

Proposed changes to the *Municipal Act, 2001* under Bill 68, the *Modernizing Ontario's Municipal Legislation Act, 2016* that affect the Office of the Integrity Commissioner

(taken from Legislative Assembly of Ontario, website
http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=4374)

Code of conduct

223.2 (1) A municipality shall establish codes of conduct for members of the council of the municipality and of its local boards.

Same

(2) Without limiting sections 9, 10 and 11, those sections authorize the municipality to establish codes of conduct.

No offence or administrative penalty

(3) A by-law cannot provide that a member who contravenes a code of conduct is guilty of an offence or is required to pay an administrative penalty.

Regulations

(4) The Minister may make regulations prescribing one or more subject matters that a municipality is required to include in a code of conduct.

19. (1) Subsection 223.3 (1) of the Act is repealed and the following substituted:

Integrity Commissioner

(1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to any or all of the following:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them.

2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them.

3. The application of sections 5, 5.1 and 5.2 of the Municipal Conflict of Interest Act to members of council or of local boards.

4. The conducting of, on the Commissioner's own initiative, inquiries about whether a member of council or of a local board has contravened the code of conduct applicable to the member or has contravened section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act.

5. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.

6. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.

7. Requests from members of council and of local boards for advice respecting their obligations under the Municipal Conflict of Interest Act.

8. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of council and members of local boards and about the Municipal Conflict of Interest Act.

(2) Section 223.3 of the Act is amended by adding the following subsections:

Request for advice shall be in writing

(2.1) A request by a member of council or of a local board for advice from the Commissioner under paragraph 5, 6 or 7 of subsection (1) shall be made in writing.

Advice shall be in writing

(2.2) If the Commissioner provides advice to a member of council or of a local board under paragraph 5, 6 or 7 of subsection (1), the advice shall be in writing.

Content of educational information

(2.3) If the Commissioner provides educational information to the public under paragraph 8 of subsection (1), the Commissioner may summarize advice he or she has provided but shall not disclose confidential information that could identify a person concerned.

20. The Act is amended by adding the following sections:

Provision for functions if no Commissioner appointed

223.3.1 If a municipality has not appointed a Commissioner under section 223.3, the municipality shall make arrangements for all of the responsibilities set out in subsection 223.3 (1) to be provided by a Commissioner of another municipality.

Provision for functions if responsibility not assigned

223.3.2 If a municipality has appointed a Commissioner under section 223.3, but has not assigned functions to the Commissioner with respect to one or more of the responsibilities set out in subsection 223.3 (1), the municipality shall make arrangements for those responsibilities to be provided by a Commissioner of another municipality.

21. Subsection 223.4 (1) of the Act is amended by striking out “or” at the end of clause (a), by adding “or” at the end of clause (b) and by adding the following clause:

(c) on the Commissioner’s own initiative about whether a member of council or of a local board has contravened the code of conduct applicable to the member.

22. The Act is amended by adding the following section:

Inquiry by Commissioner re s. 5, 5.1 or 5.2 of Municipal Conflict of Interest Act

223.4.1 (1) This section applies if the Commissioner conducts an inquiry under this Part,

(a) in respect of an application under subsection (2); or

(b) on the Commissioner’s own initiative about whether a member of council or of a local board has contravened section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act.

Application

(2) Any person may apply in writing to the Commissioner for an inquiry to be carried out concerning an alleged contravention of section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act by a member of council or a member of a local board.

Timing

(3) An application may only be made within six weeks after the applicant became aware of the alleged contravention.

Content of application

(4) An application shall set out the reasons for believing that the member has contravened section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act and include a statutory declaration attesting to the fact that the applicant became aware of the contravention not more than six weeks before the date of the application.

Notice re inquiry on Commissioner’s own initiative

(5) If the Commissioner decides to conduct an inquiry on his or her own initiative, the Commissioner shall publish a notice of the inquiry.

Inquiry

(6) The Commissioner may conduct such inquiry as he or she considers necessary.

Public meeting

(7) If the Commissioner decides to conduct an inquiry, the Commissioner may have a public meeting to discuss the inquiry.

Powers on inquiry

(8) The Commissioner may elect to exercise the powers under sections 33 and 34 of the Public Inquiries Act, 2009, in which case those sections apply to the inquiry.

Information

(9) The municipality and its local boards shall give the Commissioner such information as the Commissioner believes to be necessary for an inquiry.

Same

(10) The Commissioner is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality or a local board that the Commissioner believes to be necessary for an inquiry.

Timing

(11) The Commissioner shall complete the inquiry,

(a) within 180 days after receiving the completed application, if the inquiry is in respect of an application under subsection (2); or

(b) within 180 days after the date the notice is published under subsection (5), if the inquiry is conducted on the Commissioner's own initiative.

Completion

(12) Upon completion of the inquiry, the Commissioner may, if he or she considers it appropriate, apply to a judge under section 8 of the Municipal Conflict of Interest Act for a determination as to whether the member has contravened section 5, 5.1 or 5.2 of that Act.

Notice to applicant re decision not to apply to judge

(13) In the case of an inquiry conducted in respect of an application under subsection (2), the Commissioner shall advise the applicant if the Commissioner will not be making an application to a judge.

Reasons after inquiry

(14) After deciding whether or not to apply to a judge, the Commissioner shall publish brief written reasons for the decision.

Costs

(15) The Commissioner's costs of applying to a judge shall be paid by the following:

1. If the member is alleged to have contravened section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act as a member of council of a municipality, the municipality.

2. If the member is alleged to have contravened section 5, 5.1 or 5.2 of the Municipal Conflict of Interest Act as a member of a local board, the local board.

23. Section 223.5 of the Act is amended by adding the following subsections:

Release of advice

(2.1) Advice provided by the Commissioner to a member under paragraph 5, 6 or 7 of subsection 223.3 (1) may be released with the member's written consent.

Partial release by member

(2.2) If a member releases only part of the advice provided to the member by the Commissioner under paragraph 5, 6 or 7 of subsection 223.3 (1), the Commissioner may release part or all of the advice without obtaining the member's consent.

Other circumstances

(2.3) The Commissioner may disclose such information as in the Commissioner's opinion is necessary,

(a) for the purposes of a public meeting under subsection 223.4.1 (7);

(b) in an application to a judge referred to in subsection 223.4.1 (12); or

(c) in the written reasons given by the Commissioner under subsection 223.4.1 (14).