

TEMPLEMAN

BILL 68

MODERNIZING ONTARIO'S MUNICIPAL LEGISLATION ACT, 2017


ONTARIO EAST
ECONOMIC DEVELOPMENT


OEMC

OVERVIEW

Changes Affecting Municipal Councils

- Codes of Conduct for Members of Council and Local Boards
- Staff - Council Relations Policies
- Integrity Commissioners

Changes to the Municipal Tax Sale Process

- The Great
- The Good
- The UGLY

Conduct, Conflict, and Complaints: Changes Affecting Municipal Councils

The Legislation Amended by Bill 68 Includes:

- the *Municipal Act, 2001*
- the *Municipal Conflict of Interest Act*

General Amendments Impacting Municipal Councils

The Definition of “Meeting”

Before January 1, 2018

- Any regular, special or other meeting of a council, of a local board or of a committee of either of them.

After January 1, 2018

- Any regular, special or other meeting of a council, of a local board or of a committee of either of them, where a quorum of members is present and members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

General Amendments Impacting Municipal Councils

Electronic Participation

- Permitted in meetings which are open to the public
- A municipality's procedure by-law should outline the parameters of such participation, including voting by electronic participants

Closed Meetings

- Four new discretionary exceptions have been added which allow a meeting or part of a meeting to be closed to the public

In Force as of January 2018

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General Amendments Impacting Municipal Councils

Amendments to the *Municipal Conflict of Interest Act*

- Pecuniary Interests
- Written Statements of Disclosure
- Responses to an Alleged Contravention

In Force March 1, 2019

Council Code of Conduct

Current

223.2 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to establish codes of conduct for members of the council of the municipality and of local boards of the municipality.

- **Provides the authority to establish a Code of Conduct, but no requirement to do so**
- **Council determines how the Code of Conduct will be enforced**

In Force March 1, 2019

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

- **Codes of Conduct mandatory**
- **Enforcement by an Integrity Commissioner**

Council Code of Conduct

O. Reg. 55/18 Codes of Conduct

Codes of Conduct for members of council and local boards must cover the following prescribed subject matters:

1. *Gifts, benefits and hospitality.*
2. *Respectful conduct, including conduct toward officers and employees of the municipality or the local board, as the case may be.*
3. *Confidential information.*
4. *Use of property of the municipality or of the local board, as the case may be.*

In Force March 1, 2019

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Council - Staff Relations Policies

Section 270 (1) A municipality shall adopt and maintain policies with respect to:

2.1 The relationship between members of council and the officers and employees of the municipality.

In Force March 1, 2019

Effective Policies Will:

- ✓ **Delineate the roles and responsibilities of Council, Members, the CAO / Clerk and other staff**
 - **Governance versus Management**
- ✓ **Emphasize that Council *collectively* directs action**
- ✓ **Clarify communications and reporting procedures**

Integrity Commissioners

An Integrity Commissioner:

- Exercises such powers and duties as may be assigned to him or her by the municipality, including:
 - enforcing local codes of conduct
 - enforcing any other policies, procedures, or rules governing the ethical behaviour of council and/or local boards
 - conducting inquiries on code of conduct and *MCIA* matters
 - providing education, advice, and direction to Members and Council on ethical issues

- Reports to Council
 - Recommends appropriate sanctions for contraventions

- May delegate in writing to any person, other than a Member of Council, any of his or her powers or duties

Integrity Commissioners

- New powers to investigate *MCI*A complaints from electors or "persons demonstrably acting in the public interest"
- May launch proceedings against Members under the *MCI*A – currently, only private citizens can launch proceedings
 - Municipalities must indemnify against cost consequences reasonably incurred
- Requests for advice and any advice provided must be in writing
- May summarize advice he or she has given when providing education information to the public or a periodic report to Council, but cannot disclose confidential information that could identify a person concerned
 - Unless it is a report on a specific contravention of the Code of Conduct

Integrity Commissioners

Election Periods

- If a Commissioner has not completed an inquiry before nomination day for a regular election, the inquiry is terminated on that day
 - Cannot be re-commenced unless, within six weeks of election day, the person/entity who made the request or the Member/former Member concerned requests the inquiry be commenced
- No new requests for an inquiry can be received between the nomination day and voting day
- The municipality or local board cannot consider whether to impose penalties during this period

Integrity Commissioners

Council Must Consider:

- The policies, procedures, and rules that will be subject to enforcement by the Commissioner
- The scope of the interactions of the Commissioner and Council
- The Appointment Process
- The form and content of the Commissioner's Reports
- The course of action where a request for an inquiry is withdrawn
- What directions will be provided on issues of confidentiality (beyond what is covered in the *Act*), including the disclosure of documents that may be subject to *MFIPPA* or other privacy legislation

The Great, the Good, and the UGLY: Changes to the Municipal Tax Sale Process

The Legislation Amended by Bill 68 Includes:

- the *Municipal Act, 2001 – Part XI*
- the *Forfeited Corporate Property Act, 2015*

The Great: Timelines for Registration of Tax Arrears Certificate

Before June 1, 2017

373 (1) Where any part of tax arrears is owing with respect to land in a municipality on January 1 in the third year following that in which the real property taxes become owing, the treasurer of the municipality, unless otherwise directed by the municipality, may prepare and register a tax arrears certificate against the title to that land.

The Great: Timelines for Registration of Tax Arrears Certificate

Current

373 (1) Where any part of tax arrears is owing with respect to land in a municipality on January 1 in the **second year** following that in which the real property taxes become owing, the treasurer of the municipality, unless otherwise directed by the municipality, may prepare and register a tax arrears certificate against the title to that land.

The Great: Timelines for Registration of Tax Arrears Certificate

- Certificates can be registered where 2016 arrears owing
- Potential reduction in 1/3 of arrears previously carried
- Especially beneficial for smaller municipalities

The Good:

Expedited Process for Forfeited / Escheated Property

373.1(1) Where any part of tax arrears is owing with respect to land that is vested in the Crown because of an escheat or forfeiture as a result of the dissolution of a corporation, the treasurer of the municipality, unless otherwise directed by the municipality, may prepare and register a tax arrears certificate against the title to that land.

The Good:

Expedited Process for Forfeited / Escheated Property

“tax arrears” means any real property taxes placed on or added to a tax roll that remain unpaid on January 1 in the year following that in which they were placed on or added to the roll

The Good:

Expedited Process for Forfeited / Escheated Property

(2) A tax arrears certificate registered under this section shall indicate that the land described in the certificate will be sold by public sale if the cancellation price is not paid within **90 days following the date of the registration** of the tax arrears certificate.

The Good:

Expedited Process for Forfeited / Escheated Property

- Taxes owing January 1
- Tax Arrears Certificate registered January 2
- Cancellation price must be paid by April 2
- Notice of Registration served within 30 days (60 under traditional scheme)

The Good:

Expedited Process for Forfeited / Escheated Property

Who gets notice?

- Directors and Officers of the dissolved corporation
- Minister responsible for the administration of forfeited corporate property (Minister of Economic Development, Employment and Infrastructure)

The Good:

Expedited Process for Forfeited / Escheated Property

Dovetailed with *Forfeited Corporate Property Act, 2015*

Tax Arrears Certificate cannot be registered where:

- order cancelling encumbrances
- notice that the Crown intends to use the property for Crown purposes has been registered against the property

The Good:

Expedited Process for Forfeited / Escheated Property

- No Final Notice required
- No change in requirements for advertising sale (4 weeks – Ontario Gazette / local paper)
- December 31 arrears – property sold in May

The Good: No By-Law For Extension Agreements

Before June 1, 2017

378 (1) A municipality, **by a by-law** passed after the registration of the tax arrears certificate and before the expiry of the one-year period mentioned in subsection 379 (1), may authorize an extension agreement with the owner of the land, the spouse of the owner, a mortgagee or a tenant in occupation of the land extending the period of time in which the cancellation price is to be paid.

The Good: No By-Law For Extension Agreements

Current

378 (1) A municipality may, after the registration of the tax arrears certificate and before the expiry of the one-year period mentioned in subsection 379 (1), enter into an extension agreement, extending the period of time in which the cancellation price is to be paid, with any of the following persons:

1. Any owner of the land.
2. The spouse of any owner.
3. Any mortgagee.
4. Any tenant in occupation of the land.
5. Any person the treasurer is satisfied has an interest in the land.

The Good: No By-Law For Extension Agreements

- Can be more efficient, especially for last minute agreements
- By-Law still best practice

The UGLY: Surplus Funds from Sale

Before June 1, 2017

380 (6) If no person makes an application under subsection (4) within the one-year period referred to in that subsection, the amount paid into court under subsection (2) shall be deemed to be forfeited,

(a) to the Crown in right of Ontario if, at the time of the registration of a tax arrears certificate, the land was vested in the Crown because of an escheat or forfeiture as a result of the dissolution of a corporation; or

(b) **in any other case, to the municipality.**

The UGLY: Surplus Funds from Sale

Current

380 (5) An application under subsection (4) may only be made within **10 years after the payment into court** under subsection (2); however, the application may not be made earlier than 90 days after the payment into court.

The UGLY: Surplus Funds from Sale

380 (8) If no person makes an application under subsection (4) within 10 years after the payment into court under subsection (2), the amount paid into court, together with accrued interest, **is deemed to be forfeited to the Crown in right of Ontario**, and the Public Guardian and Trustee may be paid that amount in the name of the Crown on filing a written request for payment out of court with the Accountant of the Superior Court of Justice in the form provided by the Accountant.

The UGLY: Surplus Funds from Sale

Our experience:

- Not often
- Not usually substantial sums
- Nice windfall when it happens

But still, this one stinks.

TEMPLEMAN

205 Dundas Street East, Suite 200
Belleville, Ontario K8N 5A2
T: 613-966-2620
F: 613-966-2866

366 King Street East, Suite 401
Kingston, Ontario K7K 6Y3
T: 613-966-2866
F: 613-542-8202

9 Broad Street, Suite 207
Brockville, Ontario K6V 6Z4
T: 613-498-4832
F: 613-542-8202

43 Front Street East, Suite 400
Toronto, Ontario M5E 1B3
T: 416-840-4256
F: 416-840-4565


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ECONOMIC DEVELOPMENT


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