

AMO Submission to
the Minister of
Municipal Affairs
and Housing
concerning the
2015 Municipal Act
Five-Year Review
and Conflict of
Interest Review

SEPTEMBER 8, 2015

The Board has had several discussions about the Ministry's Municipal Legislation Review and makes this initial submission which addresses both the *Municipal Act* and the *Conflict of Interest Act*.

We recognize that the Ministry is likely to receive input from others outside municipal government in response to the review of the authorities, accountability and transparency elements. We'd be pleased to provide practical, operational commentary to the Ministry on the input of others. At the end of the day, the ability to implement policy is just as important as any policy change itself. New policy needs the lens of operational considerations so that consequences are understood and can be avoided at best or mitigated.

A. *Municipal Act Review*

Background:

The current framework of the *Municipal Act* sets out the broad powers of municipal government, spheres of jurisdiction as well as natural person powers, all of which are the outcomes of previous major change to the Act.

These were changes that municipal governments had championed for years. A more modern Act was introduced, ending a legislative framework that for far too long told municipal governments how to do their business in very specified detail, treating all municipal governments in the same manner.

AMO, along with various staff associations¹ worked together and in the fall of 2004 established nine key principles to direct the Province in the review of the *Municipal Act*, 2001 and any future legislation affecting municipalities in Ontario. Those principles are:

Principles for a Mature Provincial-Municipal Relationship:

1. Municipalities are responsible and accountable governments.
2. New legislation shall enhance existing municipal powers.
3. The Province shall stop micromanaging municipal governments.
4. Where there is a compelling provincial interest the Province shall, when regulating municipal government, define at the outset that interest.
5. Provincial legislation shall be drafted with the expectation of responsible municipal government behaviour and not as a remedial tool.
6. Accountability means mutual respect between municipal government, the Province and other public agencies.

¹Association of Municipal Clerks and Treasurers of Ontario (AMCTO), the Municipal Finance Officers' Association (MFOA), the Ontario Municipal Administrators' Association (OMAA), the Municipal Law Departments Association of Ontario (MLDAO) and the Ontario Good Roads Association (OGRA),

7. Resources for municipal governments shall be sustainable and commensurate with the level of responsibility.
8. The *Municipal Act* shall include principles that will protect the *Municipal Act* and municipal powers from provincial legislation.
9. The Province shall commit to increasing the understanding and awareness of municipal government within all ministries.

The review commenced in 2005 by then Premier, Hon. Dalton McGuinty was done with special attention to ensuring the province was not micro-managing municipalities. On more than one occasion, the Premier said that he was not elected to run municipal government but rather that is what municipal elections served. There was mutual agreement that providing a municipal governing framework that permitted local solutions within the context of local circumstances would be better than a top down, provincially prescribed rules based, one-size fits all approach, which was the historical approach of the Act.

The nine (9) principles above guided that work and AMO made significant recommendations to the government during the pre-consultation phase and in its submission to the Standing Committee on General Government. Many of those recommendations found their way into the 2006 legislation (Bill 130, *Municipal Statute Law Act*) which took effect January 1, 2007. It required a municipal council and administration to be less reliant as a 'ward' of the province and to use its 'own legs' – determining the policy and procedures that made sense within the community and to change them when needed.

With the changes to the Act in 2006, the province moved a good distance to end its micromanagement approach and AMO saw it “as yet another milestone in the advancement of a more collaborative and respectful relationship.” Greater local authority and greater choice meant better local responsibility. It certainly helped reduce the number of Bills including private member Bills being introduced in the House to deal with a local matter as one example of the benefit of the new framework.

Today:

AMO's principles used 10 years ago still hold true for this five-year review and the Board has re-confirmed them.

Basically, the *Municipal Act's* framework is working well and there is no major overhaul needed, but rather some clarity and some additional authority.

In addition to this submission, we will be looking at some technical amendments being developed by several staff associations, in particular the Municipal Finance Officers Association's review of the financial areas of the Act and we will provide further comment.

In considering the above, AMO's recommendations in this initial submission on the *Municipal Act* are:

1. As a measure to help diversify the municipal revenue base, incorporate into the Act the taxing authority that resides in the City of Toronto Act. In making this recommendation, AMO wishes to make it clear that this additional permissive taxing authority may be helpful to several municipal governments but it will not bring fiscal sustainability across Ontario, even to those that might use some of that authority. We have witnessed the campaigns of special interest groups, e.g., real estate industry against the use of the land transfer tax, which is the vulnerability of such authority.

City of Toronto Act

267. (1) The City may, by by-law, impose a tax in the City if the tax is a direct tax, if the by-law satisfies the criteria described in subsection (3) and if such other conditions as may be prescribed are also satisfied. 2006, c. 11, Sched. A, s. 267 (1).

Exclusions, types of tax

- (2) The City is not authorized to impose any of the following taxes:
1. A tax imposed on a person in respect of the person's income, revenue, profits, receipts or other similar amounts.
 2. A tax imposed on a person in respect of the person's paid up capital, reserves, earned surplus, capital surplus or any other surplus, indebtedness or in respect of similar amounts.
 3. A tax imposed on a person in respect of machinery and equipment used in research and development or used in manufacturing and processing and in respect of any assets used to enhance productivity, including computer hardware and software.
 4. A tax imposed on a person in respect of remuneration for services, including non-monetary remuneration, that is paid or payable by the person or that is conferred or to be conferred by the person.
 5. A sales tax imposed on a person in respect of the acquisition or purchase of any tangible personal property, any service or any intangible property, other than a tax imposed on the person,
 - i. for the purchase of admission to a place of amusement as defined in the *Retail Sales Tax Act*,
 - ii. for the purchase of liquor as defined in section 1 of the *Liquor Licence Act* for use or consumption,
 - iii. for the production by the person of beer or wine, as defined in section 1 of the *Liquor Licence Act*, at a brew on premise facility, as defined in section 1 of that Act, for use or consumption, or
 - iv. for the purchase of tobacco as defined in section 1 of the *Tobacco Tax Act* for use or consumption.
 6. A tax imposed on a person in respect of lodging in or the use of the rooms or other facilities of a hotel, motel, hostel, apartment house, lodging house, boarding house, club or other similar type of accommodation, including a tax in respect of services provided by the owner of the accommodation that are related to the lodging or that are related to the use of the rooms or other facilities, but not a tax described in subparagraphs 5 i to iv.
 7. A tax imposed on a person in respect of the acquisition of any gas or liquid that may be used for the purpose of generating power by means of internal combustion and in respect of any special product or any substance that may be added to the gas or liquid.
 8. A tax imposed on a person in respect of the person's consumption or use of energy, including electricity.
 9. A tax on a person's wealth, including an inheritance tax and a tax in respect of,

- i. the total value of assets or the total value of two or more classes of assets owned by the person, or
- ii. any monetary assets or financial instruments owned by the person.
10. A poll tax imposed on an individual by reason only of his or her presence or residence in the City or in part of it.
11. A tax on the generation, exploitation, extraction, harvesting, processing, renewal or transportation of natural resources.
12. A tax on the supply of natural gas or artificial gas.
13. A tax on the use of a highway (as defined in subsection 1 (1) of the *Highway Traffic Act*) by a person in respect of equipment placed under, on or over the highway for the purpose of supplying a service to the public. 2006, c. 11, Sched. A, s. 267 (2).

Across Ontario, there is a significant infrastructure gap in municipal core infrastructure (over \$60 billion). In addition, there is other capital and operating demands such as the housing stock transferred to municipal governments in the late 1990s, which is not captured in this gap figure, nor are the recreation, park and cultural facilities that contribute to quality of life and vibrancy of community.

The municipal fiscal challenges cannot be met with the nine cents of every household tax dollar that municipal governments in Ontario receive. It can only be tackled in a substantive manner with a more predictable and secure approach. AMO is currently working on a project “What’s Next Ontario?” to develop in concert with its membership a framework for municipal fiscal sustainability and will share with the province the outcomes of this work as it develops. In the meantime, as noted, some municipal governments may be in a position to utilize Toronto’s additional special tax tools authority.

2. The *Municipal Act* must contain a better definition of a “meeting”. The need for this has become readily apparent as a result of closed meeting investigations conducted under Section 239. The current regime did not anticipate that closed meeting investigators would hold different approaches as to what constitutes a meeting for the purposes of the Act. The broad definition used by the Ontario Ombudsman means that any gathering of members of council or a committee would constitute a meeting. For example, a delegation of council members to meet with a Minister could be captured by the Ombudsman’s definition. This is confusing to not only councils but the people who advise them about the rules for open meetings as well as the public.

As we did with Bill 8, we recommend that the common law definition of meeting be included in the Act to provide clarity and consistency for all participants. We have suggested that a meeting be defined as when a quorum of elected officials gathers to deal with matters which would ordinarily form the basis of council or a local board or committee’s business and acts in such a way as to move them materially along the way.

The definition of meeting should not be as broad as the Ontario Ombudsman's. The Ombudsman for British Columbia has brought some common sense to this by differentiating between a meeting and a gathering as follows:

"A gathering is less likely a meeting if:

- there is no quorum of board, council or committee members present*
- the gathering takes place in a location not under the control of the council or board members*
- it is not a regularly scheduled event*
- it does not follow formal procedures*
- no voting occurs and/or*
- those in attendance are gathered strictly to receive information or to receive or provide training*

A gathering is more likely a meeting if:

- a quorum of council, board or committee members are present*
- it takes place at the council or board's normal meeting place or in an area completely under the control of the council or board*
- it is a regularly scheduled event*
- formal procedures are followed*
- the attendees hold a vote and/or*
- the attendees are discussing matters that would normally form the basis of the council's business and dealing with the matters in a way that moves them toward the possible application of the council's authority."*

It is unfortunate that in Ontario we need to legislate what constitutes a meeting, but the current conflicting approaches cannot continue and a reasonable definition, one that has support in jurisprudence should be incorporated in the Act.

3. Apply prudent investment standard to One Investment Program, which would enable this pooled investment authority to provide its participants with greater diversification. It would provide for the management of funds based on return potential and risk rather than the “legal list” approach of the statute. A legal list cannot keep pace with evolving investment markets.

The One Investment Program has a solid track record, with a very active oversight Board and accountability to its participants. It needs to move from the “legal list” to letting professional investment managers manage portfolios according to the market. Prudent investment status would allow the municipal governments to better utilize investments as a source of revenue. Additional revenue would help municipal budgets and related capital financing plans.

AMO and its Local Authority Services subsidiary, and the Municipal Finance Officers Association of Ontario have managed this pooled investment plan with solid rates of return for 15 years. We have provided vast amounts of documented evidence over the years as we have pursued this change. Our current understanding is that the Ministry is contemplating giving the City of Toronto prudent investment status. There is no barrier to the City participating in the One Investment Program. If other large municipalities are designated as such and the One Investment Program does not receive the status, we will not be able to compete and the pooled program will erode, resulting in higher fees with fewer investment options. AMO chooses to believe that the province would not take any action that would undermine the investment program and three important municipal organizations.

4. There are also several changes that would lend clarity and further modernize the Act.
 - Develop a provision to clearly provide parental leave for Mayors and Councillors by cross-referencing the parental leave legislation. This should be done in such a manner that parental leave does not require authorization from Council under the *Municipal Act*, and that it does not constitute an absence from meetings of Section 259 (1).
 - Permit a council to establish a policy, if it chooses, on when participation at its meetings, committee and local board meetings, including accessibility advisory committee meetings might be conducted by using telephone or video conferencing. Section 40(7) of the *Northern Services Board Act* permits meetings by tele-conference, video-conference or other means of distance communication.

Council could include in its policy provisions related to the frequency and method of conferencing, other limitations and when council's policy should be reviewed. Where a council prepares such a policy, it would form part of the municipal government's procedures. There can be situations where remote participation supports the representative role of councillors. It is our view that individual members of council would use this authority judiciously. We recognize that this recommendation would not be enabled in parts of Ontario because of technology limitations, but it does reflect the principles articulated above.

Summary:

By and large, the *Municipal Act* is working well and our review did not reveal any major failings. It provides municipal governments with broad authority so that councils' policy decisions can reflect local circumstances and local needs as they evolve over time. These initial recommendations on authority are made to add some clarity and modernity and as previously noted, we will be providing further advice based on the technical recommendations of the various staff associations.

B. Transparency and Accountability

Background:

Appendix A provides a summary of the existing accountability framework within the *Municipal Act* and the *Municipal Conflict of Interest Act* (MCIA). The latter Act has not had any major review over the years.

Municipal ethics is concerned with ensuring that the standards of behaviour of municipal officials adhere to the core values of the municipality. The public consistently rates municipalities as the most trusted order of government in Canada. If a municipal government does not have the public's trust, it then holds every reason to earn it. Simply put, good government is best served when municipal governments and their designated bodies meet that goal independently rather than through provincial micromanagement and specific oversight.

The government's focus on accountability and transparency in this Review is related to integrity situations that have occurred during the last few years that have received a great deal of public attention. The recommendations that follow have benefited from the insight and advice from municipal associations, senior municipal staff and experts on municipal governance and accountability, including lawyers and integrity commissioners.

The AMO Board believes that the following should form the desired outcomes of this review:

- ✓ Any municipal accountability framework shall recognize that municipal governments are mature, responsible and accountable levels of government. The provincial government has recognized municipalities both generally and specifically as responsible governments and, as such, any changes should not undermine this position.
- ✓ Any municipal accountability framework should be straightforward and it should be easily understood by elected officials and the public. In other words, it should not be complex or legalistic. Additionally, any changes to the framework must not expose staff and municipal governments to increased liability.
- ✓ Elected officials should have access to a person who is able to provide them with advice on potential conflicts of interest and they should be able to rely on that advice. Certainty and affordability are key values in any process, including conflicts of interest.
- ✓ An accountability framework should have safeguards to prevent and to address frivolous and vexatious complaints. Without these safeguards, it could be misused for political and other ends.

Specific Recommendations:

In addition to the above desired outcomes, the following recommendations are being made to the Ministry:

1. The existing municipal accountability framework is confusing and needs to be structured in a way that allows elected officials to understand their obligations and to conduct themselves in a way that complies with those obligations. The *MClA* is overly legalistic and it is difficult to understand, particularly by elected officials who bear personal responsibility for complying with the *Act*.
2. The term “pecuniary interest” is an outdated term. The *MClA* should be updated to incorporate modern language and overarching principles of ethics and integrity.
3. The *MClA* is rather draconian and the penalties are too severe. It should be amended to provide for a broader range of penalties. Removal from office should be reserved for the most egregious conduct.
4. Elected officials should be able to seek advice from a municipal integrity commissioner for *MClA* as well as municipal code of conduct advice and they should be able to rely on the advice received. As with the closed meeting investigation and ombudsman framework, the provincial integrity commissioner could be the default advisor for municipal governments.

5. An appointed municipal integrity commissioner should be able to investigate complaints related to conflict of interest matters under the *Municipal Conflict of Interest Act*, with the authority to impose penalties. A municipal integrity commissioner can be appointed under the *Municipal Act* to deal with codes of conduct complaints. The provincial integrity commissioner could act as a default investigator for those municipalities that do not appoint their own.
6. Where an integrity commissioner has the ability to remove someone from office for an offence under the *MCI Act*, there should be a process for judicial review.
7. An accountability framework should give clear authority and set out safeguards to prevent and to address frivolous and vexatious complaints.
8. Some codes of conduct are drafted to include conflicts of interest arising from a member's financial interest, raising the possibility that a single action could breach both the *MCI Act* and a council's code of conduct. Personal financial interests should be separate from code of conduct matters. Codes of conduct should focus on councils' behaviour; e.g. use of workplace assets, 'gifts', staff/council member interaction, etc. Combining all potential ethical matters in a code of conduct can create confusion.
9. Require that accountability and transparency training is completed within 90 days of taking office. Council members are already required to do mandatory training on their personal liabilities with respect to the *Safe Drinking Water Act*. Human behaviour cannot be legislated, however solid upfront knowledge, the clarity of law, and reliable advice are important inputs to judgement and action for both elected officials and others.
10. One of the outcomes of Bill 8's amendment process is to exempt the City of Toronto from the 'final oversight' of the Ontario Ombudsman. In the Committee's review process, it did not exempt other municipal governments who appoint their own municipal ombudsman. There is no reasonable rationale for such a dual standard and this should be rectified.

Summary:

The already extensive and complex municipal accountability framework should not be made even more complex and legalistic. There will no doubt be differing perspectives on how to 'reform' the accountability framework, including the *Municipal Conflict of Interest Act*. AMO remains open to discussing with the Ministry ideas for change that may come from others.

At the end of the day, municipal governments are the most accessible and accountable order of government. Any change to the accountability framework needs to complement this rather than detract from it. The desired outcomes articulated above have merit and should be used in evaluating any legislative change. In addition, there needs to be an across-the-board view in making any changes to any part of the framework.

Conclusion:

AMO's Board submits these comments and recommendations for consideration. As noted, there may be some additional technical amendments from municipal staff associations. As always, AMO is available for government to government discussions on these and any other recommendations the Ministry receives.

Appendix “A”

The Existing Accountability Framework

Ontario does not have a comprehensive statute or regulation that addresses municipal accountability and transparency. Codes of conduct and integrity commissioners are addressed in Part V.1: Accountability and Transparency of the *Municipal Act*, while open meetings are addressed in Part VI: Practices and Procedures of the *Municipal Act*. Financial conflicts of interest are dealt with in the *Municipal Conflict of Interest Act*. Additional sources of municipal accountability and transparency rules include the *Criminal Code*, judicial inquiries/common law and, as of January 2016, the *Ombudsman Act*.

The Municipal Act

CODES OF CONDUCT

The *Municipal Act* permits municipalities to establish local codes of conduct for members of council and local boards. Codes of conduct are bylaws that establish standards for ethical behaviour when members are acting in their official capacity and for compliance with the municipality's rules, policies and procedures. Common issues addressed in codes of conduct include relations with other members of council, staff and the public, gifts and benefits, confidentiality, use of property and discrimination/harassment. Some codes have gone beyond these areas and touch upon financial interest, which can be confusing.

It is up to a municipality to determine the content of its code of conduct, the complaints process and many of the rules around its enforcement. However, a municipality cannot make it an offence to breach the code of conduct. The only two penalties available for breaching the code of conduct are a reprimand or a suspension of pay for up to 90 days. Responsibility for overseeing the code of conduct is normally assigned to a municipal integrity commissioner appointed by the municipality.

INTEGRITY OFFICERS

The *Municipal Act* permits municipalities to appoint the following integrity officers to help increase accountability and transparency at the local level:

- Integrity Commissioner
- Municipal Ombudsman
- Auditor General
- Lobbyist Registry

Integrity Commissioner: A municipality may appoint an integrity commissioner who is independent of council to interpret its code of conduct, to provide confidential advice to members on their obligations under the code and other rules, procedures and policies. In carrying out his or her responsibilities, the integrity commissioner may exercise such powers and perform such duties as are lawfully assigned by the municipality. Generally, a municipal integrity commissioner may investigate an alleged code violation and make recommendations to council about penalties. Other processes are in place to do this. If council accepts the integrity commissioner's recommendation, it may either reprimand the member or suspend the member's pay for up to 90 days. Councils do

not have the ability to impose other types of penalties or to make a breach of the code of conduct an offence punishable by law. The Integrity Commissioner has no authority for assigning penalties; this is a matter for Council as a body in the public domain.

Municipal Ombudsman: A municipality may appoint a municipal ombudsman to investigate complaints or self-identified investigations (i.e. system reviews) of matters that deal with the administration of the municipality and its agencies, boards and commissions. A municipal ombudsman shall conduct all investigations in private and maintain confidentiality. The municipal ombudsman's power is limited to reporting and making recommendations to council. Aside from Toronto, which is required to appoint a municipal ombudsman, no Ontario municipalities have availed themselves of this authority.

Auditor General: A municipality may appoint an Auditor General who reports to council and is responsible for assisting the council in holding itself and its administrators accountable for the quality of stewardship over public funds and for achievement of value for money in municipal operations. Most municipalities rely on their internal or external auditor to determine the municipal government's financial picture and financial statements. Aside from Toronto, which is required to have an Auditor General, Ottawa appears to be the only municipality that currently has an Auditor General. The Provincial Auditor General already holds the ability to investigate use of provincial grant funds for a specific purpose or as a systemic review/value for money of a funding program.

Lobbyist Registry: A municipality may establish a public registry for lobbyists, establish a code of conduct for lobbyists and prohibit former public office holders from lobbying for a designated period of time. Toronto, Ottawa and Hamilton currently have lobbyist registries.

OPEN MEETINGS

Meetings of councils and local boards must be held in public, unless they fall into one of the limited closed meeting exemptions in Section 239 of the *Municipal Act*. For example, meetings may be closed for discussion of matters that are before the courts, a pending purchase or sale of land, or personal matters about an identifiable individual.

Municipalities may appoint an independent open meeting investigator to investigate whether a meeting was properly closed to the public. Municipalities have appointed individuals or investigative services or have defaulted to the Ontario Ombudsman as the closed meeting investigator. Open meeting investigations often hinge on determining whether a meeting has in fact occurred.

JUDICIAL INQUIRIES

The *Municipal Act* authorizes a municipality to pass a resolution requesting that a judge conduct an inquiry under the *Public Inquiries Act*, to investigate any supposed breach of trust or other misconduct, to inquire into any matter connected with the good government of the municipality or to inquire into the conduct of any part of the public business of the municipality. In conducting an inquiry, a judge has the extensive investigatory powers. However, a judge does not have any enforcement powers; he or she can only make recommendations to the municipal council.

There have been two high profile municipal inquiries in Ontario in recent years. In 2005, Justice Denise Bellamy delivered her report of the Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry. The inquiry resulted from allegations of conflict of interest, bribery and corruption in the newly amalgamated City of Toronto's procurement practices. Justice Bellamy found that there were a number of improprieties in the City's dealings with its external contractors and she made 241 recommendations to Council.

With respect to ethics, Justice Bellamy recommended that council appoint an integrity commissioner to provide advice to councillors and staff, investigate complaints and recommend an appropriate range of sanctions for misconduct. She also recommended an expansion of the existing code of conduct to include broader principles and conflicts of interest and more stringent rules around lobbying, including the creation of a lobbyist registry. Some of Justice Bellamy's recommendations were adopted in new accountability and transparency sections of the *City of Toronto Act* and the *Municipal Act* during the 2006 legislation review.

In 2011, Justice Douglas Cunningham released his final report of the Mississauga Judicial Inquiry, titled "Updating the Ethical Infrastructure". The second part of the inquiry stemmed from allegations that Mayor Hazel McCallion improperly inserted herself into a land development deal between the City of Mississauga and a private company in which her adult son had a financial interest. Justice Cunningham found that Mayor McCallion had a "real and apparent conflict of interest", but she did not breach the narrow rules laid out in the *MCIA*.

Justice Cunningham made 27 recommendations pertaining to municipal accountability. Similar to Justice Bellamy, he recommended expanding the code of conduct and definition of a conflict of interest and appointing an integrity commissioner to provide advice, investigate complaints and make recommendations to Council. He also recommended providing safeguards to preserve the independence of the integrity commissioner such as security of tenure and indemnification.

Justice Cunningham spent a substantial amount of time discussing the *MCIA* and the need to clarify and coordinate the respective roles of integrity commissioners and judges in regulating conflict of interest. Some of Justice Cunningham's recommendations would require municipalities and staff to take on some responsibility for conflict of interest compliance such as publishing a list of conflicts and providing comfort letters to parties doing business with a municipality.

The Municipal Conflict of Interest Act

The *Municipal Conflict of Interest Act (MCIA)* regulates how elected officials are to conduct themselves when they have a ‘pecuniary’ or financial interest in a matter that is being considered by council or a committee. Conflicts of interest arise where there is a clash between a member’s private financial interest and their public duty. When present at a meeting in which a matter is to be considered, a member who has a direct or indirect financial interest in the matter must declare a conflict of interest, describe the nature of the conflict and recuse himself or herself from voting on the matter. The member is also prohibited from influencing or attempting to influence the vote on a matter in which they have a financial interest. The financial interests of a member’s parent, spouse or child that are known to the member are deemed to be the financial interests of the member for the purposes of the *Act*.

The *Act* provides some exceptions to the general rule on conflict of interest, including where the member has a financial interest in common with electors generally or where the interest of the member is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.

Within six weeks of becoming aware of the conflict, an “elector” who believes that a member has contravened the *MCIA* may apply to a court to determine the question. A judge is required to declare the seat of a member vacant where a conflict of interest exists, unless the judge finds that the member contravened the *MCIA* through inadvertence or an error in judgment. While the *MCIA* provides for some additional discretionary penalties, the consequences for breaching the *Act* are severe. Individual members bear personal responsibility for complying with the *MCIA* and must seek their own independent legal advice about potential conflicts of interest.

As the *MCIA* is interpreted and enforced by the courts, much of the law on conflict of interest is found in court decisions. Additionally, confusion arises when there is an overlap between codes of conduct and the *MCIA*. Some codes of conduct address conflicts of interest arising from a member’s financial interest, raising the possibility that a single action could breach both the *MCIA* and a council’s code of conduct. It is not often clear whether a municipal integrity commissioner may continue to investigate in these circumstances and how a court proceeding will affect a municipal integrity commissioner’s investigation.

The Criminal Code

It is a criminal offence for a municipal official to commit fraud or a breach of trust in connection with their duties of office. It is also a criminal offence to corrupt a municipal official or to use threats, deceit or other unlawful means to influence a municipal official. The maximum penalty for breaching the municipal provisions in the Criminal Code is five years imprisonment.

The *Ontario Ombudsman Act*

As of January 1, 2016, the Ontario Ombudsman will have expanded oversight of municipal governments. The following changes will be made to the municipal accountability framework:

- The Ontario Ombudsman will become the default ombudsman for municipal governments that do not appoint a municipal ombudsman, except in the City of Toronto.
- The Ontario Ombudsman will have 'final oversight' of individual complaints where a municipal ombudsman has been appointed, except in the City of Toronto.
- The Ontario Ombudsman will have oversight of municipal auditors general and integrity commissioners. The government has not provided clarification on the scope of the Ontario Ombudsman's powers in these areas.
- The Ontario Ombudsman will be able to conduct 'systemic' investigations of all municipal governments, including the City of Toronto.
- The existing closed meeting investigation regime will be maintained and there will be no ability to refer a matter for 'final oversight' to the provincial Ombudsman. The Ontario Ombudsman will continue to be the default closed meeting investigator where a municipality has not appointed a closed meeting investigator.
- By regulation, boards of health, library boards, long-term care homes and police services boards are to be excluded from an Ombudsman's oversight. It is not clear what, if any, role the Ontario Ombudsman will play in enforcing codes of conduct and whether the Ontario Ombudsman's role will be limited to maladministration. There is also concern that municipal integrity officers will be required to breach their confidentiality requirements under the *Municipal Act* by turning over confidential documents and information to the Ontario Ombudsman.

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