



July 14, 2021

The Honourable Jane McKenna
Associate Minister for Children and Women's Issues
Ministry of Children, Community and Social Services
438 University Ave, 7th Floor
Toronto, ON M5G 2K8

Dear Associate Minister McKenna:

We thank you for the opportunity to provide input into the Government's consultation on Strengthening Municipal Codes of Conduct.

The Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO) represents excellence in local government management and leadership. With more than 2000 members working in municipalities across Ontario, AMCTO is Ontario's largest voluntary association of local government professionals and the leading professional development organization for municipal professionals.

We appreciated the opportunity to meet with your predecessor, Minister Dunlop, during the roundtable in May along with our colleagues from the Ontario Municipal Administrators' Association.

In addition to responding to the survey, we offer this submission for your consideration with additional input on the topics raised through the consultation and the accountability and transparency framework in Ontario more broadly.

Our input is based on our first principle - that protecting the health, safety and well-being of municipal staff, elected officials and the public is paramount.

We look forward to continuing to work with you and your staff on areas of common interest and concern. Please do not hesitate to contact David Arbuckle, Executive Director (darbuckle@amcto.com) should you wish to discuss our submission further.

Sincerely,

Sandra MacDonald, CMO, AMCT, AOMC
President, AMCTO



Cc: Steve Clark, Minister of Municipal Affairs and Housing
Kate Manson-Smith, Deputy Minister, Ministry of Municipal Affairs and Housing
Marie-Lison Fougère, Deputy Minister, Women's Issues, Ministry of Children,
Community and Social Services
Jonathan Lebi, Assistant Deputy Minister, Local Government and Planning Policy
Division, Ministry of Municipal Affairs and Housing
Association of Municipalities of Ontario
Ontario Municipal Administrators' Association
Municipal Integrity Commissioners of Ontario



**AMCTO's Submission to the Strengthening Municipal Codes of Conduct
Consultation**

July 2021

AMCTO appreciates the opportunity to provide input into the Government's consultation on Strengthening Municipal Codes of Conduct. After taking time to hear from our membership and in consult with our Legislative and Policy Advisory Committee and Board members, who work in a variety of roles across Ontario municipalities, we are pleased to share with you our recommendations and additional considerations.

The AMO submission identifies five guiding principles – subsidiarity and accountability to the electorate, mature municipal governments, clear link to municipal governance, practicality and respect for other legal processes. We agree with these guiding principles and add that our submission also framed by our first principle – that protecting the health, safety and well-being of municipal staff, elected officials and the public is paramount. That said, we also note that improvements to the accountability and transparency framework should be broader than the scope of this review as it presents an opportunity to look at some of the other aspects beyond the surface that present challenges for municipalities.

Moreover, given the sensitive and often political nature of the enforcement of codes, we would also like to re-highlight that municipal staff should not be put in the uncomfortable position of enforcing codes whether that be the use of penalties or other remedial mechanisms.

As an organization representing excellence in municipal administration, with members whose responsibilities include administering policy, we also highlight the importance of planning for operational implications of any changes and believe implementation must be considered.

What changes or mechanisms are needed to better hold council members accountable for municipal code of conduct violations?

Recommendation 1: Require enhanced training on the Code of Conduct for Members of Council

Code of Conduct violations would be reduced through proactive augmented training for elected officials. This training should be standardized, and legislatively mandated each term as is done in Alberta. The training could be provided by the Ministry of Municipal Affairs and Housing or an authorized provider, in consultation with municipal staff.

Enhanced content in training would assist elected officials in understanding their responsibility to ensure a respectful workplace. Consideration can also be given to mandating training for candidates during the Campaign Period, so that potential council members understand the commitment to the Code prior to taking office.

Recommendation 2: Require continued commitment to the Code

Councillors should be required to confirm, on an annual basis, their commitment to their Code to refresh their understanding. This would also provide municipal staff and council an opportunity to review their Code frequently and evaluate if there is a need to update or enhance its provisions.

Recommendation 3: Expand O. Reg. 55/18 to include minimum standards

O.Reg. 55/18 prescribes certain subject matters that a municipality is required to include in their Code of Conduct; however, this should be augmented. Municipalities should continue to have the ability to alter their Code to suit local circumstances with minimum standard requirements.

This would assist Integrity Commissioners in reaching consistent decisions across the province, as they could better draw on precedents set by others. Councillors would also have a sense of their obligations because of the standards set by these decisions.

Some jurisdictions (e.g., the States of Western Australia and New South Wales) have provided municipalities with a model code; others have set additional minimum standards (e.g., Alberta, Quebec). In each case, municipalities can still augment the code as suited to their local circumstances. Still other jurisdictions have worked together with the sector to develop guidance and template codes (e.g., British Columbia). Should the Government choose to adopt a model code, additional consultation with municipalities as to its benefits would be required.

How can codes be more effectively enforced?

Recommendation 4: Integrity Commissioners should not be accountable to Councils

Integrity Commissioners should be independent from Council, as the current framework represents an inherent conflict in Council appointment and removal. Several municipalities have had issues where a Council is not satisfied with the report of an Integrity Commissioner, does not accept the report, and fires the Integrity Commissioner. While we are not suggesting that Integrity Commissioners are infallible and should have a secured permanent position within the municipality, there must be assurances of accountability and transparency in their independent role. Some options that might be worth considering:

- Fixed terms for Commissioner appointment;
- A stipulated 2/3 majority vote threshold to meet in order to remove the Integrity Commissioner; and
- Legislation should also make clear that Integrity Commissioners report to Council as a whole.

Moreover, separating the hiring process could also reduce the inherent conflict. For instance, some larger municipal Councils have delegated authority for an Integrity Commissioner appointment to municipal staff or to a panel though this is not a common practice.

Recommendation 5: Integrity Commissioners should have the ability to make binding decisions and the power to apply sanctions

Integrity Commissioner decisions should be binding and Integrity Commissioners should have the power to apply remedies and sanctions, not just recommend them to Council.

We have heard from our membership that since Integrity Commissioners' reports are not binding and they cannot apply sanctions, there is often a feeling amongst complainants that filing a complaint is not worth it, especially if the complaint is of a nature where the complainant may be identified. This means that serious breaches of Codes of Conduct may be going unreported because potential complainants feel defeated before the process begins.

Are a broader range of penalties for violations of the codes of conduct needed?

Recommendation 6: Create a standard suite of progressive penalties for certain violations of the Code

A broader range of penalties for violations of Codes of Conduct that are meaningful and reflective of the seriousness of Code breaches are needed. There should be a standardized, progressive hierarchy or range of penalties for violations of the Code. However, there should be inherent flexibility in this regime to allow the Integrity Commissioner to take into account unique circumstances of the local municipality.

This should include a mechanism for suspension and/or removal from office for egregious conduct. Consideration must be given, however, for Members who sit on both an upper and lower tier council and what the procedures should be for dealing with such a matter. It is currently unclear whether a violation of a lower-tier code automatically impacts the work of a councillor at the upper tier.

For instance, if they are suspended or possibly removed from one council, are they/should they be removed from both? There are other aspects that should be considered when imposing sanctions for Code breaches, such as harm or costs incurred in terms of lost wages (some councillors are part-time, receive small salaries, honorarium or stipends) as well as costs to the ratepayers related to code violations, and escalated repercussions on the municipality related to the timing of the Code breaches, such as during a crisis situation.

Whatever the progressive penalization and removal mechanism, due consideration must be given to the ease of implementation and operationalization to ensure timely remediation and avoid administrative burden.

Applying sanctions should not be the responsibility of municipal staff.

What circumstances would additional or stronger penalties for violating a code be appropriate?

Stronger penalties could be appropriate in cases where a Member of Council has multiple violations of the same provisions of the Code of Conduct.

Upon the recommendation of the Integrity Commissioner or another body, an egregious act should also be met with stronger penalties.

It is important to differentiate between serious breaches of the Code of Conduct which should be dealt with through strong penalties by the Integrity Commissioner, criminal matters that should be referred to the proper authorities, and matters related to Occupational Health and Safety and Ontario Human Rights issues. Further guidance is needed from the Province to assist in developing proper procedures to handle matters that may be addressed by multiple parties, such as those investigated by Integrity Commissioners and independent investigations conducted by a Human Resources department or third parties.

[Other Considerations for Strengthening Accountability and Transparency:](#)

Beyond the questions posed by the consultation survey, AMCTO offers several other insights on the accountability and transparency framework for your consideration. We believe that as an organization

Council-Staff Relations

Recommendation 7: Ensure staff are not responsible for enforcement of Codes of Conduct and have adequate support.

As mentioned above, municipal staff should not be responsible for the enforcement of Codes of Conduct, especially with regards to suspension or removal from office. As AMCTO and other staff associations have raised previously, matters related to Council-staff relations can continue to pose a challenge and working relationships can be significantly affected. Moreover, municipal staff require a place to turn for advice and support when it comes to problematic or troublesome interactions with members of council. In the current system, senior municipal staff are particularly vulnerable as they have nowhere to turn except Council, who they are accountable to and may be unable to seek the remedy required in these situations.

While there are processes at the provincial level for public servants to turn to for advice and support, there is no body or advisor to which municipal staff can seek advice on these or other ethical matters. The Integrity Commissioner's role is strictly for members of council and have a responsibility for education, but not to provide advice to staff.

Recommendation 8: Review the definitions and descriptions of 'administration' and 'council,' and remove the 'CEO' title from the description of the head of council

In previous submissions to review of the Municipal Act, AMCTO has recommended clarifying the roles and responsibilities of council and staff in the Act, including enhancing the distinction between the Head of Council as CEO and the CAO. As we indicated in

our submission to the last Municipal Act review in 2015, the head of council is not responsible for the administrative policies, practices and procedures of the municipality, which the Municipal Act places with the CAO, who sits atop the administrative structure.

The CEO definition creates confusion and misrepresents the role of both council and its head. This is similar to recommendations by Justice Bellamy and more recently Justice Marrocco. We would continue to recommend to the Province that this be reviewed and amended as part of strengthening and clarifying roles and responsibilities and enhancing accountability.

Municipal Operational and Administrative Burden

Recommendation 9: Clarify the ability of the Integrity Commissioner to dismiss frivolous requests and find informal mechanisms for resolution

The current Integrity Commissioner framework is placing a significant financial burden on municipalities. In some municipalities, many complaints come from the same handful of complainants, whether a resident or another member of council. By clarifying the ability of the Integrity Commissioner to either dismiss frivolous requests or explore alternative mechanisms for resolution, municipalities could most easily contain the large cost of Integrity Commissioner investigations.

There should also be regulation surrounding what Integrity Commissioners charge for their services to help standardize across the province, with consideration given to municipalities who have considerably smaller budgets.

Administrative Monetary Penalties

While we agree with AMO that legislation and regulations are needed to enhance the Integrity Commissioner's role to enforce Codes of Conduct and give it more tools to do so, we would need to better understand how the proposed application of Administrative Monetary Penalties would be implemented in order to provide meaningful feedback. Without this understanding, AMCTO is not in a position to be for or against this proposal. However, we offer the below considerations as the use of Administrative Monetary Penalties continues to be explored:

- Would members of council be able to use existing appeal processes currently available to members of the public?
- Hearing and screening officers may be members of municipal staff appointed to the role, while others may be contracted by municipalities and others still are appointed by council which could exacerbate issues around council-staff relations and impartiality/conflict of interest.
- There are typically procedures in place to collect the penalty fee from members of the public that would need to be applied to members of council. Would existing remedies for failing to pay a fine also apply to members of council who refuse to pay?

- Not all municipalities have implemented AMPS for existing offence types allowed under the Municipal Act and there would likely be administrative costs in implementing and preparing staff to operationalize such a system.

Integrity Commissioners

Recommendation 10: Set standards for Integrity Commissioners to promote greater consistency in investigations, including required qualifications, more guidance on how investigations are conducted and reported, and how Integrity Commissioners fulfill their role in providing education.

Integrity Commissioners are important to the existing accountability and transparency framework, but there is still work to be done to increase their impact and improve consistency across the province. The Integrity Commissioner mechanism should be further standardized. Across the province, there is much discrepancy surrounding the qualifications for Integrity Commissioners. Our members would like to see set standard qualifications for Integrity Commissioner as well as enhanced training, perhaps offered by the Ministry of Municipal Affairs and Housing.

Though municipalities are required to appoint an Integrity Commissioner to provide educational information to Members of Council, the municipality and the public about the Code of Conduct and the Municipal Conflict of Interest Act, this role is not always fulfilled and when it is, there are often significant costs applied.

Recommendation 11: Promote greater knowledge of municipal issues in the judicial system, and explore the creation of a specific provincial tribunal to handle local government issues

Given that some of the recommendations put forward during this consultation would potentially increase the use of the courts to adjudicate issues around removal of a member of council, we would draw attention to our submission to the last [Municipal Act Review in 2015](#). Specifically:

The government should look for ways that it can increase knowledge of municipal issues in the judicial system. This is an initiative that AMCTO would support and be willing and interested in partnering with the government to achieve. However, the government should also go further and consider what other actions it could take to ensure that the principles of good governance are being upheld in the judicial system. One option worth exploring would be the creation of a specific tribunal to handle local government adjudication.