CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF OCTOBER 20, 2015

Item 9, Report No. 35, of the Committee of the Whole which was adopted, as amended, by the Council of the City of Vaughan on October 20, 2015, as follows:

By approving the following in accordance with Communication C5 from the City Clerk, dated October 19, 2015:

1. ***That the draft formal resolution attached as Attachment 1 to this Communication be approved as follows:***

   Whereas the Ministry of Municipal Affairs and Housing has solicited input to support potential legislative amendment to the Municipal Act, 2001, the Municipal Conflict of Interest Act and the City of Toronto Act, 2006;

   Whereas the Municipal Act, 2001 provides that 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 [the Act] and many other Acts for the purpose of providing good government with respect to those matters;

   Whereas municipalities, municipal associations, and municipal professional associations have submitted or will submit proposed legislative modifications for consideration.

   It is therefore recommended:

   1. ***That the Minister of Municipal Affairs and Housing be requested to give due consideration to recommendations for legislative reform submitted by municipalities, municipal associations, and municipal professional associations;***

   2. ***That any legislative amendments made to the Municipal Act, 1996, and the Municipal Conflict of Interest Act:***

      a) ***be made in recognition of the fact that municipalities have the responsibility to be effective stewards of the services, finances, public places, and local governance mechanisms within their communities;***
      b) ***promote local accountability, but not create burdens for effective governance; and***
      c) ***give consideration to the financial affordability of the amendment to the municipality and its taxpayers;***

   and that the City Clerk be requested to forward the resulting formal resolution to the Minister of Municipal Affairs and Housing;

2. ***That the submissions of the Association of Municipalities of Ontario (AMO), the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO), the Municipal Finance Officers Association (MFOA), the Regional Municipality of York and the Clean Air Council (CAC) set out respectively in Attachments 2, 3, 4, 5 and 6 to this Communication, be received; and***

3. ***That the consolidated list of recommendations extracted from the submissions of the foregoing and attached as Attachment 7, be received.***

…/2

9 MUNICIPAL LEGISLATION REVIEW

The Committee of the Whole recommends approval of the recommendation contained in the following report of the City Clerk, dated October 7, 2015:

Recommendation

The City Clerk, in consultation with the Interim Commissioner of Legal & Administrative Services/City Solicitor, the Director of Financial Planning and Analytics, and the Director of City Financial Services/Deputy Treasurer recommends:

1. That the City Clerk be requested to complete consultations and bring forward a draft formal resolution for Council's consideration.

Contribution to Sustainability

The *Municipal Act, 2001* and the *Municipal Conflict of Interest Act* are key components of the legislative framework which supports democracy, openness and transparency in municipal government and which, in turn, contribute to the sustainability of the City's good government practices.

Economic Impact

The economic impact associated with potential legislative change is presently unknown. A draft resolution for Council's consideration will be prepared using existing internal resources and input from professional associations to which City staff belong.

Communication Plan

Council's resolution in this matter will be submitted to the Ministry of Municipal Affairs and Housing.

Purpose

The purpose of this report is to provide Council with an update on preparations underway to develop a draft formal resolution for submission to the Ministry of Municipal Affairs and Housing with respect to the Ministry's review of the *Municipal Act, 2001,* the *Municipal Conflict of Interest Act,* as well as the *City of Toronto Act, 2006.*

Background – Analysis and Options

On June 5, 2015, the Ministry of Municipal Affairs and Housing announced a review of municipal legislation, specifically the *Municipal Act, 2001*, *Municipal Conflict of Interest Act*, as well as the *City of Toronto Act, 2006*. The public, Members of Council and City Staff may provide direct submissions to the Ministry the legislation until October 31, 2015. The Ministry's review will focus on three overarching themes: accountability and transparency, financial sustainability, and responsive and flexible service delivery. Attachment 1 to this report contains a copy of the Ministry's public consultation guide for the Municipal Legislation Review.

City of Vaughan Response

At its meeting of June 23, 2015, Council approved a recommendation arising from *Municipal Elections Act, Municipal Act and Municipal Conflict of Interest Act Review* [Report No. 28, Item 5 of the Committee of the Whole Working Session] requesting the City Clerk to compile comments from Members of Council and staff and prepare a draft formal resolution for Council's consideration with respect to proposed modifications to the *Municipal Act, 2001* and *Municipal Conflict of Interest Act*.

…/3

Over the summer a number of staff participated with their professional associations to investigate and recommend potential legislative modifications. In addition, the City Clerk circulated a simplified version of the Ministry of Municipal Affairs and Housing consultation guide on the Municipal Legislation Review to Members of Council and City staff and has conducted individual consultations with Members of Council upon request. The Director of Financial Planning and Analytics and the Director of City Financial Services/Deputy Treasurer have also canvassed potential amendments relating to the municipal finance provisions in the *Municipal Act*.

Based on these ongoing consultations a draft formal resolution will be prepared and brought forward for Council's consideration on October 20, 2015.

Relationship to Vaughan Vision 2020/Strategic Plan

This report promotes the strategic goals of Vaughan Vision 2020/Strategic Plan, in particular:

Organizational Excellence

- Ensure a High Performing Organization
- Ensure Financial Sustainability

Regional Implications

There are no regional implications associated with this report at this time, though continuing consultations may result in suggestions for legislative reforms that could impact the City's relationship with the Region of York.

Conclusion

The current Municipal Legislation Review is an important opportunity for the City of Vaughan to provide the Ministry of Municipal Affairs and Housing with constructive comments and proposed modifications to key pieces of municipal legislation. Consultations with Members of Council and City Staff are ongoing, and are occurring in parallel with consultations being conducted by staff through their municipal sector professional associations and groups. The results of these consultations will be brought to Council in association with a formal draft resolution for consideration at the October 20, 2015 meeting of Council.

Attachments

Attachment 1 - Municipal Legislation Review Public Consultation Discussion Guide

Report Prepared By:

Evan Read, Municipal Management Intern

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)

VAUGHAN

C 5
Item # 9
Report No. 35 (CW)
Council - October 20/15

DATE: OCTOBER 19, 2015

TO: MAYOR AND MEMBERS OF COUNCIL

FROM: JEFFREY A. ABRAMS, CITY CLERK

RE: MUNICIPAL LEGISLATION REVIEW
COMMITTEE OF THE WHOLE REPORT NO. 35, ITEM 9

Recommendation:

It is recommended that:

1. The draft formal resolution attached as Attachment 1 to this Communication be approved, and that the City Clerk be requested to forward the resulting formal resolution to the Minister of Municipal Affairs and Housing;

2. That the submissions of the Association of Municipalities of Ontario (AMO), the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO), the Municipal Finance Officers Association (MFOA), the Regional Municipality of York and the Clean Air Council (CAC) set out respectively in Attachments 2, 3, 4, 5 and 6 to this Communication, be received;

3. That the consolidated list of recommendations extracted from the submissions of the foregoing and attached as Attachment 7, be received.

Background:

Council has before it for consideration Item 9 of Report No. 35 of the Committee of the Whole, titled "Municipal Legislation Review". The purpose of the report was to provide Council with an update on preparations underway to develop a draft formal resolution for submission to the Ministry of Municipal Affairs and Housing with respect to the Ministry's review of the Municipal Act, 2001, the Municipal Conflict of Interest Act, as well as the City of Toronto Act, 2006. This communication serves to place before Council the draft formal resolution for adoption.

Members of Council and City staff were invited to submit legislative amendments for consolidation into the draft formal resolution. In almost every case the submissions made were similar in nature to recommendations already made by other municipalities, municipal associations or municipal professional associations.

Rather than duplicating the work of other submitters, and in order to emphasize the importance of the contributions made by or on behalf of municipalities, the draft formal resolution attached to this communication requests the Minister of Municipal Affairs and Housing to give due consideration to the submissions made. In particular, the resolution asks that any amendments contribute to good governance by firstly recognizing that municipalities serve an important public interest, secondly by recognizing that local accountability should only be done in a

pragmatic way which does not impose burdens on good governance practices, and thirdly that the financial affordability of proposed changes must be taken into account.

Respectfully submitted,

Jeffrey A. Abrams
City Clerk

VAUGHAN

DRAFT FORMAL RESOLUTION

Whereas the Ministry of Municipal Affairs and Housing has solicited input to support potential legislative amendment to the *Municipal Act, 2001*, the *Municipal Conflict of Interest Act* and the *City of Toronto Act, 2006;* and

Whereas the *Municipal Act, 2001* provides that 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 [the Act] and many other Acts for the purpose of providing good government with respect to those matters; and

Whereas municipalities, municipal associations, and municipal professional associations have submitted or will submit proposed legislative modifications for consideration.

It Is therefore recommended:

1. That the Minister of Municipal Affairs and Housing be requested to give due consideration to recommendations for legislative reform submitted by municipalities, municipal associations, and municipal professional associations;

2. That any legislative amendments made to the *Municipal Act, 1996,* and the *Municipal Conflict of Interest Act:*

   a) be made in recognition of the fact that municipalities have the responsibility to be effective stewards of the services, finances, public places, and local governance mechanisms within their communities

   b) promote local accountability, but not create burdens for effective governance

   c) give consideration to the financial affordability of the amendment to the municipality and its taxpayers

ATTACHMENT 2

Association of Municipalities Ontario

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 associations[1] 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.

[1] Association 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 choses 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 *MCIA* 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 *MCIA* should be updated to incorporate modern language and overarching principles of ethics and integrity.

3. The *MCIA* 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 *MCIA* 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 *MCIA*, 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 *MCIA* 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.

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.

ATTACHMENT 3

FULL SUBMISSION NOT AVAILABLE AT TIME OF PRINTING

MUNICIPAL LEGISLATION REVIEW
AMCTO RECOMMENDATIONS

AMCTO
THE MUNICIPAL EXPERTS

MODERNIZATION

RECOMMENDATION 1: Modernize council decision-making by allowing a broader range of decisions to be made without the use of a formal instrument, such as a by-law or resolution

RECOMMENDATION 2: Clarify the requirements for retention of electronic records, and consider giving municipalities more latitude to develop their own retention protocols, including with respect to the accessibility of electronic backups

RECOMMENDATION 3: Consider a new regulatory approach for the sharing economy, recognizing the limited ability of municipalities to regulate activities that are no longer constrained to traditional borders or boundaries

ACCOUNTABILITY AND TRANSPARENCY

RECOMMENDATION 1: Establish a clear definition of a meeting

RECOMMENDATION 2: Review the circumstances where council can meet in closed session, providing clarity about when a municipality may meet in the absence of the public to discuss the security of its tangible assets and intangible property, and to deal with confidential information of government entities and third parties

RECOMMENDATION 3: Require all municipalities to adopt their own 'Codes of Conduct' for council and staff

RECOMMENDATION 4: Create additional rules for Integrity Commissioners (ICs) to promote greater consistency in investigations, specifically by providing more guidance on how investigations are conducted and reported, while giving ICs extended powers to consider a broader range of penalties

RECOMMENDATION 5: Establish an accountability mechanism for accountability officers and meetings investigators

RECOMMENDATION 6: Clarify Council's responsibility for ensuring local boards are accountable (including BIAs and Conservation Authorities)

FINANCIAL FAIRNESS

RECOMMENDATION 1: Review Ontario's Joint and Several Liability tort system, with the goal of ensuring that it more fairly balances the needs of all parties

RECOMMENDATION 2: Allow lower tier municipalities to factor tax arrears into their requisitions to school boards and the upper tier

RECOMMENDATION 3: Add disabled parking permit prosecution to the powers of AMPS hearing officers

RECOMMENDATION 4: Implement recommendations made by the Municipal Finance Officers Association (Appendix A)

GOOD GOVERNANCE

RECOMMENDATION 1: Promote greater knowledge of municipal issues in the judicial system, and explore the creation of a specific provincial tribunal to handle local government issues

RECOMMENDATION 2: Enhance the enforcement provisions of the Act

RECOMMENDATION 3: Establish more precise rules for the transition period between elections

RECOMMENDATION 4: Give municipalities more flexibility to determine the time frame for filling council vacancies

CLARITY

RECOMMENDATION 1: Consider reorganizing the Act in a more consistent, logical manner

RECOMMENDATION 2: Clarify the principles for ward boundary reviews, specifically by aligning the timelines with the federal and provincial governments (every 10 years), creating guidelines for how consultations are to be conducted, embedding the principles that support effective representation and eliminating the petition process

RECOMMENDATION 3: Review the definitions and descriptions of 'administration' and 'council,' and remove the 'CEO' title from the description of the head of council

RECOMMENDATION 4: Clarify the process and tests to follow when dealing with potentially conflicting roles, responsibilities, and legislation between different orders of government

RECOMMENDATION 5: Clarify the role of municipal services corporations and the applicability of municipal provisions

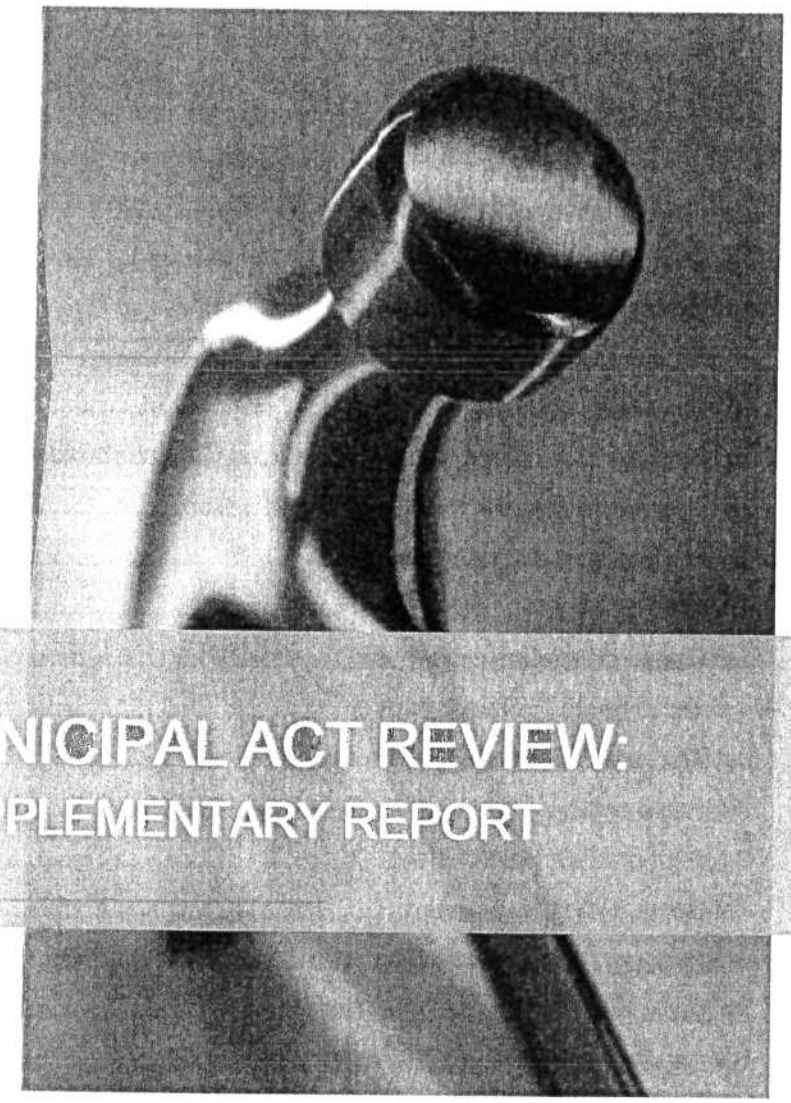
RECOMMENDATION 6: Create clearer procedures for boundary lines, roads and bridges

RECOMMENDATION 7: Review how the MA interacts with MFIPPA, and look for ways to create greater alignment of MFIPPA with the Act

RECOMMENDATION 8: Remove the 'subject to the approval of the municipal auditor' wording from sec. 255(1)(3)

RECOMMENDATION 9: Provide greater clarity and a clearer definition for indirect conflicts of interest in the Municipal Conflict of Interest Act

ATTACHMENT 4



MUNICIPAL FINANCE OFFICERS' ASSOCIATION OF ONTARIO

MUNICIPAL ACT REVIEW: SUPPLEMENTARY REPORT

October 2015

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Municipal Act Review: Supplementary Report

1. Executive Summary

The Municipal Finance Officers' Association of Ontario (MFOA)'s review of the *Municipal Act, 2001* ("the Act" or "MA"), makes numerous recommendations to improve the Act in support of municipal financial sustainability and responsive and flexible municipal government, as well as other principles outlined in the report. This report complements MFOA's municipal legislation review submission by providing recommendations outside of the scope of the 2015 MA review.

The report contains recommendations on financial administration and reporting, and on building capacity to manage municipal fiscal challenges. The specific recommendations are summarized below.

Amendments to the Act:

- Amend the *Municipal Act, 2001*, to include a broad power to impose taxes beyond the property tax as is found in section 267 of the *City of Toronto Act, 2006*. The power to impose non-traditional taxes must also include any ancillary enforcement powers as well as powers to impose fines and penalties in cases of non-compliance.

- Amend the Municipal Act, 2001 to include the power to impose hotel/accommodation taxes.

- That Part IX of the Act be amended to give municipalities the authority to opt out of the provisions of tax capping.

- That the proposed amendments for streamlining and clarifying various elements of tax administration be implemented.

- That subsection 110(1) be amended to permit a municipality to enter into agreements for the provision of municipal capital facilities by any person, including another municipality.

- That the *Municipal Act, 2001*, be amended to include the power to exempt conservation authority land from municipal tax as is found in section 451 of the *City of Toronto Act, 2006*.

- That *Municipal Act, 2001* Subsection 106(2) be amended to include "where any of the actions referred to in subparagraphs (a) to (d) above, both inclusive, would result in the granting of a bonus."

- That Municipal Act Section 17 be amended to include a reference to the *Companies' Creditors Arrangement Act*.

- That section 413 of the Municipal Act, 2001 be amended to restrict the uses to which an Ontario municipality can apply the proceeds of sale from a property financed through the issuance of debentures while the debentures remain outstanding.

- That section 413(2)(b) of the Municipal Act, 2001 be amended to address an ambiguity to clarify the uses to which an Ontario municipality can apply debenture proceeds that are in excess of or are not required for the purpose for which the debentures were issued, while the debentures remain outstanding.

Amendments to Regulations:

- The current "Heads and Beds" rate of $75 be raised to $140 beginning in 2016 and reset every 5 years with each review of the Municipal Act, reflecting inflation in the Ontario consumer price index.

- That the railway "right of way" and electrical corridors tax rates in be updated and reset regularly.

- The Province should issue regulations under subsection 40(3) of the *Municipal Act, 2001* to permit municipalities to adopt road pricing mechanisms.

- The Province should issue regulations to permit the sale of debt payable to a municipality as provided in section 305.

- That O. Reg. 438/97 be amended as set out in the CHUMS/LAS submission to the Debt and Investment Committee (attached) and that the regulation be amended to provide the One Investment Program with prudent investor status. It is also recommended that the regulation be amended to permit municipalities to hold US dollar denominated securities.

- That O. Reg 438/97 be amended to provide the authority to:
    - unwind commodity hedges;
    - extend the settlement period of bond forward agreements to 365 days; and
    - collapse or sell bond forward agreements.

- That O. Reg. 599/06 Municipal Services Corporations be reviewed.

- That O. Reg. 73/03 is amended by adding a paragraph 3 to subsection (2) of section 12 of O. Reg. 73/03 as follows:
  The municipality may adjust the total assessment for property in the property classes to which the levy applied in paragraph (1) by corrections resulting from requests for reconsideration, appeals or applications under section 39.1, 40, or 46 of the Assessment Act as reported by the assessment corporation.

- Extend provisions 4.1 of O. Reg. 403/02 to other high growth municipalities or, alternatively, the provisions of O. Reg. 610/06 under the *City of Toronto Act, 2006* which allows the City to establish its own debt limit.

Other:

- That tax rates fixed under Acts other than the *Municipal Act, 2001* that affect municipalities (such as airports under the *Assessment Act, 1990*) be updated to reflect inflation in the Ontario consumer price index.

- That the municipal fiscal implications of Section 58 of the *Education Act, 1990* be reviewed.

- Amend section 364 of the Municipal Act, 2001 to ensure vacant unit rebates are used in the manner intended by the Act. This amendment should be enacted sooner rather than later.

2. About MFOA

This review of the Act has been prepared by the Municipal Finance Officers' Association of Ontario (MFOA). The MFOA was established in 1989 and represent the interests of Municipal Finance Officers across Ontario and Atlantic Canada. MFOA promotes the interests of its members in carrying out their statutory and other financial responsibilities by initiating studies and sponsoring seminars to review, discuss, and develop positions on important policy and financial management issues.

3. Background

In June 2015, the Province of Ontario launched a review of the Municipal Act and the City of Toronto Act, along with a review of the Municipal Conflict of Interest Act. This review process provides the Association and its members an opportunity to positively influence the refinement of these Acts. As the professional association of municipal finance officers, this report focuses on proposed changes to the Municipal Act only.

The current review of the MA is not a full review of the provincial-municipal financial relationship. It excludes reviews of important financial tools outside of the MA (e.g. Development Charges Act) as well as the system of intergovernmental transfers, particularly long-term, predictable infrastructure funding that supports current asset management plans at the local level.

The broader issue of building a long-term municipal fiscal sustainability framework is the central focus of AMO's *What's Next Ontario,* which is currently underway. This is a substantial research and policy development project. The material in this submission, however, is meant to complement MFOA's submission for the current MA review, which is narrower in scope.

4. Principles

MFOA believes that all good public policy should be principle based. The following are the principles that guide our specific recommendations for reform:

1. Municipalities are responsible and accountable governments.
2. New legislation shall enhance existing municipal powers.
3. The province shall stop micro-managing 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.
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 all provincial legislation.
9. The province shall commit to increasing the understanding and awareness of municipal government within all ministries.

5. Amendments to the *Municipal Act, 2001*

The recommendations and issues identified in this submission are grouped into three categories:

- amendments to the *Municipal Act, 2001*;
- amendments to regulations; and
- other issues.

The following section identifies issues and makes recommendations to improve the *Municipal Act, 2001*.

5.1 Revenue tools

Part X of the *City of Toronto Act, 2006*, authorizes the City to impose taxes. Subsection 267(1) states that:

> 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.

Many of our members have expressed a strong interest in alternative revenue sources. For example, a recent report from Mississauga estimates that the land transfer tax alone could raise approximately $74 million annually, which would make a positive contribution to closing the City's infrastructure gap.

Recommendation: Amend the *Municipal Act, 2001*, to include a broad power to impose taxes beyond the property tax as is found in section 267 of the *City of Toronto Act, 2006*. The power to impose non-traditional taxes must also include any ancillary enforcement powers as well as powers to impose fines and penalties in cases of non-compliance.

While MFOA has not endorsed any specific tools, it looks forward to progress on the revenue front. Municipalities will require new revenue tools to invest in future infrastructure. However, it should be noted that the primary beneficiaries of COTA revenue tools will be growth centres.

5.2 Hotel/Accommodation tax

Many American and European cities, and some Canadian municipalities, levy hotel and accommodation taxes.

Ontario is the only province that does not authorize municipalities to levy hotel taxes, but major hotels in a number of Ontario cities have voluntarily agreed to collect a three per cent destination marketing fee. The funds are earmarked for tourism marketing and development purposes, and are overseen by industry associations. Even in municipalities that have the power to charge hotel taxes, revenues often are designated for these purposes. However, municipalities still benefit. Without hotel taxes, the city's efforts to develop and market its tourism industry would rest solely on the property tax base. [1]

Hotel tax is generally considered positive given the income distribution of hotel room consumption compared to property tax. Hotel tax tends to be paid by non-residents of a city. There is little efficiency or locational effect. Opponents argue that hotel taxes reduce tourist expenditure on other items. Administrative issues seem manageable. Issues may occur around online sales through intermediaries.

Recommendation: Amend the *Municipal Act, 2001* to include the power to impose hotel/accommodation taxes.

5.3 Tax Capping

Part IX of the Act deals with capping of taxes for the commercial, industrial and multi-residential property tax classes. Since capping was introduced in the late 1990s, a number of measures have been introduced to give municipalities greater flexibility to accelerate the process of moving properties towards full Current Value Assessment taxation. As a result of these measures, many municipalities now have relatively few properties where taxes are capped. In addition, tax protection in the form of assessment phase-in applies to all property classes including the capped classes (commercial, industrial and multi-residential). Given this form of mitigation, it is appropriate to amend the Act to allow municipalities to opt out of tax capping.

MFOA supports the paper prepared on this topic by Municipal Tax Equity, which is attached in Appendix A.

Business tax capping is currently subject of a review by the Ministry of Finance and, as part of that review, the ministry has involved a number of key stakeholders including MFOA. We are pleased with the process and look forward to working through it to a positive conclusion.

Recommendation: That Part IX of the Act be amended to give municipalities the authority to opt out of the provisions of tax capping (Appendix A).

5.4 Tax Administration

MFOA members have identified multiple amendments that should be made to the sections of the Act dealing with municipal taxation and tax capping. These proposed amendments have strong consensus in the sector and the support of MFOA and OMTRA. The proposals, intended to correct administrative issues or to provide greater clarity, would make significant improvements in the area of tax administration. These are summarized in Appendix B at the end of this document.

[1] Canadian Union of Public Employees. (2014). Hotel and accommodation taxes. Retrieved from: http://cupe.ca/hotel-and-accommodation-taxes

MFOA appreciates that we were invited to participate in MMAH's property tax collection technical group. The group was formed as part of the Municipal Act review consultation process and the purpose of the group is to address property tax-related technical amendments of the Municipal Act. MFOA looks forward to the progress we anticipate being made.

Recommendation: That the proposed amendments for streamlining and clarifying various elements of tax administration be implemented (Appendix B).

5.5 Section 110: Agreements for Municipal Capital Facilities

Section 110 of the Municipal Act was introduced to empower municipalities to enter into agreements for municipal capital facilities. The section was promoted as an additional method of financing for Ontario municipalities and included the authority to privatize municipal assets.

As an example, the Town of Milton used agreements under Section 110 to facilitate servicing of various municipal assets within the Town's secondary plan areas. The agreement encompassed services, timing, funding, development charge contributions, and voluntary payments, among other items. The agreement ensured cost sharing arrangements with all developing landowners within the secondary plan area.

In 2006, restrictions were added to Section 110 which limited the provision of municipal capital facilities to situations where specific conditions applied.

The limitations placed on Section 110 do not align with the Act's spirit of broad powers. Further, several issues have arisen from the addition of restrictive conditions, including questions as to whether:

- All municipal agreements involving capital require one of the four triggers in subsection 110 (1)
- In situations when a trigger is not included, does it mean that a municipality may not enter into an agreement for capital?
- Does the change in legislation invalidate former agreements entered under the former wording of subsection 110(1), which said:

  110. (1) A municipality may enter into agreements for the provision of municipal capital facilities by any person, including another municipality. 2001, c. 25, s. 110 (1).

We recommend returning to the original wording of section 110.

Recommendation: That subsection 110(1) be amended to: A municipality may enter into agreements for the provision of municipal capital facilities by any person, including another municipality.

5.6 Exempt conservation authority land

Subsection 451(3) of the *City of Toronto Act, 2006* allows the City to exempt conservation authority land from municipal taxation "for so long as it is managed and controlled by the City and used for park purposes." Other municipalities would benefit from the power to avoid the current situation whereby conservation authorities levy municipalities to pay municipal taxes.

Recommendation: That the *Municipal Act, 2001*, be amended to include the power to exempt conservation authority land from municipal tax as is found in section 451 of the *City of Toronto Act, 2006.*

5.7 Ambiguity in bonusing provision

Section 106 prohibits municipalities from directly or indirectly assisting any manufacturing business or other industrial or commercial enterprise through the granting of bonuses. While the intent of the Act appears clear, there is some ambiguity in the language in subsection 106(2). A conservative interpretation of subsection (2) may be that any time a municipality provides any matter referred to in subsection (2), such as a loan or a guarantee, it is automatically bonusing. This may unintentionally limit the scope of municipal activities. Text should be added to the end of subsection 106(2) to clarify this point.

Recommendation: That *Municipal Act, 2001* subsection 106(2) be amended to include "where any of the actions referred to in subparagraphs (a) to (d) above, both inclusive, would result in the granting of a bonus" at the end of the subsection.

5.8 Ambiguity in the bankruptcy provision

Paragraphs 17(1)(g) and (h) of the Act provide that a municipality may not:

(g) become a bankrupt under the *Bankruptcy and Insolvency Act (Canada)*; or

(h) as an insolvent person, make an assignment for the general benefit of creditors under section 49 of the BIA or make a proposal under section 50 of that Act.

The Act, however, fails to refer to the other key piece of Canadian insolvency legislation – the *Companies' Creditors Arrangement Act*. To be prudent, we recommend that Section 17 of the Act make it clear that the entire federal insolvency legislative regime does not apply to Ontario municipalities.

Recommendation: That *Municipal Act, 2001* section 17 be amended to include a reference to the Companies' *Creditors Arrangement Act.*

5.9 Use of debenture proceeds

Certain standards did not make the transition from the 'old' Municipal Act to the revamped *Municipal Act, 2001*. One of these standards, section 168(5), specifically addressed the authorized uses of proceeds generated from the sale of an asset that was financed through the issuance of debentures while those debentures remained outstanding.

The 'old' Municipal Act imposed restrictions on how a municipality could use such proceeds. Under the 'old' Act, a municipality could only use the debenture proceeds in the same way that the municipality could use the proceeds of a debenture issue that were in excess of the amount

required for the purpose for which the debentures were issued or were not required for such purpose (as set out in sections 168(3) and (4) of the 'old' Municipal Act).

The 2001 Act does not contain a provision similar to section 168(5). There is therefore no longer specific authority with respect to the use of the proceeds of sale of property financed by debentures when those debentures remain outstanding. Accordingly, some may argue that under the 2001 Act there are no restrictions on the uses to which the debenture proceeds can be applied (See Appendix C). The former provisions were consistent with sound debt management policies and prevented debenture proceeds from being used for operating purposes, which is contrary to the provisions of the Act.

Recommendation: That section 413 of the *Municipal Act, 2001* be amended to restrict the uses to which an Ontario municipality can apply the proceeds of sale from a property financed through the issuance of debentures while the debentures remain outstanding.

Section 413 of the Act requires that the proceeds of the sale of debentures be applied only for the purposes for which the debentures were issued, or for repayment of outstanding temporary borrowing under sections 405 or 406. There are, however, two authorized exceptions where the proceeds are not required for the purposes for which the debentures were issued:

1) the municipality can use the money "to repay the principal or interest of the debentures"; or
2) the municipality can use the money "to repay any other capital expenditure of the municipality if the debt charges for the other expenditure are or will be raised from the same class of ratepayers from which the amounts required for the repayment of the debentures are raised."

The wording of the second exception is unclear. The reference to the repayment of "expenditures" is ambiguous. One does not normally "repay" an expenditure. One repays a "debt". The wording is further complicated by the reference to "debt charges for the other expenditure." It is, therefore, not clear whether the section is intended to permit 'unutilized' debenture proceeds to only be applied to other capital works in respect of which a municipal council had authorized the issuance of debentures.

If the intention is to not allow 'unutilized' debenture proceeds to be applied to capital works unless they were originally authorized on the basis that they would be long-term financed, we suggest the following amended wording be considered in substitution for the existing paragraph 413(2)(b):

> To repay any other authorized long-term debt obligations of the municipality if the debt charges for the other obligations are or will be raised from the same class of ratepayers from which the amounts required for the repayment of the debentures are raised.

In the event that the policy decision is made that 'unutilized' debenture proceeds may be applied to capital works that were not originally authorized in compliance with section 4 of O. Reg. 403/02, i.e. capital works that were originally authorized on a 'pay as you go' basis, as opposed to a long-term financing basis, consideration should, in our view, be given to including a specific provision making it clear that this is the case.

Recommendation: That section 413(2)(b) of the *Municipal Act, 2001* be amended to address an ambiguity to clarify the uses to which an Ontario municipality can apply debenture proceeds that are in excess of or are not required for the purpose for which the debentures were issued, while the debentures remain outstanding.

6. Amendments to Regulations

The following section identifies issues and makes recommendations to improve select regulations under the *Municipal Act, 2001*.

6.1 Properties fixed in regulation

Some types of properties are subject to prescribed rates of tax fixed in regulation. These rates often remain unchanged from the initial enactment of the regulation. By not keeping up with inflation, additional pressure is placed on the property tax base. Rates fixed in Acts other than the Municipal Act, 2001 are discussed in section 7 of this report.

A number of properties in Ontario are subject to taxation, but not based on current value assessment. These properties, which are identified in section 323 of the Act, include:

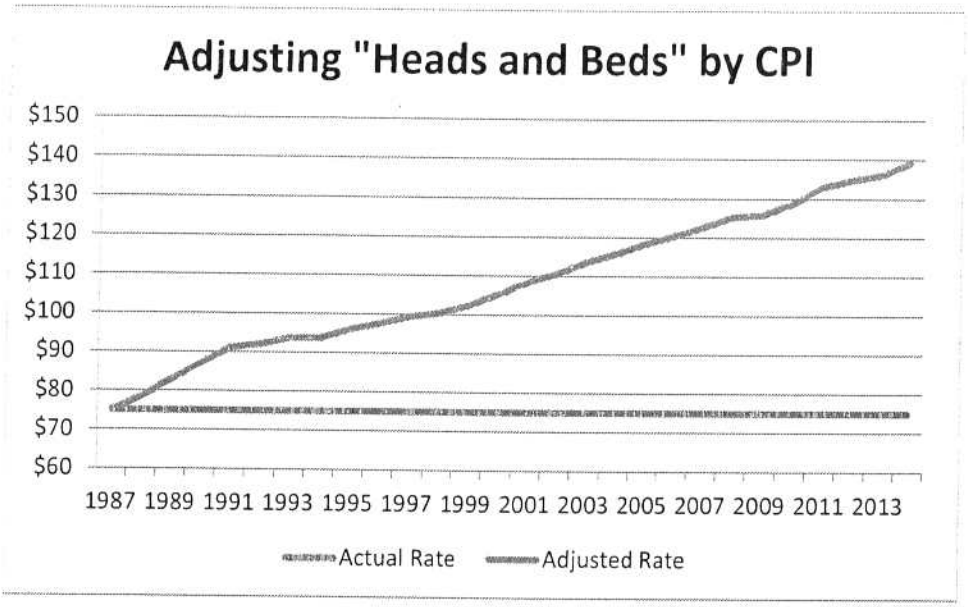
- Colleges and universities
- Public hospitals or provincial mental health facilities
- Correctional institutions, and
- Residences for the developmentally disabled

For these types of properties the tax is determined by applying a regulated rate against the number of students (universities, colleges) or beds (correctional facilities, residences for the developmentally disabled). Subsection 323(10) gives the Minister of Finance the authority to establish the applicable rate by regulation.

Currently the rate is set at $75. This rate was established in 1987 and has not been adjusted in the subsequent 25 year period. MFOA has previously recommended that this rate be adjusted to reflect inflation over the period. Others have also recommended such changes.

Based on the Ontario consumer price index, the rate should be approximately $140 when adjusted for the index's inflation.

Chart I: Heads and Beds Rate Adjusted for Inflation



Since the rate remained constant,

- In 2013, municipalities lost $48M in potential revenue
- Between 1987 and 2014, the cumulative municipal loss was approximately $695M

Had the rate been adjusted every 5 years between 1987 and 2014, the cumulative municipal loss would drop to approximately $102M.

Recommendation: That the current "Heads and Beds" rate of $75 be phased-in to $140 beginning in 2016 and reset every 5 years with each review of the Municipal Act, reflecting inflation in the Ontario consumer price index.

Section 315 of the MA authorizes municipalities to impose taxes, according to regulations, on:

- Roadway or right-of-way of a railway company, other than the structures, substructures and superstructures, rails, ties, poles and other property on the roadway or right-of-way, and
- Land owned by a power utility prescribed by the Minister of Finance, other than a public utility, and used as a transmission or distribution corridor

O. Reg. 387/98 sets out the prescribed rates of tax to be imposed by municipalities on land described in subsection 315 (1) of the Act.

The rates in O. Reg. 387/98 for levying property tax on railway assets and electrical corridors have not been reviewed since 1998. Rates have, therefore, been kept artificially low which shifts the burden of servicing the lands to the general tax base.

For example, in the Town of Parry Sound, Canadian National Railway Company (CN) and Canadian Pacific Railway Limited (CP) operate over 67 acres of rail property, including 7 bridges. This land has cost the municipality more than the $38.89/acre prescribed by regulation.

The Province should consider updating the railway "right of way" rates and electrical corridors rates, and completing regular evaluations.

Recommendation: That the railway "right of way" and electrical corridors rates in be updated and reset regularly.

Subsection 6.2 reviews two methods of road pricing: toll highways and congestion charges.

Subsection 40(1) of the *Municipal Act, 2001*, states that:

> 40. (1) A municipality may,
> (a) designate a highway as a toll highway; and
> (b) operate and maintain the designated highway as a toll highway.

Notwithstanding this grant of power, Subsection 40(2) states that "a municipality does not have the power to designate, operate and maintain a highway as a toll highway until a regulation is made under this section." Subsection 40(3) provides for broad regulation authority for the Lieutenant Governor in Council.

This provision has been in the Act for over 10 years. It is time that regulations were considered under this section of the Act as part of a discussion about financing roads and public transit.[2]

Congestion costs the GTHA more than $6 billion each year, and it costs Ottawa-Gatineau $200 million a year.[3] Congestion pricing, such as the use of road tolls, can have an important impact on congestion.

Congestion pricing provides an incentive for motorists to change their commuting behaviour. When faced with tolls during peak periods, many commuters will choose to flex their work hours to avoid peak periods, take public transit, telecommute, or look for work closer to home. People may also choose to commute as usual, but they will now benefit from shorter commute times. Pricing our collective resources appropriately allows us to use them more efficiently, i.e., less people trapped in traffic allowing them to do more productive things.[4]

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[2] Kitchen, H. M. & Lindsey, R. (2013). Financing Roads and Public Transit in the Greater Toronto and Hamilton Area. Report Prepared for the Residential and Civil Construction Alliance of Ontario.

[3] Province of Ontario. (n.d.) Moving Ontario Forward: Modernizing our infrastructure. Retrieved from: http://www.ontario.ca/government/moving-ontario-forward

[4] Wood, Joel. (2012). Canadian cities can look to London and Stockholm for traffic solutions. *Fraser Forum*, 11-12.

Congestion pricing supports municipal and provincial objectives such as good air quality, promotion of transit, and reduction in sprawl. Congestion charges can also be linked to municipalities on the basis that the sources of the charges impact municipal expenses, including costs related to health, road, and transit. Depending on the technology used, the administration of congestion charges could involve costs for roadside infrastructure and operation, in-vehicle equipment and calculation of charges.

Recommendation: The Province should issue regulations under the *Municipal Act, 2001* to permit municipalities to adopt road pricing mechanisms.

6.3 Section 305: Sale of Debt

Subsection 305(1) of the Act states that:

> 305. (1) A municipality may sell any prescribed debt payable to the municipality to any other person in accordance with the prescribed rules and conditions. 2001, c. 25, s. 305 (1); 2002, c. 17, Sched. A, s. 48 (1).

Subsection 305(2) grants the Minister of Municipal Affairs and Housing the power to issue regulations to prescribe the types of debt for the purposes of section 305. To date, no regulations have been issued, therefore we recommend that regulations be issued to make this part of the Act come into force.

Recommendation: The Province should issue regulations to permit the sale of debt as provided in section 305.

6.4 Section 418: Investment

A municipality does not have the power to invest under section 418 of the Act in a security other than a security prescribed under Ontario Regulation 438/97 "eligible investments". O. Reg. 438/97 also covers related financial agreements, including forward rate agreements.

MFOA has a keen interest in municipal investment powers since it provides investment pooling services to the municipal sector in partnership with the LAS, a wholly owned subsidiary of the Association of Municipalities of Ontario (AMO). Matters related to investment are routinely dealt with at the provincial-municipal Debt and Investment Committee representing municipalities, associations, investment dealers, rating agencies and several provincial ministries.[5]

MFOA, AMO, and other municipal members, submitted proposals to the Debt and Investment Committee for amending O. Reg. 438/97 Eligible Investments and Related Financial Agreements. Our position paper is set out in Appendix D.

In addition to the proposed amendments found in MFOA's position paper, MFOA recommends the following changes to the regulation:

[5] The ONE Investment program is an investment pool run jointly by the CHUMS Financing Corporation (a subsidiary of the MFOA) and LAS (a subsidiary of AMO).

- *Prudent investor status*: For many years, MFOA has been advocating for prudent investment standard to be applied to the One Investment Program. Our analysis shows that prudent investor status would result in an increase in the diversity of investments held by the program, which would mitigate some risks to the municipal sector and likely lead to greater rates of return.

- *To invest in US dollar denominated securities*: The current wording restricts municipalities from having a US dollar denominated account held at a Canadian institution. While this limitation is problematic for all municipalities, it is especially constraining for municipalities close to the US border that engage in US dollar transactions regularly.

Recommendation: That O. Reg. 438/97 be amended as set out in the CHUMS/LAS submission to the Debt and Investment Committee (attached) and that the regulation be amended to provide the One Investment Program with prudent investor status. It is also recommended that the regulation be amended to permit municipalities to hold US dollar denominated securities.

O. Reg. 438/97 also deals with commodity hedges and other financial agreements. Hedges are recognized as a technique for fixing the price of needed commodities into the future, but there has always been a concern that hedging could encourage commodity price speculation at the municipal level. MFOA recommends that municipalities be granted the authority:

- *To unwind commodity hedges*: Hedges are recognized as a technique for fixing the price of needed commodities into the future, but there has always been a concern that hedging could encourage commodity price speculation at the municipal level. Legislators' fear of speculation can lock municipalities into commodity hedges that no longer make business sense. A municipality with the sophistication to engage in hedging activities should be granted the authority and flexibility to unwind commodity hedges when the market acts in unexpected and unprofitable ways.

- *To extend settlement period of bond forward agreements*: Municipalities' inability to enter into bond forward agreements with settlement periods 180 days or longer is unduly constraining. Settlement periods should be extended to 365 days to enable municipalities to lock in interest rates, when applicable.

- *To collapse or sell bond forward agreements*: Similar to the rationale for providing the authority to unwind commodity hedges, municipalities should be granted the authority and flexibility to collapse or sell bond forward agreements when appropriate.

Recommendation: That O. Reg 438/97 be amended to provide the authority to:

- **unwind commodity hedges;**
- **extend the settlement period of bond forward agreements to 365 days;**
- **and collapse or sell bond forward agreements.**

3.5 Section 203: Power to Establish Corporations

Section 203 of the MA provides municipalities the authority to establish corporations in accordance with O. Reg. 599/06.

Our members have suggested that one of the most significant barriers inhibiting the establishment of municipal services corporations is the restrictive ownership structure prescribed in O. Reg. 599/06. Currently, Canadian municipalities outside of Ontario cannot partly or fully own Ontario municipal services corporations; Ontario municipalities cannot sell shares to the public; and Ontario corporations may not be able to partner with other entities.

Members have suggested that the province consider amending O. Reg. 599/06 to reflect changes proposed to the ownership structure of electricity distributors in Section 16 of Bill 112 An Act to amend the Energy Consumer Protection Act, 2010 and the Ontario Energy Board Act, 1998. The proposed amendment repeals section 73 of the *Ontario Energy Board Act, 1998.*

Another issue brought to our attention is the prohibition of using municipal services corporations for the provision of long-term care homes. We do not understand the restriction and believe it warrants reexamination.

If the province is interested in encouraging municipalities to take advantage of Section 203 of the MA, the province should reconsider the restrictions placed on municipal services corporations. MFOA encourages a review of O. Reg. 599/06.

Recommendation: That O. Reg. 599/06 Municipal Services Corporations be reviewed.

3.6 Amendment to the notional rate

O. Reg. 73/03 Tax Matters – Special Tax Rates and Limits prescribes the methodology to calculate the notional tax rate to raise the previous year's levies.

Municipalities need to reset tax rates after every reassessment. The current methodology uses the returned roll to calculate the notional tax rate. However, changes are usually made to the roll that tend to reduce CVA. The municipality taxes on the adjusted roll. If the notional tax rate were derived from the adjusted roll on which municipalities tax, it would be higher than the notional rate derived from the roll as returned. (See Appendix E).

Recommendation: That O. Reg. 73/03 is amended by adding a paragraph 3 to subsection (2) of section 12 of O. Reg. 73/03 as follows:

> **The municipality may adjust the total assessment for property in the property classes to which the levy applied in paragraph (1) by corrections resulting from requests for reconsideration, appeals or applications under section 39.1, 40, or 46 of the Assessment Act as reported by the assessment corporation.**

The current method of calculating the annual repayment limit should be reviewed and amended.

No one size fits all. Many large municipalities have the sophistication and capacity required to set their own debt limits similar to the authority provided to the City of Toronto. These municipalities should be extended the authority to put in place their own debt and financial obligations limit.

The ARL calculation also contains some inconsistencies. For example, local improvement charges are included, while debt charges for tile drainage and shoreline improvement assistance are excluded. Further, development charge revenues are brought into the ARL calculation in York Region but not in other high growth municipalities.

We recommend a review of the current ARL to eliminate these inconsistencies.

Recommendation: Extend provisions 4.1 of O. Reg. 403/02 to other high growth municipalities or, alternatively, the provisions of O. Reg. 610/06 under the *City of Toronto Act, 2006* which allows the City to establish its own debt limit.

7. Other issues

This section identifies other issues that have been raised by MFOA members and makes recommendations for improvements.

Tax rates fixed in other Acts

Municipalities are also affected by tax rates fixed in regulations of other Acts. For example,

- *O. Reg. 282/98: General (Assessment Act, 1990)* sets out the rates airport authorities are required to make to the municipality in which it is located. These rates have not been changed since 2001, nor has the methodology of multiplying the passenger total for the year of the airport by the prescribed rate been reviewed.
- *O. Reg. 244/97: General (Aggregate Resources Act, 1990)* sets out the annual fee for different classes of licenses and the tonnage fees. There rates have not changed since 2006.
- Subsection 19.0.1(1) of the *Assessment Act, 1990* sets out the rate for assessing nuclear generating facilities at $86.11 per m^2 of inside ground floor area of the actual generating and transformer station buildings. This rate has not changed since 1968.
- Subsection 33(1) of the *Expropriations Act, 1990* sets out the rate to be paid on the portion of the market value of the owner's interest in the land and on the portion of any allowance for injurious affection to which the owner is entitled. This rate has not changed since 1990 and creates a disincentive for property owners to settle with municipalities.

Recommendation: That rates fixed under Acts other than the *Municipal Act, 2001* that affect municipalities (such as airports under the *Assessment Act, 1990*) be updated to reflect inflation in the Ontario consumer price index.

7.2 Education Act exemption for Municipal Act Part XII charges

Section 58 of the *Education Act, R.S.O 1990* (EA) provides school boards an exemption under Part XII Fees and Charges of the *Municipal Act, 2001.*

> 58 (1) Despite sections 9, 10 and 11 and Part XII of the Municipal Act, 2001 and sections 7 and 8 and Part IX of the City of Toronto Act, 2006 but subject to subsection (3), a by-law imposing fees and charges passed under those provisions does not apply to a board.

Part XII of the MA is used by municipalities to impose all forms of charges. Due to s 58 of the EA, there have been several cases where capital charges for the recovery of water and wastewater services which directly benefit schools have not been paid. This placed the full financial burden onto the municipality for the capital servicing of the schools and to some extent, required the municipality to subsidize the school board.

Section 58 is of great concern to municipalities as Part XII of the MA is where municipalities draw the authority to impose water and wastewater bills for water consumption/sewage usage. While we are not aware of a school board refusing to pay their water or wastewater bills, s 58 may give them the authority to do so. This is inconsistent with the move to full cost pricing for water and waste water services when some customers receive exemptions.

Either the Municipal Act and/or the Education Act should be amended to address these issues or the province may choose to address the issue by providing a grant to municipalities.

Recommendation: That the municipal fiscal implications of Section 58 of the *Education Act, 1990* be reviewed.

7.3 Forfeited properties

In 2012, the Ontario Municipal Tax and Revenue Association (OMTRA) consulted with MFOA and the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO) to provide feedback on the Ministry of Infrastructure's report "Revitalizing Forfeited Corporate Property". The comments in OMTRA's response continue to have strong support in the sector. The comments are available in Appendix F at the end of this document.

MFOA looks forward to working with MMAH to revitalize forfeited corporate property legislation.

7.4 Vacancy rebate program

MFOA is pleased that the Ministry of Finance has launched a process to review the existing vacancy rebate program. The review is timely given recent Ontario Assessment Review Board decisions, such as the April 30, 2015 Haldimand County decision. The existing program has been in place for close to twenty years and it is time to revisit the rationale for its existence.

The definition of vacancy seems to have been broadened since inception. In our view, the issue of rebates being applied in ways that were not originally intended by the province needs to be addressed sooner rather than later. The urgency of this matter and the need for shorter timelines is heightened by US Steel's current case at the Ontario Superior Court as this case could cause precedent setting implications for municipalities.

Recommendation: Amend section 364 of the *Municipal Act, 2001* to ensure vacant unit rebates are used in the manner intended by the Act. This amendment should be enacted sooner rather than later.

8. Conclusion

This report makes numerous recommendations to improve the Act in support of municipal financial sustainability and responsive and flexible municipal government. Many of the recommendations are housekeeping in nature with a few key exceptions. Exceptions include the broadening of revenue authority and investment powers, as well as updates to rates fixed in legislation. While MFOA believes that the Municipal Act is working well, we continue to support regular reviews of the Act to ensure it remains relevant.

Appendix

Appendix A: Tax Capping

Mandatory Business Tax Capping in Ontario

A Policy Discussion

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MTE is not responsible to the municipality, nor to any other party for damages arising based on incorrect data or due to the misuse of the information contained in this study, including without limitation, any related, indirect, special or consequential damages.

Introduction and Purpose

Leading into 1998, sweeping reforms to the property assessment and taxation system were introduced by the Harris Government under the auspices of a number of key goals. Primary among these was ensuring that the assessment of real property and taxation practices across Ontario would be more fair, consistent, and understandable for taxpayers. Despite this original conviction, when faced with widespread criticism of their initial efforts, the Government of the day quickly introduced a mandatory tax capping program for business class properties for the 1998 through 2000 tax cycles. This became known as the 10-5-5, in a laudable attempt to ease the transition to the new property tax regime.

Over time a variety of modified tax capping protection regimes have been implemented, replacing earlier incarnations with more permanent forms of relief. This tradition has created a long legacy of inequity within the multi-residential, commercial and industrial tax classes, which has effectively undermined the original goals of a stable, fair, transparent, and easily administered assessment and property tax system in the Province of Ontario.

Since the initial implementation of business tax capping in Ontario, Municipal Tax Equity (MTE) Consultants Inc. has worked intently with property tax professionals and municipalities across the province to meet the policy and administrative challenges of these demanding and complicated tax protection programs. MTE's involvement with capping has ranged from the development of critical educational materials and seminars, to the provision of ad-hoc expert assistance, to the development and management of our full service stand-alone capping program.

MTE continues to work with a host of client jurisdictions to meet the technical and administrative challenges of this mandatory Provincial policy both as a primary service provider and in a range of support functions. What has become abundantly clear is that there is a deep rooted sense of fatigue, frustration and futility with respect to the mandatory tax capping program. These views have long been associated with the burden of capping, however, it is of significant interest that we have witnessed an intensification of these themes as the material impact of the capping program has diminished. Although the technical challenges have receded somewhat, the exercise of going through the capping process, only to come out the other end with little or no impact brings its own set of frustrations.

It seems obvious that the next change to Ontario's capping policy, as currently set out under Part IX of the *Municipal Act, 2001*, is for the Province to give municipalities the ability to "*Opt Out*" of the program in its entirety. This discussion has been prepared to explore the issue in a systematic fashion. Ideally, it will ultimately help to crystallize, summarize and articulate the reader's own perspective; however, it is not intended to represent the universal authority on the matter. Readers are encouraged to consider the content critically within the context of their own ideas, interests and perspective on the subject matter.

There will be ideas, issues, positions and suggestions that have not been addressed here, and/or those which run counter to what follows; the objective of this discussion is to simply add to that mix.

Overview of Business Tax Capping

Legislation creating the mandatory "10-5-5" tax capping program was originally presented as a transitional measure to provide temporary tax protection for the 1998 through 2000 tax cycles. In 2001, however, the Province introduced additional property tax reforms that served to reinforce the prescriptive nature of the property tax policy environment in Ontario. At this time, tax capping became a permanent feature of the property tax landscape as the original, temporary 10-5-5 program was replaced with a modified model known as the "5% limit on increases".

Beginning in 2005 a number of capping options were made available to single and upper-tier municipalities. This initial range of optional tools included: 1) the ability to increase the annual cap from 5% of the previous year's final capped taxes up to 10%; 2) setting a second limit for annual increases of up to 5% of the previous year's annualized CVA taxes; and/or 3) the establishment of dollar thresholds of up to $250 whereby properties with nominal capping adjustments could be moved directly to their CVA tax liability in any given year. The 2005 reform package attempted to balance the interests of those in favour of maintaining property tax capping against the call to give municipalities the flexibility to accelerate movement towards full CVA taxation for all classes of property where this was the local preference.

The 2009 taxation year represented another in a long series of reform and reassessment cycles. In addition to a number of fundamental changes to the assessment system, which included the introduction of a four-year reassessment cycle coupled with a program to phase-in assessment increases, the Province gave municipalities the option to begin permanently excluding individual properties from capping by utilizing "stay at CVA tax" and "cross-over CVA tax" tools.

A Municipal Option to End Local Programs is Overdue

Notwithstanding the current slate of capping options and the significant number of properties now being taxed without a capping adjustment, we believe that significant consensus exists within the municipal community that it is time for municipalities to be given the ability to opt out of business tax capping entirely.

Since 2005, Provincial policies and Provincial actions have trended towards placing an increasing level of responsibility for local property tax decisions with local government within a framework of province-wide standards and criteria. Changes surrounding capping options, tax ratio movement, and levy restriction rules (hard-capping), optional class structure, etc. have all provided municipalities with greater autonomy to craft local tax regimes that more closely reflect local priorities and objectives. As previously argued in an earlier incarnation of this discussion paper published in 2012, the fact that business tax capping remains mandatory is a significant exception to this general trend.

It should also be noted that the case for giving municipalities the ability to opt out of business tax capping is based on factors that go far beyond the argument for local autonomy; it is also strongly rooted in the fact that this specific program is outdated, redundant, inherently inequitable, administratively cumbersome and confusing to both taxpayers and those tasked with administering the system.

A sampling of what we believe to be the most relevant and critical concerns and issues raised by this program are explored within the context of this report. It is MTE's view that these issues strongly support the argument that the continuation of capping should be a local choice.

Central Policy Concerns

Capping Creates Inequitable Tax Treatment

One of the central tenets of Ontario's property assessment and taxation system is that all properties are subject to a uniform valuation date, and that similar properties are to be assessed in a similar manner across the entire province. While tax rates do fluctuate by jurisdiction and property class, the overall structure of the system is intended to ensure that properties that are similar in nature, value and use carry a similar portion of the overall tax burden. The marked exception from this goal is the mandatory tax capping program for business class properties.

Under this system, two properties in the same municipality, assessed at the same value, can be subject to very different tax liabilities. While one may enjoy a large capping credit, the other could be forced to fund the cap with a tax liability in excess of what its CVA and prevailing tax rates would otherwise suggest. In another instance, one property may be eligible for capping protection, while another facing an identical assessment and CVA tax increase, the same might be excluded.

There are endless combinations and examples that could be provided, but the critical point is that the capping program creates inequities by distorting the tax liability of each property subject to an adjustment, which results in similar properties paying disparate taxes. Ultimately, this undermines the intention of the property tax system to treat similar properties in a similar manner by breaking the link between one's assessment, the tax rates and the final taxes owing.

Capping also creates more subjective and global inequities in our property tax system. For example, in many jurisdictions, we see that the capping protection that is still being provided is concentrated to the benefit of a very few taxpayers. Those still captured by the capping rules are generally the very small minority, and it can be easily argued that it is unfair and inappropriate for a large number of business owners to be funding special treatment for a small sub-set of taxpayers.

Capping has been made Redundant by the Four-Year Phase-In Program

In its original incarnation, the tax capping program was introduced as a means to provide business tax payers with temporary relief as they became acclimated to the Government's new property tax and assessment system. In subsequent years, however, the protection provided to taxpayers has been less related to the original transitional issues and more so due to the ongoing impacts of subsequent assessment base updates. While prior arguments could suggest that its continuation was necessary so as not to remove or deny protection, this program must now be seen as a redundant measure in light of the successful four-year assessment phase-in program, which more effectively and equitably addresses assessment increases for all properties.

Unlike capping, however, the assessment phase-in program operates on a finite cycle with a built-in reset at every reassessment. The current capping system, which is based on a rate of change limit, does not account well for outliers and without a reset point, those receiving the greatest protection will continue to benefit with no specific end in sight.

Capping Shortfalls and Provincial Education Taxes

In jurisdictions where the application of the claw-back option is not possible, or is insufficient to cover the costs of capping, the costs of protection for these business taxpayers must be funded from general revenue, and thus ultimately shared across all property classes. This inequity is exacerbated by the fact that the Province does not share in capping costs, or funding shortfalls related to its own education levy. Where a funding shortfall occurs, the burden is shouldered solely by the municipality(ies), including the education portion. Education levies must be remitted to school boards based on CVA X Rate, regardless of whether or not a portion is forgone as a result of the mandatory Provincial capping program.

Capping is Administratively Cumbersome and Complex

There are a number of practical considerations beyond the program's utility that remain relevant regardless of how many or how few capping adjustments, if any, are required. Simply undertaking the calculations, applying adjustments to specific properties and managing affected tax accounts has proven to be very time-consuming, cumbersome and costly to administer.

Municipalities continue to devote considerable human and budgetary resources each year to ensure that tax bills and adjustments are accurate, compliant and timely. These resources could be more effectively and strategically deployed to other more productive ends, such as improving the delivery of other services, if not for the demands of capping.

Once adjusted bills are issued, the complicated and intricate nature of the capping calculations themselves make them very difficult for the layperson, business owner, and even many tax professionals to understand. This coupled with the often counter-intuitive outcomes revealed on tax bills and tax adjustments, result in an ongoing demand for explanations from taxpayers and their agents.

For municipalities, this all means that intensive resources must be dedicated to the on-going management and maintenance of the capping program; for the taxpayer it often appears that their tax liability is arbitrary and incomprehensible.

Exclusions Rules Provide only Limited Relief

Since the advent of CVA exclusion options in 2009 the actual impact of capping on the taxpayers' final liabilities has become marginal or non-existent within many jurisdictions. The fact remains, however, that even with the limited number and magnitude of capping adjustments now being applied, the program as a whole continues to require significant time and resources to administer and manage.

From briefing council to passing by-laws to preparing Schedule 3's that show no change, the overall administration of a capping program remains a significant element of the annual tax cycle. Even where a municipality has excluded all of its capped class properties, the skeleton of the capping exercise continues. Until Part IX of the Municipal Act becomes optional, untold resources will continue to be devoted to the capping exercise regardless of how small a minority of properties are subject to actual adjustments.

Option Should Reside with Taxing Authority

Municipalities throughout the province have devoted significant resources to ensure compliant and appropriate implementation of the mandatory tax capping program since its inception. The capping program has proven to be an administrative and budgetary burden because of the

increased complexity it has added to the annual tax billing exercise and the management of any in-year tax adjustments required in response to assessment appeals, tax rebates or other events that demand taxes be recalculated.

Despite the burdens posed by the business tax capping regime, Ontario's municipalities have accepted the associated challenges and have demonstrated a high degree of local responsibility with respect to the shape and outcomes of this program as it applies to taxpayers. Since the original introduction of optional capping tools in 2005, municipal staff and decision makers have shown a keen interest and willingness to capitalize on the various options provided by the Province. In the vast majority of cases, local programs have been crafted to accelerate the greatest number of properties to their full CVA tax liability.

In addition to the application of the core capping calculation options, municipalities have widely utilized the "new construction" constraint options, which ensure new or significantly improved capped class properties, are subject to CVA tax.

Based on our observations, the majority of municipalities across the province have strategically and deliberately employed the mix of optional capping tools in each taxation year that proved to be the most effective in meeting their local capping objectives. In the current environment, however, marked by straggling outliers with little prospect of reaching their destination tax, funding shortfalls, and administrative requirements with no outcome, municipalities need to have significantly enhanced options with respect to the capping program. These enhancements should include, but may not be limited to Part IX of the *Municipal Act* becoming optional.

Considering Enhancements and Formulating a Perspective

2015 represents the 18th taxation cycle that has been impacted by mandatory tax capping in Ontario, and it is MTE's view that it is timely for an exit strategy option to be put in place. While we feel that the central need is for capping to become optional, there are a host of related and peripheral issues and challenges to consider. Stakeholders and decision makers will need to clearly articulate and consider the shortcomings of the current program; the policy challenges they pose; and of course, what will likely be a landslide of suggested policy solutions.

The following matrix has been prepared as a starting point to assist the reader in considering some of the main challenges with the current capping program as well as some of the challenges that could arise under some form of exit or opt-out plan. As noted earlier, this is not intended to represent a comprehensive or exhaustive policy review, or a prescription for specific policy reform; the intent is to simply add to the discussion.

Question, Comments, Reactions

Should you have any comments or questions regarding this discussion, or the broader issues surrounding business tax capping, please do not hesitate to contact the undersigned.

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BUSINESS TAX CAPPING – POLICY CONSIDERATION MATRIX

ISSUE	POLICY CHALLENGE/OBJECTIVE	POTENTIAL SOLUTIONS
Stalled Outlier Properties	Many of the properties that continue to receive protection under this program represent significant outliers, which the optional capping parameters currently available have not been successful in dealing with. ☐Some of these could remain capped indefinitely based on current increase limits	Enhanced optional parameters including, but not limited to increasing the allowable range for: • Threshold limits, • 5% CVA tax limit, and • 10% annualized tax limit
Vacant Land	It is not uncommon for properties receiving disproportionally high capping credits to be vacant land without improvements. In the absence of direct physical improvements, all CVA changes in respect of vacant land are treated as "equity" and are therefore subject to capping protection. The rules are not sensitive to values that are increasing due to zoning changes, adjacent development, etc...	An option to increase the base tax of specific properties based on material changes other than physical improvements could be considered by would prove complicated and cumbersome; A preferred solution would be the addition of the option to limit the program to occupied property.
Capping Shortfalls	Historically large capping shortfalls were not uncommon, but with increased optional limits these began to decline and disappear. Partially due to the advent of exclusion tools, shortfalls can and are occurring as the decrease pools shrink and the cost of capping changes at a different rate, or in a different direction. Currently municipalities have no choice but to fund the cost of capping from clawing back decreases within the class and/or through general revenue.	Potential enhancements to address the continued funding of capping protection, regardless of whether a shortfall occurs or not could include one or a mix of the following: • Allow capping/claw-back to be balanced across all capped classes, • When a funding shortfall is identified, allow for the proportional reduction of all capping adjustments to achieve a balanced cap, i.e. Limit total protection based on available clawback
Sharing of Shortfalls	When a shortfall does occur, municipalities must fund the entire amount, including the Provincial education tax thereby putting municipal revenue at risk and ensuring that revenue neutrality for the Province.	In the absence of any enhancements geared towards eliminating shortfalls, these amounts should be shared proportionally among all levying bodies, including the Provincial Government.
Capped Tax with No Capping	Currently a municipality with one or more class must still go through all the motions of the capping exercise and taxes are billed and explained within the context of the program. In these circumstances there remains significant cost and effort, with no outcome, or worse, new layers of confusion.	At an absolute minimum, the capping, tax notice and other associated legislative provisions need to be updated to account for circumstances where no capping adjustments are being made. These updates should include, but not limited to: • Eliminating the requirement to prepare capping calculations or billing files (determining annualized taxes, OLC, applying exclusions, etc...); • Allowing for the use of Schedule 2 rather than Schedule 3 of the Standard Tax Bill; and • Allowing exclusion tool by-laws to apply until repealed.

A transitional tool has turned into an ongoing burden.	The continuation of capping, particularly in circumstances were there are no adjustments, seems to be driven more by path dependency than by ongoing policy goals.	There needs to be provisions in the legislation for ending this program either by municipal specific choice, accelerated elimination of properties, and/or a wind-down strategy with a specified end date.
Fully Optional Policy	The ideal solution would seem to be a legislative amendment making the entire capping program, and its inherent requirements, an optional policy tool.	Under such a model, upper and single-tier councils would have the ability to adopt a capping program within the context of Part IX of the Municipal Act for a taxation year or not. Where a capping program isn't created via by-law for a taxation year for a class, taxes would be calculated in the same manner as taxes for the remaining non-capped classes (res, farm, etc...).
Active and Deliberate Discontinuation	Due to the length of time capping has been part of the tax landscape; some might suggest it would be appropriate to require the discontinuation of capping to be a deliberate decision of Council.	Largely the same as a fully optional solution, however, municipalities would have the option to "Opt Out" of capping via by-law. This would be similar to the requirements for having optional property classes begin to and cease to apply.
Instability for Taxpayers	The sudden discontinuation of capping provisions could lead to significant tax increases for some taxpayers and it may be deemed appropriate to establish structured limits in regards to, and to manage such impacts.	This could be accomplished in a number of ways: • Requiring full exclusion before the program is officially collapsed, • Allowing opt out only where outstanding protection amounts fall below a certain threshold, or • Adding an optional wind-down tool that would move all remaining capped properties to CVA tax over a specified period of time.
Creating Optional Capping Programs	Should the legislation be amended to allow for municipalities to choose whether or not capping should be part of their tax policy landscape, improvements to the program should be made to correct the current shortcomings.	In particular, municipalities should be given expanded options that will allow them to tailor the program to meet their specific needs, including any number of the concepts discussed herein.
Planning Future Capping Campaigns	Where a municipality chooses to continue capping, or chooses to restart it at a later date, there needs to be a safeguard that would allow them to re-set, or discontinue the program, but also a need to protect taxpayers from undue volatility.	Some consideration should be given to the amount of advance planning and program details that would be required to adopt a capping program in a world where it was optional. It might be prudent for initiating by-laws to set out various parameters that would dictate the structure of the capping program over time. Such details might include: • Minimum or maximum duration; • Intervals for re-evaluation of the program; • Identifying the scope of tools and parameters that would be used; and/or • Advance criteria for discontinuing or re-setting the program.

About Municipal Tax Equity Consultants and MTE Paralegal Professional Corporation

Municipal Tax Equity Consultants (MTE) Inc. is an Ontario incorporated company established in 1990 that provides municipalities with key services in the areas of property assessment, taxation, municipal finance and administration. Our affiliate corporation, MTE Paralegal Professional Corporation was established in 2008 and is a certified Professional Corporation under the Law Society of Upper Canada.

MTE's service portfolio is broad ranging, however, all of our services and our corporate approach to working with the municipal community focus heavily on providing municipal staff and decision makers with the knowledge, tools and resources necessary for the development and maintenance of appropriate, compliant and successful tax, assessment and financial policies and practices.

Municipal Tax Equity Consultants and MTE Paralegal Professional Corporation are recognized throughout the province as trusted sources of expertise, and have long been considered as being on the leading edge of the property assessment and taxation industry in Ontario. The depth and breadth of our expertise and experience, coupled with a long demonstrated ability to maintain unparalleled standards of practice, has allowed us to forge a unique position across the broader spectrum of municipal finance, administration, strategic policy development and research.

The municipalities that rely on MTE's experts range from small rural and Northern single-tiers to large urban cities and key Counties and Regions across Ontario. By applying the organization's unique blend of experience and expertise, we work with our client communities to help ensure they achieve maximum revenue yields from existing revenue sources, realize optimal benefits from emerging opportunities, and are able to develop and operate within tax policy frameworks at the most optimal level.

MTE's core municipal client base is concentrated within Ontario, and includes approximately one third of the province's municipal governments. MTE is also regularly engaged by broader public sector entities such as professional associations, Provincial Governments and industry working groups that draw on our unique blend of expertise and experience to meet the requirements of various specialized projects. Such projects include, but are not limited to: development and delivery of education and training material, specialized industry writing, customized software development and policy development support.

To best serve our clients, both corporations employ a service model that is based on an exclusive commitment to the municipal community; neither engages private sector clients whose interests may diverge from that of a municipality.

To find out more about MTE, please visit our web-site at

www.mte.ca

Dear Ken and the Executive of the AMTCO/OMTRA,

In response to your request for suggested amendments to the *Municipal Act, 2001* (MA), we have encountered several issues with the act as it now stands pertaining to tax sales that we think could use another look. We have outlined three problems below along with suggestions to address the issues. We have a fourth issue that we are still discussing for possible suggestions, however we are forwarding on the problem to you in the meanwhile for consideration for possible suggestions for resolution.

ISSUE NO. 1
Surplus Funds that are required to be paid into court following a readvertised tax sale conducted in accordance with MA section 380.1

Problem
As the wording of the act stands now, all surplus funds after a tax sale must be paid into court pursuant to MA section 380(2) with surplus funds described in section 380(2) as the proceeds of the sale, minus the cancellation price. Tax sales are most often unsuccessful when the amount of taxes owing (for some reason or another) overwhelms the value of the property. In situations where the municipality has written off taxes following a prior unsuccessful sale per s. 354 and has readvertised the property for sale per s. 380.1 at a new lower cancellation price comprised of the remaining taxes and costs, the surplus funds from the successful readvertised sale are required by s. 380(2) to be paid into court where the delinquent owner or some other party with an interest in the property could claim them. It only seems fair that if the municipality has written off taxes and is lucky enough to have a tender in a readvertised sale for more than the new cancellation price, that they should be able to apply those proceeds to the taxes that were written off.

Suggestion:
The *Municipal Act 2001* be amended so that if there are surplus funds after a readvertised sale where the municipality has written off taxes and reduced the cancellation price from the first sale as provided by MA sections 354 and 380.1, the surplus funds should be applied to the cancellation price for the re-advertised sale *and then to the amounts that were written off* before any balance is paid into court.

ISSUE NO. 2
An error in paragraph 3 of Form 10 Final Notice of Readvertisement. It appears to offer an option for an extension agreement in paragraph 3 that would be in contravention of s. 378(1)

Problem
The window for entering into an extension agreement only exists for one year from the date the tax arrears certificate was registered as per MA section 378(1). The one year has passed before the property is advertised for the first sale date. It appears that the contents of the Form 3 Final Notice were copied into the Form 10 without consideration that the option of an extension agreement in paragraph 3 was not applicable to a readvertised sale.

Suggestion:
Reference to an extension agreement be removed from paragraph 3 in Form 10.

ISSUE NO. 3
Method of Payment Problem
Rule 25 states:

> Subject to clause (6) (1) (b), any payment required by this Regulation to be made in cash may be made by way of cash or money order or by way of bank draft or cheque certified by a bank or trust corporation.

This creates problems, and a potential lawsuit, when a certified cheque from a credit union is received.

It's important to note that in many communities, there is no bank or trust corporation; only a credit union. The nearest bank or trust corporation may be a hundred or more kilometres away. This makes it difficult for some potential tenderers or bidders to get a bank draft or certified cheque from a bank or trust corporation.

Suggestion:
Clause (6) (1) (b) of The Municipal Tax Sale Rules be amended so that it recites:

> accompanied by a deposit of at least 20 per cent of the tender amount, which deposit shall be made by way of money order or by way of bank draft or cheque certified by a bank or trust corporation or credit union or caisses populaires.

Rule 25 be amended so that it recites:

> Subject to clause (6) (1) (b), any payment required by this Regulation to be made in cash may be made by way of cash or money order or by way of bank draft or cheque certified by a bank or trust corporation or credit union or caisses populaires.

ISSUE NO. 4

Stalemate that occurs property when purchaser has paid balance owing pursuant to *Municipal Tax Sale Rules O. Reg 181/03* (Tax Sale Rules) 11(2), 12(2) or 16 and has been declared the successful purchaser, but refuses to sign the documents required to register tax deed

Problem:
We have encountered several situations where purchasers in a tax sale *pay their balance in full* as required in section 11, 12 or 16 of the Tax Sale Rules but then refuse to sign the Acknowledgement and Direction required for electronic registration or the Land Transfer Tax Affidavit required for paper registration. The treasurer is caught between various sections of the *Municipal Act 2001*. (MA) The "Successful Purchaser" has been declared in accordance with the above sections and MA Section 379(5) (a) says the treasurer

> ... shall prepare and register a tax deed in the name of the successful purchaser or in such name as the successful purchaser may direct.

The treasurer is required to register the tax deed but does not have control over the purchaser signing the Acknowledgement and Direction required to register electronically or the Affidavit of Land Transfer Tax required to register the paper document. Also, neither the Form 7 Tender, nor the Auctioneer's receipt contains enough information to draft a registerable tax deed under the current Land Registration Reform Act requirements, most particularly the birth date and chosen tenancy of the purchaser(s).

The municipality cannot go to the lower bidders in an auction as the auction is over at this point and everyone has gone. In a tax sale by tender, the tenders of everyone other than the "Successful Purchaser" have been returned. There is no provision to cancel only the sale portion of a tax registration and readvertise once the successful purchaser has been declared. The 90-day provision in section 22 of the Tax

Sale Rules does not apply to this situation as this is to be used if completing the sale "would be unfair to the bidders or tenderers" and by the time it is discovered the Purchaser won't sign, the 90 day period is too short to accommodate a readvertised sale. Even if it did, it would totally undermine the tax sale process as purchasers could delay the cost and time of investigating a property until they are declared the successful purchaser, hold off on finalizing the registration until they complete their investigations and then get their money back if they decide they are unhappy with the deal. The municipality would be stuck with the cost of doing the whole sale over, with no confidence that the same thing wouldn't happen the next time around.

Another suggestion of declaring that there was no successful purchaser and then vesting would be patently unfair to the lower tenderers who submitted their tenders in good faith and particularly to the second highest tenderer who would have been the successful purchaser if the highest tenderer had not bid or tendered for a property he or she did not want.

This situation has arisen several times when it is obvious the bid or tender was submitted without the purchaser investigating matters such as crown interests, contamination and/or road access. They paid their balance so that lower bids or tenders are rejected and then went to check out the property to discover it is not the deal they were hoping for. They then demanded their money back and refused to sign the documents required for registration.

Note that the Prescribed Form 6 Tax Sale ad says:

> Except as follows, the municipality makes no representation regarding the title to or any other matters relating to the land(s) to be sold. Responsibility for ascertaining these matters rests with the potential purchasers.

- When the purchaser refuses to sign the documents required for registration, how does the treasurer move forward with the property? The *Cunningham v. Front of Yonge* case confirmed that the tax sale is not final until the tax deed or notice of vesting is registered as per MA section 383(1). The ownership is still in the name of the old owner. What happens to the funds in this stalemate? They cannot be paid into court because the sale is not final yet as determined in the Cunningham case. If they are applied to the arrears, the old delinquent owner would retain ownership with the taxes all paid up at the expense of the purchaser. Could the purchaser come along years after the sale and demand their tax deed finally be registered?

Allowing purchasers to back out of a tax sale because they have not done their due diligence or they have simply changed their mind, undermines the whole tax sale process and results in added costs and time to the municipality, as well as tying up the title of the property.

It is apparent from the wording of the legislation that it was drafted at a time when no further action was required on the part of the purchaser in order to register the tax deed. The money was paid and the tax deed registered. With amendments to the Land Transfer Tax Act requiring that the affidavit can only be signed by the transferee (purchaser) and the Land Registration Reform Act providing for electronic registration, the sections of the Municipal Act that pertain to registration of the tax deed need to be updated to accommodate these changes.

In most cases, the properties are small and not worth much, so the purchaser is content to walk away or play a game of chicken to see if the treasurer will cancel the tax registration so the municipality can move on. The property may have a small assessed value, but this stalemate can cost a lot of money and time for the municipality.

At Realtax, we are still discussing several options for amendments to the Municipal Act, 2001 that would allow the treasurer to move ahead with these properties without getting caught up in a cumbersome legal

quagmire. We thought, however, we would pass this issue along to you for your consideration in the meanwhile.

If you have any questions regarding this letter, please do not hesitate to contact us. We are pleased to offer any ongoing support we can.

Best regards,

Mary

RealTax Inc.

Mary MacCallum
Tax Sale Specialist
Phone 1-888-585-7555 X 6

Appendix C: Section 413 discussion expanded

Municipal Act, 2001 Section 413: Expanded discussion

In accordance with a long established practice, restrictions in respect of the authorized uses of proceeds generated from the sale of a capital work that was financed through the issuance of debentures while the debentures remained outstanding (the "Sale Proceeds") were embedded in Ontario municipal legislation for more than forty years before the current *Municipal Act, 2001* became effective on January 1, 2003 (the "Act")[6]. In essence, those restrictions provided that Sale Proceeds were to be used in the same manner that a municipality was authorized to use excess debenture proceeds and debenture proceeds that were no longer required for the purpose for which the debentures were issued i.e. to pay principal and interest on the debentures. Those restrictions reflected the long established principle, central to municipal long-term finance, that since future ratepayers will benefit from a capital work funded through debentures, it is generally viewed as appropriate that those future ratepayers should help fund the cost. This is, in effect, the 'matching' principle. Essentially, it contemplates that the financial burden is 'matched' to the ratepayers who will benefit from the capital work throughout its useful life. When the current Act became effective on January 1, 2003, the well-established restrictions were entirely omitted. There was no indication that the Province intended to change the long standing principle and no clear indication at all as to why the previously explicit restrictions set out in section 168 (5) of the immediately preceding *Municipal Act* or its equivalent were not carried forward.

It could well be the case that the principle of 'matching' and the restrictions were so well understood that the drafters of the current Act did not turn their minds to them. The fact is however that the current Act is silent which could, and apparently has, in fact, led to some uncertainty. One could argue for example that the absence of the statutory restrictions has the effect of removing any restrictions on council's use of Sale Proceeds. This position would be inconsistent with the practice followed by Ontario municipalities for more than forty years.

Before abolishing the long established practice, one would have thought that a clearer statement of the Legislature's intention in this regard would have been included if indeed the intention was to abolish that long standing practice. This is not mere speculation, two municipalities have already raised the question as the authorized purposes to which Sale Proceeds can be applied.[7]

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[6] The restrictions first appeared in an *Act to Amend the Municipal Act*, SO 1961-62, c86, s39 which became effective on April 18, 1962 and continued in force pursuant to RSO 1970, c284, s313(4), RSO 1980, c302, s170(5), RSO 1990, cM45, s168(5). The restrictions were repealed for all Ontario municipalities except for the City of Toronto on January 1, 2003 by the *Municipal Act, 2001*, SO 2001, c25 and for the City of Toronto by the *City of Toronto Act, 2006* which became effective on January 1, 2007.

[7] The Regional Municipality of Waterloo raised the issue of its ability to deal with Sale Proceeds in the context of the following two scenarios during a conference call on Thursday, September 17th: (1) the Region acquired land in the downtown corridor for a multi-modal transit hub that was financed through a debenture issue with a term of 20 years, which debentures remain outstanding. The Region is exploring a number of possible development scenarios for this land, some of which would result in ownership of the land being transferred to a developer, before those debentures mature; and (2) based on a KPMG recommendation

As mentioned above, the absence of any reference to section 168(5) or its equivalent allows one to argue that the long standing principle no longer applies based on the fact that the current Act does not contain a specific equivalent to the former section 168(5). The logical extension of that argument is that there are no restrictions on how a municipality may use Sale Proceeds.[8]

Unless there is some movement to reverse more than forty years of municipal long-term finance practice, it would appear to be in every municipality's interest to clarify council's powers and introduce an amendment to carry forward the previously explicit restrictions.[9]

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that the Region discontinue its current practice of owning and operating childcare centres (there are five), the Region may decide to dispose of one or more of its childcare centres, which were financed through the issuance of debentures, before those debentures mature.

The Region of Peel also raised a question about the manner in which it can deal with Sale Proceeds in the context of a possible sale of a social housing project, owned by the Region, that was long-term financed in 2013 through a 40 year 3.95% sinking fund capital markets debenture issue. The Region is currently applying the rental revenue generated from the social housing project to the debt charges in respect of the debentures on the understanding that the ratepayers of the Region are ultimately responsible for such debt charges. Under the Act, the Region has a number of options in terms of the manner in which it could deal with the Sale Proceeds in the event that the Region decides to sell the social housing project. One of the options contemplates a contribution to fully fund the sinking fund established in respect of the debentures, but the Region would, in assessing its various options, be mindful of the current interest rates relative to the interest rate on the debentures (3.95%).

[8] The 'old' *Municipal Act* which contained the restrictions in section 168(5) was repealed and replaced with the Act. According to well recognized rules of statutory interpretation, repealing a statute not only erases the text, but also expunges the statute altogether. As articulated by Sullivan and Driedger:

"*When a repeal takes effect, the repealed legislation ceases to be law and ceases to be binding or to produce legal effects.* ***This means that the conduct that was formerly prohibited is now lawful.*** *It also means that everything dependent on the repealed legislation for its existence or efficacy ceases to exist or to produce effect.*"[emphasis added] Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed., (Butterworths, 2002) at page 527.

[9] During a Regional Treasurer's meeting on Friday, October 2, 2015 a consensus was reached to the effect that the old restrictions should be carried forward into the Act and that the "net proceeds" in respect of the Sale Proceeds only are to be subject to the restrictions.

THE One INVESTMENT PROGRAM

200 University Avenue Tel: 416-971-9856
Suite 801 Fax: 416-971-6191
Toronto, Ontario M5H 3C6 Website: www.oneinvestmentprogram.ca

May 10, 2013

Trevor Bingler
Director - Municipal Finance Policy Branch
Ministry of Municipal Affairs and Housing
13th Flr, 777 Bay St
Toronto, ON M5G 2E5

Dear Mr.Bingler:

Re: One Investment Program Request for Amendments to the *Municipal* Act Eligible Investment Regulation

We provide this letter in response to a request for information from Tanya Wanio related to the LAS and MFOA/CHUMS request for changes to the Eligible Investment Regulation. Our request was tabled in writing and verbally with the Debt and Investment Committee at the December 2012 meeting.

In our December 2012 submission, LAS and CHUMS, as agents for The One Investment Program, requested the following changes to the *Municipal Act Eligible Investment Regulation*:

Fixed Income

- *That the Eligible Investment regulation be changed to make 'BBB' rated issues an eligible investment option for The One Investment Program.*

Equities

- *That the list of eligible investments for The One Investment Program be expanded to include Real Estate Investment Trusts (REITS).*

Eligible Program Investors

- *That AMO/LAS, MFOA/CHUMS and other Ontario municipal associations, and their subsidiary companies, be added to the list of 'eligible investors' with whom municipalities can 'comingle' investments.*
- *That consideration be given to allowing First Nations groups the ability to invest in The One Investment Program.*

The One Investment Program track record which supports this 'ask' is articulated in our original submission report – included as Appendix A. In short, the One Program has offered Ontario municipalities and other Ontario public sector entities competitive investment options dating back to 1993 for our Bond Portfolio offering, 1995 for the Money Market Portfolio, 2007 for the Equity Portfolio and since 2008 for the Universe Corporate Bond Portfolio.

One Investment Program Performance (returns are net of fees)

Money Market Portfolio	• Average 5 year portfolio balance ending December 31, 2012 = $259 million
	• Annualized Return for 5 years ending December 31, 2012 = 1.52%
	• # of negative month end returns since 1995 portfolio inception = 2
Bond Portfolio	• Average 5 year portfolio balance ending December 31, 2012 = $149M
	• Annualized return for 5 years ending December 31, 2012 = 4.01%
	• # of negative rolling 1 year returns since 1993 inception = 3
Universe Corporate Bond Portfolio	• Portfolio Balance at December 31, 2012 = $39M
	• Annualized 4.5 year return at December 31, 2012 = 5.94%
	• Portfolio inception was August 2008
Equity Portfolio	• Portfolio Balance as at December 31, 2012 = $84M
	• Annualized 6 year return as at December 31, 2012 = 2.91%
	• Portfolio inception was January 2007

The Case for including BBB Rated Issues in One Bond and Corporate Bond Portfolios

In the period since LAS and MFOA/CHUMS tabled our requested changes, Tanya Wanio approached staff for additional supporting information. We request that the Ministry consider the following information before any amendment decisions related to the Eligible Investment Regulation are made.

The following information obtained from both Moody's Investors Service and MFS McLean Budden demonstrates a very favourable experience related to the addition of BBB credits to a bond portfolio. The Annual Default Study: Corporate Default and Recovery Rates, 1920-2012 released by Moody's Investors Service on February 28, 2013 is included with this letter. The pertinent points from this document related to our request are summarized below:

- Of the 58 global corporate issue defaults occurring in 2012, only one was rated as investment grade (exhibit 16, page 19). Investment grade is defined as "BBB3" or higher by Moody's.[1]

- Of total global corporate issue defaults in 2012, only one default was a Canadian corporation (exhibit 16, page 19). This corporation, Catalyst Paper Corporation was not rated investment grade.

- Over the 31-year period from 1982 to 2012, the average annual loss for all BBB rated global credit was 0.13%. In 14 of these years, the annual loss for all BBB rated issues was 0%. There are two instances in the last five years when the loss by A rated credits exceeded the loss incurred by BBB credits (exhibit 23, page 26)

- For the period of 1920 - 2012, there were zero BBB defaults in 60% of the years (exhibit 30, pages 31-33).

[1] The Ratings Table is found on the Multiple Markets website at the following link http://multiple-markets.com/3ratingschart.htm

- The mean difference in default rates between A and BBB graded corporate issues over the period of 1994 to 2012 was only 0.017% in favour of the A graded issues (exhibit 39, page 40).

We would note that with the One Investment Program, professional investment portfolio managers control all investment risk within our allowable investment universe. In the case of the One Bond and Universe Corporate Bond Portfolios, our portfolio manager, MFS McLean Budden, has more than 50 years of experience with a track record of zero defaults.

MFS McLean Budden is of the opinion that there are numerous benefits related to the introduction of BBB-rated bonds into the Eligible Investment Regulation for the One Investment Program. Their submission to the One Program is attached as Appendix B.

In the context of an overall Canadian investment grade bond portfolio, there are several potential benefits to introducing BBB-rated bonds:

- **Enhanced yield**: BBBs generally offer higher yields than higher-grade issues in order to compensate the investor for the additional perceived risk.
- **Capital appreciation**: An investment in BBBs may generate capital appreciation in the event of improving company fundamentals, an upgrade, or healthier macroeconomic landscape.
- **Spread cushion**: BBBs possess a spread cushion that should provide some measure of protection for total return in the event that interest rates rise.
- **Diversification**: BBBs have lower correlations to other sectors of the bond market relative to higher-grade bonds and therefore provide diversification benefits.

Adding an allocation to BBB-rated corporate bonds to a portfolio has the potential to enhance the overall yield and return. Over the past 20 years, the spread between BBB and A rated corporate bonds – the BBB/A quality spread – has averaged 74 basis points (bps) within the DEX Short Term Bond Index and 61bps within the DEX Universe Bond Index over the same period. (Source: PC Bond) MFS McLean Budden (MFS MB) also points out that an annualized 10-year return from a portfolio with a 10% allocation to BBB credit was actually 14 bps higher while having a lower risk profile.

While noting that BBB rated bonds carry greater risk than do higher grade issues they note that appropriate risk management processes should be put in place, to limit position sizes on individual BBB issues or issuers and a maximum allocation limit to BBB credits within a portfolio. At MFS MB, in addition to limits for BBB securities, risk is further controlled through rigorous in-house credit analytics, which augments the work done by the credit rating agencies.

The in-house credit analysis capacity at MFS MB offers municipal investors in the One Universe Corporate Bond Portfolio a significant benefit, with the benefit continuing if the portfolio was to include BBB credits. Most municipalities acknowledge that they do not have the internal staff resources required to properly analyze, review and monitor these credits, whereas, MFS MB has a team of six dedicated credit analysts and extensive systems that support thorough reviews, analyst recommendations, portfolio analysis, trading, and compliance.

The Case for REITS in the One Equity Portfolio

As outlined in our December 2012 submission to the Debt and Investment Committee, the customized portfolio benchmark adopted by LAS and MFOA/CHUMS for the One Equity Portfolio has helped account for the overweight (risky) positions of various sectors (financial, energy, and materials); there however remains a challenge in constructing a suitably diversified, conservative portfolio for our municipal investors. REITs, which are currently not an eligible investment for Ontario municipalities, are contained within the financial sector of the S+P/TSX Composite Index. By allowing these securities for the One Investment Program, the One Equity Portfolio would have the opportunity to increase diversification in the financial sector beyond traditional banking and insurance company holdings. In certain market cycles, the ability to hold securities other than banks or insurance companies may help the One Portfolio reduce overall investor risk, and possibly lead to enhanced returns.

Since its 2007 inception, the One Equity Portfolio has been managed by Guardian Capital LP. Guardian Capital has a specialty practice in managing REIT portfolios and is very familiar with quality-oriented REITs in Canada. As at February 2013 there were 15 REITs included in the S+P/TSX Composite Index. As with all asset classes, the quality of these securities varies, however, Guardian has advised LAS and CHUMS that there is a sufficient universe of quality REIT issues to consider for the One Equity Portfolio.

The attached memo from Guardian (Appendix C) supports our request for the allowance of REITs as an eligible investment for Ontario municipalities and the One Investment Program.

As was the case with the request to add BBB bonds, when considering the addition of REITS we would reiterate that the One Investment Program co-mingled investment portfolios are professionally managed by accredited investment firms. In the six years that the One Equity Portfolio has been in operation with Guardian Capital as the investment manager, the portfolio has outperformed the S&P TSX index on an annualized basis.

Eligible Program Investors

Since tabling our December 2012 proposal, LAS AND CHUMS staff has learned that some committee members believe that allowing AMO/LAS and MFOA/CHUMS to be eligible investors related to the One Investment Program may be a conflict of interest given our role in operating the portfolios. We would respectfully suggest that this is not the case. With respect to the operation of the One Investment Program portfolios, all portfolios are professionally managed to an approved set of investment guidelines that are developed by One staff in close consultation with out independent CFA consultant, our municipal program advisory committee, and the investment managers themselves.

After the investment guidelines are developed for any portfolio they are approved by the LAS and MFOA/CHUMS Boards of Directors. Subsequently all investment decisions are the sole responsibility of the professional investment managers, within the confines of the portfolio guidelines. To be clear, neither LAS nor MFOA/CHUMS staff has any say in the investment decisions related to any One Investment Program portfolio, and due to the success of the portfolios we would like the opportunity to invest along with our municipal investors.

Both AMO/LAS and MFOA/CHUMS believe that through the One Investment Program we provide competitive professionally managed investment options to the municipal sector and that we do so for a very reasonable fee. Through economies of scale, the One Program

achieves pricing and options that may not otherwise be available to many small and medium-sized municipalities, and both AMO/LAS and MFOA/CHUMS would like the same opportunity to utilize these investment options.

LAS and MFOA/CHUMS staff also see the value of the One Program extending beyond Ontario municipalities. We would like to see the Eligible Investment Regulation amended to allow First Nations groups to be deemed eligible investors for the purposes of municipal investment co-mingling. Based on the informed advice of our independent CFA, who has a strong background in first nations issues, we believe there is an opportunity to help smaller First Nations groups achieve better investment returns.

We would like the opportunity to meet with you to discuss our December 2012 proposal as well as this letter in greater detail. LAS and MFOA/CHUMS do feel that our proposals are very sound and reasonable requests and feel that you will feel the same way if you have the opportunity to meet with us and our professional investment managers. We look forward to hearing from you to arrange a meeting.

Sincerely,

Dan Cowin
Executive Vice President
CHUMS Financing Corporation

Nancy Plumridge
President
Local Authority Services Limited

/encl

CC: Edward Hankins – Region of York – member of Debt & Investment Committee and One Investment Program Advisory Committee

Gerry Mahoney – City of Ottawa – member of Debt & Investment Committee and One Investment Program Advisory Committee

Appendix A

LAS and CHUMS Submission to the Debt and Investment Committee

Request for changes to the Eligible Investment regulation for the One Investment Program

December 2012

Executive Summary

Since the last substantial change to the Municipal Act Eligible Investment Regulation with O. Reg. 655/05, LAS and CHUMS have worked diligently to educate the Ontario municipal sector about available investment options, opportunities, and related obligations. LAS and CHUMS have also leveraged the expanded investment powers offered to the One Investment Program via O. Reg. 655/05 to develop and launch a successful Canadian Equity Portfolio and a Universe Corporate Bond Portfolio, which complement the existing One Money Market and One Bond portfolios.

With a track record of 6 years of equity investment, 4.5 years of corporate bond investment, and 19 years of money market and bond investment, the One Program is requesting further changes to the Eligible Investment regulation to provide greater investment powers to the One Investment Program.

In addition, LAS and CHUMS is also interested in a broadening of the 'eligible investor' term related to who Ontario municipalities can co-mingle their investments with. AMO/LAS and MFOA/CHUMS, among other municipal associations, would like the ability to invest in the One Investment Program.

Our requested changes are:

Fixed Income

- That the Eligible Investment regulation be changed to make 'BBB' rated issues an eligible investment option for the One Investment Program.

Equities

- That the list of eligible investments for the One Investment Program be expanded to include Real Estate Investment Trusts (REITS).

Eligible Program Investors

- That AMO/LAS, MFOA/CHUMS and other Ontario municipal associations, and their subsidiary companies, be added to the list of 'eligible investors' that municipalities can 'comingle' investments with
- That consideration be given to allowing First Nations groups the ability to invest in the One Investment Program.

Introduction

Local Authority Services Limited (LAS) and The CHUMS Financing Corporation (CHUMS), subsidiary companies of the Association of Municipalities of Ontario (AMO) and the Municipal Finance Officers Association of Ontario (MFOA), respectively, have collectively operated the One Investment Program for the Ontario municipal sector since 1993. Until 2010, the program was operated under the name of 'One – The Public Sector Group of Funds' or the One Funds.

It is the intent of this report to demonstrate how the One Investment Program has long offered competitive investment options that are safe and credible for our core investors (i.e. municipalities), with a mind toward minimized investor risk. In addition, based on the One Program's lengthy evidence of thoughtful program design and operation, we are seeking additional investment powers for the program.

One Investment Program Background (including activity since O. Reg. 655/05)

From inception until 2007, the One Program offered two investment options to Ontario municipalities: a short-term Money Market Portfolio and a medium-term Bond Portfolio. In 2005 One was granted additional investment powers under the Municipal Act Eligible Investments regulation (via O. Reg. 655/05), which granted One the ability to invest in longer term corporate debt instruments and shares of Canadian corporations. These expanded investment powers were offered to the Ontario municipal sector only via the One Program. These changes resulted in the launch of a long-term Equity Portfolio offering by One in 2007, and a medium-long term Universe Corporate Bond Portfolio offering in 2008.

When One was given the expanded investment powers through O. Reg. 655/05, a comprehensive assessment process was undertaken to determine how the new investment powers could be turned in appropriate investment options for the Ontario municipal sector. In addition, One also sought to develop a defensible governance and oversight framework for these new expanded investment powers. The first step in One's review was to identify an appropriate independent investment consultant to assist in guiding this process. A CFA with an expertise in foundations, first nations, and not-for-profit clients, was selected to aid LAS and CHUMS, and this individual continues to be retained by One to this date.

One then assembled a 'Working Group' of municipal finance representatives who were interested in assisting in the development of a framework for the new One Program investment portfolios, which also addressed concerns over investment risk and liquidity. The Working Group was composed of representatives from municipalities of various sizes to ensure that all potential One Program stakeholders had a voice in the development of the new investment strategies.

The group established that the first priority in the development of any new longer-term investment mandates for One, or the review of the existing One Program investment mandates (i.e. Money Market and Bond Portfolio) should be risk control and return enhancement. This focus was evidenced in the 2007 revision and expansion of the fixed income investment policies, and also the creation of a conservative equity investment framework.

A summary of the review and activities of the working group related to the One Program investment offerings is as follows:

Fixed Income

Through the municipal working group, One undertook a review of how municipal investors were using the existing Money Market and Bond Portfolios, and whether there were changes that could be made to the portfolios, to ensure a better match between municipal investment horizons and the management of the portfolios.

One staff and the working group also consulted with the current investment managers and the external CFA consultant to identify opportunities and risks related to an expansion of the investment mandate, both from an investor and also a portfolio perspective. Small changes were made to the investment guidelines related to the One Bond Portfolio, but more significant changes for the Money Market Portfolio resulted from this review process:

1) Change of the portfolio management guidelines, including lengthening the average term of the existing portfolio to better reflect actual investment time horizons.
2) Change of the portfolio benchmark from the 30 day T-bill index to the 182 T-bill index.
3) Change of portfolio manager to achieve a more focused and advantageous investment strategy, consistent with investor expectations.

The review also found a need for a medium-long term bond investment option for the sector, given the new powers granted to the One Program via O. Reg. 655/05. It was deemed appropriate to launch a new corporate bond portfolio, rather than altering the focus and purpose of the existing short-medium term One Bond Portfolio, as it may have resulted in some inappropriate investments by existing portfolio investors.

A new Universe Corporate Bond (UCB) Portfolio was designed to provide municipal investors the ability to better match the time horizon of the securities with the time horizon of longer term liabilities. The portfolio is managed to have a similar duration as the DEX Universe Bond Index, in keeping with the long term nature of infrastructure reserve funds. In addition it provides investors with the opportunity to improve earnings through its focus on very high quality corporate issues.

Shares of Canadian Corporations

O. Reg. 655/05 also provided municipalities with the ability to invest in Canadian equity investments, but this power was granted only through the One Investment Program. Although a desirable expansion of the investment regulation, this new investment opportunity presented a significant challenge for the One Program, in that only 'shares of Canadian corporations' are eligible investments and the Canadian equity market is limited in terms of quality and diversification by both industry sector, and specific securities.

In 2006, One staff, along with our independent CFA consultant and working group, set to develop investment guidelines for the portfolio. It was discovered that the Canadian equity market was heavily dominated by three sectors: Financials, Materials and Energy, which represented a total of 75.9% of the market capitalization of the S&P / TSX Composite Index at December 31, 2006 – see below table. In addition, of the remaining sectors there was a limited selection of high quality companies that had proven track records of stable performance and steady dividends, which is exactly the type of investment desired by the One Program for our municipal investors.

SECTOR	At December 31, 2006	
	S&P /TSX Composite	MSCI World
Consumer Staples	2.6%	8.0%
Consumer Discretionary	5.2%	11.4%
Industrials	5.3%	10.7%
Utilities	1.5%	4.4%
Telecom Services	5.0%	4.5%
Energy	27.9%	9.1%
Information Technology	3.7%	10.4%
Healthcare	0.8%	9.2%
Financials	31.9%	26.4%
Materials	16.1%	6.0%

In contrast, the global equity markets were, and continue to be, more broadly diversified across the industry sectors, as demonstrated in the table below.

Group & Sector Allocations at Jan 2007		
MSCI World GIC Sector	MSCI World Sector Weightings	S&P TSX Sector Weightings
Resource	**15.10%**	**44.00%**
Energy	9.10%	27.90%
Materials	6.00%	16.10%
Consumer	**28.60%**	**8.60%**
Health Care	9.20%	0.80%
Consumer Discretionary	11.40%	5.20%
Consumer Staples	8.00%	2.60%
Interest Sensitive	**30.80%**	**33.40%**
Financials	26.40%	31.90%
Utilities	4.40%	1.50%
Industrials	**25.60%**	**14.00%**
Industrials	10.70%	5.27
Information Technology	10.40%	3.72
Telecom Services	4.50%	4.97

The challenge faced by the One Program given the above facts, was to design a portfolio structure that would minimize risk, ensure appropriate diversification, and remain compliant with the Municipal Act Eligible Investment regulation limitation to invest only in shares of Canadian corporations. This challenge is not faced by other similar institutional investors, including Housing Services Corporation (formerly Social Housing Services Corporation), OMERS, and Teachers; these organizations have the

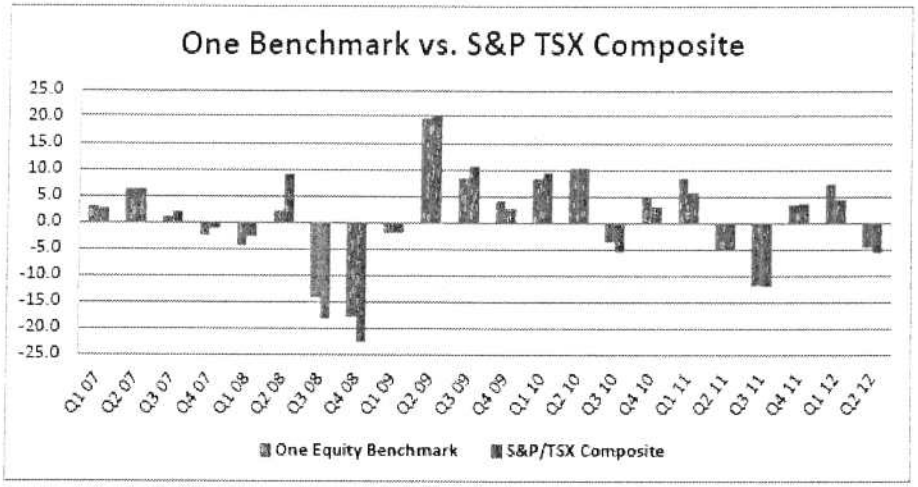
ability to gain effective diversification while maintaining liquidity through the inclusion of Income Trusts, Real Estate Investment Trusts as well as shares of non-Canadian issuers.

In addition, as a broad, diversified investment universe was not available to One, a customized portfolio structure was designed for the One Equity portfolio to ensure a minimal amount of risk and maximum investment diversification for municipal investors.

The portfolio structure developed by One requires the portfolio manager to maintain broad industry diversification similar to that exhibited in global equity markets (via the MSCI world sector weightings) while still adhering to the Municipal Act Eligible Investment regulation limitation of investment in only shares of Canadian corporations. The One portfolio benchmark superimposes the MSCI world sector weightings over the S&P/TSX to create a diversified portfolio of eligible investment options for the One Equity Portfolio. The benchmark is reviewed and amended twice each year, the original allocation for the One Equity Portfolio is below.

Group & Sector Allocations as at Jan 2007							
Group	MSCI World GIC Sector	MSCI World Sector Weightings	S&P TSX Sector Weightings	Relative Minimum	Relative Maximum	Actual Minimum	Actual Maximum
Resource		**15.10%**	**44.00%**	50%	150%	7.55%	22.65%
	Energy	9.10%	27.90%		2 times sector weight		
	Materials	6.00%	16.10%				
Consumer		**28.60%**	**8.60%**	75%	125%	21.45%	35.75%
	Health Care	9.20%	0.80%		2 times sector weight		
	Consumer Discretionary	11.40%	5.20%				
	Consumer Staples	8.00%	2.60%				
Interest Sensitive		**30.80%**	**33.40%**	75%	125%	23.10%	38.50%
	Financials	26.40%	31.90%		2 times sector weight		
	Utilities	4.40%	1.50%				
Industrials		**25.60%**	**14.00%**	75%	125%	19.20%	32.00%
	Industrials	10.70%	5.27		2 times sector weight		
	Information Technology	10.40%	3.72				
	Telecom Services	4.50%	4.97				

Over the six years the One Equity Portfolio has been available to municipal investors, the portfolio has performed as expected by balancing risk management with reasonable performance over the longer term. This is evidenced in the below chart with a comparison to the S&P TSX performance.



During the North American credit crisis of 2008, the design of the One Equity Portfolio provided significant capital protection to investors, consistent with its design. With the custom benchmark, the One Equity Portfolio was designed to minimize, as much as possible, extreme negative returns through appropriate diversification, while also providing near market returns on the upside. In short, the One Portfolio was designed not to chase returns in a rising market; instead the portfolio invests in proven and predictable companies that continue to grow over time.

To ensure effective oversight, risk control, and portfolio operation, LAS and CHUMS staff continue to review the portfolio operation periodically, and the One Program Advisory Committee formally meets with the portfolio manager semi-annually.

A formal review of all four current One Program portfolios is conducted annually by One's independent CFA consultant, in order to assess if the performance of the One Program portfolios are acceptable, both from a returns perspective but also a risk management perspective. The findings of these annual reviews are shared by LAS and CHUMS with the One Program Advisory Committee, and are also summarized in the program's year-end report to investors.

One Program Commitment to Investor Education and Support

LAS and CHUMS believe that developing an appropriate investment portfolio approach is not enough, since the expanded investment powers were granted to the One Program via O. Reg. 655/05, LAS and CHUMS have undertaken a committed effort to educate municipal staff and elected officials about the investment options available to them, their related responsibilities, investment strategies, and opportunities related to the One Investment Program. Our belief is that no investment option should be considered by a municipality if the investor is not aware of the investment type, potential risks, etc.

Since receiving enhanced investment powers for the One Program in 2005, LAS and CHUMS have provided education and support through multiple channels, including conference presentations at various MFOA and AMO conferences and events, targeted presentations to municipal administrator/treasurer groups, telephone availability, robust website information, as well as quarterly investment program reports that are pushed out to key individuals within the Ontario municipal sector. LAS and CHUMS have also delivered 'Investment 101' educational seminars to more than 235 municipal staff and elected officials on investment powers, opportunities and responsibilities since 2009.

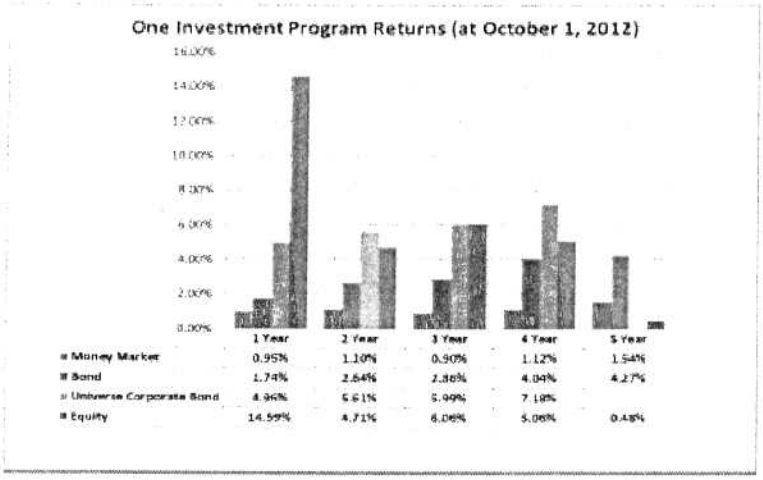
In addition to sector outreach, staff has made great efforts to ensure that investors and potential investors are aware of the appropriate investment duration for all monies invested in any of the One Program portfolios. An example of our education is the below table from our marketing collateral:

Portfolio	Intended Investment Duration	Investment Approach	Holdings
Money Market	1 month to 18+ months	Preserve capital and maintain liquidity while maximizing short term income	• Canadian treasury bills • High quality commercial paper • Banker's acceptances • Floating rate notes
Bond	18 months to 3+ years	Provide a higher return over longer investment horizons through diversified investments	• Federal, provincial and municipal bonds • High quality bank paper • Bank guaranteed debt
Universe Corporate Bond*	4+ years	Investment in highly rated corporate bonds maturing over a wide timeframe	• Canadian corporate bonds • Federal, provincial and municipal bonds
Canadian Equity*	5+ years	A diversified, conservatively managed portfolio of equity securities issued by Canadian corporations	• Canadian equity securities

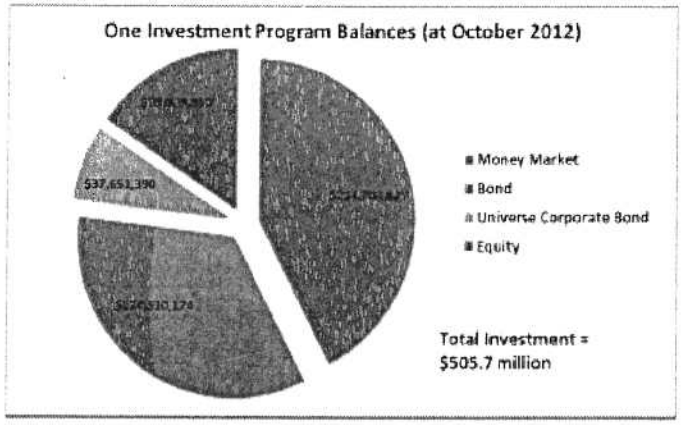
* Available to Ontario municipalities only through One Program as per the Municipal Act Eligible Investment regulation

One Investment Program Results

The results of the One Programs commitment to provide municipalities with a greater understanding of both the benefits and the risks of investment through education, and also the opportunity to better match their investments to their short and long term liabilities has been proven. Despite the challenges noted in this report, 'early adopter' municipalities in both the One Universe Corporate Bond Portfolio and Equity Portfolio have benefitted from enhanced investment returns – see the three and four year returns for both the One Universe Corporate Bond Portfolio and Equity Portfolio below, which are presented on a net of fees basis.



The consistently demonstrated focus on strong governance, program oversight, and risk controls has been recognized by One investors and is a key reason for their continued participation in the program. At October 2012, total investment in the four One Program portfolios totaled almost $506 million – as below.



Proposed Revisions to Eligible Investment Regulations

One has demonstrated an ongoing commitment to risk control and strong oversight while evolving the mandates of each of the portfolios to provide competitive and diversified investment options to our municipal investors. To continue with this mandate, LAS and CHUMS propose the following amendments to the Eligible Investment regulation as it relates to the One Investment Program.

Fixed Income Investment

Our ask: We request a change to the Eligible Investment regulation to make 'BBB' rated issues an eligible investment option for the One Investment Program and our municipal investors.

A challenge for the One Universe Corporate Bond Portfolio is the credit quality restrictions within the current Eligible Investment regulation. These restrictions severely limit the investable universe for this portfolio as the following tables demonstrates.

DEX All Corporate Bond Index		
	% of Index	
	Issues	Market Value
AA	15.8%	29.0%
A	49.0%	43.3%
BBB	35.1%	27.7%

The current credit quality restrictions on Corporate issues with greater than five years to maturity excludes 35.1% of the available investment grade issues and 27.7% of the investable universe defined by the market value of issues within the index.

In addition, with short-term interest rates at or close to record lows, our municipal investors find themselves in a yield-starved environment.

Adding an allocation to BBB-rated corporate bonds has the potential to:

- Enhance the One portfolio's overall yield and total return
    - over the past 20 years, the spread between BBB and A rated corporate bonds – the BBB/A quality spread – has averaged 0.74% within the DEX Short Term Bond Index and 0.61% within the DEX Universe Bond Index over the same period. (Source: PC Bond)

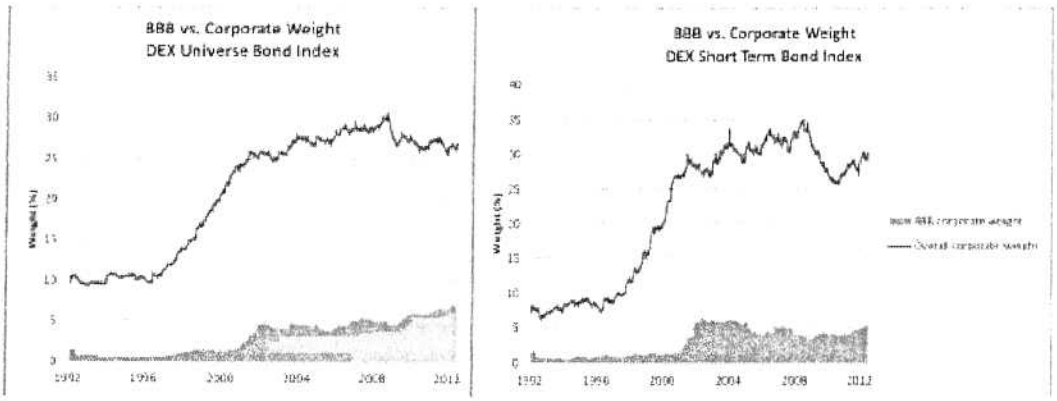
- Offer diversification benefits due to their lower correlations to other sectors of the bond market and can enhance risk-adjusted returns
    - Using ten years of historical data from the DEX Short Term Bond Index, adding BBB corporates in their index weight of approximately 5% boosts the average annual total return by 0.05% while reducing the standard deviation of returns. (Source: PC Bond)

- Provide a measure of total return in the event that interest rates rise, given the spread cushion.

Size Matters

The corporate bond market has grown considerably and now represents a significant share of the overall bond market in Canada. As the charts below illustrate, corporate bonds have grown from below 10% of the universe of bonds to almost 30%. Growth in the weight of BBB-rated corporates has been just as robust, 7.5% of the DEX Universe Bond Index and 27% of the Index's overall corporate weight (Source: PC Bond, as of June 30, 2012).

As of the end of the second quarter 2012, the size of the BBB-rated corporate bond market in the DEX Universe Bond Index was $87 billion and includes such Canadian household names as Rogers, Loblaw, CP Rail, and Enbridge (Source: PC Bond).

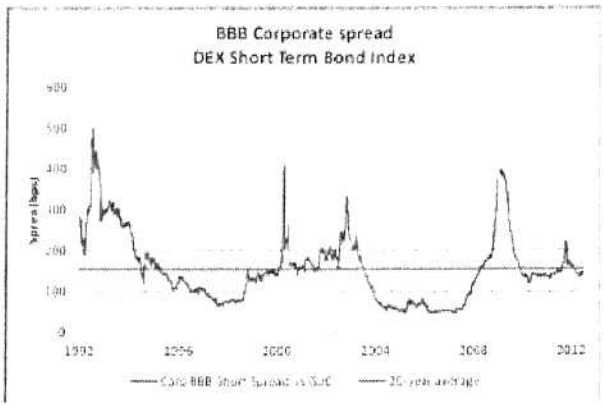


Given the increase of BBB-rated corporate bonds, there is a much larger benchmark risk than there was 20 years ago associated with a portfolio that prevents investment in lower-rated investment grade (i.e. BBB) issues.

Why consider allowing BBBs for the One Program portfolio?

- **Capital appreciation**: An investment in BBBs may generate capital appreciation in the event of improving company fundamentals, an upgrade, or a healthier macroeconomic landscape.
- **Spread cushion**: BBBs possess a spread cushion that should provide some beneficial measure for total return when interest rates rise.
- **Diversification**: BBBs typically have had lower correlations to other sectors of the bond market relative to higher grade bonds and therefore may provide diversification benefits.
- **Enhanced yield**: BBBs generally have offered higher yields than higher-grade corporates in order to compensate investors for the slight additional risk.

Naturally, in the current yield-starved environment, the last bullet point is the most attention grabbing. A scarcity of income due to unprecedented low interest rates has made the yields offered by lower-grade issues especially attractive. The following chart shows the spread relationship between BBB-rated corporates and Government of Canada issues within the DEX Short Term Bond Index. (Source: PC Bond, as of June 30)



Clearly, this spread fluctuates over time, generally widening during times of market stress and narrowing during periods of more stable and healthy economic growth. As of the end of the Q2 2012 this spread was approximately equal to its twenty year average of 1.55%.

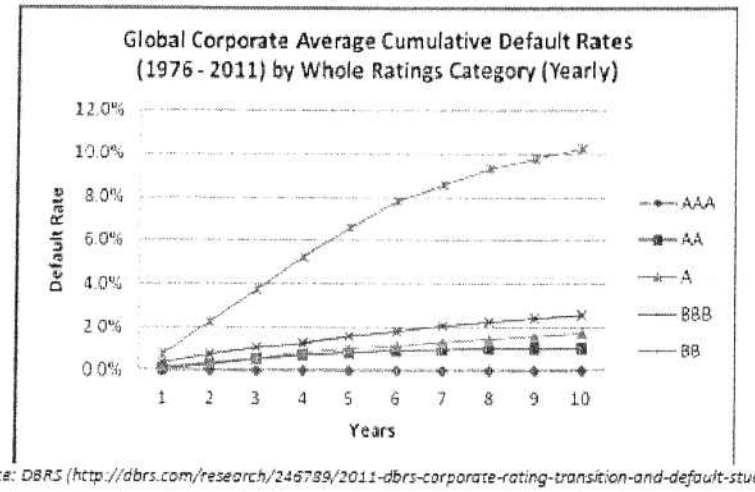
Furthermore, BBB corporates have offered a positive spread vs. those assigned an A rating, averaging 0.75% over the past twenty years. The BBB/A spread has narrowed since 2004, but has still averaged 0.33%. (Source: PC Bond, as of June 30)

What are the risks?

The prospect of higher yield and total return comes with a trade-off: slightly increased risk. Broadly-speaking, this higher risk stems from the higher credit risk associated with BBB issuers. Spreads can widen due to company-specific or macro-level concerns, a bond's price can fall as a result of a downgrade, or the issuer can default by failing to meet its interest or principal payments.

Default Risk

Default risk is the risk that a bond issuer will be unable to make the required payments on their debt obligations. Historically, the Canadian bond market does not have a notable history of defaults. In a study published earlier this year, ratings agency DBRS looked at all the corporate issuers for which it had assigned ratings from 1976 through 2011. The following chart shows the average cumulative default rates by rating over that period:



Source: DBRS (http://dbrs.com/research/246789/2011-dbrs-corporate-rating-transition-and-default-study.pdf)

For instance, 5 years after having assigned an issuer a rating, those with a rating of A had a 1.0% cumulative probability of default, whereas those with a rating of BBB had a 1.6% probability of default. As expected, the risk of default is greater for BBBs, however the differential between BBBs and other investment grade issues is much smaller than the differential between investment and non-investment grade (i.e. below BB).

Furthermore, it can be argued that the extra yield generated by BBB issues more than compensates for the incremental additional risk of default. In other words, even if there are more defaults in the BBB space, the additional total return provided by those BBB issues that remain solvent may be adequate to offset the additional risk.

In summary, broadening of the issues eligible for investment by One to allow for 'BBB' issues would allow the portfolio the ability to offer better diversification of both issuers and sector exposures. The increase in eligible issuers would enable One to access the entire universe of corporate issues and provide better diversification within the portfolio.

Equity Investment

Our ask: We request that the list of eligible investments for the One Investment Program be expanded to include Real Estate Investment Trusts (REITS).

Even with the customized portfolio benchmark for the One Equity Portfolio, we continue to face challenges in constructing a suitably diversified, conservative portfolio for our municipal investors. This

is particularly evident in the limited Canadian market universe in the Consumer Staples, Healthcare, Utilities, Real Estate and Telecom Services sectors, for large capitalization, stable, dividend paying companies. In particular within the Real Estate sector the security profile that is most suitable to the One portfolio is typically found in Real Estate Investment Trusts rather in within corporate issues.

Eligible Program Investors

1) **Our ask: We request that AMO/LAS, MFOA/CHUMS and other Ontario municipal associations, and their subsidiary companies, be added to the list of 'eligible investors' that municipalities can 'comingle' investments with. This would allow municipal associations the ability to invest in the One Investment Program.**

Currently AMO/LAS and MFOA/CHUMS are not eligible investors for the One Investment Program due to the co-mingling restrictions within the Eligible Investment regulation. Allowing these organizations, and all other Ontario municipal associations, to invest alongside the current municipal investors would further align the interests of investors with the interest of the program sponsors. This would ensure that a key governance principle of aligning stakeholders' interests with management / operators could be demonstrated in the One Investment Program. The ability to invest in the One Program is a request that has also been made by a variety of AMO and MFOA sister municipal associations (i.e. AMCTO, NOMA, etc.) in recent years.

2) **Our ask: We request consideration related to providing First Nations groups the ability to invest in the One Investment Program.**

Another group that could potentially benefit from eligibility to invest through the One Program is First Nations. While it is true that many First Nations are poor there are also many who are not and who manage substantial budgets. Our independent CFA consultant has tremendous experience with First Nations groups and has noted that many would have an interest in a pooled investment option like the One Investment Program. First Nations in British Columbia are currently entitled to invest in the MFABC pooled funds and many do participate. Many Fist Nations receive funds from industry as a result of Impact Benefit Agreements, and others retain settlements resulting from land claims that are investable monies for the First Nation government.

Granting First Nations organizations eligibility to invest through One would provide an additional option for these historically disadvantaged communities to obtain competitive rates of return within a strong governance framework. We request that this option be considered by the Province.

Appendix B

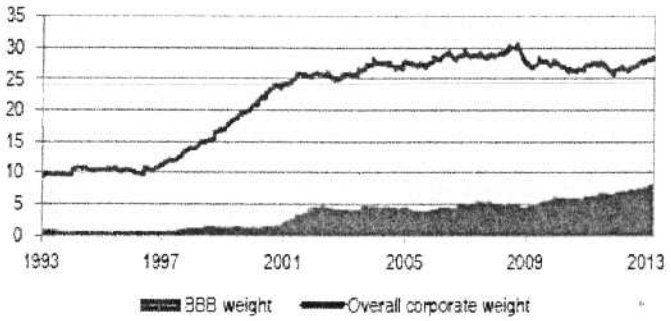
MFS McLean Budden

BBB-rated bonds: An essential component of a well-diversified, investment grade Canadian bond portfolio

Market size:
BBBs represent a growing proportion of the Canadian bond market

Corporate bonds are an increasingly important part of the Canadian bond market. As illustrated in the chart below, corporate bonds now represent almost 30% of the investible universe. More and more companies – both Canadian and non-Canadian – are issuing bonds in Canada.

DEX Universe Bond Index Composition



Source: PC Bond, as of March 25, 2013

While the overall corporate weight in the DEX Universe Bond Index has increased over the past 20 years, even more striking has been the growth in BBB-rated names. As of March 25, 2013, the size of the BBB market in Canada was $101 billion, or 8.2% of the DEX Universe Bond Index and 29% of the DEX Corporate Bond Index.

Importantly, we expect this trend to continue.

Risk:
The importance of carefully monitoring the risk of all securities in a portfolio

All corporate bonds, no matter the rating, have an element of default and price risk. As individual securities, BBB-rated bonds carry greater risk than higher-grade issues *in the opinion of the credit rating agencies*. Broadly-speaking, this higher perceived risk stems from the higher credit risk associated with BBB issuers. Spreads can widen due to company-specific or macro-level concerns, a bond's price can fall as a result of a downgrade, or the issuer can default by failing to meet its interest or principal payments. BBB-rated bonds, as individual securities, tend to have higher price volatility. Event risk such as M&A must also be considered, although it is the higher-rated credits and less often BBBs that are typically targeted for M&A activity as the higher-rated credits have a greater ability to add leverage to their balance sheets in order to finance the activity.

As a result, an investment grade portfolio that includes BBB-rated bonds should have appropriate risk management processes in place. These may include limits on position sizes on individual issues or issuers, a maximum allowable allocation to BBB-rated bonds, and most importantly, a fundamental credit research process that identifies and monitors investments from a credit risk perspective. A good bond manager will not rely on the credit rating agencies

for credit opinions; rather, a good bond manager, using all the resources at its disposal, will formulate its own opinions on a particular issuer's creditworthiness.

Benefits:
Potential for greater risk-adjusted portfolio returns, and benefits from diversification

In the context of an overall Canadian investment grade bond portfolio, there are several potential benefits to introducing BBB-rated bonds:

- Enhanced yield: BBBs generally offer higher yields than higher-grade issues in order to compensate the investor for additional perceived risk.
- Capital appreciation: An investment in BBBs may generate capital appreciation in the event of improving company fundamentals, an upgrade, or a healthier macroeconomic landscape.
- Spread cushion: BBBs possess a spread cushion that should provide some measure of protection for total return in the event that interest rates rise.
- Diversification: BBBs have lower correlations to other sectors of the bond market relative to higher-grade bonds and therefore provide diversification benefits.

This last bullet deserves further discussion. The benefits of diversification are derived both in terms of names and in terms of industries. For instance, the Canadian telcos are all BBBs: Bell, Telus, Rogers, Shaw. Most industrial names (Cameco, CP Rail) as well as many of the consumer names (Loblaw, Canadian Tire) are BBBs.

The following table – which depicts the corporate segment of the DEX Universe Bond Index – offers some perspective on the diversification benefits of including BBBs in a fixed income portfolio in terms of sectors, names, and issues:

Rating		Communi-cations	Energy	Financial	Industrial	Infra-structure	Real Estate	Securitization	Total
AAA	Size			3 B				9 B	12 B
	# Issues			3				16	19
	# Issuers			1				9	10
AA	Size			76 B		3 B	2 B		81 B
	# Issues			66		9	6		81
	# Issuers			10		3	1		14
A	Size	3 B	27 B	80 B	5 B	40 B	2 B		157 B
	# Issues	4	119	130	15	113	5		386
	# Issuers	2	23	43	7	34	4		113
BBB	Size	33 B	20 B	17 B	18 B	9 B	5 B		101 B
	# Issues	56	72	37	61	29	25		280
	# Issuers	10	22	19	24	9	7		91
	BBB examples	Bell, Rogers, Telus, Shaw	TransAlta, Encana, Union Gas	BMO & CIBC Tier 1 Captial, Ford Credit	Cameco, CP Rail, Cdn Tire, Loblaw	407 Int'l, Nova Scotia Power, Fortis	RioCan REIT, First Capital Realty		
Total	Size	36 B	46 B	176 B	23 B	52 B	8 B	9 B	350 B

Source: PC Bond, MFS McLean Budden, as of March 25, 2013

Simply put, a portfolio consisting solely of AAA, AA, and A-rated bonds would be very heavily weighted in government bonds and financials, which is demonstratively riskier than a well-diversified portfolio that includes BBBs. Using 10 years of DEX Universe Bond Index returns, the following table shows how hypothetical portfolios with varying amounts of BBB-rated bond weights would have performed:

BBB weight[1]	Annualized 10-year return	Annualized standard deviation
0.00%	6.00%	1.98%
5.00%	6.07%	1.92%
10.00%	6.14%	1.91%
15.00%	6.21%	1.94%
20.00%	6.29%	2.01%

Source: PC Bond, MFS McLean Budden

While one may be inclined to believe that risk in the portfolio increases by adding BBBs, a responsible portfolio manager would actually be attempting to better manage risk while seeking better risk-adjusted returns. A 10% allocation to BBBs over the past ten years would have generated a higher return with a lower amount of risk than one with no BBBs. And an 18% allocation to BBBs over the past ten years would have out-yielded a portfolio with a 0% allocation by 26bps with the same amount of risk.

The views expressed are those of the author, and are subject to change at any time. These views do not necessarily reflect the views of MFS McLean Budden or others in the MFS McLean Budden organization, and should not be relied upon as investment advice, as securities recommendations, or as an indication of trading intent on behalf of any MFS investment product.

[1] Scenario analysis uses DEX Universe Bond Index weights and returns by sector: Federal bonds, provincial bonds, municipal bonds, AAA/AA corporates, A corporates, and BBB corporates. Non-BBB sector scenario weights derived in proportion to their weight in the index. Benchmark returns used for the ten-year period ended December 31, 2012.

Appendix C

To: The One Investment Program

From: Brian Holland, Senior Vice President, Guardian Capital LP

Date: March 27th 2013

Re: Rational for the inclusion of Real Estate Investment Trusts in a Canadian Equity Portfolio

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This memo is support of the One Portfolio proposal for allowing Real Estate Investment Trusts as a permissible investment in the One Investment Program Canadian Equity portfolio used by Ontario Municipalities.

Measurement: At the end of February, the S&P/TSX Composite Index has a 2.7% exposure to REITs. One of the central principals of investment management practice is that portfolio results should ideally be measured against a benchmark where the manager can invest in the underlying securities. At present, the One Portfolio Canadian Equity strategy is measured, albeit by a small amount, against the performance of REITs in the S&P/TSX Composite Index and these are not permissible investments.

Performance: Below is a comparison of the S&P/TSX Composite Index versus the S&P/TSX Capped REIT Index[1]. As indicated, this 'sub-group' of assets has performed well.

Comparison of the S&P/TSX Capped REIT Index vs. the S&P/TSX Composite Index (Total Return %)
Ending December 31st 2012

	1 Yr	2 Yrs	3 Yrs	4 Yrs	5 Yrs	6 Yrs	7 Yrs	8 Yrs	9 Yrs	10 Yrs
S&P/TSX Cdn REIT Total Return	16.97	19.30	20.39	28.29	10.93	7.89	10.15	11.94	12.16	13.47
S&P/TSX Composite Total Return	7.19	-1.08	4.79	11.85	0.81	2.26	4.28	8.58	7.43	9.22

Portfolio Exposure: Guardian Capital has a specialty practice in managing REIT portfolios and we are therefore very familiar with most of the quality oriented REITs in Canada. Current REITs held in all Guardian Capital portfolios is approximately $600 million. At this time, for the One Portfolio we would be investing in only RioCan, the largest REIT in Canada, specializing in shopping malls and retail facilities. The current yield on this security is 5.17% and its total market capitalization is $8.1 billion. Typically, the portfolio will hold approximately 2% in any one particular investment.

Diversification: REITs are contained within the Financial sector of the S&P/TSX Composite Index. By allowing these securities, the portfolio has the opportunity in to increase diversification in the Financial sector beyond the traditional banking and insurance company holdings. In certain market cycles, the ability to hold securities other than banking or insurance companies may help reduce portfolio risk and/or enhance results.

[1] Note that the S&P TSX Capped REIT Index is not a sub-set of the S&P TSX Composite and is shown from illustrative purposes. The REIT membership and weights, therefore, may differ between indices.

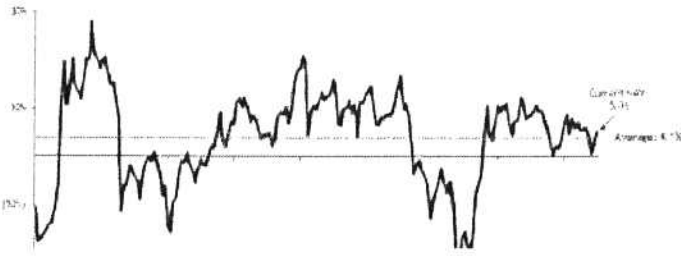
Investment Opportunity: At the end of February 2013, there were 15 REITs included in the S&P/TSX Composite Index. As with all asset classes, the quality of the securities vary, however, as portfolio managers we believe that this is a sufficient number of securities to select from in order to perform our analysis and to make comparisons for valuation purposes.

Characteristics: REITs are generally lower growth securities that pay most of their profits to unit holders. Below is a comparison of market statistics of a selection of REITs versus both the S&P/TSX Composite Index and the Financial sector. This analysis is based on the Morningstar (CPMS) analysis as of March 26th 2013.

	S&P TSX Composite	Financial Sector	Selection of REITs
Number of Securities in Analysis	240	89	22
Expected Yield %	3.09	2.82	4.99
5 yr normalized Dividend growth (%/yr)	8.18	3.76	1.43
Long Term Debt to Equity Ratio	0.47	0.40	0.83
5 yr normalized sales growth (%/yr)	3.99	2.10	-1.66
5 yr normalized earnings growth (%/yr)	6.08	10.49	32.05
10 yr normalized earnings growth (%/yr)	9.42	4.21	5.87
Current Price/Book ratio	1.86	1.13	1.21

Current Valuations: REITs currently looks expensive on some relative index measures but more reasonable when compared to the price-to-net-asset values (NAV) and comparative U.S. REITs. Below is a long term illustration of the valuations of REITs versus their NAV.

Canadian REITs: Public valuation versus value of net asset value of real estate holdings



Source: RBC Capital Markets as of January 31, 2013

Outlook: We expect good cash flow growth into 2013 driven by healthy fundamentals, interest cost savings on debt refinancing, and accretive acquisitions. The sector should continue to benefit from continued stable outlook for commercial property fundamentals, valuation support from direct property markets, low interest rates, attractive relative yields, and good cash flow growth. From a stock selection perspective, we believe it remains prudent to maintain our bias to higher quality, mid to large cap companies at this time.

Jim Watson
Mayor / Maire

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September 4, 2015

The Honourable Charles Sousa
Minister of Finance
Frost Building South
7th Floor, 7 Queen's Park Crescent
Toronto ON M7A 1Y7

The Honourable Ted McMeekin
Minister of Municipal Affairs and Housing
College Park, 17th Floor
777 Bay Street
Toronto, ON M5G 2E5

Dear Ministers Sousa and McMeekin,

At a time when both the Provincial and municipal governments are looking for ways to generate funds to address much needed services such as transit, we would like to offer a recommendation that could benefit both levels of government. The simple and non-controversial amendment we are recommending to the tax regulations would ensure that both levels of government receive the full value of new properties added to the tax roll and would generate millions more of education taxes each year for the Province.

The current methodology prescribed under regulation as to how property tax rates are to be adjusted each year to take into account the phasing-in of property values has a small flaw which compounds over time. That flaw does not allow for corrections to the tax roll to be distinguished from new properties being added to the tax roll, resulting in an overall loss of taxation from real growth. Using data provided by the Municipal Property Assessment Corporation we have calculated the amount of taxes lost in 2015 as a result of this flaw in methodology as $119 million in education taxes and $400 million in municipal taxes across Ontario.

The impact of this flaw in methodology is particularly important to the City of Ottawa as without it we stand to lose $4 million in taxes next year as a result of a correction to the assessment values for a number of office towers. Without the recommended correction the Province will lose $3 million in education taxes from the same error.

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As this is a fairly technical issue we have attached a white paper that details the problem and provides a simple amendment to the existing regulations that will rectify the problem. Staff at the City of Ottawa are available to provide any clarifications you may require.

Thank you for your attention to this matter and I look forward to a positive response on the ability to amend the regulations.

Sincerely,

Jim Watson
Mayor
City of Ottawa

Attachment

c.c. The Honourable Kathleen Wynne, Premier, Province of Ontario
The Honourable Bob Chiarelli, Minister of Energy
The Honourable Yasir Naqvi, Minister of Correctional Services
The Honourable Madeleine Meilleur, Attorney General
John Fraser, MPP for Ottawa—South
Marie-France Lalonde, MPP for Ottawa—Orléans
Grant Crack, MPP for Glengarry—Prescott—Russell

WHITE PAPER

HOW CORRECTIONS TO THE TAX ROLL RESULT IN LOST TAX REVENUE

SUMMARY

- One of the benefits of the new municipal assessment regime introduced in 1998 was allowing municipalities and the Province to identify and benefit from real assessment growth on the tax roll.

- To ease the impact on taxpayers of regular updates to their assessment values the new system phases-in those values over a four year period. As a result of this new regime and the phase-in the Province requires the prior year's municipal tax rates be recalculated annually using the current year's assessment values as part of the process to establish rates for the current year. This is done so that tax impacts resulting from reassessment can be distinguished from tax impacts arising from tax increases. The Province uses the same methodology to calculate their education tax rates each year.

- A small but compounding error in how this recalculation is performed has led to a steady erosion of property taxes, for both the municipalities and the Province, amounting to the following:

	Total Loss in Tax Revenues (2001 to 2015)	Loss in Tax Revenues in 2015
Province (education tax)	$876,000,000	$119,000,000
Municipalities	$2,600,000,000	$400,000,000

  For the Province, not only does this represent a significant reduction in the education tax base, it also leads to increasing fiscal pressure from municipalities to close the gap created through the ongoing erosion of the municipal tax base.

- Simply put, the problem is that MPAC makes a small number of errors in each reassessment which are only corrected during the four years of phase-in, but there is no way to account for the errors in the recalculation of municipal rates each year that does not result in a loss of taxes.

- This error, which is ***costing the province and municipalities over $500M in lost revenue in 2015,*** can easily be corrected through a simple amendment to *Ontario Regulations 73/03 and 121/07* to ensure that the notional rate methodology includes an easily determined adjustment to reflect corrections during the year on the tax rolls. This money is critically needed to support the Province's infrastructure renewal and transit expansion program. Future losses can be stopped with a simple and non-controversial regulatory change.

BACKGROUND

Each year Ontario Municipalities must recalculate their prior year's tax rates as part of the process for setting the current year tax rates. This has now become an annual requirement as a result of the phasing-in of property value changes over a four year period. Using the tax rates for the prior year multiplied by the Current Value Assessment (CVA) on the roll at the end of the prior calendar year produces a tax value that is then divided by the new year's phased-in assessment values to generate "notional rates" for the previous year.

With phased-in increases to assessment values the "notional rates" will be lower than the previous year's rates and become the new starting point before any budgetary tax increase is added. This can be seen in an example of a municipality with:

- A constant tax requirement of $1,000,000,
- A current CVA of $100,000,000;
- An increase to the CVA of $20,000,000 that is being phased in over four years; and
- No other changes to the CVA over the time period.

Using the recalculation methodology that is laid out in *Ontario Regulation 73/03*[1], the notional tax rate will drop each year as follows:

	Year 0	Phase-In Year 1	Phase-In Year 2	Phase-In Year 3	Phase-In Year 4
CVA	100,000,000	105,000,000	110,000,000	115,000,000	120,000,000
Notional Tax Rate	1.0%	0.95238%	0.90909%	0.86957%	0.83333%
Taxes Generated	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000

This recalculation allows taxpayers to distinguish changes in their property taxation that are attributable to budgetary tax increases from those that are a result of tax shifting from reassessment. Without the

[1] The methodology for the notional rates is included in *Ontario Regulation 73/03 Tax Matters – Special Tax Rates and Limits, 2003 and Later Years,* made under the *Municipal Act, 2001,* and in *Ontario Regulation 121/07 Traditional Municipal Taxes, Limits and Collection,* made under the *City of Toronto Act, 2006.* The process to split the calculation on the property tax bill between a reassessment change and municipal/education levy change (budgetary or inflationary) is legislated under *Ontario Regulation 75/01 and 122/07 Tax Matters – Property Tax Bill Form and Content* made under the *Municipal Act, 2001* and the *City of Toronto Act, 2006.*

requirement to calculate a new notional rate, it would be possible for municipalities to increase taxes by keeping the tax rate constant and applying it to an ever increasing CVA.

These calculations are also critically important for the province, since **the province uses the same methodology to produce a notional rate for its education tax.**

THE SOURCE OF ERROR

When tax rates are set at the beginning of each year, the assumption in the formula laid out in *Ontario Regulation 73/*03 and *121/07* is that the CVA that is determined during a reassessment is 100% accurate and that it contains no errors in the assessment values that will used to calculate tax rates. In reality, Request for Reconsideration (RFR), Assessment Review Board (ARB) decisions and court applications continuously correct errors that reduce the assessment base and result in tax write-offs during the year. At the same time, new properties are also added to the roll. As a result, the CVA at the end of the year may have been reduced through corrections and increased as a result of real growth. Mixing these two sources of change together into a single figure masks the impact that errors in the CVA have on future tax bases, costing municipalities and the Province millions each year.

In order to illustrate this we can return to the same municipality we looked at in the previous example. If we keep all of the parameters the same as before but add in a loss of $1 million per year from RfR and ARB's, we see the following notional rates and taxes they generate prior to any budgetary increase.

	Year 0	Year 1	Year 2	Year 3	Year 4
Original CVA Phase-In	100,000,000	105,000,000	110,000,000	115,000,000	120,000,000
A. Start of Year CVA (Prior Year C + $5 M)	100,000,000	105,000,000	109,000,000	113,000,000	117,000,000
B. In-Year CVA Loss		(1,000,000)	(1,000,000)	(1,000,000)	(1,000,000)
C. Year End CVA	100,000,000	104,000,000	108,000,000	112,000,000	116,000,000
D. Notional Tax Rate	1.0%	0.95238%	0.90869%	0.86848%	0.83136%
E. Taxes Generated (D x A)	$1,000,000	$1,000,000	$990,475	$981,385	$972,697

This example clearly demonstrates that the amount of taxes generated decreases each year. To make matters worse, as can be seen these reductions are compounded over time with $55,443 lost in the four year period. Assuming the municipality continues to require taxation of $1 million to support services, the difference between the taxes required and the taxes generated by the notional rates would be misclassified as a budgetary tax increase. Clearly the cause of the increases in taxes was not a budgetary increase but rather a result of the difference between the CVA at the beginning of the year

($105,000,000) which is used to calculate the notional tax rate and the CVA at the end of the year ($104,000,000) which is used as the starting point to calculate next year's taxes.

The impact of this error is masked when there are both new properties added to the roll and corrections made in the same year. To illustrate this impact we will first return to the same municipality as before but this time with $2 million in new properties being added and no assessment loss during the year.

	Year 0	Phase-In Year 1	Phase-In Year 2	Phase-In Year 3	Phase-In Year 4
Original CVA Phase In	100,000,000	105,000,000	110,000,000	115,000,000	120,000,000
A. Start of Year CVA (C + $5 M)	100,000,000	105,000,000	112,000,000	119,000,000	126,000,000
B. In-Year CVA Gain	0	2,000,000	2,000,000	2,000,000	2,000,000
C. Year End CVA	100,000,000	107,000,000	114,000,000	121,000,000	128,000,000
D. Notional Tax Rate	1.0%	0.95238%	0.90986%	0.87163%	0.83704%
E. Taxes Generated (D x A)	$1,000,000	$1,000,000	$1,019,046	$1,037,240	$1,054,672
F. Taxes from new properties			$19,046	$37,240	$54,672

The $110,958 in additional taxes generated from new properties is easily identified in this scenario and Council would then have the option of either increasing the taxes to be levied in each year by the value of the taxes generated by the new properties or, if they are not required, reducing the tax rate to generate the actual amount required.

When the two scenarios above are combined the result is shown below.

	Year 0	Phase-In Year 1	Phase-In Year 2	Phase-In Year 3	Phase-In Year 4
Original CVA Phase In	100,000,000	105,000,000	110,000,000	115,000,000	120,000,000
A. Start of Year CVA (C + $5 M)	100,000,000	105,000,000	111,000,000	117,000,000	123,000,000
B. In-Year CVA Gain	0	2,000,000	2,000,000	2,000,000	2,000,000
B. In-Year CVA Loss		(1,000,000)	(1,000,000)	(1,000,000)	(1,000,000)

C. Year End CVA	100,000,000	106,000,000	112,000,000	118,000,000	124,000,000
D. Notional Tax Rate	1.0%	0.95238%	0.90948%	0.87061%	0.83522%
E. Taxes Generated (D x A)	$1,000,000	$1,000,000	$1,009,523	$1,018,617	$1,027,323
F. Taxes from new properties			$9,523	$18,617	$27,323

Even though the real growth in assessment was the same in both scenarios the amount of taxation that is available from the new properties is now worth $55,462 which is a loss of $55,495 in taxes compared to the scenario where the roll is returned with no errors. As new properties come with a requirement for municipal services, this error reduces the net amount of taxation available to provide for those services. The choices Council will have in this situation are to either raise overall taxes or reduce service levels.

THE IMPACT OF THE ERROR

Although this error is small, it adds up to a significant reduction in the tax base for the Province and for municipalities. Further, as noted above, these small errors are compounded year over year. Using data provided by MPAC from across Ontario, the impact of this error is estimated to be as follows:

	Total Loss in Tax Revenues (2001 to 2015)	**Loss in Tax Revenues in 2015**
Province (education tax)	$876,000,000	$119,000,000
Municipalities	$2,600,000,000	$400,000,000

This error can be particularly damaging when a large correction to CVA occurs in a single fiscal year. This is the situation that Ottawa is currently facing where an ARB decision in 2015 will eliminate approximately $200 million of assessment in the Office Building class from the values set in 2013. As this error was only rectified after the third year of the assessment phase-in, the notional rates were lower than they should have been in each of those years. Not only will this error result in a multi-year write-off of $11.7 million in taxes against the current year budget, it will, as demonstrated above, result in a permanent drop in the 2016 tax base of $4.3 million as it will reduce the taxation generated from real assessment growth in the City. Correspondingly it will result in a $8.0 million write-off of education taxes and a permanent drop in the 2016 education tax base of $2.9 million. There is no mechanism in the methodology to adjust the notional rate in 2016 to account for it being set too low in the previous 3 years.

As all municipalities have to use this methodology, all are impacted. In Ottawa, the accuracy of the assessment values on the tax roll based on MPAC's annual reports has been estimated on average at 99.85% every year. While this is a high accuracy level, the 0.15% error is compounded each year and, over time, leads to a significant and completely unintended degrading of the tax base over time. The impact to Ottawa of this error on a $1.4 billion tax requirement is a loss of $2M in taxation every year, year over year. After 15 years this equates to a loss of $30M to the 2015 tax base and a cumulative loss of $191 million in taxes over the time period.

PROPOSED SOLUTION

The solution to this problem would be a simple amendment to *Ontario Regulation 73/03* and *121/07* so that the notional rate methodology includes an easily determined adjustment to the CVA to reflect corrections that take place during the year on the tax rolls. The formula would be modified to include this municipal and class specific adjustment as follows.

The current Market Change Profile (MCP) provided by MPAC already tracks those CVA changes between the original roll (the phase-in values identified at the start of the reassessment cycle) and the year-end roll by type of adjustment including corrections to the tax roll. It can measure precisely and accurately the adjustment required for each municipality and for each affected class. The correction adjustment added would be the difference identified on the MCP between the original roll CVA and the year-end CVA. As the MCP distinguishes between growth for new properties as increases and ARB, RFR and court application reductions as corrections it is easy to identify the adjustments for the previous year. The proposed change would also stop the tax loss to the provincial treasury these errors are causing.

The City of Ottawa is seeking a simple amendment to Ontario Regulation which provides a permanent solution to this problem. The proposed change to the regulation would be to add a paragraph 3 to subsection (2) of s. 12 of 73/03 and s. 19 of 121/07 as follows:

> **3. The municipality may adjust the total assessment for property in the property classes to which the levy applied in paragraph (1) by corrections resulting from requests for reconsideration, appeals or applications under section 39.1, 40, or 46 of the Assessment Act as reported by the assessment corporation.**

Appendix F: Forfeited properties

OMTRA

Ontario's Municipal Revenue Specialists

ONTARIO MUNICIPAL TAX AND REVENUE ASSOCIATION

December 21, 2012

Mr. Bruce Singbush, Assistant Deputy Minister (Acting)
Ministry of Infrastructure
Strategic Real Estate Asset Management Division
College Park
Suite 425 - 777 Bay Street, 4th Floor
Toronto, ON M5G 2E5

Re: Feedback on the "Revitalizing Forfeited Corporate Property" Report

Dear Mr. Singbush:

In response to the above-mentioned document our Association, the Ontario Municipal Tax and Revenue Association (OMTRA – Ontario's Municipal Revenue Specialists), is pleased to provide our feedback. Since the release in late October of the report we have consulted our membership of just over 500 members who represent municipalities of every size across the province. Our members represent lower, upper and single tier municipalities and are directly engaged in the billing and collection of property taxes as well as the sale of property for non-payment of taxes. We have developed the Municipal Tax Administration Program (MTAP) which is administered by Seneca College, Faculty of Continuing Education & Training. It is this perspective that we bring to the feedback from our consultation with our members.

We also consulted with two other municipal associations with whom we enjoy a close cooperative relationship, the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMTCO) and the Municipal Finance Officers Association (MFOA). The AMCTO is Ontario's largest municipal professional association, with 2,200 members comprised of municipal CAOs, clerks, treasurers, managers and other professionals – working in 97% of the municipalities across Ontario. The MFOA was established in 1989 to represent the interests of Municipal Finance Officers across Ontario and is the professional association of municipal finance officers in the Province of Ontario. We believe that joint consultation and submission ensures all municipal issues have been addressed. We hope this worthwhile consultation is of value to the staff of the Ministry as they roll out the project to "revitalize" forfeited corporate property.

14845-6 Yonge Street, Suite 119, Aurora, Ontario L4G 6H8

OMTRA

Ontario's Municipal Revenue Specialists

ONTARIO MUNICIPAL TAX AND REVENUE ASSOCIATION

In summary, we would like to thank the Ministry for the opportunity to participate in this process and would like to offer our continued assistance should it be required. Naturally, if there are any questions on the joint submission we would be pleased to respond to them.

Yours truly,

Ken Hughes

Ken Hughes,
President

c.c. Association of Municipal Managers, Clerks and Treasurers of Ontario
Municipal Finance Officers Association

ONTARIO MUNICIPAL TAX AND REVENUE ASSOCIATION

Ontario Municipal Tax and Revenue Association

Comments on Ministry of Infrastructure Consultation Paper: *Revitalizing Forfeited Corporate Property*

The Ontario Municipal Tax and Revenue Association, in October 2012, received a copy of the Ministry of Infrastructure's consultation paper: *Revitalizing Forfeited Corporate Properties*, dated October 2012. The association provides the following comments.

1.3 Authority for the Minister of Finance to conduct a sale of property to recover taxes owed by a corporation

Comments: It is proposed that the Minister of Finance be given the ability to sell an active corporation's property as a means of collecting outstanding provincial debts, and that a process be developed to undertake tax sales in these circumstances, *including the provision of notice and distribution of proceeds*.

OMTRA strongly feels that the process to be developed must specifically address how municipal property tax arrears and/or other charges or debts owed to municipality are considered in the distribution of proceeds. Where a property is sold to recover provincial taxes, the process should identify what portion of proceeds from the sale will be directed to the municipality to satisfy outstanding municipal debts, and in what priority in relation to provincial amounts. This could involve a pro-rata sharing of the total sale proceeds based on the proportion of provincial debts to municipal debts, or a clear indication of the priority of provincial vs. municipal debts.

Additionally, where the Province intends to conduct a tax sale under these processes, it is critical that the notification process include advance notification to the municipality, as the municipality may have already initiated collection proceedings (including issuance to a bailiff/collection agency) or the municipal tax sale process, and so may have already incurred collection-related costs. Early notification would allow municipalities to identify any interest or municipal debts or costs that may be associated with the tax sale property – these may then be included in the amounts to be recovered through a provincial tax sale.

2.1 Removal of encumbrances from forfeited corporate property

Comments: A number of options have been proposed regarding the removal of encumbrances from a forfeited property. The process for removing financial encumbrances would involve notification to affected parties. OMTRA notes that it is suggested that notice be provided to, among others, the Municipal Property Assessment Corporation – notice should also be provided to the municipality in which the property is situated, to allow a municipality to identify any interest or municipal debt or collection-related costs in such forfeited properties.

The process to remove encumbrances from forfeited property must also ensure that the municipality's statutory authority to conduct a municipal tax sale is not subjugated or diminished by this process.

2.2 Limitation period for a dissolved corporation to recover property upon revival

Comments: The consultation paper identifies that the *Business Corporations Act* provides for a 20-year window in which an administratively dissolved corporation can be revived by filing Articles of Revival, and that, once a corporation is revived, it is deemed to have never been dissolved. Further, that upon revival, any property that had forfeited to the government of Ontario upon dissolution would be automatically returned to the corporation, subject to third-party rights.

Changes are proposed that provide that, on the third anniversary of the dissolution of a corporation, any property that forfeited to the government of Ontario as a result of dissolution would remain forfeited to the government of Ontario and not be returned to the corporation upon revival.

OMTRA feels that it is critical that the same protection be provided to a municipality where a municipality has conducted a successful tax sale on a forfeited property to recover unpaid municipal property taxes, i.e., that the property remains forfeited and is not returned to the revived corporation. This ensures the integrity and certainty of the municipal tax sale process, where title to a property is either transferred to a new owner or vested in the name of the municipality.

2.3 Amended process for municipalities to undertake municipal tax sales of forfeited lands

Comments: The consultation paper identifies the following proposed changes:

Where a municipality registers a tax arrears certificate to initiate a tax sale, the municipality would be required to notify the Minister of Infrastructure. Agreed.

A municipality could not register a tax arrears certificate after the earlier of: the removal of encumbrances by the Minister of Infrastructure, or the registration of notice that the government of Ontario intends to use the property for its own purposes. OMTRA can agree with this approach, provided that early notification is provided to the municipality of either of the above events. However, where the Crown intends to use a forfeited property for its own purposes, or where other encumbrances are removed, legislation must make clear how a municipality can recover property tax arrears owed to the municipality in these circumstances.

OMTRA is also supportive of the option to allow a municipality to advertise a forfeited property for tax sale if the cancellation price remains unpaid after a shortened period, rather than a full year. While 180 days has been proposed, OMTRA believes this can be shortened to 90 days to expedite the municipal tax sale property where a property has been forfeited.

Further, it is suggested that the period within which a municipality may vest forfeited corporate property be shortened from the current two years to a one-year period. OMTRA believes that this period in which a municipality may vest a property in its name be maintained with a two-year limit, to allow adequate time to conduct environmental or other investigations where environmental contamination may be an issue (often, a one-year period is insufficient to conduct full environmental testing), however, it should be clear that a municipality may vest immediately following an unsuccessful tax sale or at any time in the subsequent two-year period.

2.4 Process for the Minister of Infrastructure to transfer forfeited non-developable blocks created through the subdivision process to an appropriate entity

Comments: This section identifies that the Minister be provided authority to transfer, by order, and at nominal value, to a municipality or other appropriate legal entity, forfeited blocks within a plan of subdivision, including undedicated highways, etc. and blocks that may be undevelopable due to condition of lands such as severe slopes or presence of environmental features.

OMTRA believes that such authority should require that a municipality must agree to have such blocks transferred to its title, such that municipalities are not required by an order of the Minister to acquire properties that may be environmentally contaminated, or properties that, due to their nature, could present risks, liabilities or costs to the municipality to maintain.

4.2 Accrual of an amount equivalent to taxes after forfeiture of corporate property and relief from payments in lieu of taxes to municipalities for forfeited corporate property

Comments: < to follow >

4.3 Authority to dispose of any personal property left on forfeited real property and process for disposition of forfeited property and personal property, including distribution of any proceeds

Comments: The consultation paper proposes that, where the Minister of Infrastructure disposes of forfeited corporate property, the proceeds would be distributed in the following order:

i) *To recoup any costs incurred by the government of Ontario related to the forfeited property;*

ii) *To satisfy any debts of the federal government or judgements in favour of the federal government [...];*

iii) *To compensate the municipality for any education taxes that may have already been paid to the government of Ontario;*

iv) *To satisfy any debts of the government of Ontario or judgements in favour of the government of Ontario;*

v) *To satisfy municipal debts; including an amount equivalent to municipal property tax that would have accrued on the property following forfeiture and any municipal tax arrears.*

OMTRA believes that the distribution of proceeds from the sale of forfeited corporate property should be based on a pro-rata sharing between the provincial, federal and municipal levels of government, in proportion to the total amounts owed to each party. This would ensure that, where the proceeds of sale are not sufficient to cover all outstanding debts, that each party receives an amount proportionate to their total debt, rather than a ranked priority that sees municipalities ranked third, after all provincial and federal debts have been satisfied, and where there may not be sufficient proceeds leftover to address municipal debts.

ATTACHMENT 5

York Region

Clause 18 in Report No. 16 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on October 15, 2015.

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Municipal Act Review

Committee of the Whole recommends adoption of the following recommendations, as amended, contained in the report dated October 2, 2015 from the Chief Administrative Officer:

1. Council endorse the recommendations set out in Attachment 1 with respect to proposed amendments to the Municipal Act, 2001.
2. This report be submitted to the Ministry of Municipal Affairs and Housing and circulated to the local municipalities.

1. Recommendations

It is recommended that:

1. Council endorse the recommendations set out in Attachment 1 with respect to proposed amendments to the *Municipal Act, 2001.*
2. This report be submitted to the Ministry of Municipal Affairs and Housing.

2. Purpose

This report is to seek Council endorsement of recommendations for proposed amendments to the *Municipal Act, 2001*, in response to the legislative review being undertaken by the Ministry of Municipal Affairs and Housing.

3. Background

The Ministry of Municipal Affairs and Housing is undertaking a review of municipal legislation and has invited submissions

In June 2015, the Ministry of Municipal Affairs and Housing ("MMAH") released a discussion paper announcing its review of legislation governing municipalities. The review includes the *Municipal Act, 2001*, the *City of Toronto Act, 2006*, and the *Municipal Conflict of Interest Act*. A separate initiative is being undertaken to review the *Municipal Elections Act*.

The discussion paper invited submissions on the legislation from a broad spectrum of interested parties, including municipalities, organizations and private individuals. The overall goal of the review is to ensure that municipalities remain sustainable and have the necessary tools to respond to local issues. The paper was structured around a series of questions designed to stimulate and guide discussion on three main themes: Accountability and Transparency, Municipal Financial Sustainability and Responsive and Flexible Municipal Government. The review is also driven by the legislative mandate to review the *Municipal Act* every five years. MMAH has asked for comments by October 31, 2015.

The recommendations in this report focus specifically on amendments to the *Municipal Act, 2001*.

4. Analysis and Options

Regional staff from all departments provided input on amendments to the legislation and consulted with peer groups from local municipalities

Regional staff across all departments were engaged in developing the recommendations, through the Region's Interdepartmental Advocacy Co-ordination Group. Discussions focused primarily on the specific issues raised in the consultation paper. The draft recommendations have been structured according to the three themes identified in the document. Staff also considered this to be an opportunity to raise other issues that may not fit within the themes and these have been summarized in an Appendix to the submission.

In July 2015, a meeting was convened with local municipal lawyers and clerks to discuss the draft recommendations. A majority of local municipalities were represented at the meeting and there was broad consensus on the Regional staff position. The recommendations will also be tabled at the Regional/Local CAOs meeting on October 2 and the Regional/Local Treasurers meeting on October 9.

The Region's proposals are not, however, intended to be formally made on behalf of the local municipalities, many of whom have indicated an intent to prepare their own submission.

On September 8, 2015 the Association of Municipalities of Ontario ("AMO") released its submission to MMAH on the legislative review. The general theme of the AMO submission is consistent with the Region's proposed recommendations and addresses many specific issues set out in Attachment 1.

Theme 1: Accountability and Transparency

Regional staff do not recommend any major changes to the Accountability framework in the Act

The theme of Accountability and Transparency is aimed at soliciting comments on provisions that were introduced in the Act in 2006 to promote accountable self-governance. These include:

- Establishment of a code of conduct for Council members
- Appointment of an Integrity Commissioner to monitor compliance with the code of conduct
- Appointment of a Municipal Ombudsman
- Appointment of an Auditor General
- Establishment of a Lobbyist Registry

These measures are generally not mandatory for municipalities, with the exception of the City of Toronto. All municipalities are, however, required to have in place a policy setting out how they will remain accountable to the public and ensure that their actions are transparent.

Staff recommend that these provisions generally remain permissive and no amendments are proposed. Attachment 1 outlines the specific measures the Region has implemented to ensure accountability and transparency.

The closed meeting provisions in the Act should be amended to reflect the protected categories in privacy legislation

Under the theme of Accountability and Transparency, MMAH has invited comments on the matters which municipal councils should be permitted to discuss in camera. Currently, the scope of in camera meetings is limited and includes: personal matters about an identified individual, proposed acquisition

and disposition of property and matters of solicitor-client privilege. Council education and training sessions may also be closed to the public.

Staff have consistently identified the disconnect between the Act and the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"). MFIPPA protects several categories of records from public disclosure, including commercially confidential and proprietary matters. This leads to anomalies in that certain materials are protected from disclosure, e.g. the proprietary content of a contract, but there is no clear mechanism to discuss the matter in camera. Equally, there seems no distinction in principle between negotiations regarding a property matter and other commercially sensitive transactions.

Staff recommend that there be clearer alignment between the Act and MFIPPA so that Council may consider certain matters in private session prior to adopting a recommendation. This would include proprietary information and commercially confidential material submitted in the context of contractual negotiations.

AMO is also proposing that the Act include a clearer definition of "meeting" in light of the broad definition that has been articulated by the Ontario Ombudsman and which would characterize any gathering of council members as a meeting.

Electronic participation in Committee and Council meetings should be permitted in limited circumstances

The consultation paper invited discussion on whether there should be more options for municipal councils to use technology in holding meetings. Currently, Council members must be present in person at Committee and Council meetings, with the exception of the City of Toronto where electronic participation is permitted. Those members participating remotely do not, however, count towards a quorum.

Video and audio conferencing technology is available to permit remote participation in meetings by Council members. Staff recommend, however, that extensive use of such technology would undermine the principles of accountability by denying direct access to elected officials. It is proposed that remote participation be permitted in limited circumstances, including for accessibility purposes and for calling special meetings where the attendance of Council members at short notice is not feasible.

The AMO submission supports this amendment, particularly for accessibility advisory committees, and cautions that there should be some limitation on the use of remote participation.

Theme 2: Municipal Financial Sustainability

The recommendations on financial sustainability propose granting the Region broader powers of self-governance

Under the second theme, Municipal Financial Sustainability, the consultation paper raised the following questions:

- Do municipalities have the necessary tools to effectively plan for, prioritize and fund their investments in infrastructure and spending on services?
- What barriers do municipalities face in achieving long-term financial sustainability?

Regional Finance staff recommend the introduction of certain broad powers to enable the Region greater flexibility in the management of financial matters, in recognition of the Region as a mature municipality. A key recommendation is that the Region be permitted to establish its own debt and financial obligation limit, rather than be subject to the limit prescribed by the Province. The City of Toronto currently has independent jurisdiction in this regard. It is proposed that certain criteria should be established as a prerequisite, including maintaining at least an AA credit rating and the annual adoption of a long term debt management plan.

The Province is currently proposing to confer "prudent investor" status on the City of Toronto to enable greater diversification in portfolio management. Regional staff propose that the Region should equally be granted this status, subject to certain safeguards, including limiting the percentage of the portfolio that could be managed under this provision. AMO is also recommending that the prudent investor standard apply to the One Investment Program to enable the pooled investment plan to respond to market shifts. Regional staff support this recommendation.

Since 2006, the City of Toronto has been granted the power to impose direct taxes, within certain limitations. Under this provision the City implemented the land transfer tax. AMO is recommending that this taxing authority be made more generally available to municipalities to help diversify the sources of revenue. Regional staff support this recommendation and propose that the Region be granted the power to impose direct taxes. If this recommendation is adopted, further analysis will be required on the appropriate use of this additional tool. Additional revenues could also be made available through the phasing out of the tax capping provisions, as recommended in the draft submission.

The broader powers supporting financial sustainability would be supplemented with more flexible investment and financial management tools

In addition to the broad powers set out above, Regional staff are proposing specific amendments to the Act to permit more flexible financial and investment management. These proposals are set out in detail in the Attachment and include: the ability to invest in US dollar securities, the triggering of the provision permitting sale of debt, greater flexibility in managing bond forward agreements and extending the prescribed period for holding investments. Staff are also recommending the introduction of greater latitude in selecting appropriate securities for investment.

Theme 3: Responsive and Flexible Municipal Government

The division of powers between upper and lower tiers should be preserved and no significant changes to the service migration provisions are proposed

The third theme, Responsive and Flexible Municipal Government addresses the scope of municipal powers in providing efficient and responsive service delivery. The topics for discussion in this section include: the division of powers between upper and lower tier municipalities, and whether there are any barriers to municipalities providing services in an effective and innovative manner. The Province also invited comments on how councils are improving the quality of municipal service delivery.

Regional staff support the current division of powers between the Region and its local municipalities. The clear delineation of responsibility for infrastructure reflects the principles of accountability and self governance that were the foundation of the major amendments introduced in 2003. As well, the current procedures that need to be followed for service migration between tiers (the "triple majority") are appropriate in that broad consensus should be required for any major reassignment of jurisdiction.

Potential for conflict between municipal bylaws and federal and provincial regulation

One area that staff have identified as needing clarification is the potential for conflict between municipal bylaws and federal and provincial legislation and regulation. The Act provides that a municipal bylaw will be inoperative to the extent that it "frustrates the purpose" of the senior legislation. The interpretation of this requirement can lead to uncertainty as to the permitted scope of municipal jurisdiction and has led to challenges to municipal bylaws. Staff recommend that a clearer test, which has been articulated by the Supreme Court should be the

'dual compliance' test. i.e. that a municipal bylaw will not be invalid provided there can be compliance concurrently with the bylaw and the provincial or federal enactment. This would assist municipalities in determining the scope of their authority, especially with respect to broader powers which are subject to extensive regulation, e.g., health and environmental matters.

Municipalities should be specifically empowered to respond to climate change by its inclusion in the list of municipal powers

The Province has requested specific feedback on whether municipalities have the necessary tools to address climate change adaptation and mitigation.

In the proposed submission, staff have outlined the initiatives currently being undertaken by the Region to address climate change. The challenges associated with implementing these measures are also highlighted, including the need for greater coordination and a clearer legislative mandate. In this regard, staff recommend that climate change and mitigation be specifically included in the Act as a matter within municipal jurisdiction. This approach is preferable to a piecemeal enumeration of specific tools (e.g. green roofs) and is more consistent with the broader statement of municipal spheres of jurisdiction.

The main recommendations are supplemented with staff proposals for certain technical amendments

In addition to responding to the specific issues raised in the discussion paper, staff are recommending technical amendments to the Act to enhance clarity and ease of interpretation. These are set out in an Appendix to the submission with a rationale for each recommended amendment.

Link to key Council-approved plans

The Region's 2015-2019 Strategic Plan identifies "Providing Responsive and Efficient Public Service" as a Strategic Priority Area. One objective of this priority area is ensuring a fiscally prudent and efficient Region.

The stated objectives of the legislative review undertaken by the Province are to ensure that municipalities have the powers they need to respond effectively to local issues and for the efficient management of assets and resources. Accordingly, the proposed submission fully supports this Strategic Priority Area.

5. Financial Implications

There are no direct financial implications associated with submitting the proposed recommendations to MMAH.

If the recommendations are implemented by the Province through amendments to the Act, there will be resulting implications, particularly with respect to the Region's financial management and investment powers. These matters will be fully analyzed and reported to Council in due course, as appropriate.

6. Local Municipal Impact

The proposed amendments set out in the attached submission have been discussed with staff from local municipalities and are generally supported. The submission is not, however, formally made on behalf of local municipalities. If the recommendations are adopted and amendments are made to the Act, the amendments will likely be, for the most part, applicable to all municipalities and will benefit both the Region and its local municipalities.

7. Conclusion

In June 2015, the Ministry of Municipal Affairs and Housing released a public consultation paper inviting comments on municipal legislation, including the *Municipal Act, 2001*. The deadline for submissions is October 31, 2015.Regional staff from across all departments have prepared recommendations within the key themes identified in the consultation document and have discussed the recommendations with local municipal counterparts. AMO has now also released its recommendations which are more limited in scope but are broadly consistent with the Regional proposals. It is recommended that the submission attached as Attachment 1 be forwarded to the Province as the Region's position on proposed amendments.

The Senior Management Group has reviewed this report.

October 2, 2015

Attachment (1)

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Accessible formats or communication supports are available upon request

York Region Response to MMAH Review of Municipal Legislation

Theme 1: Accountability and Transparency

1. Current system for municipal accountability and transparency

York Region generally supports the current regime for promoting accountability and transparency. The *Municipal Act, 2001* (the "Act") provides a framework which enables municipalities to customize policies and procedures according to their individual needs and the demands of their constituents. It is appropriate that many of the measures remain permissive rather than mandatory, to underline the principle of municipalities as responsive and accountable elected governments and to acknowledge the varied challenges across the municipal sector.

The Region has implemented measures to ensure accountability and transparency

The Region has used specific tools provided under the Act, as necessary and appropriate. Regional Council adopted an Accountability and Transparency Policy in 2007 under Section 270 of the Act. This policy established practices and procedures which broadly govern the decision making process and administrative management, including financial matters, public disclosure, internal audits and public involvement. Many of these procedures predated the formal requirement to establish a policy.

Regional Council has not formally appointed an Auditor General, however since 2001 the Region's internal Auditor and staff have fulfilled the core functions contemplated under Section 223.19. of the Act. Reporting to Regional Council through the Audit Committee, the Auditor conducts regular audits to report on compliance with regulatory matters, contract terms and financial due diligence.

In common with other municipalities, the Region appointed LAS, an AMO affiliate, as a meeting investigator. Since the appointment in 2007, however, no matters before Council have been referred to the investigator.

Regional Council has to date not elected to establish a code of conduct for members of Council. Consequently, a Regional Integrity Commissioner has not been appointed.

It is recommended that the requirement for a code of conduct and an Integrity Commissioner remain discretionary. Accordingly, it is not recommended that the Act mirror the *City of Toronto Act, 2006* which provides that certain appointments are mandatory. Regional Council members are elected in their constituent local municipalities. Seven out of nine local municipalities have Council Codes of Conduct.

As a result, 18 of the 20 elected members of Regional Council are subject to a Code of Conduct. To introduce another municipal Code of Conduct would be redundant and, potentially introduce ambiguity. The seven Codes of Conduct that are in effect vary substantially. It might be helpful for the MMAH to provide a guideline or template stipulating minimum requirements.

With respect to the appointment of an Ombudsman, with the passage of Bill 8 the Region is currently initiating a process to appoint an Ombudsman, potentially in conjunction with its local municipalities.

> **Recommendation:** that the procedures implemented in 2006 to promote accountability and transparency continue to be generally permissive rather than mandatory and at the discretion of individual municipalities

2. Open meetings

The Region acknowledges that, in the interests of transparency and public accessibility, exceptions to the requirement for open meetings should be limited and specific.

There is, however, a basis for expanding the closed meeting provisions in Section 239(2) of the Act to align with privacy legislation.

MFIPPA provides for exemptions from disclosure for certain categories of records

The *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA") provides for certain categories of information to be protected from disclosure to the public. These include matters where disclosure could potentially prejudice the commercial interests and competitive advantage of a third party. Certain internal records may also be withheld from public release, if necessary to protect the municipality's economic interests.

Currently, there is only partial alignment between Section 239 of the Act and MFIPPA. Subsection 239 does provide for private consideration of certain matters, including personal information, pending acquisition or disposition of land, and the security of

property of the municipality. Closed meetings are also permitted for Council education and training sessions. The scope of "security of property" matters has, however, been largely thrown into doubt by decisions of the Information and Privacy Commission which have limited its application to a perceived physical threat, rather than broader economic interests as set out in MFIPPA.

These differing statutory schemes can give rise to anomalies in the conduct of Council business. For example, proponents responding to a Request for Proposals may submit material which is designated as proprietary and which may be exempt from public disclosure under MFIPPA. Similarly, a private entity may submit confidential information on an emerging technology which may be valuable to Council in developing future strategies, for example in waste management. In either case, there is no clear mechanism for considering these matters in camera without breaching Section 239 of the Act. Subsection 239 (2) (c) permits in camera discussion of property matters but does not extend the same treatment to other potentially sensitive negotiations, e.g. commercial contracts.

Closed meeting provisions should be aligned with MFIPPA

As a result of the disconnect between the *Municipal Act, 2001* and MFIPPA, there is a risk that matters may be artificially characterized as matters of solicitor-client privilege when there is a perceived need to discuss contractual and commercially sensitive issues in camera. This undermines the principles of accountability and transparency. Alberta's *Municipal Government Act* specifically aligns the closed meeting provisions with the matters that are protected from disclosure under its privacy legislation. It is proposed that similar provisions be introduced in the Ontario context.

Recommendation:

(a) that Section 239(2) of the Act expand the matters that may be discussed in camera to include those matters that are protected from disclosure under MFIPPA; and

(b) that "security of property" be defined in the Act to include economic interests

3. Use of technology for holding meetings

Currently, the Act requires members of Regional Council to attend meetings in person. The *City of Toronto Act, 2006* provides that the procedure bylaw may provide for a member of Council to participate electronically in a meeting of City Council which is open to the public. The participation of that member, however, does not count towards a quorum.

Electronic participation in meetings should be used sparingly

Advancements in technology, particularly video-conferencing capability, would permit active participation by Council members who are not present in the Council chamber.

The Region recognizes that extensive use of technology to facilitate attendance may, however, erode the principles of accountability and transparency. If Council members are not routinely present and members of the public do not have direct access to elected officials for the purpose of making deputations and asking questions, the democratic process may be jeopardized.

The Alberta legislation addresses these concerns in part by providing that electronic participation may only be permitted where the facilities enable all the meeting's participants to watch or hear each other.

Electronic participation may be appropriate in limited circumstances

The Region recommends that electronic participation be permitted in certain limited circumstances. The Region's Accessibility Advisory Committee has requested that attendees be permitted to attend by electronic means because of mobility issues. Permitting this form of participation would support the Region's commitment to accessibility and enhance the existing measures implemented under the AODA.

In addition, there are occasions where a special meeting of Council is required to decide on a specific matter. If the meeting is called during the summer recess or the year end break, it may be practically difficult to assemble a quorum. Permitting a meeting to be conducted by electronic means would enable a greater level of participation by Council members.

Recommendation: that the Act be amended to provide that a procedure bylaw may permit electronic participation at meetings by members of Council in limited circumstances, including for accessibility purposes and for calling special meetings where it is practically impossible for Council members to attend in person

Theme 2: Municipal Financial Sustainability

1. Annual debt and financial obligation limit

The *City of Toronto Act, 2006* requires the City to establish a limit for the City's annual debt and financial obligations. The Region submits that it should be accorded similar powers to establish its own debt and financial obligation limit. This would afford more flexibility and recognize the Region as a mature municipality. This greater latitude could also be extended to other regional and upper-tier governments.

The Region acknowledges that it would be appropriate to establish a framework within which this power could be exercised. It is proposed that, to maintain fiscal responsibility a municipality would need to maintain a credit rating of at least 'AA-' or higher (or equivalent) by at least one rating agency and have Council adopt or affirm, annually, a long-term debt management plan.

> **Recommendation:** that municipalities achieving a prescribed credit rating be permitted to establish their own debt limits

2. Tax capping

Currently under Part IX of the Act, the Province protects commercial, industrial and multi-residential properties from significant tax increases through a tax capping program. The program caps any change in property taxes at between 5 and 10 per cent if the assessment value of a property increases. As a result, capping protects landowners from paying an exceedingly high amount of taxes if their property assessment increases.

Tax capping is an administrative and budgetary burden due to the increased complexity it has added to annual tax billing and the management of tax adjustments required in response to tax recalculations. As well, tax capping creates inequitable tax treatment as two properties in the same municipality assessed at the same value can be subject to different tax liabilities.

In York Region, the current beneficiaries include property types such as: Vacant Commercial Land, Vacant Industrial Land and Large Office Building (Multi-tenanted). The payers into the capping program, by property type, are: Large Office Building (Multi-tenanted), Standard Industrial Properties and Heavy Manufacturing (Non-automotive).

Recommendation: that Part IX of the Act be phased-out over the next four years and that the Region be allowed to opt out of tax capping

3. Application of the prudent person ("investor") standard to the Region, if and when the Province extends this standard to the City of Toronto

Under the *Trustee Act, 1990*, the "prudent person" standard is applied in the context of managing an overall investment portfolio. This standard, as it applies to municipal investment officers, would require an officer to exercise due diligence and take all necessary actions to ensure the maximum performance of investments, on a portfolio basis, subject to the prescribed risk parameters dictated by the municipal investment policy.

The rationale for this approach is it enables a municipality to earn better returns and manage risk by building a more diversified investment portfolio.

The criteria for determining which municipalities would qualify to avail themselves of this standard have not been promulgated, however, these should include a weighted mix of municipal size, credit rating ('AA-' or higher or equivalent), and financial/investment performance.

The Province should consider extending to all municipalities who qualify the ability to avail themselves of the prudent person ("investor") standard in a similar fashion as is being contemplated for the City of Toronto, in particular:

(a) for those municipalities who do qualify (i.e. a credit rating of 'AA-' or higher or equivalent), equity investments should not exceed 10 per cent of the total municipal portfolio and a review of investment strategies should be conducted by an independent board;

(b) for those municipalities who do qualify (i.e. a credit rating of 'AA-' or higher or equivalent) and are looking for equity exposure without a managed fund, equity investments should not exceed 10 per cent of the total municipal portfolio and the municipality should have the ability to buy Exchange Traded Funds (ETFs) on the Canadian and US exchange directly;

(c) the "prudent investor" standard should be applied to the One Investment Program "(a co-mingled investment program available to Ontario municipalities and the broader Ontario public sector. It is operated by wholly owned

subsidiaries of AMO and MFOA.)" This would allow for greater returns on investments being made by municipalities within the program.

> **Recommendation:** that the Province extend to all municipalities who qualify the ability to avail themselves of the prudent person ("investor") standard in a similar fashion as is being contemplated for the City of Toronto, and that the standard apply to the One Investment Program.

4. Investment in U.S. dollar securities

Currently, under section 6(1) of O.Reg. 438/97, a municipality cannot invest in a security that is expressed or payable in any currency other than Canadian dollars. Municipalities do, however, purchase goods and services from US vendors that require payment in US dollars. In anticipation of these purchases, US dollars are bought and deposited in a US account earning no interest as the funds cannot be deposited into US dollar securities where they could accumulate interest.

> **Recommendation:** that the regulation be amended allowing for investments in US dollar securities of Canadian issuers. It is recommended that criteria include:
> (a) the credit exposure should be based on the equivalent rating for Canadian dollar securities at an equivalent maturity; and
> (b) the US exposure should be limited to no greater than 2.5 per cent of the total portfolio

5. Exemption from municipal taxation for Conservation Authorities.

The *City of Toronto Act, 2006* provides for tax exemption for conservation authority lands under certain circumstances. Land vested in the Toronto and Region Conservation Authority and managed and controlled by the City under an agreement can be exempt from municipal taxation as long as the land is managed and controlled by the City and used for park purposes.

The Region proposes that the power to exempt these lands from taxation should be granted to all municipalities if they satisfy the conditions set out in the *City of Toronto Act, 2006*.

The Region may in future be in a position to manage and control land vested in the Toronto and Region Conservation Authority, or another conservation authority. Broadening the power to exempt these lands from municipal taxation would ensure

that conservation authorities are treated similarly irrespective of their location within Ontario.

> **Recommendation:** that the powers under section 451(1), (2), (3), (4) of the *City of Toronto Act, 2006* be extended to all municipalities who fulfil the required criteria

6. Sale of debt payable to the Region by a third party

Currently Section 305(1) of the Act provides that a municipality may sell prescribed debt. No regulation has yet been made to prescribe classes of debt under this section. The Region does not routinely engage in loan agreements with private entities, however, there are occasions when this is done. Having the power to sell debt to a third party for collection purposes could ensure that the property tax base is protected if debt collection becomes difficult. In this way, the risk is mitigated by divesting the debt, and parties who have loans with the Region will be aware that the debts will eventually be collected.

In addition, by including bad debt as 'prescribed debt', the Region is afforded additional flexibility while ensuring the property tax base is protected.

> **Recommendation:** that the Province enact a regulation under Section 305(1) of the *Municipal Act, 2001*, allowing the Region to sell prescribed debt that is payable to the Region by a third party. The Region would recommend that "prescribed debt" under this section include accounts receivables that have become 'bad debt' as determined by the Regional Treasurer

7. Unwinding commodity hedging agreements

Currently, under section 5(3) of O.Reg 653/05 a municipality cannot sell or dispose of its commodity agreements or any interest in them, with the following two exceptions: (a) the sale or disposition is part of a transaction for the sale of real property by the municipality relating to a change in the use of the property by the municipality, or: (b) if the municipality has ceased to carry on any activity relating to the municipal system for which the commodity was being acquired.

The current exceptions within this regulation do not take into account major changes within the market place. The policy rationale behind prohibiting partial and/or full unwinding of commodity agreements (excluding the exceptions) is to prevent financial speculation. However, remedial powers on the part of the Minister can protect against

financial speculation. As well, permitting partial and/or full unwinding of commodity agreements protects the property tax base from potential increases in property taxes. As a result, by amending the regulation to allow for the partial or full unwinding of commodity agreements as well as remedial powers for the Minister, the property tax base is protected and the risk of financial speculation is mitigated.

> **Recommendation:** that the regulations be amended to permit the full or partial unwinding of commodity hedging agreements. In addition, the Region recommends amending the regulation, to afford the Minister of Municipal Affairs and Housing with investigatory and/or remedial powers should 'financial speculation' on the part of a municipality, be suspected as the underlying factor for the partial or full unwinding of the agreement(s)

8. Investment Flexibility

(a) Extended term for bond forward agreements

A bond forward agreement is an agreement where one party agrees to sell a bond to another party at a set price on a future date. With a bond forward agreement, a municipality can sell bonds and specify the interest rate at which the bond will be repaid. A municipality will issue debt through the sale of bonds in order to finance projects.

Under O.Reg 653/05 municipalities are unable to use bond forward agreements if they intend to issue debt more than six months into the future. Therefore, municipalities cannot incorporate borrowed funds at a specific interest rate into their capital and operating budgets if they intend to borrow funds more than six months into the future.

The Region would benefit from allowing bond forward agreements to have a settlement date of up to 365 days from the day on which the agreement is executed. By doing this, a municipality would be able to lock in attractive rates at any time throughout the year, even if the next issue is up to a year in the future. This also allows a municipality to have interest rate cost certainty during the annual budget process. These changes could potentially lead to lower interest rate costs that would benefit the local ratepayer and, at the very least, provide greater budget certainty.

> **Recommendation:** that the settlement date of bond forward agreements be extended from 180 days to 365 days

(b) Disposition of bond forward agreements prior to maturity

Currently, under Section 2(8) of O.Reg. 653/05 a municipality cannot sell or lend a bond forward agreement prior to maturity.

The ability to sell a bond forward agreement prior to maturity would allow for more flexibility to react to market fluctuations and/or change the timing or size of debenture issues as a major change in interest rates may impact the debt management strategy.

> **Recommendation:** that the regulation be amended to provide municipalities with the ability to collapse or sell bond forward agreements, placed or hedged in anticipation of a financial transaction authorized by Council, prior to maturity

(c) Extended period for holding investments

Currently, under section 3(6) of O.Reg. 438/97, if an investment falls below the required standard, the municipality must sell the investment within 180 days after the day the investment falls below the standard.

In periods of market turmoil, selling these investments may worsen market conditions for these particular investments and prevent market stabilization. By extending the time period beyond 180 days, the market could be allowed to stabilize after periods of instability.

> **Recommendation:** that the regulation be amended to provide municipalities the ability to create a workout plan beyond the 180 day period, to be used in times of market turmoil

(d) Diversification of investment portfolio

Currently, sections 2(7.1), 3(1), 3(4.1), 4, 4.1(1.1) of O.Reg. 438/97 limit the quality and duration of securities which the Region may invest in.

The market for 'AA-'or higher bonds, with a maturity greater than five years in Canada, has grown smaller. Currently, there are only a few companies (36 as of 2014) that are in this category with a debt outstanding of approximately $17 billion. Limiting investments to 'AA-'or higher prevents a broader credit diversification for municipalities and decreases potential portfolio investment returns. Furthermore, the available market and potential yield for investments of 1 to 5 years is limited to a

credit rating of 'A'. This negatively affects the potential returns for municipal investors and increases concentration risk.

Recommendation: that this regulation be amended as follows:

(a) to allow municipalities to invest directly in corporate securities that have a credit of 'A' or higher (or equivalent)[1] for a maturity of ten years provided that the municipality maintains a 'AA-' or higher (or equivalent) credit rating by at least one ratings agency; and

(b) to allow municipalities to directly invest in securities that have a credit rating of 'BBB+' or higher (or equivalent) for greater than one but not longer than five years, provided the municipality maintains a 'AA-' or higher (or equivalent) credit rating by at least one rating agency. The Region would add a stipulation noting that the overall exposure to 'BBB+' credit shall not exceed 10 per cent of the total portfolio value

9. Power to impose direct taxes

Under Part X, section 267 of the *City of Toronto Act, 2006*, the City may, by bylaw, impose a tax in the City if the tax is a direct tax. Direct taxes may include: motor vehicle ownership/driver's licence tax, real property transfer tax, a parking tax or a billboard tax.

The Region is a large, sophisticated government and should have the financial management powers that reflect its maturity as a government. These revenue generating tools would allow the Region to achieve recognition as a mature municipality. In addition, the new revenue tools can help alleviate the pressures on the property tax base.

Two direct taxes that could, in meeting growth plan targets, be of interest to the Region would be the vehicle ownership tax and parking tax. A vehicle ownership tax could not only provide the Region with additional revenue, but it should also help to encourage use of the rapid transit system.

As Regional Express Rail comes online and services such as park-and-ride become more prevalent, a parking tax could become a revenue source to help fund transit investments.

[1] Note: 'A' rating is still well within the investment grade standard.

Recommendation: that the powers under Part X, sections 267 – 272 (inclusive) of the *City of Toronto Act, 2006* be extended to the Region

10. Publication of financial statements

Currently, under section 295(1) of the Act, within 60 days after receiving the audited financial statements of the municipality for the previous year, the Treasurer is required to publish the entire copy of its financial statements, or a notice that they are available upon request, in a newspaper with wide circulation in a municipality. However, there are more widely available forms of media.

The Region would benefit from the ability to select publishing its financial statements in a newspaper or an online medium (or both).

Recommendation: that section 295 (1) of the Act be amended to permit the publishing of the financial statements in either print or digital format

11. Revisions to the 'heads and beds' policy in light of inflationary pressures

Currently, Section 323 of the Act authorizes local municipalities to pass bylaws to levy annual taxes payable by colleges and universities, hospitals and correctional institutions in an amount not to exceed the prescribed amount of $75 for each full time student, provincially-rated bed or resident place, as determined by the responsible Ministry. This section is more commonly referred to as the 'heads and beds' provision.

As a result of a 'heads and beds' policy which has remained stagnant and unreflective of inflationary pressures, municipalities are forced to compensate the difference through other means such as increases to property taxes. The rate of $75 per student/bed does not reflect the change in cost of delivering services by Ontario municipalities. Using historic CPI or historic Construction Index (for inflation), that rate would be more appropriately set at between $140 and $149. The result is undue pressure on all tax classes.

Recommendation: that O.Reg 384/98 be amended to prescribe a rate consistent with the appropriate inflationary index. It is also recommended that the rate be revisited and reset every 5 years, based upon the inflationary index

Theme 3: Responsive and Flexible Municipal Government

1. Division of powers between upper and lower-tier municipalities

Generally, the Region supports the division of powers between upper and lower-tier municipalities. The clear delineation in jurisdiction supports the principles of self-governance and accountability that were introduced as key concepts in 2003. The Region has exercised its authority over major infrastructure to improve the quality of services while implementing efficiencies and cost effectiveness. In this regard, Council has endorsed various initiatives, including:

- State of Good Repair Programs
- Asset Management policies
- Transportation Master Plan
- System Performance Monitoring
- 10 year Capital Programs

The Region is also achieving efficiencies by implementing technology that provides the public with self-serve options through open data initiatives. For example, constituents have direct access to a wide array of data sets including traffic, bus schedules, energy use and facility locations.

2. Conflict with provincial and federal legislation

The Act expresses municipal authority in broad terms, in contrast to the traditional prescriptive approach in the former legislation. These broader powers provide greater flexibility for municipalities, but can result in potential conflict with federal and provincial legislation in some areas of jurisdiction. This is particularly evident in environmental and health regulation which are matters where senior levels have regulated extensively.

It can be problematic to determine with certainty whether a Regional bylaw may conflict with existing regulation by a senior government. The test articulated in Section 14 of the Act is that a municipal bylaw is in conflict with federal or provincial enactment if it "frustrates the purpose" of the enactment. The case law that has evolved with respect to this issue has developed a two part test: (a) is it possible to comply simultaneously with the municipal bylaw and the senior level enactment; and (b) does the bylaw frustrate the purpose of the enactment. It is submitted that the first part of the test provides clearer guidance to a municipality in determining the scope of its authority and, if enshrined in the Act would potentially reduce the risk of *ultra vires* challenges.

Recommendation: that Section 14 of the Act be amended to provide that a municipal bylaw is deemed to be in conflict with federal or provincial legislation only if it is not possible to comply simultaneously with the bylaw and the federal or provincial enactment

3. Transfer of powers (service migration)

The Region supports the current regime for service migration and does not recommend any fundamental amendments. The scope of the services that are subject to service migration is appropriate and the mechanism for transfer (the "triple majority") ensures the requisite level of support is obtained before a fundamental change in service delivery is implemented.

The Region used the predecessor to these provisions in assuming transit service from its local municipalities in 2001. One issue that proved challenging is that there was no clear guidance on the status of contracts entered into by the local municipalities in connection with their local transit services. There were over one hundred associated contracts including bus service providers, maintenance contracts and advertising contracts. Many of these contracts did not contemplate that the authority for transit service would be assumed by a different entity. This exposed the Region to claims that the contracts were not binding and could be terminated or renegotiated at the option of the contractor. Conversely, it was unclear whether the Region could take the position that the contracts could be renegotiated on more favourable terms, if appropriate.

Recommendation: that the Act clarify the status of existing contracts where service migration is implemented. This would be analogous to the provision in Section 53 where jurisdiction over a highway is transferred and provides that the municipality assuming the highway stands in the place of the transferor under any agreement in respect of the highway

4. Climate Change

Climate change has been identified as a key concern for municipalities. The Region is taking action to address climate change through a number of corporate and strategic initiatives and action plans, including partnerships with external stakeholders. The Province has been demonstrating leadership by addressing climate change in a number of policy/regulatory reviews. It will be important for the Province to take a holistic approach to balance climate change with other Provincial priorities.

Challenges and/or barriers that York Region is facing in implementing initiatives related to climate change

Action at the municipal level will be a critical component of any climate change strategy developed at the provincial or national level, however there are a number of challenges for municipalities outlined below:

- Municipal climate change initiatives have been largely implemented through voluntary programs. Legislative mandates would empower municipalities to implement initiatives consistently on a wider scale.
- Impacts of climate change are difficult for municipalities to foresee and to adequately allocate resources. The Province, by coordinating modeling exercises with a goal of data sharing among stakeholders, would alleviate some of this uncertainty.
- Adaptation will be costly and challenging for municipalities to implement. A portion of the funds collected from the Province's upcoming Cap and Trade program could assist municipalities in implementing climate change adaptation and mitigation measures.
- Municipalities are constrained by the Ontario Building Code. It is important that construction practices effectively consider climate change adaptation and mitigation measures.

What tools in the Municipal Act do municipalities need to address climate change mitigation and adaptation?

Many of the challenges outlined above require a co-ordinated approach through a range of legislative and policy tools. It would be of assistance to the Region to have clear authority in the Act to implement mitigation and adaptation measures to address climate change. Municipally driven climate change mitigation and adaptation measures should be included as a broad municipal power under Section 11 of the Act. This authority would assist municipalities in implementing a range of measures under the general regulatory powers in the Act.

Recommendation: that Section 11 of the Act be amended to include "climate change mitigation and adaptation" as a matter under the jurisdiction of municipalities

Additional comments and proposed amendments

Technical amendments are recommended to clarify interpretation.

In reviewing the Act in connection with this submission, a number of provisions have been identified which would benefit from clarification. These are essentially technical amendments and do not fit within the broad themes outlined above. Accordingly, they have been summarized in chart form and are attached as Appendix 1.

Technical Amendments

Section	Proposed Amendment	Rationale
s. 1 **Definitions**	Amend definition of "highway" to include the boulevard	Clarifies the scope of jurisdiction
s. 5(3) **Powers exercised by by-law**	Amend to provide that a power may be exercised by resolution	The theoretical distinction between a by-law and a resolution is unclear since both require a majority vote. (in practice, confirming by-laws erode the distinction)
s. 28(2) **Jurisdiction** (highways)	Amend to provide that an upper tier municipality may establish highways on a registered plan of subdivision	The limitation to local municipalities does not reflect current reality
s. 128 **Public nuisance**	Amend to provide that upper tier municipalities may exercise this power	Assigning this power exclusively to local municipalities significantly limits the broad power of upper tier municipalities to regulate in respect of health, safety and wellbeing under s. 11 (1) (2)
NEW – add in O. Reg. 599/06	Include a new provision to require a municipal services corporation to appoint an auditor general, except where the municipality has specified that the municipal services corporation will be subject to the municipality's appointed auditor general per section 223.19 of the *Municipal Act, 2001*, or its internal auditor, as the case may be.	The auditor would be able to audit the corporation to ensure value-for-money, thereby strengthening the municipality's accountability for use of public funds.
NEW – add in O. Reg. 599/06	Include a new provision to require a municipal services corporation to appoint an ombudsman, except where the municipality has specified that the municipal services corporation will be subject to the municipality's appointed ombudsman per section 223.13 of the *Municipal Act, 2001*.	An ombudsman would be able to investigate the decisions and/or recommendations made in the course of administration of the corporation, and thereby provide more transparency to decision-making.

O. Reg. 599/06, s. 6, **Business case study**	Include a requirement to perform a value-for-money analysis as part of a business case study to establish a municipal services corporation.	Adopting a business case study is a condition precedent to a municipality being able to file articles of incorporation. O. Reg. 599/06 is silent in terms of the content of a business case study. A value-for-money analysis to support the justification for a corporation would strengthen the municipality's accountability for use of public funds.
NEW – add in O. Reg. 599/06	Permit a municipal services corporation to purchase shares in a corporation established by a university or educational institution.	A corporation is limited to purchasing shares in a corporation that relates to its purpose (see subs. 18(3) of O. Reg. 599/03). A corporation that has the ability to purchase shares in an educational institution for joint development purposes would provide more flexibility in terms of service delivery.
O. Reg. 599/06, subs. 11(3), **Prohibited use of powers in relation to corporations**	The restriction of ownership to <u>new</u> long-term care facilities should be deleted.	This kind of restriction where a municipal services corporation can own a long-term care facility so long as the facility is <u>new</u> is a holdover from the predecessor Regulation. Deleting this limitation would provide more flexibility in terms of service delivery.
O. Reg. 599/06, subs. 9(4)(b), **Economic development corporations**	It is recommended that the following clauses be added → "the acquisition, development, <u>encumbrance</u> and disposal of sites, <u>including any interest in a site,</u> in the municipality for residential, industrial, commercial and institutional uses".	Addition of the clause "encumbrance" would provide the right to encumber property to raise money. Addition of the clause "including any interest in a site" would enable a corporation to enter into a lease and/or a license.
O. Reg. 599/06, subs. 18(1), **Limitations on actions of corporation**	It is recommended that the *Municipal Act, 2001* establish a similar regulation to Build Toronto's O. Reg. 295/09, which provides the power to create subsidiaries.	The establishment of such a regulation would permit a municipal services corporation to create subsidiaries.
O. Reg. 599/06, subss. 18(5)(a) and (b), **Limitations on actions of corporation**	The limitations pertaining to the provision of a public utility for water or sewage should be deleted.	Deleting these limitations would allow a corporation whose business or purpose includes the provision of water or sewage utility services to be privatized.

O. Reg. 599/06, subs. 18(6), **Limitations on actions of corporation**	The limitation pertaining to the provision of youth recreational services should be deleted.	Deleting this limitation would allow a corporation whose business or purpose includes the provision of youth recreational services to be privatized.
O. Reg. 599/06, subs. 9(4)), **Economic development corporations**	The following provision should be added as a catch-all → "(k) provision of facilities used for ancillary purposes in respect of each of the provisions in this subsection".	Currently, facilities used for ancillary purposes are not explicitly provided for under the definition of "economic development services". The addition of such a provision would provide greater clarity to the definition.
O. Reg. 599/06, subs. 11(4), **Prohibited use of powers in relation to corporations**	There is a missing "a" before the first word "corporation".	Grammatical error.
O. Reg. 599/06, subs. 18(1), **Limitations on actions of corporation**	The following clause should be added → "A corporation shall not act as an incorporator of another corporate body that is incorporated under any Act, save and except where a regulation has been passed with respect to incorporation of a secondary corporation."	Subsection 18(1) of O. Reg. 599/06 is unclear now that subsection 203(3.1) of the Act has defined "secondary corporations". The two sections appear to be inconsistent with one another. The addition of such a clause to subsection 18(1) would resolve the discrepancy between the two sections.

ATTACHMENT 6

RE: Clean Air Council Member Feedback to the Province of Ontario's City of Toronto Act and Municipal Act (MA) Five Year Review

As was highlighted in the Province of Ontario's Municipal Legislation Review Public Consultation Discussion Guide, climate change is one of the most significant challenges of our time. Clean Air Council member municipalities have been leaders in taking action on climate change and in involving their communities in developing mitigation and adaptation plans and actions.

The Clean Air Council is a network of 26 municipalities and health units from across the Greater Toronto, Hamilton and Southern Ontario Area. CAC members work collaboratively on the development and implementation of clean air and climate change mitigation and adaptation actions.

Many studies have demonstrated that investments in low carbon communities could generate wider economic, social and environmental benefits in the form of improved levels of equality, health, education, employment, innovation, productivity, mobility and environmental quality. They could also create new revenue streams and reduce the need for government expenditure. Many of these opportunities need to be realized by local governments, but there is a significant and important role for provincial and national governments to create enabling policy frameworks that empower municipalities to invest and innovate towards advancing these lower-carbon communities.

As such the Clean Air Council would like to commend the Province of Ontario for reviewing three key elements of Ontario's municipal legislative framework: the Municipal Act (MA), the City of Toronto Act (COTA), and the Municipal Conflict of Interest Act. While the government is required by legislation to review the MA and the COTA every five years the, Clean Air Council[1] is pleased to have been consulted for its feedback. It is a positive development that the Province has implemented a Climate Change lens into the reviews to better identify opportunities the Acts present to enabling municipal leadership and capacity on climate change and community sustainability.

As both the Province of Ontario and Ontario municipalities want to ensure the long-term prosperity and livability of our communities, the Clean Air Council members would like to provide some of their input on the following discussion questions:

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[1] Municipal staff representatives on the Clean Air Council (CAC) were consulted in the preparation of this submission to reflect the priorities and directions of the member municipalities, but direct endorsement of this document by Municipal Councils was not sought due to the limited time frame of consultations. Many municipalities are also preparing their own independent submissions. CAC representatives are the municipal change agents within leading climate change action municipalities and have been working collaboratively across the region for the last 15 years to support and enable progress on clean air and climate change actions. The consultations were facilitated by the Clean Air Partnership, a charitable environmental organization that serves as the secretariat for the Clean Air Council. CAC Municipal and Public Health Unit members include: Ajax, Aurora, Brampton, Burlington, Caledon, Clarington, Durham Region, East Gwillimbury, Halton Region, Halton Hills, Hamilton, King, London, Markham, Mississauga, Newmarket, Oakville, Peel Region, Pickering, Richmond Hill, Simcoe-Muskoka District Health Unit, Toronto, Vaughan, Whitby, Windsor, York Region.

Question # 1: Has your local council integrated climate change considerations in its policies, programs and decision making processes?

Clean Air Council members have been working collaboratively on the development and implementation of clean air and climate change actions within their municipalities and sharing the resources developed and the lessons learned with others since 2001. The Clean Air Council identifies and promotes effective initiatives to: reduce the occurrence of air pollution and greenhouse gas emissions and their associated health risks; and find opportunities to better integrate climate change impacts and resilience into municipal decision making.

The Clean Air Council works on the very simple premise that if one jurisdiction undertakes a clean air and climate change action, it makes sense to share their experience and lessons learned with other jurisdictions. In this way it helps to promote and raise the bar for the implementation of actions that will lead us to lower carbon and more healthy and livable communities.

Priority Clean Air Council clean air and climate change actions and their implementation status are within CAC member municipalities is provided in **Appendix A: Clean Air Council Inter-Governmental Declaration on Clean Air and Climate Change**.

Question # 2: What tools do municipalities need to address climate change mitigation and adaptation?

- **Land Use and Growth Management Policies and Plans:** Efforts to better manage urban growth such as those within the Growth Plan for the Greater Golden Horseshoe; the Niagara Escarpment Plan; the Oak Ridges Moraine Conservation Plan; the Greenbelt Plan and the Provincial Policy Statement are instrumental in encouraging dense, transit-oriented, walkable and livable communities. Based on lessons learned thus far, however, significant improvements can be made to these frameworks that would better enable local action to pursue the goal of growth management, community livability and increased financial, social and environmental sustainability. As that is beyond the scope of the consultation on the Acts please see the attached **Appendix B: Clean Air Council Member Feedback to the Province of Ontario's Land Use Planning Review** for more input on recommendations.

- **Knowledge Sharing and Network Building:** Facilitating knowledge sharing within and among municipalities on climate change actions, policies, and innovation is a fundamental component of informing and inspiring action. Co-ordination between municipal departments ("horizontal integration") and between local, regional and provincial networks ("vertical integration") is critical. Building the capacity and ability for local governments to share and build on each other's experiences and lessons learned will reduce the need for local governments to have to recreate each other's efforts and better enable them to build on each other's work and results. Allocation of resources to enable that peer-to-peer knowledge sharing and network building will be essential to achieve scale and to build upon success.

- **Municipal Act requirements for municipalities to incorporate the development and implementation of climate change action plans/targets/reporting into their Official Plans**

would greatly facilitate the uptake of climate change considerations, consultations, and plans into the municipal mandate and structure, (similar to what was done in British Columbia with their Green Communities Act).

- **Integrating Climate Change into Business as Usual:** It is important for local governments (as well as all levels of government and the private sector) *to identify and implement a mechanism for integrating a "climate change mitigation and adaptation lens" to policy development, funding, infrastructure processes and decision making*. However in order to support and enable that ability, it is imperative that tools be developed and shared in order to inform that "climate change lens".

- Some tools that would advance this effort include (but are not limited to):

General Climate Change Tools:

  - Educational Tool: Embed references to climate change and its municipal implications within the Municipal and City of Toronto Act. Support with education and outreach tools/programs.

Climate Change Mitigation Tools:

  - Energy Data Tool: Support for municipalities in the provision and compilation of energy data and development of energy and greenhouse gas emissions inventories.
  - Open Data Tool: Increasing access and availability of open data on energy, greenhouse gas emissions, and other sustainability factors.
  - Enabling Tool: Enable municipalities to undertake programs to move to a low carbon economy. Support economic development of innovation products supportive of a low carbon economy such as the provision of municipal support for community energy such as renewable and district energy systems.

Climate Change Adaptation Tools:

  - Resilient Building Tool: Create a Building Code that integrates climate change as outlined in the Minister's MMAH Mandate Letter from the Premier, *"...moving Ontario forward as the North American leader in climate-resistant and environmentally efficient construction"*.
  - Information Tool: Climate information provided to municipalities to enable appropriate infrastructure assessment and design to address climate change vulnerabilities and impacts.
  - Financial Tool: Infrastructure funding sources to enable climate change considerations into decision making especially those related to appropriate planning, building and construction, and stormwater systems including pipe and overland flow components.
  - Emergency Planning Tool: Emergency preparedness support to ensure municipal preparedness includes preparedness for extreme weather events such as wind, rain and ice storms and extremes of heat, humidity and smog.

- Risk Mitigation Tool: Enable municipalities to protect against climate change risks and liabilities by preparing climate change strategies and policies with associated implementation programs.

Question # 3: Are you aware of any challenges and/or barriers that your council is facing in implementing initiatives related to climate change?

- **Advancing the mandate for local governments to act on climate change:** Municipal action on climate change would be strengthened if the General Principles section of the Acts would expand on the current purpose by adding "*improve the environmental well-being of residents through actions to mitigate and adapt to climate change*".

- **Clarifying municipal authority to adopt mandatory green development standards:** Greater clarity within the Acts *to acknowledge the authority of municipal governments to adopt and implement mandatory green development standards* would enable increased adoption of actions aimed at increasing building energy efficiency, community sustainability actions and other environmental priorities within new developments.

- **Enabling increased authority on the part of municipalities to enact by-laws, policies, and/or programs respecting climate change mitigation and adaptation in order to more effectively enable actions,** such as, but not limited to, reducing greenhouse gas emissions through increased waste diversion, improving energy and water efficiency and ensuring greater resiliency of infrastructure and buildings.

- **That the Section 108 in the City of Toronto Act** regarding green or alternative roof surfaces be **included in the Municipal Act** and enable municipalities to pass green/cool roof bylaws to achieve such purposes of energy and water conservation, habitat creation, and urban heat island mitigation.

- **Increased recognition within the Municipal Act/City of Toronto Act of Urban Forests and Natural Areas as a community service and asset that provides significant ecological services and value and be factored into municipal asset management .** For example a number of Clean Air Council members have undertaken iTree Studies that have identified the significant ecological services provided by urban forests and a scan of their various Clean Air Council Urban Forestry actions is available at: http://www.cleanairpartnership.org/files/Urban_Forestry_Scan_March_2012_1.pdf.

  In addition the TD Economics Report available at: http://www.td.com/document/PDF/economics/special/UrbanForests.pdf has identified the significant value of the ecological services provided by Toronto's urban forest.

  Increased recognition of the ecological value provided by green infrastructure such as natural areas to protect watershed management, improve stormwater management, provide communities with increased resilience and protection from extreme weather impacts within

the Municipal Act/City of Toronto Act would better enable municipalities to enact programs and policies such as those identified within the Clean Air Council Report Natural Capital and Why it Matters.

- **Increasing climate change as a municipal mandate through increased recognition within the Municipal and Toronto Acts that municipalities are required to advance the development and implementation of climate change action plans/targets/reporting.** Similar to what was done in British Columbia with their Green Communities Act. This requirement could be implemented within the Planning Act but recognition of this mandate would strengthen and better enable progress and engagement with all municipal departments if also identified within the Municipal Act and the City of Toronto Act. It is important to ensure that this requirement is attached to a provincial program that provides capacity and support for municipalities to advance this requirement (for example, the provision of community greenhouse gas inventories) and that it be placed on those municipalities above a certain size (for example, above 50,000 population) where the greatest opportunity for mitigating greenhouse gas emissions occurs.

- **Enable financing of commercial, institutional and industrial sector entities within the Local Improvement Charge section of the Municipal/City of Toronto by clarifying that this would not be considered "bonussing" if this financing will support Council approved environmental objectives.**

- **Increased recognition within the Municipal Act and the City of Toronto Act of the municipal role in advancing community energy planning.** Community Energy Planning is a comprehensive, long-term plan that helps to define community priorities around energy with a view to explore how energy is and could be used, generated, and delivered in the community now and into the future) would better enable municipalities to identify and act on local energy generation opportunities. This increased recognition would better enable increased momentum for the creation of holistic and integrated community energy plans that identify opportunities to better meet local energy needs in the most efficient, cost-effective and resilient way possible.

- **Enable increased flexibility for municipal property tax opportunities to be better aligned to actual costs associated with the municipal provision of services.** At present the municipal tax base is based on Market Value and Property Assessment data which is not directly related to actual costs associated with servicing a property. Increased flexibility to address this misalignment between municipal revenue and expenses will enable increased progress towards ensuring the long-term prosperity, livability and financial sustainability of our communities.

- **Enable municipal ability to identify and enact fees that municipalities determine will enable them to meet their financial, social and environmental sustainability goals.** (For example this could include but not be limited to parking related, fuel efficiency related, licensing of delivery in zones fees).

ATTACHMENT 7

VAUGHAN

Municipal Legislation Review – Consolidated Recommendations

Accountability & Transparency

1. That the procedures implemented in 2006 to promote accountability and transparency continue to be generally permissive rather than mandatory and at the discretion of individual municipalities. [RMY]

2. That Section 239(2) of the Act expand the matters that may be discussed in camera to include those matters that are protected from disclosure under MFIPPA; and that "security of property" be defined in the Act to include economic interests. [RMY]

3. That the Act be amended to provide that a procedure bylaw may permit electronic participation at meetings by members of Council in limited circumstances, including for accessibility purposes and for calling special meetings where it is practically impossible for Council members to attend in person. [RMY]

4. Establish a clear definition of a meeting. [AMCTO]

5. Review the circumstances where council can meet in closed session, providing clarity about when a municipality may meet in the absence of the public to discuss the security of its tangible and intangible property, and to deal with confidential information of government entities and third parties. [AMCTO]

6. Require all municipalities to adopt their own 'Codes of Conduct' for council and staff. [AMCTO]

7. Create additional rules for Integrity Commissioners (ICs) to promote greater consistency in investigations, specifically by providing more guidance on how investigations are conducted and reported, while giving ICs extended powers to consider a broader range of penalties. [AMCTO]

8. Establish an accountability mechanism for accountability officers and meetings investigators. [AMCTO]

9. Clarify Council's responsibility for ensuring local boards are accountable (including BIAs and Conservation Authorities). [AMCTO]

10. Review how the MA interacts with MFIPPA, and look for ways to create greater alignment of MFIPPA with the Act. [AMCTO]

11. Remove the 'subject to the approval of the municipal auditor' wording from sec. 255(1)(3). [AMCTO]

12. Provide greater clarity and a clearer definition for indirect conflicts of interest in the Municipal Conflict of Interest Act. [AMCTO]

13. 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 MCIA is overly legalistic and it is difficult to understand, particularly by elected officials who bear personal responsibility for complying with the Act. [AMO]

14. The term "pecuniary interest" is an outdated term. The MCIA should be updated to incorporate modern language and overarching principles of ethics and integrity. [AMO]

15. The MCIA 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. [AMO]

16. Elected officials should be able to seek advice from a municipal integrity commissioner for MCIA 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. [AMO]

17. 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. [AMO]

18. Where an integrity commissioner has the ability to remove someone from office for an offence under the MCIA, there should be a process for judicial review. [AMO]

19. An accountability framework should give clear authority and set out safeguards to prevent and to address frivolous and vexatious complaints. [AMO]

20. 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 MCIA 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. [AMO]

21. 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. [AMO]

22. 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. [AMO]

23. 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. [AMO]

Municipal Financial Sustainability

1. Amend the Municipal Act, 2001, to include a broad power to impose taxes beyond the property tax as is found in section 267 of the City of Toronto Act, 2006. The power to impose non-traditional taxes must also include any ancillary enforcement powers as well as powers to impose fines and penalties in cases of non-compliance. [MFOA]

2. Amend the MA to include the power to impose hotel/accommodation tax.

3. Amend Part IX of the Act to give municipalities the authority to opt out of the provisions of tax capping. [MFOA]

4. Implement the proposed amendments for streamlining and clarifying various elements of tax administration. [MFOA]

5. Remove restrictions placed on the provision of municipal capital facilities by revising current Municipal Act, 2001 Section 110 (1) wording to reflect the 2001 version of the Municipal Act. [MFOA]

6. Amend the Municipal Act, 2001 to include the power to exempt conservation authority land from municipal tax as is found in section 451 of the City of Toronto Act, 2006. [MFOA]

7. Amend Municipal Act, 2001 Subsection 106(2) to include "where any of the actions referred to in subparagraphs (a) to (d) above, both inclusive, would result in the granting of a bonus". [MFOA]

8. Amend Municipal Act, 2001 Section 17 to include a reference to the Companies' Creditors Arrangement Act. [MFOA]

9. That the current "Heads and Beds" rate of $75 be raised to $140 beginning in 2016 and reset every 5 years with each review of the Municipal Act, reflecting inflation in the Ontario consumer price index. [MFOA]

10. Update the "right of way" rates in O. Reg. 387/98 every 5 years. [MFOA]

11. The Province should issue regulations under subsection 40(3) of the Municipal Act, 2001 to permit municipalities to adopt road pricing mechanisms. [MFOA]

12. The Province should issue regulations to permit the sale of debt as provided in section 305. [MFOA]

13. Amend O. Reg 438/97 as set out in the CHUMS/LAS submission to the Debt and Investment Committee (Appendix C) and that the regulation be amended to provide: One Investment Program with prudent investor status; the authority to invest in securities that are denominated in a foreign currency; and the authority to develop a plan to sell investments when credit ratings fall. [MFOA]

14. Amend O. Reg 438/97 to provide the authority to: unwind commodity hedges; enter into bond forward agreements; and collapse or sell bond forward agreements. [MFOA]

15. Review the ownership structure of municipal services corporations prescribed in O. Reg. 599/06. [MFOA]

16. Amend O. Reg. 73/03 by adding a paragraph 3 to subsection (2) of section 12 of O. Reg. 73/03 as follows: "The municipality may adjust the total assessment for property in the property classes to which the levy applied in paragraph (1) by corrections resulting from requests for reconsideration, appeals or applications under section 39.1, 40, or 46 of the Assessment Act as reported by the assessment corporation." [MFOA]

17. Amend the Annual Repayment Limit calculation (O. Reg. 403/02) to recognize the sophistication of select Ontario municipalities. [MFOA]

18. Update rates fixed under Acts other than the Municipal Act, 2001 that affect municipalities to reflect inflation in the consumer price index. [MFOA]

19. Review the municipal fiscal implications of Section 58 of the Education Act, 1990. [MFOA]

20. That municipalities achieving a prescribed credit rating be permitted to establish their own debt limits. [RMY]

21. That Part IX of the Act be phased-out over the next four years and that the Region be allowed to opt out of tax capping. [RMY]

22. That the Province extend to all municipalities who qualify the ability to avail themselves of the prudent person ("investor") standard in a similar fashion as is being contemplated for the City of Toronto, and that the standard apply to the One Investment Program. [RMY]

23. That the regulation be amended allowing for investments in US dollar securities of Canadian issuers. It is recommended that criteria include:
    a. The credit exposure should be based on the equivalent rating for Canadian dollar securities at an equivalent maturity; and
    b. The US exposure should be limited to no greater than 2.5 per cent of the total portfolio. [RMY]

24. That the powers under section 451(1), (2), (3), (4) of the City of Toronto Act, 2006 be extended to all municipalities who fulfil the required criteria. [RMY]

25. That the Province enact a regulation under Section 305(1) of the Municipal Act, 2001, allowing the Region to sell prescribed debt that is payable to the Region by a third party. The Region would recommend that "prescribed debt" under this section include accounts receivables that have become 'bad debt' as determined by the Regional Treasurer. [RMY]

26. That the regulations be amended to permit the full or partial unwinding of commodity hedging agreements. In addition, the Region recommends amending the regulation, to afford the Minister of Municipal Affairs and Housing with investigatory and/or remedial powers should 'financial

speculation' on the part of a municipality, be suspected as the underlying factor for the partial or full unwinding of the agreement(s). [RMY]

27. That the settlement date of bond forward agreements be extended from 180 days to 365 days [RMY]

28. That the regulation be amended to provide municipalities with the ability to collapse or sell bond forward agreements, placed or hedged in anticipation of a financial transaction authorized by Council, prior to maturity [RMY]

29. That the regulation be amended to provide municipalities the ability to create a workout plan beyond the 180 day period, to be used in times of market turmoil [RMY]

30. That this regulation (sections 2(7.1), 3(1), 3(4.1), 4, 4.1(1.1) of O.Reg. 438/97) be amended as follows:
    a. To allow municipalities to invest directly in corporate securities that have a credit of 'A' or higher (or equivalent)1 for a maturity of ten years provided that the municipality maintains a 'AA-' or higher (or equivalent) credit rating by at least one ratings agency; and
    b. To allow municipalities to directly invest in securities that have a credit rating of 'BBB+' or higher (or equivalent) for greater than one but not longer than five years, provided the municipality maintains a 'AA-' or higher (or equivalent) credit rating by at least one rating agency. The Region would add a stipulation noting that the overall exposure to 'BBB+' credit shall not exceed 10 per cent of the total portfolio value. [RMY]

31. That the powers under Part X, sections 267 – 272 (inclusive) of the City of Toronto Act, 2006 be extended to the Region. [RMY]

32. That section 295 (1) of the Act be amended to permit the publishing of the financial statements in either print or digital format. [RMY]

33. That O.Reg 384/98 be amended to prescribe a rate consistent with the appropriate inflationary index. It is also recommended that the rate be revisited and reset every 5 years, based upon the inflationary index. [RMY]

34. Review Ontario's Joint and Several Liability tort system, with the goal of ensuring that it more fairly balances the needs of all parties. [AMCTO]

35. Add disabled parking permit prosecution to the powers of AMP hearing officers. [AMCTO]

36. Implement recommendations made by the Municipal Finance Officers Association. [AMCTO]

37. Allow lower tier municipalities to factor tax arrears into their requisitions to school boards and the upper tier. [AMCTO]

38. 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. [AMO]

39. 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. [AMO]

Responsive & Flexible Municipal Government

1. That Section 14 of the Act be amended to provide that a municipal bylaw is deemed to be in conflict with federal or provincial legislation only if it is not possible to comply simultaneously with the bylaw and the federal or provincial enactment. [RMY]

2. That the Act clarify the status of existing contracts where service migration is implemented. This would be analogous to the provision in Section 53 where jurisdiction over a highway is transferred and provides that the municipality assuming the highway stands in the place of the transferor under any agreement in respect of the highway. [RMY]

3. That Section 11 of the Act be amended to include "climate change mitigation and adaptation" as a matter under the jurisdiction of municipalities. [RMY]

4. Modernize council decision-making by allowing a broader range of decisions to be made without the use of a formal instrument, such as a by-law or resolution. [AMCTO]

5. Clarify the requirements for retention of electronic records, and consider giving municipalities more latitude to develop their own retention protocols, including with respect to the accessibility of electronic backups. [AMCTO]

6. Consider a new regulatory approach for the sharing economy, recognizing the limited ability of municipalities to regulate activities that are no longer constrained to traditional borders or boundaries. [AMCTO]

7. Promote greater knowledge of municipal issues in the judicial system, and explore the creation of a specific provincial tribunal to handle local government issues. [AMCTO]

8. Establish more precise rules for the transition period between elections. [AMCTO]

9. Enhance the enforcement provisions of the Act. [AMCTO]

10. Give municipalities more flexibility to determine the time-frame for filling council vacancies. [AMCTO]

11. Consider reorganizing the Act in a more consistent, logical manner. [AMCTO]

12. Clarify the principles for ward boundary reviews, specifically by aligning the timelines with the federal and provincial governments (every 10 years), creating guidelines for how consultations are to be conducted, embedding the principles that support effective representation, and eliminating the petition process. [AMCTO]

13. Review the definitions and descriptions of 'administration' and 'council', and remove the 'CEO' title from the description of the head of council. [AMCTO]

14. Clarify the process and tests to follow when dealing with potentially conflicting roles, responsibilities, and legislation between different orders of government. [AMCTO]

15. Clarify the role of municipal services corporations and the applicability of municipal provisions. [AMCTO]

16. Create clearer procedures for boundary lines, roads and bridges. [AMCTO]

17. 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). [AMO]

18. 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. [AMO]

To the question: What tools do municipalities need to address climate change mitigation and adaptation?

19. •Land Use and Growth Management Policies and Plans: Efforts to better manage urban growth such as those within the Growth Plan for the Greater Golden Horseshoe; the Niagara Escarpment Plan; the Oak Ridges Moraine Conservation Plan; the Greenbelt Plan and the Provincial Policy Statement are instrumental in encouraging dense, transit-oriented, walkable and livable communities. Based on lessons learned thus far, however, significant improvements can be made to these frameworks that would better enable local action to pursue the goal of growth management, community livability and increased financial, social and environmental sustainability. As that is beyond the scope of the consultation on the Acts please see the attached Appendix B: Clean Air Council Member Feedback to the Province of Ontario's Land Use Planning Review for more input on recommendations. [CAC]

20. •Knowledge Sharing and Network Building: Facilitating knowledge sharing within and among municipalities on climate change actions, policies, and innovation is a fundamental component of informing and inspiring action. Co-ordination between municipal departments ("horizontal integration") and between local, regional and provincial networks ("vertical integration") is critical. Building the capacity and ability for local governments to share and build on each other's experiences and lessons learned will reduce the need for local governments to have to recreate each other's efforts and better enable them to build on each other's work and results. Allocation of resources to enable that peer-to-peer knowledge sharing and network building will be essential to achieve scale and to build upon success. [CAC]

21. Municipal Act requirements for municipalities to incorporate the development and implementation of climate change action plans/targets/reporting into their Official Plans would greatly facilitate the uptake of climate change considerations, consultations, and plans into the municipal mandate

and structure, (similar to what was done in British Columbia with their Green Communities Act). [CAC]

22. •Integrating Climate Change into Business as Usual: It is important for local governments (as well as all levels of government and the private sector) to identify and implement a mechanism for integrating a "climate change mitigation and adaptation lens" to policy development, funding, infrastructure processes and decision making. However in order to support and enable that ability, it is imperative that tools be developed and shared in order to inform that "climate change lens". Some tools that would advance this effort include (but are not limited to):
    a. General Climate Change Tools:
        - Educational Tool: Embed references to climate change and its municipal implications within the Municipal and City of Toronto Act. Support with education and outreach tools/programs.
    b. Climate Change Mitigation Tools:
        - Energy Data Tool: Support for municipalities in the provision and compilation of energy data and development of energy and greenhouse gas emissions inventories.
        - Open Data Tool: Increasing access and availability of open data on energy, greenhouse gas emissions, and other sustainability factors.
        - Enabling Tool: Enable municipalities to undertake programs to move to a low carbon economy. Support economic development of innovation products supportive of a low carbon economy such as the provision of municipal support for community energy such as renewable and district energy systems.
    c. Climate Change Adaptation Tools:
        - Resilient Building Tool: Create a Building Code that integrates climate change as outlined in the Minister's MMAH Mandate Letter from the Premier, "...moving Ontario forward as the North American leader in climate-resistant and environmentally efficient construction".
        - Information Tool: Climate information provided to municipalities to enable appropriate infrastructure assessment and design to address climate change vulnerabilities and impacts.
        - Financial Tool: Infrastructure funding sources to enable climate change considerations into decision making especially those related to appropriate planning, building and construction, and stormwater systems including pipe and overland flow components.
        - Emergency Planning Tool: Emergency preparedness support to ensure municipal preparedness includes preparedness for extreme weather events such as wind, rain and ice storms and extremes of heat, humidity and smog.
        - Risk Mitigation Tool: Enable municipalities to protect against climate change risks and liabilities by preparing climate change strategies and policies with associated implementation programs. [CAC]

To the question: Are you aware of any challenges and/or barriers that your council is facing in implementing initiatives related to climate change?

23. •Advancing the mandate for local governments to act on climate change: Municipal action on climate change would be strengthened if the General Principles section of the Acts would expand on the current purpose by adding "improve the environmental well-being of residents through actions to mitigate and adapt to climate change". [CAC]

24. •Clarifying municipal authority to adopt mandatory green development standards: Greater clarity within the Acts to acknowledge the authority of municipal governments to adopt and implement mandatory green development standards would enable increased adoption of actions aimed at increasing building energy efficiency, community sustainability actions and other environmental priorities within new developments. [CAC]

25. Enabling increased authority on the part of municipalities to enact by-laws, policies, and/or programs respecting climate change mitigation and adaptation in order to more effectively enable actions, such as, but not limited to, reducing greenhouse gas emissions through increased waste diversion, improving energy and water efficiency and ensuring greater resiliency of infrastructure and buildings. [CAC]

26. •That the Section 108 in the City of Toronto Act regarding green or alternative roof surfaces be included in the Municipal Act and enable municipalities to pass green/cool roof bylaws to achieve such purposes of energy and water conservation, habitat creation, and urban heat island mitigation. [CAC]

27. •Increased recognition within the Municipal Act/City of Toronto Act of Urban Forests and Natural Areas as a community service and asset that provides significant ecological services and value and be factored into municipal asset management. [CAC]

28. Increased recognition of the ecological value provided by green infrastructure such as natural areas to protect watershed management, improve stormwater management, provide communities with increased resilience and protection from extreme weather impacts within the Municipal Act/City of Toronto Act would better enable municipalities to enact programs and policies such as those identified within the Clean Air Council Report Natural Capital and Why it Matters. [CAC]

29. •Increasing climate change as a municipal mandate through increased recognition within the Municipal and Toronto Acts that municipalities are required to advance the development and implementation of climate change action plans/targets/reporting. [CAC]

30. Enable financing of commercial, institutional and industrial sector entities within the Local Improvement Charge section of the Municipal/City of Toronto by clarifying that this would not be considered "bonussing" if this financing will support Council approved environmental objectives. [CAC]

31. •Increased recognition within the Municipal Act and the City of Toronto Act of the municipal role in advancing community energy planning. [CAC]

32. •Enable increased flexibility for municipal property tax opportunities to be better aligned to actual costs associated with the municipal provision of services. [CAC]

33. •Enable municipal ability to identify and enact fees that municipalities determine will enable them to meet their financial, social and environmental sustainability goals. [CAC]

COMMITTEE OF THE WHOLE – OCTOBER 7, 2015

MUNICIPAL LEGISLATION REVIEW

Recommendation

The City Clerk, in consultation with the Interim Commissioner of Legal & Administrative Services/City Solicitor, the Director of Financial Planning and Analytics, and the Director of City Financial Services/Deputy Treasurer recommends:

1. That the City Clerk be requested to complete consultations and bring forward a draft formal resolution for Council's consideration.

Contribution to Sustainability

The *Municipal Act, 2001* and the *Municipal Conflict of Interest Act* are key components of the legislative framework which supports democracy, openness and transparency in municipal government and which, in turn, contribute to the sustainability of the City's good government practices.

Economic Impact

The economic impact associated with potential legislative change is presently unknown. A draft resolution for Council's consideration will be prepared using existing internal resources and input from professional associations to which City staff belong.

Communication Plan

Council's resolution in this matter will be submitted to the Ministry of Municipal Affairs and Housing.

Purpose

The purpose of this report is to provide Council with an update on preparations underway to develop a draft formal resolution for submission to the Ministry of Municipal Affairs and Housing with respect to the Ministry's review of the *Municipal Act, 2001,* the *Municipal Conflict of Interest Act,* as well as the *City of Toronto Act, 2006.*

Background – Analysis and Options

On June 5, 2015, the Ministry of Municipal Affairs and Housing announced a review of municipal legislation, specifically the *Municipal Act, 2001*, *Municipal Conflict of Interest Act*, as well as the *City of Toronto Act, 2006*. The public, Members of Council and City Staff may provide direct submissions to the Ministry the legislation until October 31, 2015. The Ministry's review will focus on three overarching themes: accountability and transparency, financial sustainability, and responsive and flexible service delivery. Attachment 1 to this report contains a copy of the Ministry's public consultation guide for the Municipal Legislation Review.

City of Vaughan Response

At its meeting of June 23, 2015, Council approved a recommendation arising from *Municipal Elections Act, Municipal Act and Municipal Conflict of Interest Act Review* [Report No. 28, Item 5 of the Committee of the Whole Working Session] requesting the City Clerk to compile comments from Members of Council and staff and prepare a draft formal resolution for Council's consideration with respect to proposed modifications to the *Municipal Act, 2001* and *Municipal Conflict of Interest Act*.

Over the summer a number of staff participated with their professional associations to investigate and recommend potential legislative modifications. In addition, the City Clerk circulated a simplified version of the Ministry of Municipal Affairs and Housing consultation guide on the Municipal

Legislation Review to Members of Council and City staff and has conducted individual consultations with Members of Council upon request. The Director of Financial Planning and Analytics and the Director of City Financial Services/Deputy Treasurer have also canvassed potential amendments relating to the municipal finance provisions in the *Municipal Act*.

Based on these ongoing consultations a draft formal resolution will be prepared and brought forward for Council's consideration on October 20, 2015.

Relationship to Vaughan Vision 2020/Strategic Plan

This report promotes the strategic goals of Vaughan Vision 2020/Strategic Plan, in particular:

Organizational Excellence

- Ensure a High Performing Organization
- Ensure Financial Sustainability

Regional Implications

There are no regional implications associated with this report at this time, though continuing consultations may result in suggestions for legislative reforms that could impact the City's relationship with the Region of York.

Conclusion

The current Municipal Legislation Review is an important opportunity for the City of Vaughan to provide the Ministry of Municipal Affairs and Housing with constructive comments and proposed modifications to key pieces of municipal legislation. Consultations with Members of Council and City Staff are ongoing, and are occurring in parallel with consultations being conducted by staff through their municipal sector professional associations and groups. The results of these consultations will be brought to Council in association with a formal draft resolution for consideration at the October 20, 2015 meeting of Council.

Attachments

Attachment 1 - Municipal Legislation Review Public Consultation Discussion Guide

Report Prepared By:

Evan Read, Municipal Management Intern

Respectfully Submitted,

Jeffrey A. Abrams
City Clerk

ATTACHMENT 1

MUNICIPAL LEGISLATION REVIEW

PUBLIC CONSULTATION DISCUSSION GUIDE

June 2015

ontario.ca/provincialmunicipalreview

Ontario

MUNICIPAL LEGISLATION REVIEW

PUBLIC CONSULTATION DISCUSSION GUIDE

TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION

Municipalities are the government level closest to people in communities. They provide front-line services like public transportation, garbage collection, and recreation facilities. They also deal with other local issues like fixing local roads and collecting property taxes.

All Ontarians want strong, vibrant communities where they can live, work and raise families. That means Ontario municipalities need to be financially sustainable, open and accountable. That's why we want to ensure they are using, and have in place, the tools and powers to make that happen.

WHAT IS BEING REVIEWED?

Ontario is reviewing three key elements of Ontario's municipal legislative framework: the Municipal Act, the City of Toronto Act, and the Municipal Conflict of Interest Act.

The government is required by legislation to review the Municipal Act and City of Toronto Act every five years. The government is reviewing these Acts at the same time, along with the Municipal Conflict of Interest Act.

We want to hear from municipalities, organizations, elected officials, experts, and Ontarians in every part of the province about how this legislation might be improved. We are interested in all suggestions. Based on what we've heard to date from members of the public, municipalities and other interested groups, there are three main themes that this review will focus on:

1. **Accountability and Transparency;**
2. **Municipal Financial Sustainability; and**
3. **Responsive and Flexible Municipal Government.**

This discussion guide is your chance to have your say about these themes and to share your ideas on these important pieces of legislation.

MUNICIPALITIES IN ONTARIO

There are 444 municipalities in Ontario, ranging from large urban centres to small, rural towns with very small populations. Many factors, such as whether a municipality is part of a county or regional government, can influence how a municipality is governed and how it delivers services.

In Northern Ontario, most of the population lives in municipalities, but most of the land mass is "unorganized territory" – areas of the province without municipal organization. In some of these areas, local services boards and local roads boards deliver basic community services to

residents. Because of this diversity, the needs, priorities and capacity of municipalities in the province can vary widely.

The Municipal Act and the City of Toronto Act (for Toronto) provide the primary legislative framework, setting out the roles, responsibilities and powers for Ontario's municipalities. However, municipalities also get their responsibilities and powers from over 100 provincial acts, such as: the Highway Traffic Act, the Police Services Act, the Ambulance Act and the Ontario Heritage Act.

MUNICIPAL LEGISLATION REVIEW: GOALS

We want to ensure our local governments remain strong and financially-sustainable, and that they have the tools to be flexible, responsive and accountable to the people they serve.

While the government's view is that these pieces of legislation are generally working well, the government regularly receives suggestions for improvement from municipalities, stakeholders, and the public. The Ministry of Municipal Affairs and Housing (MMAH) will consider all suggestions for change as part of this review. Issues raised that are outside the scope of this review or outside the scope of the ministry will be shared with the appropriate area of the provincial government for future consideration.

WAYS TO GET INVOLVED

We want to hear your concerns and suggested solutions on the Municipal Act, the City of Toronto Act and the Municipal Conflict of Interest Act. We want to hear what is working, what could work better, and your innovative ideas for addressing challenges together.

There are a number of ways to share your feedback:

Online Discussion Guide: access this discussion guide online at ontario.ca/provincialmunicipalreview and complete the discussion questions on one or more themes.

E-mail: e-mail your suggestions for changes to the legislation, or any other comments or questions you may have about the reviews, to municipalreview@ontario.ca.

Mail: send a written submission with your suggestions for changes to the legislation, or any other comments to:

Municipal Legislation Review
Ministry of Municipal Affairs and Housing
Local Government Policy Branch
777 Bay Street, 13th Floor, Toronto, ON M5G 2E5

USER INFORMATION

To help us make the most effective use of your comments, please consider identifying your municipality or, if you prefer, your geographic region of the province (for example, southwestern Ontario) or whether you live in a rural or urban area.

If you are providing comments on behalf of an organization, please provide its name. If you are providing comments on behalf of a municipality, please provide its name and indicate whether the submission has been endorsed by a council resolution.

Your responses may be used for the purposes of the ministry's consultation process. Please note the ministry may summarize and share them, including with other ministries and the public. Names of organizations and persons who indicate an affiliation may also be shared.

Please do not provide any additional personal or identifying information such as opinions about individuals or names and addresses as part of your response.

CHAPTER 2: OVERVIEW OF THE ACTS

MUNICIPAL ACT OVERVIEW

The Municipal Act gives municipalities a variety of powers, both broad and specific, so that they can govern, deliver services, and effectively serve their residents.

The current act came into force in 2003, and the last review was completed in 2006.

Part 1 (General – ontario.ca/cafy) includes the purposes of municipalities, key definitions, and general provisions. It requires the Ministry of Municipal Affairs and Housing to initiate a review of the act every five years. Part 1 also commits to ongoing consultation between the province and municipalities through the memorandum of understanding (MOU) between the province and the Association of Municipalities of Ontario (AMO).

Part 2 (General Municipal Powers – ontario.ca/cafz**)** establishes key municipal powers, including natural person powers and broad powers. Natural person powers allow municipalities to act like an individual or a corporation. For example, they can enter into a contract or hire staff. Broad powers provide municipalities with authority to pass bylaws in a wide range of areas, subject to certain limits, including:

- Governance structure of the municipality and its local boards
- Financial management of the municipality and its local boards
- Economic, social and environmental well-being of the municipality
- Health, safety and well-being of persons

Part 2 also sets out how municipalities can delegate municipal powers to local bodies, such as advisory committees or community councils, to assist with local decision-making. The act establishes rules such as what powers can and cannot be delegated.

Part 3 (Specific Municipal Powers – ontario.ca/caf1**)** provides specific rules and provisions for certain municipal powers (some of which are affected by other ministries' legislation). For example, there are specific provisions in Part 3 for:

- Highways
- Transportation
- Waste Management
- Public Utilities
- Culture, Parks, Recreation and Heritage
- Drainage and Flood Control
- Parking
- Economic Development
- Closing of Business Establishments
- Health and Safety

- Natural Environment
- Animals
- Structures, including fences and signs

Part 4 (Licenses – ontario.ca/caf3**)** sets out business licensing powers of municipalities (for example, concerning tow trucks, taxis). This part also gives the municipality authority to require a person to pay an administrative penalty to the municipality if they fail to comply with any part of a licensing system.

Part 5 (Municipal Reorganization – ontario.ca/caf4**)** deals generally with municipal restructuring (annexations, amalgamations, etc.) and other kinds of organizational changes at the local level. This includes changing municipal names, transferring powers between tiers, establishing municipal corporations and municipal service boards, and establishing or changing wards. Part 5 also includes provisions respecting municipal changes to certain local boards and respecting business improvement areas.

Part 5.1 (Accountability and Transparency – ontario.ca/caf5**)** includes provisions about establishing codes of conduct for members of municipal council and many of their local boards. Municipalities may also choose to appoint local integrity officers: an Integrity Commissioner, Ombudsman, Lobbyist Registrar and Auditor General. For more information on accountability and transparency provisions of the Municipal Act and the City of Toronto Act and to share feedback, please see Chapter 3 of this Guide.

Part 6 (Practices and Procedures – ontario.ca/caf6**)** sets out roles, responsibilities, rules and processes for municipal councils and key staff members including the clerk and chief administrative officer (CAO). Part 6 includes rules about the conduct of council and local board meetings and the public's right to attend them. Most council and local board meetings are required to be open to the public (with certain allowed exceptions). Part 6 also has requirements on quorum, council member eligibility and vacancies from office, and records retention. Under Part 6, municipalities are required to have policies on certain matters, including the sale and other disposition of land, hiring employees, procurement of goods and services and public notice.

Parts 7-13 (along with Part 3 sections 106-110, and other sections – ontario.ca/caf7**)** contain many of the rules and procedures for financial and administrative matters such as budgeting, financial reporting, fees and charges, debt and investment, and the administration and collection of property taxes, For more information on financial and administrative provisions of the Municipal Act and the City of Toronto Act, and to share feedback, please see Chapter 4.

Part 14 (ontario.ca/caf8) deals with enforcement of municipal bylaws, including offences and penalties, powers of entry, general enforcement powers, municipal orders and remedial actions, and court orders to close premises. Part 14 includes provisions on establishing a system of fines for offences for contravening a bylaw, with rules on minimum and maximum fine amounts, and rules concerning special fines.

Parts 15-18 (ontario.ca/caf8) contain municipality-specific, technical, transitional, and miscellaneous provisions, including provisions on regulations and municipal liability.

CITY OF TORONTO ACT OVERVIEW

The City of Toronto Act is the counterpart legislation to the Municipal Act (which applies to all other municipalities in Ontario) for the City of Toronto (ontario.ca/cagb). It creates the legal framework for the roles, responsibilities and powers for the City of Toronto and its local bodies, such as city boards or committees.

The City of Toronto Act is similar to the Municipal Act, but there are some particular differences that recognize Toronto's status as Ontario's largest municipality. These include:

1) The City of Toronto has broad authority to levy taxes in addition to property taxes, beyond those available to other Ontario municipalities. The City's authority in this area is subject to specific limitations. For example, the City may not put in place taxes on personal or corporate income, gasoline or sales taxes.
2) The City of Toronto is required to have a Code of Conduct for council and members of certain local boards, as well as an Integrity Commissioner, City Ombudsman, Auditor General and a Lobbyist Registry. In other municipalities, appointing these officers is optional.
3) The City of Toronto has specific authority to require and govern the construction of green roofs.
4) The City of Toronto's long-term debt is not subject to a provincial Annual Repayment Limit, in recognition of the City's internal capacity to determine its own appropriate level of debt.
5) The City of Toronto's wholly-owned land development corporation, Build Toronto, has special powers to incorporate corporations.

The City of Toronto Act came into force in 2007, and the last review took place in 2009.

MUNICIPAL CONFLICT OF INTEREST ACT OVERVIEW

The Municipal Conflict of Interest Act (last substantially amended in 1983) sets out rules to help ensure that municipal council members and members of local boards (including school boards and police services boards) do not participate at meetings when their council, committee or local board considers a matter in which the members have a pecuniary (i.e. financial) interest (ontario.ca/cagc).

For more information on conflict of interest rules for municipalities, and to share feedback, please see Chapter 3 of this Guide.

CHAPTER 3: ACCOUNTABILITY AND TRANSPARENCY

In response to what we have heard from municipalities, the public, and experts, we have made Accountability and Transparency a theme of this review. This chapter of the Discussion Guide outlines the accountability and transparency requirements for municipalities and the tools they have to deliver them. We invite you to provide your feedback on accountability and transparency by answering the questions at the end of this chapter.

The Municipal Conflict of Interest Act sets out some rules for municipal council and local board members that are enforced through the courts. Other accountability and transparency-related rules set out in law include requirements under the Municipal Act and City of Toronto Act, such as open meeting requirements.

In 2014, the province passed the Public Sector and MPP Accountability and Transparency Act. Schedule 9 of the Bill, when proclaimed into force on January 1, 2016, will extend the role of the Ontario Ombudsman to include all municipalities. The intent is to ensure that every Ontarian has access to an ombudsman.

We want to examine the accountability and transparency requirements for municipalities, and the tools for locally-determined integrity frameworks, to ensure they provide a greater benefit and meet the changing needs of municipalities and the public. In this review we want to consider:

- Codes of conduct
- Integrity officers
- Conflicts of interest
- Open meetings

CODES OF CONDUCT

Some municipalities have codes of conduct for members of council and local boards. They may also have other procedures, rules and policies governing the ethical behaviour of those members. It is generally up to a municipality to determine the content of its code of conduct (if it chooses to have one)– for example, a general set of principles, or a more detailed set of rules on specific issues. Because of this, codes of conduct vary from municipality to municipality. Some common issues that codes of conduct address include use of municipal resources, gifts and benefits and conduct at council meetings. As of 2014, many large municipalities have adopted a code of conduct, but most medium sized or small municipalities have not.

It is up to a municipality to determine the complaints process for codes of conduct and many of the rules around its enforcement. Municipalities also have authority to appoint an integrity commissioner to investigate complaints related to the code, though not every municipality

with a code of conduct also has an integrity commissioner. There are two penalties available to council for code of conduct contraventions: a reprimand or a suspension of the member's pay for up to 90 days.

For more information on municipal codes of conduct, please see section 223.2 of the Municipal Act (ontario.ca/cage) and section 157 of the City of Toronto Act (ontario.ca/cagd).

Some municipalities have also developed a code of conduct for municipal staff.

Similar to municipal codes of conduct, codes of conduct for school board trustees are developed by the school board and reflect the norms of behaviour that trustees agree to uphold and respect. Like other codes of conduct, school board codes might cover such matters as acting with integrity, guarding against conflict of interest, complying with legislation, maintaining confidentiality, and respecting the decision-making authority of the board.

DISCUSSION

- Do you know whether your municipality or school board has a code of conduct? If so, does it seem to be working effectively?
- Do you think there should be a greater range of penalties for violating a code of conduct?

Share your feedback online

INTEGRITY OFFICERS

All municipalities may decide to appoint integrity officers, and Toronto must do so under the City of Toronto Act. The Municipal Act and the City of Toronto Act set out the general responsibilities and functions of the integrity officers, and each municipality determines their specific duties.

These integrity officers are:

- An Integrity Commissioner
- A municipal Ombudsman
- An Auditor General
- A lobbyist registry (related officer is a lobbyist registrar)

If a municipality chooses to put one or more of these officers in place, it can help to increase accountability and transparency at the local level.

Integrity Commissioner

An Integrity Commissioner's role is independent and his or her functions are assigned by council. The commissioner's functions may include conducting inquiries about whether a member of council or a local board has contravened the code of conduct.

If the Integrity Commissioner reports that a member of the council or local board has contravened the code of conduct, the municipality may impose a penalty in the form of a reprimand or a suspension of pay for a period of up to 90 days. The commissioner, who reports to council, may also be tasked with looking at how members of council have applied procedures, rules and policies of the municipality or local board governing the ethical behaviour of members of council and local boards. Some municipalities have also assigned their commissioner with other functions such as providing advice and/or education and training on ethical matters to members of council.

Municipal Ombudsman

A municipal Ombudsman investigates acts, decisions, and recommendations made in the course of the administration of a municipality. A municipal Ombudsman also does this for local boards or certain municipal corporations as specified by the municipality. Toronto is currently the only municipality in Ontario to have an Ombudsman, which it is required to have under the City of Toronto Act. The current Toronto Ombudsman describes her role as "an impartial investigator of residents' complaints about the administration of city government".

Auditor General

An Auditor General may assist council in holding itself and municipal administrators accountable for the quality of stewardship over public funds and achieving value for money in municipal operations. An Auditor General must perform his or her duties in an independent manner.

Lobbyist Registrar and Registry

The Municipal Act authorizes a municipality to establish a public Registry for lobbyists, establish a code of conduct for lobbyists and prohibit former public office holders from lobbying for a designated time period.

DISCUSSION

- Are there gaps in the current municipal accountability and transparency system?
- What kinds of tools would support greater accountability and transparency in local government?

Share your feedback online

CONFLICTS OF INTEREST

Local members (including councillors and members of local boards) have legal and ethical duties to consider in relation to conflict of interest. Some of these are found in the Municipal Conflict of Interest Act, but other related rules or codes may also apply to local members (for example, in a local code of conduct for councillors).

The Municipal Conflict of Interest Act sets out ethical rules for council and local board members if they have certain pecuniary (financial) interests in a matter that is before their council or board at a meeting. For example, a member might have to declare a pecuniary interest if they own land or a property that is likely to be affected by a council/board decision.

The Municipal Conflict of Interest Act generally requires a local member with a financial interest in a matter that is before their council or board at a meeting to:

- disclose the interest before the matter is considered at the meeting;
- not take part in the discussion or voting on the matter;
- not attempt to influence the voting before, during, or after the meeting; and
- immediately leave the meeting, if the meeting is closed to the public.

As with any legal matter, local members may seek legal advice if they wish to.

The declaration of the member's interest is recorded in the meeting's record (minutes). The public may use meeting records to assist in finding out whether a member declared an interest on a matter.

The Municipal Conflict of Interest Act includes some exceptions. For example, a member would not need to declare a pecuniary interest for an interest in common with electors generally. A proposed property tax increase affecting all property owners in the municipality might be an example of an interest in common with electors generally.

The courts decide whether or not a contravention of the Municipal Conflict of Interest Act has taken place. Any elector in the municipality may apply to a court if he or she feels that a municipal councillor or local board member has violated conflict of interest rules.

If the judge finds that there is a contravention of the Municipal Conflict of Interest Act, the judge must remove the member, unless the judge also finds that the contravention was because of the member's inadvertence or error of judgement.

A judge may also find that other penalties for contravention of the Municipal Conflict of Interest Act apply. These include:

- restitution (i.e. reimbursement of a person who suffered the loss where the contravention resulted in personal financial gain); or

- disqualification from office for up to seven years (which a judge may decide does not apply due to a member's inadvertence or error of judgement).

For more information about the conflict of interest rules for municipalities, please see the Municipal Conflict of Interest Act (ontario.ca/cagc).

DISCUSSION

- How might conflict of interest rules be made clearer for municipal officials and the public?
- Do you think the current rules prevent municipal councillors from participating in municipal decision making too often? Do you feel that your own councillor/board member (e.g. school trustee) has been able to represent your interests at meetings given these conflict of interest rules?
- Do you think municipal councillors need more support to comply with conflict of interest rules? For example, having a municipality make expert or legal advice available to them.
- How could public access to the decision-making process about conflicts of interest be improved?
- What do you think are the appropriate penalties for violating conflict of interest rules?
- Who should enforce municipal conflict of interest rules?

Share your feedback online

OPEN MEETINGS

Most municipal meetings must be open to the public. There are a limited number of reasons why meetings may be closed to the public. 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.

A person may request an investigation of whether a meeting was properly closed to the public. The municipality may appoint an independent investigator who may report with recommendations to council. If the municipality does not appoint an investigator, the Ontario Ombudsman may investigate.

For more information about open meetings requirements, please see section 239 of the Municipal Act (ontario.ca/cagh)and section 190 of the City of Toronto Act (ontario.ca/cagj). Some boards, such as police services, library and school boards have different rules about their meetings, which are found in other legislation. For example, please see ontario.ca/cagk.

DISCUSSION

- Do you think there should be more options for municipal councils to use technology in holding meetings? (e.g., internet video conferences?) Please provide examples.
- Do you think that the public has appropriate access to council meetings? How could municipal council meetings be more transparent?
- Under what circumstances do you think it is appropriate for council to discuss matters in private? (e.g. personal information, security of the municipality)

Share your feedback online

In addition, we have some general questions regarding the current accountability and transparency framework for municipalities.

DISCUSSION

- Overall, what do you see as the province's role in supporting municipal and local board accountability and transparency? What do you see as your municipality's role?
- How effective are the accountability and transparency requirements in the Municipal Act, City of Toronto Act and Municipal Conflict of Interest Act?
- How might accountability and transparency rules be made clearer for municipal officials, board members and the public?

Share your feedback online

CHAPTER 4: MUNICIPAL FINANCIAL SUSTAINABILITY

We want to ensure our local governments remain strong and financially sustainable, and that they continue to be accountable, flexible and responsive to the people they serve. We invite your input on topics such as:

- How existing municipal financial tools can be used more effectively
- Whether municipalities have the necessary tools to effectively plan for, prioritize and fund their investments in infrastructure and spending on services
- What barriers municipalities may face in achieving long-term financial sustainability

WHAT IS MUNICIPAL FINANCIAL SUSTAINABILITY?

Municipal financial sustainability can be defined as the ability to match expenditures well with revenues – on both an operating and capital cost basis.

Municipalities are responsible for providing a range of services to Ontarians, including: fire, police, water, garbage, public health, and recreation programs. Municipalities are also responsible for maintaining and expanding public infrastructure, such as roads, bridges, water systems and their local public transit systems. In order to deliver on both responsibilities, municipalities must manage their finances effectively.

This chapter outlines financial management tools and processes contained in the relevant municipal legislation and used by municipalities in Ontario. We invite you to provide your feedback on this topic by answering the questions at the end of this chapter.

MUNICIPAL BUDGETS AND FINANCIAL REPORTING

Municipal governments are expected to deliver services and facilities in a way that is financially sustainable.

The Municipal Act and the City of Toronto Act require municipalities to pass balanced operating budgets each year. While municipalities may borrow over the long term to fund capital expenditures, such as building a new bridge, or installing a new water main, they are generally not allowed to fund operating expenses, such as salaries and wages, fuel or contracted services through borrowing. This helps to ensure that municipalities pay for the expenses that they incur each year, while allowing them the flexibility to spread out the cost of long-term assets.

Municipalities are also required to prepare annual financial statements according to the Public Sector Accounting Board (PSAB)'s recommended accounting principles. Municipalities must publish and make publicly available their audited financial statements for the previous year within 60 days of receiving them. This helps to ensure that municipalities are accountable to their citizens and also to the province.

MUNICIPAL REVENUE SOURCES/FINANCIAL TOOLS

The Municipal Act provides municipalities with financial tools to help them pay for the services they provide, including:

- Property taxes, including special area rates
- User fees and charges
- Local improvement charges
- Fees for licenses, permits and rents
- Fines and penalties
- Debt financing
- Investment income
- Development charges

In addition to these tools, the City of Toronto has broad authority under the City of Toronto Act to implement a variety of municipal taxes, subject to limitations (see below for further information).

Property Taxes

The property tax generates $17.5 billion across the province and is a municipality's main source of revenue. In order to determine the amount of property tax they need to collect, municipalities first determine their revenue needs as part of their annual budget process. Municipalities then set the tax rates.

A property tax bill is composed of two components: a municipal portion and a provincial education portion. The tax rate and levy for the municipal portion, is set by the municipality (subject to provincial rules) and is based on their revenue needs as part of their annual budget process. The tax rate for the education portion is set by the province. These tax rates, multiplied by the assessed value, results in the tax levies for municipal and education purposes. These amounts added together equal the amount of total property taxes payable.

For example, if a residential property is assessed at $300,000 and the total tax rate is 0.75 per cent, the total property tax bill would be $2,250.

Property assessments are determined in accordance with the Assessment Act, which is not within the scope of this legislative review.

Special Area Rates

Municipalities have the authority to impose special area rates to recover the cost of a special service for only a designated area of the municipality. A special service is a service that is not generally provided throughout the municipality, or is provided in a different way or at a different level in other parts of the municipality. Examples of services for which municipalities have used this authority include: public transit, sewer, water and waste collection.

User Fees and Charges

Municipalities have broad authority to impose fees or charges for any service or activity they provide, or for the use of their property. Examples of common municipal fees include: sewer, water, garbage collection, recreation programs and transit. In recent years, many municipalities have adopted user fee policies to bring some of these services closer to cost recovery, particularly in the case of water and wastewater services. These policies also help reduce pressure on the general tax base, freeing up resources for services that are not as amenable to pricing.

Local Improvement Charges

A local improvement is a capital project that a municipality undertakes that provides a benefit to properties in the vicinity, such as sidewalks and sewers. Municipalities can impose local improvement charges on properties that benefit from the project to recover all or part of its cost. This tool allows municipalities to spread the cost of a project over several years to minimize the annual payment property owners have to make.

Licenses, Permits, and Rents

Municipalities also receive revenues from issuing licenses and permits related to specific activities related to, businesses, vendors, trailers and animals. These revenues also include rents charged to use or occupy municipal properties.

Fines and Penalties

This source of revenue includes fines imposed for not complying with municipal bylaws, or provincial regulatory laws. The most common fines are for local parking infractions and offences under the Highway Traffic Act.

City of Toronto Broad Taxation Authority

The City of Toronto Act gives the City of Toronto broad authority to implement a variety of taxes, subject to certain limitations, such as:

- no tax on personal or corporate income;
- no tax on wealth or payroll;
- no tax on gas or hotels; and
- no sales tax, except for taxes on the sale of entertainment, alcohol or tobacco.

Under this authority, the City of Toronto has elected to implement a Municipal Land Transfer Tax and a Third Party Sign Tax.

Any decision to use the taxation authority is solely the decision of City of Toronto Council. The imposition of taxes under this authority is done through a bylaw. If you have questions

regarding the taxes that the City of Toronto has implemented under this authority, please contact the City of Toronto directly.

Grants

Municipalities may receive grants from the province and/or federal government under specific programs.

For example, the Ontario Municipal Partnership Fund (OMPF) is the Province's main unconditional transfer payment to municipalities. In 2015, the Province is providing municipalities with $515 million in unconditional funding through the OMPF, with over 90% of the grant supporting northern and rural municipalities.

Municipalities receive a significant level of ongoing support from the province in other ways. In 2015, the province is providing municipalities with approximately $3.7 billion in ongoing support through the provincial upload of social assistance benefit program costs, the Ontario Municipal Partnership Fund, provincial gas tax program, and other ongoing initiatives.

MUNICIPAL CAPITAL FINANCE

To help pay for capital projects and plan future operating budget expenditures, a municipality may use a number of sources of financing, including debt (up to a set limit), investment income, and development charges.

Debt Financing

Generally, unless it first receives approval from the Ontario Municipal Board, a municipality may not incur a long term debt that would require it to use more than 25 per cent of its total annual own-purpose revenues to service that debt and the municipality's other long term debt. It is the municipality's decision to use debt or pay-as-you-go financing.

The debt limit for a municipality is often referred to as the annual repayment limit (ARL). The ARL is calculated using the data that municipalities submit annually through the Financial Information Return to the Ministry of Municipal Affairs and Housing on their long-term liabilities and debt charges. The City of Toronto's long term debt is not subject to an Annual Repayment Limit.

Investment Income

During the year, a municipality may have cash on hand (for example, from reserve funds or interim tax collections) that is not immediately needed. This cash is often invested to earn income.

Development Charges

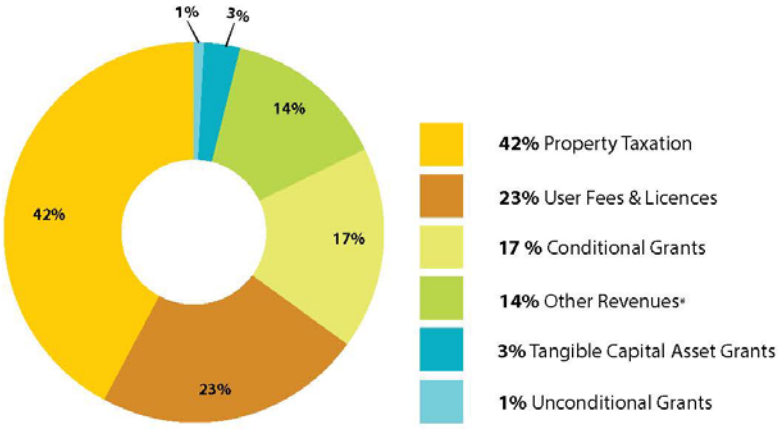
Development charges are fees imposed by municipalities on developers to pay for increased growth-related capital costs (both residential and non-residential) related to items such as water lines or recreational facilities. Development charges are payable when a builder applies for a permit.

The Development Charges Act was reviewed in 2014. That review has concluded and that legislation is not within the scope of this review.

Municipal Expenditures and Revenues

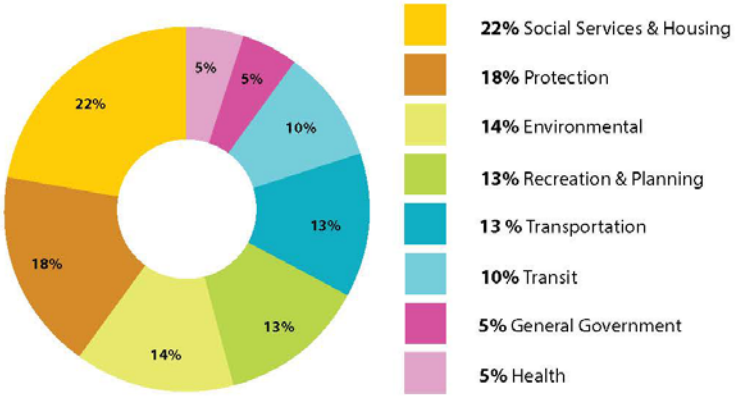
The following charts provide an overview of municipal capital and operating expenditures and how those costs are financed.

2013 Municipal Revenues

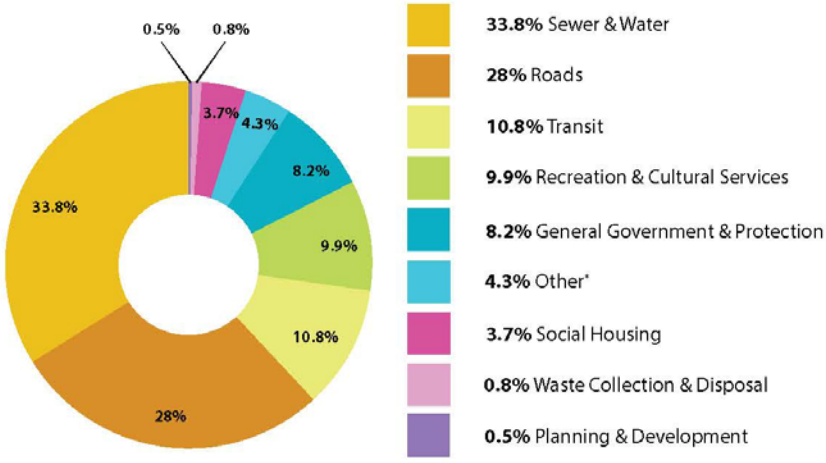


* Other revenues includes: investement income, deferred revenue earned (development charges), donations, revenue from other municiplalites, fines, penalties, and City of Toronto Municipal Land Transfer Tax.

2013 Municipal Operating Expenses

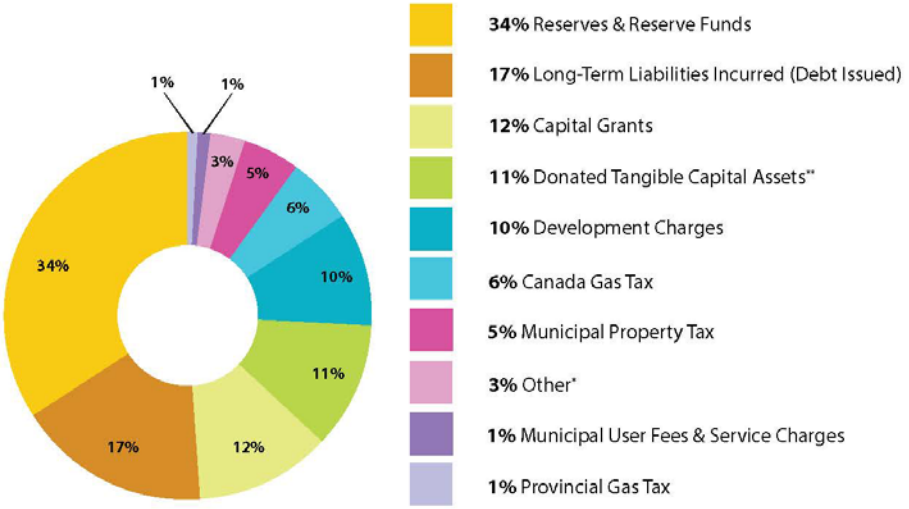


2013 Capital Acquisitions



* Other includes health, soical and family services, parking and air transportation.

2013 Sources of Tangible Capital Asset Acquisition Financing



* Other includes contributions from reserves and reserve funds, cash donations, recreational land, other deferred revenues.
** Assets have been contributed to municipalities from developers and and private citizens.

OTHER TOOLS

Municipal Services Corporations

Municipalities can create corporations for most services that they provide. Corporations may have advantages and challenges compared to other service delivery mechanisms. Advantages may include their ability to increase capital, pool expenses, expertise and staff resources, and provide better economies of scale. Challenges may include balancing independent operation with accountability to the public. Municipal services corporations also allow municipalities to potentially partner with the private and not-for-profit sectors, educational institutions and Aboriginal communities.

Capital Facilities Agreements

Outside parties (potentially private, not-for-profit, educational and Aboriginal partners among others) can provide facilities related to a number of municipal services on behalf of municipalities through a formal agreement. Some of these are referred to as municipal capital facilities agreements. Under these agreements the municipality can provide financial incentives (property tax exemptions, waivers from fees and charges or the use of municipal

employees) relating to the delivery of those facilities. For example, many municipalities can provide incentives through capital facilities agreements with housing providers for affordable housing in the municipality. That outside service provider may therefore receive similar financial treatment as a municipality would if it provided the facility itself.

Business Incubators

With the approval of the Minister of Municipal Affairs and Housing, municipalities can provide financial incentives to facilitate the development of small business programs (commonly referred to as business incubators) in their communities.

Business incubators provide a means for small businesses to grow their client base, take advantage of shared resources and learn from each other. Incubators often bring together small businesses that reflect local industry in the municipality.

MUNICIPAL ASSET MANAGEMENT PLANNING

Asset management planning can help municipalities make the best possible decisions regarding the building, operating, maintaining, renewing, replacing and disposing of infrastructure assets. It is an integrated, long-term or lifecycle approach to planning, intended to maximize benefits, manage risk and provide satisfactory levels of service to the public in a financially sustainable and environmentally responsible manner.

Municipal asset management plans describe the following:

- the characteristics and condition of infrastructure assets;
- the expected levels of service of the assets;
- the planned actions to ensure the expected level of service; and
- the financing strategies to implement the planned actions.

Ontario municipalities must develop detailed asset management plans to accompany any request for provincial infrastructure funding. It is a best practice for municipalities to do ongoing asset management planning and to integrate it into long-term financial planning.

DISCUSSION

- Do you feel your municipality is able to effectively plan for and prioritize its investments in infrastructure (e.g. roads, bridges, water systems, public transit) and its spending on services (e.g. fire, police, water, garbage, public health, recreation programs)?
- Municipalities have a number of options when deciding how to pay for services and projects (e.g. property tax, user fees). Do you feel your municipality is using the right mix of revenue sources to pay for local services and invest in infrastructure?
- Are there changes to current tools that could contribute to municipal financial sustainability (i.e. ability to meet current and future financial needs)?
- Do regional variations (e.g. economy, geography, demographics) present barriers to municipalities achieving long-term financial sustainability? If so, how can these challenges be addressed in the Municipal Act?

Share your feedback online

CHAPTER 5: RESPONSIVE AND FLEXIBLE MUNICIPAL GOVERNMENT

INTRODUCTION

The province views municipalities as responsible and accountable governments. As such, the province wants to make sure that municipalities have the powers and the flexibility they need to govern and be creative and responsive in providing services to their communities. In this review, we will consider topics such as:

- Whether municipalities are able to be innovative in how they are providing services to the community;
- How improvements to the Municipal Act and City of Toronto Act can help ensure that municipalities can make the best use of their authority and available tools to respond to climate change and other municipal and provincial priority areas; and
- Whether the Municipal Act and City of Toronto Act have the necessary processes in place to address local representation needs.

DIVISION AND TRANSFER OF POWERS BETWEEN UPPER- AND LOWER-TIER MUNICIPALITIES

In Ontario, there are three types of municipalities: upper- and lower-tier municipalities in a two-tier municipal structure, and single-tier municipalities that are not part of a two-tier system. Upper-tier municipalities are commonly referred to as counties, historically one of the oldest forms of municipal government in Ontario and largely rural; or as regions, which were created in the 1970s by special legislation to cope with the emerging demands of rapidly growing urban centres.

For lower-tier and single-tier municipalities, the term "local municipality" is often used. They may also be known as cities, towns, villages, or townships.

Division of Powers

As discussed in chapter 2, all municipalities have a range of powers, to make decisions that serve the needs of their community. In two-tier municipal structures, the Municipal Act provides specific rules for the division (or sharing) of powers between upper- and lower-tier municipalities (ontario.ca/cagm).

In practice, this means that if your municipality operates in a two-tier structure, the upper-tier municipality delivers certain services within the upper-tier boundaries. For example, upper-tier services provided by regional municipalities often include arterial roads, transit, sewer and water systems and waste disposal. Upper-tier services provided by counties often include only arterial roads. Lower-tier municipalities are usually responsible for local roads, garbage collection and animal control.

Transfer of Powers (Service Migration)

While the Municipal Act divides certain powers between upper- and lower-tier municipalities, it allows for the transfer of powers between lower- and upper-tier municipalities as long as certain requirements are met (ontario.ca/cagn).

An upper-tier municipality may make a bylaw to transfer all or part of certain lower-tier powers (from one or more lower-tiers) to the upper-tier. This is referred to as upper-tier service migration, and the bylaw does not come into force unless a "triple majority" vote supports the bylaw, meaning:

- the upper-tier council passes the bylaw by majority vote of all votes on the council;
- the councils of a majority of all the lower-tier municipalities forming the upper-tier municipality pass resolutions supporting the bylaw; and
- the total number of electors in the lower-tier municipalities supporting the bylaw form a majority of all the electors in the upper-tier municipality.

A lower-tier municipality may make a bylaw to transfer all or part of certain upper-tier powers to one or more lower-tiers. The lower-tier service migration bylaw does not come into force unless a "triple majority" vote supports the bylaw, meaning:

- at least half of all the other lower-tier municipalities forming the upper-tier municipality pass resolutions supporting the bylaw;
- the total number of electors in the lower-tier municipalities supporting the bylaw (including the lower tier that made the bylaw) form a majority of all the electors in the upper-tier municipality; and
- the upper-tier council passes a resolution supporting the transfer of power by majority vote of all the votes on council.

Some services that have been transferred from one tier to another tier may be transferred back. For example, public transportation systems, other than highways can be migrated between lower-and upper-tier municipalities. Waste collection can also be migrated between lower-tier and upper-tier municipalities.

Under the current rules, some powers may not be transferred back once they have been migrated. For example, the production, distribution and supply of water can only be migrated from the lower-tier to the upper-tier. It cannot be migrated from the upper-tier municipality to the lower-tier.

DISCUSSION

We want to hear if powers are working well in your communities, including the division and transfer of powers.

- What steps is your council taking to improve the quality of municipal services or to save money in the way municipal services are provided to the community?
- Are you aware of any challenges and/or barriers that may prevent your council from providing municipal services, such as economic development, roads or parks, in a more effective and/or innovative manner?

Share your feedback online

CLIMATE CHANGE

Climate change is one of the most significant challenges of our time. Ontario released its Climate Change Action Plan in 2007, which includes greenhouse gas emissions reduction targets of 80 per cent below 1990 levels by 2050 to help reduce the future impacts of climate change and support the development of a strong, low carbon economy. Many municipalities have been leaders in taking action on climate change and in involving their communities in developing mitigation and adaptation strategies.

Climate Change Mitigation

The Ministry of Municipal Affairs and Housing provides some direction and guidance to municipalities on climate change mitigation. For example, ministry policies encourage compact development and complete communities, which may help to reduce greenhouse gas emissions through improved energy efficiency and a reduced need to drive. The ministry also administers a Building Code that specifies energy and water efficiency requirements for new construction.

Under the City of Toronto Act, the City of Toronto has the authority to require and govern the construction of green roofs or alternative roof surfaces in certain circumstances. The Municipal Act currently does not include similar green roof provisions.

Climate Change Adaptation

Municipalities are already feeling the impacts of a changing climate as they deal with the aftermaths of an increased number of extreme weather events like greater flooding, tornados, more frequent heat waves and more severe episodes of freezing rain. These events can pose serious and costly threats to public safety and infrastructure. In addition, climate change impacts, like an increased number of extreme heat waves, may have significant effects on

public health. Municipalities have a role to play in fostering resilient communities that are prepared to anticipate and address these impacts.

DISCUSSION

We want to ensure the long-term prosperity and livability of our communities. The Ministry of the Environment and Climate Change (MOECC) is leading Ontario's efforts to fight climate change. MOECC is currently developing a climate change strategy and action plan to be announced later this year. We are interested in hearing how we can strengthen the Municipal Act and the City of Toronto Act to help municipalities address climate change across all municipal departments.

- Has your local council integrated climate change considerations in its policies, programs and decision making processes?
- What tools do municipalities need to address climate change mitigation and adaptation?
- Are you aware of any challenges and/or barriers that your council is facing in implementing initiatives related to climate change?

Share your feedback online

LOCAL REPRESENTATION

The Municipal Act sets out rules that municipalities must follow if they wish to change their council composition. For regional municipalities, some of the changes they may make include:

- changing the size of council;
- changing the way in which members of the upper-tier council are selected (for example, directly elected to the upper-tier); and,
- changing the method for how the head of council (e.g. regional chair) is selected.

If a regional municipality wishes to change its composition, it must first ask the Minister of Municipal Affairs and Housing to pass a regulation allowing it to do so. If and when a regulation is passed, the regional municipality must then follow the rules set out in the Act to change its composition. These rules include passing a bylaw, holding at least one public meeting to discuss the proposed change and receiving the required level of support from the lower-tier municipalities for the change.

Municipalities may also create local bodies, such as advisory committees or community councils, to help municipalities take into account community views in local decision-making. It is up to the municipality to decide the purpose of the local body, its composition, and its powers.

DISCUSSION

- Does the Municipal Act process for changing regional municipal council representation allow regions to respond to changing demographics and/or rapid population growth? If not, do you have suggestions for how these issues can be addressed?
- How can local bodies, such as community councils, best be used to increase community input in municipalities?

Share your feedback online

CHAPTER 6: WHAT'S NEXT

NEXT STEPS – WHAT WE HEARD

The main engagement period for the review will run from June to October 2015. Over the summer, the Ministry of Municipal Affairs and Housing will begin analysis on what we heard from Ontarians and our municipal sector partners.

Later this year, the government will post a "What We Heard" document on the Municipal Affairs and Housing website (ontario.ca/dl82) to capture and organize the input received from the public, municipalities and organizations.

OTHER WAYS TO GET INVOLVED

In addition to providing feedback through this discussion guide, you are welcome to send any further questions or suggestions you may have to:

Municipal Legislation Review
Ministry of Municipal Affairs and Housing
Local Government Policy Branch
777 Bay Street, 13th Floor, Toronto, ON M5G 2E5

Email: municipalreview@ontario.ca

FURTHER READING

We understand that you may have additional questions regarding the current municipal legislation framework. For more information, please see the resources below:

- **Municipal Councillor's Guide (ontario.ca/cagp)**
- **Municipal Act on e-laws (ontario.ca/cagq)**
- **City of Toronto Act on e-laws (ontario.ca/cagb)**
- **Municipal Conflict of Interest Act on e-laws (ontario.ca/cagr)**
- **MMAH website (ontario.ca/mah)**
- **Ontario Ombudsman website (ombudsman.on.ca)**

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