

The Corporation of the City of Kawartha Lakes

Council Report

Report Number CLK2017-004

Date: April 18, 2017

Time: 2:00 p.m.

Place: Council Chambers

Ward Community Identifier:

Subject: **Update on Bill 68 – Modernizing Municipal Legislation – Proposed Changes to the Municipal Act and the Municipal Conflict of Interest Act, the Municipal Election Act and Other Pieces of Legislation**

Author/Title: Judy Currins, City Clerk

Signature:



Recommendation(s):

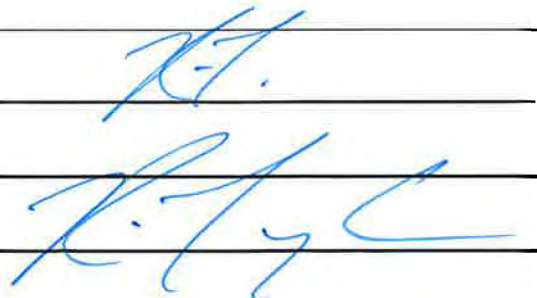
RESOLVED THAT Report CLK2017-004, **Update on Bill 68 – Modernizing Municipal Legislation – Proposed Changes to the Municipal Act and the Municipal Conflict of Interest Act, the Municipal Elections Act and Other Pieces of Legislation**, be received; and

THAT the submission to the Standing Committee, as supported by the Executive Committee and outlined in Appendix B to Report CLK2017-004, be received and supported.

Department Head:

Corporate Services Director / Other:

Chief Administrative Officer:



Background:

On November 16, 2016, Bill 68, An Act to amend various Acts in relation to municipalities was introduced by The Honourable B. Mauro, Minister of Municipal Affairs. It is currently being debated as part of Second Reading. This Act, if passed, includes amendments to the Municipal Act, Municipal Conflict of Interest and the Municipal Elections Act as well as a few other pieces of legislation.

This report provides details of the Bill and its impact to the municipality if passed for amendments that relate to Council and Clerk's functions. Amendments relating to other operations areas are noted but a detailed analysis of their impact is not included in this report.

An electronic version of the Bill is available on the Legislative Assembly website at: www.ontla.on.ca.

Rationale:

It is anticipated that the majority of changes included in this Bill will be effective with the start of the next term of Council, however, this will not be known until the Bill is passed.

Municipal Conflict of Interest Act

A section is added outlining that the Province of Ontario endorses four principles to strengthen the integrity and accountability in local governance for members of Council and local boards. It also expands the range of penalties to include fines and suspension for members of Council in contravention of this Act.

The section reads as follows:

- "1.1 The Province of Ontario endorses the following principles in relation to the duties of members of councils and of local boards under this Act;
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."

Members of Council will now have to file written statements after the member discloses a pecuniary interest. A registry is required to be established by the

municipality and local board with copies of each written statement maintained. This Registry is open to the public.

A new section prohibits a member from influencing certain decisions or recommendations where the member has a pecuniary interest in the matter being considered except in an instance where it deals with penalties to the individual member. There are special rules that apply where the matter under consideration relates to the imposition of a penalty on a member as a result of an Integrity Commissioner inquiry. The member would be allowed to attend closed session for the item, but not take part in debate, or be permitted to attempt to influence or vote on the matter.

Rules relating to court actions dealing with alleged contraventions have been replaced and the range of consequences that could be imposed on a member of Council by the Judge would also be expanded.

The penalties include:

- Reprimand the member or former member
- Suspend the remuneration paid to the member for a period of up to 90 days
- Declare the member's seat vacant
- 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
- 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.

A link to the full copy of the redlined Municipal Conflict of Interest Act noting all of the proposed amendments is

<https://amctopolicy.wordpress.com/2016/12/01/annotated-versions-of-ma-and-mcia-as-amended-by-bill-68/>

Municipal Elections Act

This Bill proposes to further amend the Municipal Elections Act. The main amendments include:

- Moving the beginning of the term of Council from December 1st to November 15th
- Increase the maximum contribution to a candidate and to a registered third party from \$750 to \$1200;
- Changes to the maximum contributions from a candidate and their spouse towards their own campaign.

The result of the first bullet means a shorter period of restricted acts (lame duck), but also a shorter orientation timeframe.

The key dates for candidates:

May 1	First day to file a nomination paper
July 27	Nomination Day
October 22	Voting Day
November 15	New term of Council commences (if amended)

Municipal Act

The bulk of the amendments are related to the Municipal Act.

The definition of “meeting” has been expanded to clarify that a meeting of Committee or Council requires:

- a) that a quorum of members is present; **and**
- b) that members discuss or otherwise deal with any matter in a way that materially advances the business or decision making of the Council. This is a useful clarification and will assist in determining whether any informal gatherings of members of Council may be interpreted as a meeting.

The types of matters that may be considered in closed is expanded to include:

- information supplied in confidence by Canada, a Province or Territory or a Crown agency;
- certain third party information supplied in confidence;
- trade secret or financial, commercial, etc. information that belongs to the municipality or local board and has monetary value or potential monetary value; or
- instructions, etc. to any negotiations by or on behalf of the municipality or local board.

There is a new provision to allow for members to participate in meetings remotely by an electronic format where the meeting is open to the public. There are parameters relating to this participation. It does not include specifics on how the member might participate nor voting rights. This would only be allowed with amendments to the Procedural by-law that would set out all of the parameters.

Several amendments deal with greater accountability and some are changing from permissive (may) to mandatory (shall) taking the decision out of the hands of municipalities.

Municipalities shall have Codes of Conduct for members of Council and local boards. This municipality currently has Codes of Conduct for Council and Staff.

A formal policy is required to deal with Council-staff relations that address the roles and responsibilities of municipal public service and interactions with Council.

The municipality **shall** appoint an Integrity Commissioner. This can be on its own or in partnership with other municipalities. The powers of the Integrity Commissioner are expanded to include inquiries on his/her own initiative and not just on a complaint basis. The Integrity Commissioner would also be required to provide advice and education to members of Council on the Code of Conduct and pecuniary interest.

A policy shall be adopted to allow pregnancy leaves and parental leaves for members of Council.

Should the municipality have a closed meeting investigation and a report is issued, Council or local board is required to pass a resolution addressing how they intend to address a meeting investigation report where the situation was contrary to open meeting provisions

Minor amendments are noted below. These amendments have little impact on the municipality, but noted here for information –

- There is no substantive new financial tools for revenue generation included;
- Investment powers will be enhanced for municipalities that qualify as a prudent investor
- Added flexibility to deal with forfeited corporate property and to administer tax sales faster
- Broader scope for imposing administrative penalties to assist with the enhancement of enforcement options

Of note, and in light of the recent council composition decision made by Council, there is an amendment that will require reviews of regional council composition after every second municipal election, beginning in 2018. This mirrors the decision of this Council.

Other areas that will include further analysis once the amendments have been finalized and regulations released, include –

- Mandatory policy on tree conservation and canopy cover
- Broader power to deal with climate change and energy planning – right to pass climate change by-laws and do long-term planning for energy use
- Prescribed actions that municipalities must take to support local integrated planning in order to implement community hubs
- Community councils – affirming a municipality's power to establish and determine the composition

- Repeal provision so that municipal by-laws will have effect in areas under jurisdiction of conservation authorities
- Prescribed conditions that a municipality must meet to establish a small business program instead of a ministerial order

Other Acts are also amended:

The Building Code Act would be amended to authorize regulations relating to a new section in the Municipal Act related to entry onto land.

The Development Charges Act would be amended to include a cross-reference to the new section dealing with Prudent Investment in the Municipal Act as noted above.

The Limitations Act is amended to reflect the Municipal Conflict of Interest Act amendments.

A link to the full copy of the redlined Municipal Act noting all of the proposed amendments is <https://amctopolicy.wordpress.com/2016/12/01/annotated-versions-of-ma-and-mcia-as-amended-by-bill-68/>

Comments to Date

Council has received previous updates on the changes to the Municipal Elections Act that occurred in 2016. This includes further amendments. The Standing Committee of the Legislature is holding hearings and receiving written submissions on the Bill, with the deadline for written submissions being April 11th. Due to the timing of this report to Council, the City written submission was presented to the Executive Committee on April 6th for review. The Executive Committee supported the submission and therefore staff submitted prior to April 11th. The City submission relates to the two main issues that will have the largest impact on the City.

The Association of Municipalities of Ontario (AMO) and the Association of Municipal Clerks, Treasurers and Managers of Ontario (AMCTO) have or will be presenting their comments and support the areas that the City provided comments. The two organizations will provide a very thorough review and submission to the Standing Committee. AMO's submission can be reviewed at <https://www.amo.on.ca/AMO-PDFs/Reports/2017/Bill68StandingCommitteeSubmissionFinal2017-04-05.aspx> At the time of writing this report, the AMCTO written submission was not available to the membership. As the City is a member of these organizations and they represent this municipality, staff will be tracking their submissions through the process.

Other Alternatives Considered:

This is an information report so there were no alternatives considered.

Financial Considerations:

At this time there are no financial considerations, however, some of the future decisions of Council and the changes required, particularly relating to an Integrity Commissioner will have financial impacts.

Relationship of Recommendation(s) To The 2016-2019 Strategic Plan:

As this is an information report, there is no direct relationship to the 2016-2019 Strategic Plan.

Review of Accessibility Implications of Any Development or Policy:

N/A

Servicing Comments:

N/A

Consultations:

Attachments:

Appendix A – AMCTO Circulation summarizing legislation amendments

Appendix B – Submission to the Standing Committee



Appendix A - AMCTO
Summary.pdf



Appendix B -
Submission.docx

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Government Releases Changes to Municipal Legislation

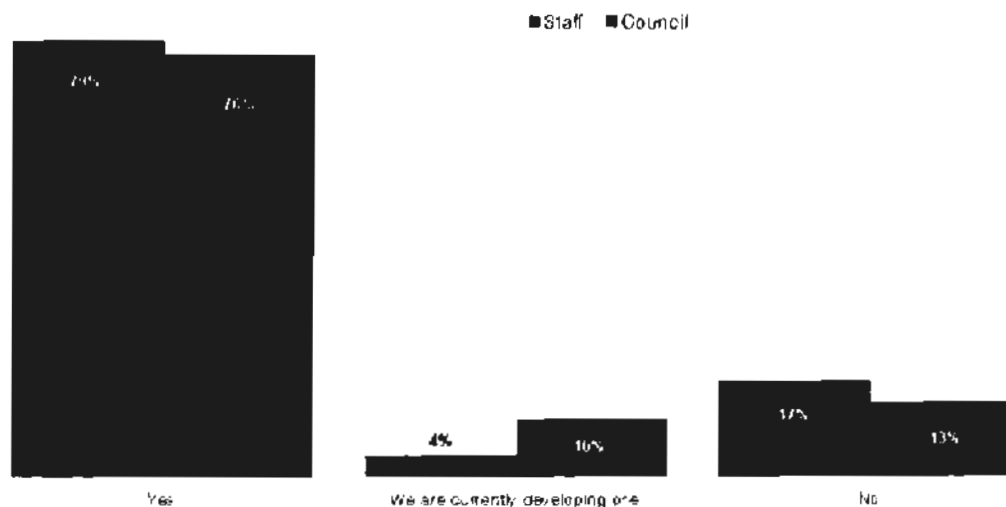
Yesterday the government tabled Bill 68, *Modernizing Ontario's Municipal Legislation Act*, which will introduce a series of reforms to the *Municipal Act*, and *Municipal Conflict of Interest Act*. While it's too early to assess the overall impact of these changes, we were pleased to see many of AMCTO's recommendations incorporated in the announced changes, including a clear definition of a meeting, new rules around open meetings, a requirement for municipalities to adopt codes of conduct, and a shorter lame duck period amongst others.

Some of the key highlights can be found below. You can also find the full text of the legislation can be found [here](#).

Codes of Conduct

- Codes of Conduct will now be mandatory for all municipalities. As demonstrated in a survey that we conducted in early 2016, most municipalities already have codes of conduct for both council and staff, but we believe that this is nevertheless a positive development

CODES OF CONDUCT | Does your municipality have a Code of Conduct?



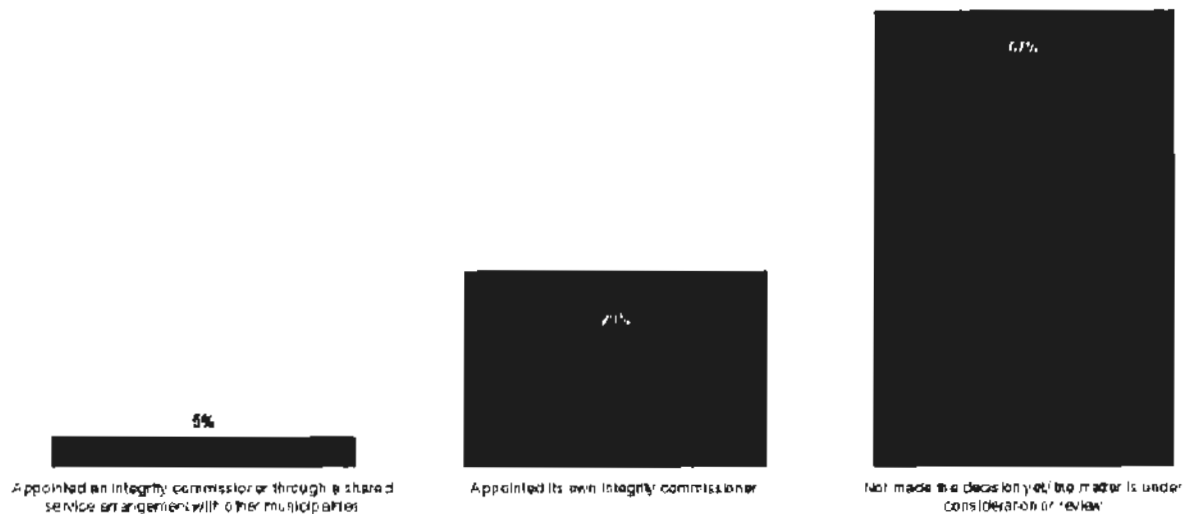
Closed, Open & Electronic Meetings

- There is going to be a clearer definition of a “Meeting,” under the *Municipal Act*’s open meeting provisions:
 - The new definition requires there to be (1) a quorum of council members; and (2) that those present discuss issues in a way that “materially advances” the business or decision-making of council, for it to be formally considered a “meeting” that should be open to the public
 - This is similar to the definition that was favoured by AMO and several other municipal stakeholders
- There will also be an expanded number of discretionary exemptions where councils can meet in closed session. The new exemptions will include:
 - When information is supplied in confidence by the federal government, provincial government’s or a crown agency/corporation
 - Certain third party information supplied in confidence
 - Trade, financial or commercial information that belongs to the municipality and has potential monetary value
 - Information related to negotiations being conducted by or with the municipality
- Under the broader changes to open meetings, there will also be a new requirement for municipalities to report back on how they intend to address a closed-meeting investigation
- Councillors will also now be able to participate in meetings electronically, as long as there is an in-person quorum of councillors

Integrity Commissioners

- All municipalities will also now need to provide their citizens access to an Integrity Commissioner (IC)—either by appointing their own, keeping one on retainer, or working with another municipality through a shared serviced arrangement. We know from the same survey data that while most municipalities have a code of conduct, not as many have Integrity Commissioners

INTEGRITY COMMISSIONER | Has your municipality:



- The role of the Integrity Commissioner will also be changed and expanded in a number of ways, including by:
 - Expanding their authority to also include the *Municipal Conflict of Interest Act* (MCIA)
 - Giving ICs the power to provide advice to councils and local boards about their codes of conduct and MCIA obligations
 - Giving ICs the power to refer investigations to the courts
 - Giving ICs the power to initiate investigations into potential MCIA violations or code of conduct breaches
 - Giving ICs broader responsibility for public education

MCIA

- The range of penalties for *Municipal Conflict of Interest Act* (MCIA) violations will be expanded (likely new penalties will include suspensions or fines), giving judges more latitude when dealing with these types of violations
- Municipalities will also be required to create a registry that tracks all registered conflicts of interest

Fiscal sustainability

- Notably the government will not be giving municipalities access to any new revenue tools. At the AMO conference in August the Premier indicated that the government is still open to this conversation but is looking for the municipal sector to make a specific request
- The government's current prudent investor standards will be expanded to give municipalities more investment options
- The MA will also be changed to allow tax sales to start faster, and be easier to complete
- There will be a number of technical changes to property taxation, and we will share more specific information about this as it becomes available

Staff-Council Relations

- All municipalities will have to have a formal policy on staff-council relations, addressing the formal roles and responsibilities of public servants and members of council

AMPs

- Municipalities will be given the authority to use AMPs (administrative monetary penalties) for a broader range of offences, beyond simply parking

Parental Leave

- Councillors will be guaranteed a minimum period of parental leave
- This issue was the subject of a private members bill a few weeks ago

Regional Council Composition

- There are a number of changes to regional council composition, including:
 - A new requirement for regional governments to review their council composition following every second municipal election (starting after the 2018 election)
 - Removing the requirement for a minister's regulation when changing the composition of council
 - In situations where a regional government is unable to reach consensus on a new council composition, the Minister will retain responsibility for imposing a solution
- A lower tier council will also be able to temporarily appoint an alternate in situations where the permanent member cannot attend an upper-tier council meeting
- In the government's omnibus budget bill, which was also released this week, it was announced that regional chairs will also now be directly elected

Municipal Elections

- There are a number of changes to the MA that will have an impact on municipal elections, including:
 - The lame duck period will be shortened, and the start of a new council term will now be November 15th

- A change of the individual contribution limit from \$750 to \$1,200 (this will place it in-line with the provincial limit)
- Imposing new formula-based limits on self-finance campaigns, with a maximum limit of \$25,000

Climate Change

- The municipal act will now give municipalities explicit authority to deal with climate change. While several municipalities are already doing so, this change will clear up any confusion about their authority in this area

Community Hubs

- The Minister will also gain the express authority to impose regulations on community hubs. We are told that this provision will not likely be used in the immediate term, but is designed to give the ministry greater flexibility in the future.

Misc.

- Municipalities will now be required to meet prescribed conditions before establishing small business programs
- Municipalities will be given the ability to regulate all signs in their jurisdiction (this will remove any signs that have been grandfathered in)

For more:

AMCTO Municipal Act Submission

The following are the comments relating to Bill 68 – Modernizing Ontario's Municipal Legislation Act from the City of Kawartha Lakes.

1. Integrity Commissioner

The City does not support the mandatory appointment of an Integrity Commissioner (IC) for the municipality. This is a cost that is not required and adds to the financial burden already faced by municipalities. In an era where municipalities are trying to be fiscally responsible to their tax payers by cutting budgets for necessary services, this added mandatory expense for an added bureaucratic position is not supported.

The roles and added responsibilities and powers bestowed on this position are also not supported. The parameters by which an IC operates must be documented by the Province in the Act or by Regulation. Without parameters and a consistent approach there will be varied application across the Province at the expense of the municipality. Without controls, there is no accountability to the tax payers for the expense. The IC should not be allowed to initiate an investigation on their own, this should be removed from the Bill. With the ability to make their own work program, there is no control of the impact on budgets. The goal is to make municipal governments more accountable, what will make the Integrity Commission accountable with no checks and balances?

2. Implementation

There is a considerable amount of work required to implement the various amendments and new provisions established in this Bill. There needs to be a lengthy implementation time frame allowed. The time required is for planning, budgeting, developing and passage of policy and procedures and implementation, particularly if the mandatory appointment of an Integrity Commission is passed.