

Type of Decision									
Meeting Date	Tuesday, November 14, 2017				Report Date	Wednesday, October 18, 2017			
Decision Required		Yes	x	No	Priority	X	High		Low
Direction		Information Only		x	Type of Meeting	X	Open		Closed

Clerk's - Report #14/11/17/801-iii - Bill 68 Training October 18, 2017

Subject: Bill 68, Changes relating to Openness and Transparency – Municipal Act, Codes of Conduct, Municipal Conflict of Interest Act, Integrity Commissioners, and subsequent required Policy

The Clerk has attended on-line and in person training on Bill 68 which included significant changes to legislation enacted to increase accountability and transparency of municipal Councils. The *Modernizing Ontario's Municipal Legislation Act* has made changes to the *Municipal Conflict of Interest Act*, the *Municipal Act*, and many others with a goal to make municipal council's more accountable to the public.

A full report with detailed recommendations will be provided later however; the attached is a summary of the training attended as per municipal policy.

1. Meetings

- a. The definition of meeting has been clarified and includes such things as email or phone meetings. It has been determined that a head of council contacting each member independently, advancing business of council, via email or phone is in fact a meeting and illegal as there is no opportunity for debate amongst all members or observation by the public.
- b. Education and training sessions are an allowable closed meeting category as they do not advance specific council decisions but instead provide general information, even though it is to the entire council.
- c. The key is to "materially advance" an issue which means "to measurably or identifiably advance" a topic/issue.

2. Electronic Participation

- a. The procedure by-law MAY allow for electronic participation during meetings. This has been allowed under the *City of Toronto Act* for years but its Council has not allowed this stating "we got elected to come to council to represent our constituents, we got elected to vote".
- b. During discussion at the provincial level, this type of participation was suggested as a means of getting business done during emergency situations (exceptions and challenges, not routine). It is not to replace people who plan to be away for a length of time, such as on vacation.

- c. Each council will need to determine whether the individual attending electronically might vote or not. They are not included in a quorum. You need a quorum to vote. Not clear? Results of any vote could be contested as this legislation is new and has not been tested in court.
- d. Some municipalities (inside Ontario) now use it only sporadically due to (AODA) accessibility issues. School boards and Northern service boards use it.
- e. Some of the concerns are:
 - i. Who is this person sitting with? Lobbying efforts? Someone else is dictating how the individual is to vote?
 - ii. If the council is to go into closed session, to receive legal advice prior to the vote, something might be shared that might change the vote of the individual who is not permitted to participate. Once out of closed session, the vote is taken; the council member not permitted to participate in closed session has no idea what was shared but is now required to vote?
 - iii. Electronic connections, interruptions. Some say "10 minutes not connected and you're done". The meeting will resume, no more efforts will be taken to reconnect.
 - iv. How could the chair effectively manage a meeting when not in attendance?
- 3. New closed meeting exemptions. Be careful with them. You must be able to satisfy yourself that the issue fits under this legislation to close, but it must also fit under MFIPPA legislation so that you do not later have to disclose any documents requested.
 - a. IPC cases will eventually reveal what should/could fall under new exemptions.
- 4. Open and closed meetings. Recommendation is as HCM currently does and hold as many meetings in open session as possible.
 - a. To make decisions concerning a topic that might fall under closed meeting rules; in order to foster an atmosphere of accountability and transparency. A cover report would be produced for the open meeting indicating as much information as possible but supported by a confidential document with details required to be kept secret, also provided to council for information. The closed doc data is not to be discussed in open session, in a situation where a decision could be made without doing so.
- 5. Make sure meetings are open. Do all you can to keep them open. Closed meetings should occur only upon the Clerk's recommendations.
- 6. Conflict of Interest legislation has changed so that now, a member is to file a written statement of the interest and its general nature with the clerk.
 - a. Recommended that blank documents be provided to all members. Can fill in and read it at the appropriate time during the meeting. All forms to be forwarded to the Clerk. Best to then list them and file all on the municipal website.
 - b. Spoke about bias. The Supreme Court of Canada has ruled on this, bias is difficult to prove, members often have well known positions on matters, have been elected because of them. Eg. Rob Ford – John Tory wanted to rename an arena. Rob's nephew and a councillor friend called a "point of privilege" and chose not to vote. Not necessary. No conflict, they were overly cautious.
- 7. Two new policies required:
 - a. The relationship between members of council and the officers and employees of the municipality. – (we already have this in Codes)

- b. Pregnancy leave and parental leave of members of Council. (to encourage females to run for council.)
- 8. Closed meeting Investigation
 - a. Closed meeting investigator report is to go to council in closed session or a staff report is created to summarize and provided in open. The investigator meets with the clerk to review the report and make recommendations. The clerk then recommends that the investigator's recommendations be adopted.
 - b. Council must now pass a resolution stating how it attends to address the report.
 - c. A deputy head of council only has head of council powers while presiding at meetings. Any other application is contrary to legislation (Municipal Act) without the municipality taking further steps.
 - d. For any other use, the specifics are to be detailed in the Procedure by-law. The head may delegate specific tasks – example, attend a ribbon cutting, signing legal docs etc. but cannot be automatically transferred to someone designated as “deputy” under the *Municipal Act*.
- 9. Codes of Conduct – Council
 - a. The Minister may make regulations which will require certain subject matters to be included; right now it is up to Council.
 - b. It's about public confidence. Need to ensure that you are not simply hearing from one group that does not like a recent decision of council. Squeaky wheel.
 - c. Remember what the consequences of a Code violation are. What sanctions are allowed? Is an investigation worth the money spent to the taxpayer?
 - d. Code and IC process should be formally adopted by By-Law/policy. Spell it out.
 - e. Reduce number of items in Code. Reduce # of complaints.
- 10. Integrity Commissioner
 - a. Hire. A teacher or a lawyer. Want to teach to avoid conflict, or be a judge once it has occurred?
 - b. Even though the legislation provides broad power, provide specific authority in terms of reference or contract to refuse to investigate under frivolous and vexatious circumstances.
 - c. Is to provide oversight as well as education and training.
 - d. Can delegate education and training.
 - e. Access, process – policies.
 - f. Changes:
 - i. Can depend on MCIA sections 5, 5.1, 5.2;
 - ii. Can provide advice to members on obligations under Code;
 - iii. Can provide advice to members on ethical behaviours;
 - iv. Can provide advice to members on obligations under MCIA;
 - v. Education to council, boards and public, staff under MCIA and Codes.
 - g. Significant budget item for 2019.
 - h. Educate, educate, educate to keep costs low.

To Do

- 1. Update current policy and by-law to reflect legislated changes
 - a. Procedure By-Law
 - i. Bill 8 changes – Ombudsman's Act, MFIPPA
 - b. Municipal Code of Conduct – Council
 - c. Appoint Integrity Commissioner
 - d. Accountability and Transparency By-Law
 - e. Indemnification Policy
 - f. MCIA
 - i. Create form to declare interest

- g. Elections Act – Bill 181 changes – Elections Related Resources Policy (already in code?)
- h. Review Bill 68 Report – City of Ottawa
- i. Tree Policy “By-Law”