power to reinvestigate maladministration complaints that have been investigated by a municipal ombudsman, even if the municipal ombudsman conducted a thorough investigation or found the complaint to be frivolous. A municipal ombudsman should be a last resort.

Double oversight is an unnecessary and complicating approach that will confuse the public and others. It will certainly add costs to administration for all orders of government. We believe the Ontario Ombudsman should not have jurisdiction where a municipal ombudsman is in place. At the very least, the legislation must clearly state that a complainant is required to exhaust all remedies before the Ontario Ombudsman may intervene.

It is our understanding that the Government is concerned with addressing systemic issues across the province. If that is the objective of Bill 8, the Ontario Ombudsman's authority should be scoped to allow that office to deal with systemic issues that raise an overriding intergovernmental imperative, rather than acting as an 'appeal' ombudsman.

RECOMMENDATION 3: That the *Ombudsman Act* be amended as follows:

14 (a) Nothing in this Act empowers the Ombudsman to investigate any decision, recommendation, act or omission, in respect of which there is, under any Act, bylaw or policy, a right of appeal or objection, or a right to apply for a hearing or review, on the merits of the case to any accountability office, court or tribunal constituted by or under any Act, until that right of appeal or objection or application has been exercised in the particular case, or until after any time for the exercise of that right has expired.

14(a.1) For greater clarity, a complainant shall exhaust all complaints processes, rights of appeal or objections under any Act, bylaw or policy before making a request with the Ontario Ombudsman.

14(4.2) Nothing in this Act empowers the Ombudsman to investigate a complaint respecting any decision, recommendation, act or omission that is within the jurisdiction of a municipal ombudsman, integrity commissioner, auditor general or lobbyist registrar appointed under Part V.1 of the Municipal Act.

'Systemic Investigation' Option:

14(4.2) Nothing in this Act empowers the Ombudsman to investigate a complaint respecting any decision, recommendation, act or omission that is within the jurisdiction of a municipal ombudsman appointed under s. 223.13 (1) of the Municipal Act, unless the Ombudsman publicly demonstrates and documents that the complaint is with respect to a matter of overriding provincial interest and is not solely procedural or of a local effect.

Regulatory authority shall be added for describing provincial interests and developed pursuant to the Assembly's authority to make general rules for the guidance of the Ontario Ombudsman.

4. Definition of 'Meeting':

The role of a closed meeting investigator is to determine whether a municipal council has complied with the open meeting provisions in the *Municipal Act*. The investigations often hinge on determining whether a meeting has in fact occurred. The *Municipal Act* definition that a meeting is "any regular, special or other meeting of a council, of a local board or of a committee of either of them" provides little practical guidance for determining whether informal gatherings of councillors or members of a local board or committee amounts to a 'meeting'. Some, including members of the public, have interpreted informal gatherings as a 'meeting'.

Since becoming the default closed meeting investigator, the Ontario Ombudsman has adopted his own working definition of 'meeting' which is broader than the established common law definition and changes depending on the nature of the matter under investigation:

Members of Council (or a committee) must come together for the purpose of exercising the power or authority of the Council (or committee), or for the purpose of doing the groundwork necessary to exercise that power or authority.

The definition of 'meeting' has been litigated on a number of occasions and the courts have consistently held that 'meeting' in the municipal context means that a quorum of council or members of a local board or committee gather to deal with matters which would ordinarily form the basis of council or a local board or committee's business in such a way as to move them materially along the way. As with all other matters, municipal solicitors and administrators advise their councils, boards and committees of their obligations based on the law.

The Ontario Ombudsman's working definition of 'meeting' eliminates the common law requirements of quorum and material advancement. "Doing the groundwork" is so broad that it creates the possibility that merely mentioning an item that may go before council or a local board or committee may be found to breach the open meeting provisions in the *Municipal Act*. The Ontario Ombudsman's working definition of meeting is impractical and it is not supported in law. Creating one's own broad and flexible definition of 'meeting' and ignoring case law creates uncertainty and confusion among the very solicitors and administrators who advise councils, local boards and committees on their procedural obligations. How can municipalities ensure compliance with the open meeting provisions in such circumstances?

Councillors should be able to discuss matters affecting their communities with each other without making any decisions in the same way Members of Provincial Parliament are free to discuss matters with their peers. Creating a climate where heads of councils cannot provide leadership on policy issues and neighbouring councillors are afraid to engage each other outside of council meetings is not necessary to achieve the goals of accountability and transparency and it is detrimental to local democracy and good governance. The use, or potential use, of multiple definitions of 'meeting' undermines the ability to be accountable and transparent.

RECOMMENDATION 4: That the *Municipal Act* be amended as to incorporate the common law definition of 'meeting':

238 (1) "meeting" means any regular, special or other meeting of a council, of a local board or of a committee of either of them where a quorum discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

5. Double Oversight of Closed Meeting Investigations:

The Ontario Ombudsman currently functions as the default closed meeting investigator where a municipality has not appointed a closed meeting investigator. Bill 8 will allow the Ombudsman to reinvestigate closed meeting complaints where a closed meeting investigator is in place irrespective of how thoroughly the closed

meeting investigator conducts his or her investigation or whether the complaint is frivolous or vexatious.

Closed meeting investigations are procedural in nature, rather than matters of administrative fairness. The *Municipal Act* already states that an investigator is independent and impartial, holds confidentiality with respect to the investigator's activities and uses a credible investigative process. There has been no evidence provided by the Province that the existing closed meeting framework is ineffective or that the Ontario Ombudsman's oversight is required where a closed meeting investigator is in place.

We see no overriding provincial interest related to procedural matters that would require the Ontario Ombudsman to reinvestigate the decision of any independent and impartial closed meeting investigator. Double oversight is unnecessary.

RECOMMENDATION 5: That the proposed amendment to s. 239.1(b) of the *Municipal Act* be struck from Bill 8 and that the existing closed meeting investigation framework be maintained.

6. Shared Services for Accountability and Transparency:

Given the capacity challenges faced by smaller municipalities, Bill 8 should explicitly permit municipalities to join together in developing models to share a municipal ombudsman and other local accountability officers.

RECOMMENDATION 6: That the *Municipal Act* be amended as follows:

223 (1.1) Two or more municipalities may, by bylaw adopted by the council of each participating municipality, establish an inter-municipal delivery model in relation to one or more matters for which they have authority under this Part.

7. Transition and Legislative Review:

The *Municipal Act* recognizes the diverse capacities and needs of Ontario's municipalities. If Bill 8 becomes law, municipalities will need a period of at least one year to transition to a new accountability framework and to align the new framework with their budget cycle. Municipal governments will also have to abide by their procurement, review complaint processes and procedures to support the new framework, evaluate their options under the new legislation and provide notice. A one-year period will give municipalities time to assess their needs and arrangements for any shared services.

In addition, Bill 8 should be reviewed from time to time to assess the effectiveness of the new framework and to ensure that local governments continue to have the powers and flexibility they need to deliver services to communities efficiently and in accordance with public expectations. Three years would be an appropriate amount of time to review the accountability framework that applies to both the Province and

municipal governments. The review would allow for good evidence-based information on accountability and transparency.

RECOMMENDATION 7: That the Lieutenant Governor in Council make a regulation providing for a transition date not earlier than January 1, 2016 for those sections of Bill 8 that relate to municipalities.

RECOMMENDATION 8: That Bill 8 be amended to add a mandatory review provision for Schedule 9.

8. Local Board Exemptions:

In a letter to AMO dated March 24, 2014, the government wrote that Bill 179, the predecessor to Bill 8, would exempt "local boards", including long-term care homes, library boards and police services boards, from the Ontario Ombudsman's jurisdiction. (See Schedule "B"). These exemptions should either be in the Bill or in a regulation that is passed immediately at the time of proclamation so that there is no gap that would allow for misinterpretation of the legislation.

RECOMMENDATION 9: That the government work with AMO to develop a comprehensive list of local boards and municipally-controlled corporations to determine which bodies will be within the Ontario Ombudsman's jurisdiction and which ones will be exempt.

9. Judicial Review on Jurisdictional Questions:

As noted, Bill 8 is open to a variety of interpretations. AMO is concerned that the broad authority in the *Ombudsman Act* will cause confusion when applied to the municipal sector.

The *Ombudsman Act* permits the Ontario Ombudsman only to apply for a declaratory order respecting the Ombudsman's jurisdiction to investigate a case. Basic fairness requires that parties affected by a proposed exercise of authority have some recourse. The *Ombudsman Act* should be amended to permit affected parties, including municipalities, to apply to the court for a declaratory order where they believe the Ontario Ombudsman does not have jurisdiction to intervene, and to stay any further action by the Ontario Ombudsman until the court makes an order. An express statutory right to apply for relief would support and enhance strong and effective municipal government in Ontario and it would bring fairness and balance to Bill 8.

RECOMMENDATION 10: That *the Ombudsman Act* be amended as follows:

14 (5) If any question arises whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, the Ombudsman or any person, municipal sector entity or public sector body affected by a proposed exercise of the Ombudsman's jurisdiction may, if he or she thinks fit, apply to

the Superior Court of Justice Divisional Court for a declaratory order determining the question.

14(6): Where a person, municipal sector entity or public sector body makes an application pursuant to subsection 14(5), the Ombudsman shall take no further step that relates to a question that is the subject of the application until the application is determined or the Court orders otherwise.

10. Additional Technical Matters:

- The proposed change to the legal advisor provision in s. 14 (4) (b) of the *Ombudsman Act* appears to only protect legal advice relating to a proceeding.

RECOMMENDATION 11: That this provision be clarified to state that all legal advice, whether it is received from in-house counsel or from external counsel, and whether or not it is related to a proceeding, is exempt.

- The proposed change to s. 18(3) of the *Ombudsman Act* will require municipalities to return or destroy any documents relating to an investigation by the Ontario Ombudsman, even though the documents become part of the municipal record and may be referred to by the Ontario Ombudsman in a final report. This provision is inconsistent with the principle of open and transparent government.

RECOMMENDATION 12: That this provision be amended to require municipalities to retain and redact any materials provided in the course of an investigation by the Ontario Ombudsman.

- The proposed change to s. 239(3) of the *Municipal Act* will require municipalities to close meetings dealing with ongoing investigations by the Ontario Ombudsman. It is not clear why such a meeting shall be closed in all circumstances and the provision seems to be inconsistent with the principle of open and transparent government.

B. Schedule 5 – The Creation of a Patient Ombudsman with Oversight of Long-Term Care Homes:

If Bill 8 becomes law, it will amend the *Excellent Care for All Act* to create a Patient Ombudsman who will have oversight of hospitals and long-term care homes (LTC homes). LTC homes are already subject to a robust, multi-disciplinary and multi-faceted accountability regime, including an enforceable *Residents' Bill of Rights*. As background, the complaint system mandated by the *Long Term Care Homes Act* (LTCHA) involves the following:

1. A resident may make a verbal or written complaint to the Manager of an LTC home. An investigation must be conducted within 10 days to determine the root cause of the issue and a multidisciplinary team will work to resolve the complaint to the satisfaction of the resident. If a resident is not satisfied with

the Manger's response to the complaint, he or she may make a verbal or written complaint to the Administrator of the LTC home. A second investigation is conducted and a second multidisciplinary team will work to resolve the complaint.

2. If abuse or neglect is alleged at any point, the LTC home must immediately log the complaint in the Provincial system, which triggers an on-site investigation by the Ministry. The Ministry may make any order it deems fit to resolve the concern or complaint, including revoking a license, and it may withhold funding from the LTC home.
3. A resident may also make a verbal or written complaint to their Residents' Council. The Residents' Council may investigate and take steps to resolve the complaint with the Manager or Administrator.
4. If a complaint is not resolved within the LTC home, the resident may make a verbal or written complaint to the Director of Long-Term Care Homes for further investigation. The Director may make any order he or she deems appropriate to resolve the complaint, including revoking a license, and he or she may also withhold funding from the LTC home. The complaint and proposed resolution may also be forwarded to the Board of LTC homes for further recommendations. LTC boards are comprised of citizen representatives and publically elected persons who are directly accountable to the public.
5. Additionally, anyone who is concerned about any resident's situation may, at any point, report a concern or complaint to the Ministry's ACTION hotline. A complaint automatically triggers an on-site investigation by the Ministry.

Bill 8 neither proposes to eliminate the existing LTCHA framework nor addresses how the Patient Ombudsman will fit within that framework. Bill 8 appears to simply create the possibility for a sixth layer of investigation, without any explanation of how this additional oversight will enhance administrative fairness in a way that the Director of Long-Term Care Homes or the Ministry cannot.

There is significant concern that LTC homes may find themselves in situations where the Ministry orders them to do one thing in response to a complaint and the Patient Ombudsman recommends they do something different or contrary to the Ministry's order. An LTC home could be caught between its regulator and a Patient Ombudsman with no clear understanding of its obligations.

The rationale for setting up the Patient Ombudsman was to have medically informed professionals oversee the health and long-term care sector. Yet, the Ontario Ombudsman has indicated that his office will have oversight of the Patient Ombudsman, which raises the possibility yet of a seventh layer of investigation and recommendations for a complaint. As previously noted, we were told this was not the Government's intent and that LTC would be exempt from the oversight of the Office of the Ontario Ombudsman. We believe that this intent should be put in legislation to end the misinformation and to bring absolute clarity to Bill 8. We would also suggest that the same occur for the other local boards mentioned in Schedule "B".

RECOMMENDATION 13: That Bill 8 be amended to clarify the following:

1. That a complainant must exhaust all measures under the LTCHA before the Patient Ombudsman will have jurisdiction to investigate a complaint.
2. How the Patient Ombudsman will fit within the LTCHA framework. Specifically, whether the Ministry will be responsible for implementing recommendations from the Patient Ombudsman and/or directing LTC homes with respect to recommendations from the Patient Ombudsman that are contrary to orders from the Ministry. MOHLTC must turn its mind to this issue and draft the appropriate amendment. It would be a huge gap in the legislation not to provide direction on this to all parties to a complaint.
3. The circumstances under which the Patient Ombudsman may undertake investigations on his or her own initiative.

RECOMMENDATION 14: That Bill 8 be amended to clarify the Patient's Ombudsman's power of entry. The proposed legislation seems to both grant the Patient Ombudsman an absolute right of entry and permit an LTC home to refuse entry if the Patient Ombudsman does not have a warrant.

RECOMMENDATION 15: That Bill 8 be amended to specifically exclude the Patient Ombudsman and LTC homes from the jurisdiction of the Ontario Ombudsman.

C. Schedule 6 – Records Retention under MFIPPA:

The *Municipal Act* requires municipalities to put policies in place to retain and preserve the records of the municipality and its local boards in a secure and accessible manner. The Bill's provisions with respect to MFIPPA do not appear to go beyond the existing records retention requirements in the *Municipal Act*. If there is a different intent, we would like to understand this.

CONCLUSION:

AMO supports accountability and transparency in local government and the broader public sector. Our submission aims to clarify and improve Bill 8. An expansion of provincial oversight into the municipal sector without careful language will create confusion. The Province's commitment to treat municipalities as mature, responsible and accountable governments that provide good governance their citizens is important. Bill 8 only addresses one part of local government accountability and transparency. AMO wants to work with the Province on comprehensive accountability and transparency infrastructure that supports the diverse needs and capacities of Ontario's regions and communities and fosters mutual respect between municipalities, the Province and officers of the Legislature.

Schedule "A"

Example of Statements of Provincial Interest Regulation

Introduction –The *Municipal Act, 2001* states that municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction. The *Municipal Act, 2001* also recognizes the importance of accountability and transparency, and authorizes municipalities to establish codes of conduct, lobbyist registries, and to appoint Accountability officers, including an integrity commissioner, municipal ombudsman, closed meeting investigator, and auditor general. The Accountability Act further recognizes the importance of accountability and transparency in public sector bodies, and provides for a role for the Ontario Ombudsman in overseeing this.

Purpose – The purpose of the Statements of Provincial Interest Regulation is to identify provincial interests to guide and provide direction to the Ontario Ombudsman and other municipal accountability officers (accountability officers) in fulfilling their functions and carrying out their responsibilities under law.

Interpretation- Each statement of interest is intended to provide guidance rather than rigid standards and there is no implied priority based on the order in which they appear. Statements of interest do not create any new rights of appeal.

1. The Province has an interest in ensuring that all accountability officers respect the interdependence and broad scope of jurisdiction the Municipal Act, 2001 confers on municipalities, as a responsible level of government.
 2. The Province has an interest in promoting inter-municipal cooperation that facilitates strong partnerships and coordinated local development and decision-making.
 3. The Province has an interest in promoting best practices amongst public sector bodies.
 4. The Province has an interest in ensuring that public sector bodies that are incorporated under the Ontario Business Corporations Act are not placed at a competitive disadvantage from their private sector counterparts, by virtue of being subject to possible investigation under the *Public Sector and MPP Accountability and Transparency Act, 2014*. To this end, for the purpose of any such investigations, the Ontario Business Corporations Act shall prevail over the *Public Sector and MPP Accountability and Transparency Act, 2014* and the *Municipal Act, 2001*.
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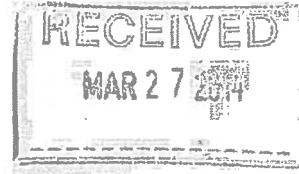
Schedule "B"

Local Bodies to be Exempt

(Milloy Letter, March 24, 2014 – sent electronically on Fri 07/11/2014 11:57 AM to Office of the Premier Staff).



MEMORANDUM



TO: Russ Powers, AMO President

COPY: Bill Mauro
Minister of Municipal Affairs and Housing

FROM: John Milloy
Minister of Government Services

DATE: March 26, 2014

Re: **Ombudsman Mandate**

As you are aware, the government introduced Bill 179, *The Public Sector and MPP Accountability and Transparency Act, 2014*, on Monday, March 24, 2014 that, if passed, would expand the Ontario Ombudsman's role to include municipalities, school boards and publicly-assisted universities. The bill is about strengthening accountability and, for municipalities, it is about making sure every Ontarian, in every municipality, has access to an ombudsman. If passed, this bill would give the Ombudsman the authority to investigate complaints only after local processes have been completed.

I know AMO has expressed particular concern about some aspects of the proposed mandate for the Ontario Ombudsman. I want to take this opportunity to confirm the government's intent with respect to the mandate that the Ontario Ombudsman would have if the bill is passed. The intent is to mirror the mandate currently available to a municipal ombudsman as set out in the *Municipal Act*. This would mean that the Ontario Ombudsman would not be able to investigate some local boards, including Children's Aid Societies, Boards of Health, Boards of Long Term Care Homes, Police Services Boards and Library Boards, and certain municipal corporations. The exclusion of these local boards is not part of the proposed legislative amendments, but would be made through regulation under the *Ombudsman Act* should the bill be passed.

I hope that this information clearly addresses this concern. Should this bill be referred to a Select or Standing Committee after Second Reading, AMO would have the opportunity to engage in the committee process to provide its views and suggestions for the legislation.

Thank you.

A handwritten signature in black ink, appearing to be "J.S.", written in a cursive style.

Encl:

Schedule "C"

**Administrative Fairness Guidelines in British Columbia, Nova Scotia and
Manitoba**



About the Office of the British Columbia Ombudsperson

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About Administrative Fairness

Administrative fairness consists of applying well-recognized principles of procedural fairness and effective public administration. These include:

- Appropriate legal authority
- Useful policies and procedures
- Clear public information
- Accessible programs
- Consistent standards of practice
- Adequate monitoring and enforcement
- Timely and responsive complaint resolutions

Ombudsperson Fairness Checklist

Communication

- Public information is available and understandable
- Forms are in plain language
- Clients are given all the information they need
- Clients are treated with courtesy

Facilities and Services

- Telephones are answered promptly
- Voicemail, answering machines or toll-free numbers are available
- Premises are easily accessible and suited for wheelchairs
- The environment is safe and healthy for workers
- The public's right to privacy is respected

Decision Procedures

- Those affected by a decision have a chance to give information and evidence to support their position
- Decisions are made within a reasonable time
- Reasons are given for decisions

Appeal, Review, and Complaint Procedures

- At the time of decisions, people are told of any existing appeal or review procedures
- Complaint procedures are clearly defined
- The public is asked for ideas on improvements in service

Organizational Issues

- Staff are given clear titles for the functions they perform
- Agencies consider whether reorganizing would provide better quality service
- Agencies cooperate with one another to provide better service to the public

Agency Review and Planning

- The public is invited to participate in planning programs
- How decisions will be made is clear from the beginning
- Statistical information needed to evaluate and improve performance is recorded and maintained

Mission

**Fostering confidence
in the public service
by promoting
the principles of
Fairness, Integrity, and
Good Governance.**

What is the Office of the Ombudsman?

Our purpose is to assist individuals who feel they have been treated unfairly and, when warranted, to recommend improvements in the delivery of government services offered to Nova Scotians. All concerns filed with this office are confidential and will only be shared with the government body involved. Files are not subject to freedom-of-information requests. All services are provided free of charge.

To Contact the Office of the Ombudsman

Office of the Ombudsman:

Suite 700
5670 Spring Garden Road
Halifax, Nova Scotia

Our mailing address is:
PO Box 2152
Halifax, Nova Scotia
B3J 3B7

Telephone: (902) 424-6780

Toll free within Nova Scotia: 1 800 670-1111

Fax: (902) 424-6675

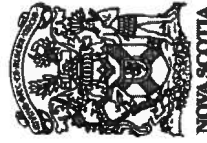
Email: ombudsman@gov.ns.ca

Youth Services

Toll free within Nova Scotia: 1 888 839-6884



**DO YOU HAVE
CONCERNS ABOUT
PROVINCIAL
OR MUNICIPAL
GOVERNMENT
SERVICES?**



Office of the Ombudsman

For more information on our services, or to view a copy of the Ombudsman Act, please visit our website: www.gov.ns.ca/ombu

🗣️ How We Can Help You

If you have tried unsuccessfully to resolve your concern(s), you can contact us and we will assess your situation. To help us complete our review, *we may require*

- your name, address, and a telephone number where you can be contacted during the day
- the name of the department, agency, board, commission, or municipality involved
- a detailed summary of the concern
- the name and phone number of any individual with whom you have been in contact regarding your concern
- copies of relevant information and any actions you have taken to resolve the situation

Traditionally, we have been able to resolve many concerns in a relatively short time through our administrative review process. However, some issues require a more in-depth investigation.

🗣️ Concerns We Can Investigate

Here are some examples of concerns that we can investigate in relation to provincial and municipal government services:

- the manner in which programs and services are delivered
- fairness and accountability issues
- licenses and permits
- treatment of offenders

🗣️ Some Concerns We Cannot Investigate

The Office of the Ombudsman cannot investigate concerns outside our jurisdiction, although we may offer referrals. Some issues that we are unable to investigate include:

- federal government departments or agencies
- private individuals and corporations
- decisions of Cabinet
- decisions of courts and judges
- a solicitor or prosecuting officer acting for the Crown
- decisions of elected provincial or municipal officials
- matters covered by a legislated avenue of appeal

🗣️ Our Services

Our role is to ensure that policies and procedures are being followed and are consistent and fair. We provide all parties with an opportunity to be heard, and we treat all individuals fairly, with dignity, respect, and courtesy.

🗣️ Investigation and Complaint Services

- reviews and investigates public concerns about provincial and municipal government decisions and actions
- identifies areas of concern and recommends improvements
- assists government bodies to develop and review policies and proposed revisions to legislation and regulations

🗣️ Youth Services

- reviews and investigates concerns received from children, youth, parents, guardians, and youth workers in relation to youth-serving systems (provincial and municipal only)
- monitors conditions in youth facilities through outreach visits and makes recommendations for improvements to facilities

🗣️ Seniors' Services

- reviews and investigates concerns received from seniors in residential care facilities, nursing homes, and homes for the aged
- ensures seniors' voices are heard and their issues addressed

Primary responsibility for seniors in these facilities rests with the Department of Health; however, we are establishing a process to assist seniors navigate through government services.

🗣️ Own Motion Investigations

We may also decide on our own initiative to investigate government activities and practices. For example, we may decide to do this after noticing a pattern of complaints developing in one specific area.

🗣️ Education

Our staff provide information sessions and presentations to the public and government employees on the role of the Office of the Ombudsman.

🗣️ Civil Servants

The Civil Service Disclosure of Wrongdoing Regulations came into effect on September 16, 2004. Any civil servant who reasonably believes a wrongdoing has occurred, or is about to, can file a complaint with his or her supervisor/manager, the deputy head, or with the Ombudsman. You are protected against any reprisals as a result of making your disclosure.

Appendix B: Municipality Fairness Checklist

This checklist outlines aspects of fairness that your municipality might want to consider to ensure fair service and treatment for municipal residents

Access and Communication	
<input type="checkbox"/>	Does our procedures by-law require that the public receive notice of regular council meetings? Is the agenda published or posted so that people will be aware council is considering issues that may affect them? If requested, is it available by email or other means?
<input type="checkbox"/>	Is the public informed about the decisions of council? Are the minutes of council meetings routinely posted in the municipal office, post office, or other community centre? Is a copy sent to the local paper? Are they available to mail or email, or on the web?
<input type="checkbox"/>	Is public information about municipal services, and how to request them, available and understandable? Is this information available on your municipal website?
<input type="checkbox"/>	Do we have a policy facilitating routine and proactive disclosure of all information permitted by law? Information on the application of provincial access and privacy laws is available on the Manitoba Ombudsman website at www.ombudsman.mb.ca , and also on the website of Manitoba Tourism, Culture, Sport and Consumer Protection.
<input type="checkbox"/>	Are our municipal premises easily accessible? Can we accommodate people in wheelchairs or scooters? Can we communicate with people who are hearing impaired or visually impaired? Do we have a private space for people to review minutes, notices, or by-laws?
<input type="checkbox"/>	Is correspondence answered in a timely manner?
<input type="checkbox"/>	Are phone calls and voice mail messages answered promptly?
Customer Service	
<input type="checkbox"/>	Is staff aware of municipal programs and services and able to provide this information by phone? Does staff have a referral list for other government programs and services?
<input type="checkbox"/>	Have municipal staff who are required to deal with the public received customer service training? Is there a customer service policy addressing issues like respectful behaviour and timely response to inquiries?
<input type="checkbox"/>	Is there a complaints policy setting out how complaints are addressed and disputes with citizens resolved? If so, is this policy known to municipal residents and to all staff who interact with the public?
<input type="checkbox"/>	If mistakes occur, are they addressed in a timely and respectful manner?
<input type="checkbox"/>	Is the public's right to privacy respected?
Decisions	
<input type="checkbox"/>	Is there adequate notice provided to those persons who may be affected by a decision of council or administration? What steps have been taken to inform the public of council's decision-making process?
<input type="checkbox"/>	Are those affected by a decision given a chance to give information and evidence to support their position?
<input type="checkbox"/>	Are decisions made within a reasonable time?
<input type="checkbox"/>	Are meaningful reasons given for decisions?
Appeal/Complaint Procedures	
<input type="checkbox"/>	If people have a right to appeal, are they told about that right at the time a decision is made?
<input type="checkbox"/>	Are procedures for filing a complaint or appeal fully explained when told of a decision? Is the public generally informed about appeal or complaint procedures in letters, posters or brochures?
Ongoing Review/Improvement	
<input type="checkbox"/>	What procedures are in place to address problems that continue to arise?
<input type="checkbox"/>	Does the complaints or customer service policy contain a method for keeping/tracking statistics that can be used to identify common concerns and to plan necessary changes or improvements?
<input type="checkbox"/>	Is there a mechanism to identify and consult affected individuals or groups when significant program or service changes are contemplated?
<input type="checkbox"/>	Is there a method for incorporating procedural or service improvements into municipal policy so they remain in place? Such as in the procedures by-law or other existing by-laws or policies?