

AMCTO SUBMISSION *on the*
**MUNICIPAL ACT & MUNICIPAL
CONFLICT OF INTEREST ACT**

OCTOBER 2015

About AMCTO:

AMCTO represents excellence in local government management and leadership. AMCTO has provided education, accreditation, leadership and implementation expertise for Ontario's municipal professionals for over 75 years.

With approximately 2,200 members working in 98 per cent of municipalities across Ontario, AMCTO is Canada's largest voluntary association of local government professionals, and the leading professional development organization for municipal administrative staff.

Our mission is to provide management and leadership service to municipal professionals through continuous learning opportunities, member support, and legislative advocacy.

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October 30, 2015

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

Dear Minister McMeekin

RE: Municipal Legislation Review

I am writing on behalf of AMCTO and the more than 2,200 municipal professionals who make up our membership, to present our submission as part of the Municipal Legislation Review.

AMCTO is pleased to present our submission which contains recommendations on the themes of modernization, accountability and transparency, financial fairness, good governance and clarity. We would encourage the government to carefully consider these recommendations and those that are being put forward by other associations and municipalities. Our goal is to ensure that the *Municipal Act* and *Municipal Conflict of Interest Act* function as effective documents that enable local governments to operate in an efficient, effective manner while offering high quality services to their citizens.

We appreciate your consideration of our suggestions and look forward to hearing back in a timely manner. Should you have any questions about this submission, please do not hesitate to contact Rick Johal, Director of Member & Sector Relations at AMCTO. He is best reached at rjohal@amcto.com or 905 602 4294 Ext. 232.

Yours sincerely,



Chris Wray
AMCTO President

C. Deputy Minister Laurie LeBlanc
C. Assistant Deputy Minister Kate Manson-Smith
C. Pat Vinini, Executive Director – Association of Municipalities of Ontario (AMO)

TABLE OF CONTENTS

Context	5
Making this Review Matter	13
Recommendations	16
Part I: Modernization	18
Part II: Accountability & Transparency	22
Part III: Financial Fairness	27
Part IV: Good Governance	30
Part V: Clarity	33
Conclusion	40
Appendix A: Projected Ontario Municipal Operating Costs to 2020	41
Appendix B: MFOA Municipal Act Review Recommendations	42
Appendix C: Members of AMCTO's Municipal Legislation Review Advisory Group	49

THE CONTEXT

Local governments in Ontario are in a period of transition and change, and as with all transitions, the implications are significant. This period of transition, in particular, will impact the way that local governments fund services, staff key positions, interact with their citizens, and maintain critical infrastructure in the future. The Government of Ontario's review of municipal legislation, therefore, comes at a fortuitous time. It offers municipalities, municipal professionals, associations, public servants and elected officials a unique opportunity to engage in a sustained conversation about the most important issues faced by the municipal sector.

Since the time that local government was first envisioned in the Baldwin Act (*Municipal Corporations Act*) of 1849, municipalities have become increasingly complex, expanding into a range of activities not originally envisioned at their conception. As the province of Ontario grew in size and industrialized it was only natural for local governments to take on increased responsibilities beyond providing and maintaining roads, sewers and streetlights. Municipalities are now responsible for a range of substantive and complex programs and services, including economic development, infrastructure, public health, housing, and a range of human and social service programs.¹ Yet despite the expansion of responsibility for local governments, the intergovernmental relationship between the province and municipalities has remained skewed, with most of the power for the regulatory, legal, operational, and financial levers of local government left with the province.²

Outside of the intergovernmental relationship, the world outside local government has also shifted to become more complex. Steady urbanization, rapid technological advancements, demographic transformation, and globalization have all produced monumental changes in society.³ Local governments have worked to adapt to these changes by adopting new approaches to planning and development, service delivery, law enforcement, public safety, representation and advocacy. Yet, citizens in Ontario, Canada, and around the world have nevertheless come to expect their governments to deliver faster, cheaper, and better quality public services, while at the same time, technology has enabled an instantaneous feedback loop that leaves a very small margin of error for governments to experiment or make mistakes.⁴

¹ Andre Cote and Michael Fenn, "Approaching an Inflection Point in Ontario's Provincial-Municipal Relations," IMFG Perspectives, No. 6, 2014, 2

² Cote and Fenn, 2014, 2

³ Richard Dobbs et al., "How to you govern a disrupted world?" *McKinsey & Company*, May 2015

⁴ Dobbs, 2015

Accountability and transparency

Expectations are now higher than ever, and growing rapidly, for increased accountability and transparency in government. In 2014 the government of Ontario passed Bill 8, the *Public Sector and MPP Accountability and Transparency Act, 2014*, which amongst other things extended the oversight authority of the Ontario Ombudsman to cover municipalities, as well as hospitals, universities and school boards. Bill 8 is the latest in a growing accountability and transparency regime for municipalities that includes existing provincial oversight, reporting, and statutory requirements for everything from financial management to conflict of interest and local elections.⁵ Canadians have high aspirations and expectations for open and transparent decision-making, and low tolerance for behaviour seen to be unethical. These expectations carry important implications, as there is a strong correlation between even perceptions of corruption or unethical behaviour and public trust in government.⁶

In many ways the current thrust for strong accountability and transparency is reflective of declining levels of trust in government, which are at an all-time low. While there are many explanations for this declining trust, including high profile scandals and the 2008 financial crisis, the trend has been clear for several decades. In Canada, trust in government has fallen from approximately 60 percent in the early 1970s to 24 percent in 2013, according to research done by Canadian polling firm EKOS.⁷ Similar work done by the Organization for Economic Cooperation and Development (OECD) found that between 2006-2008 and 2011-2012, confidence in government fell by at least six percentage points in 18 of 34 OECD member states (figure 1).⁸ In fact by 2012 an average of only four of every 10 people in OECD member countries expressed confidence in their government.⁹ For governments at all levels maintaining citizen trust satisfaction is now more difficult than ever.¹⁰

Figure 1:

⁵ Cote and Fenn, 2014, 5

⁶ OECD, *Government at a Glance 2013*, OECD Publishing, 2013, 22

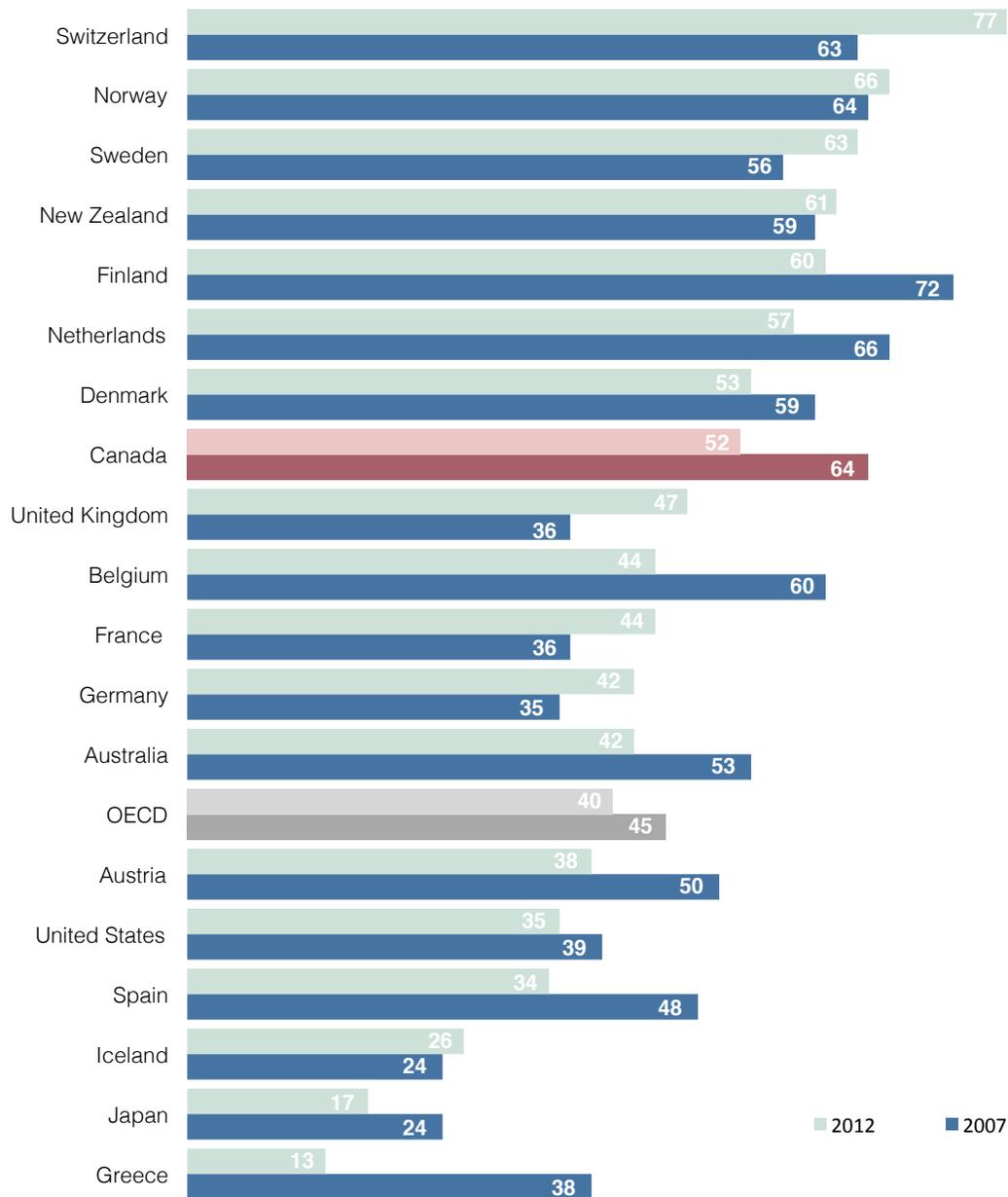
⁷ Frank Graves, "The EKOS poll: Democracy and the death of trust," *iPolitics*, January 2, 2014

⁸ Drew Silver, "Confidence in government falls in much of the developed world," *Pew Research Centre*, November 2, 2013

⁹ OECD, 2013, 20

¹⁰ OECD, 2013, 20

Confidence in OECD National Governments, 2006-8 to 2011-12¹¹



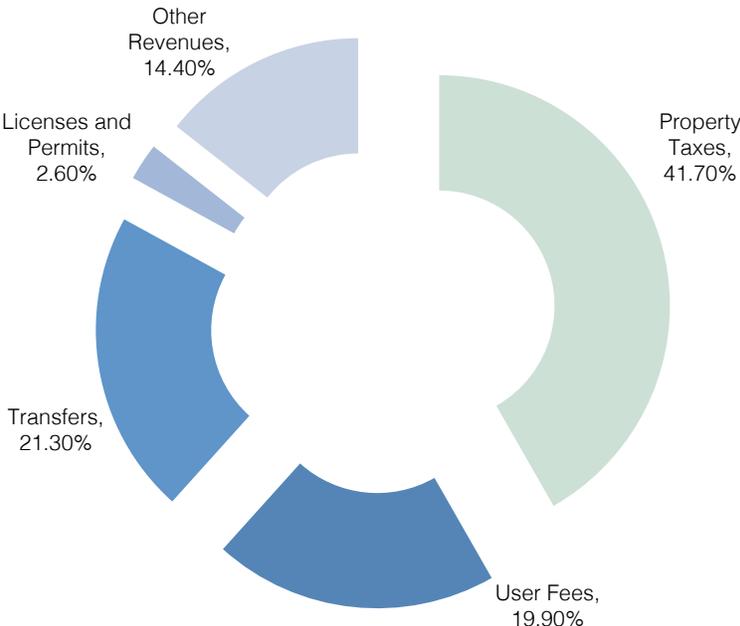
Source: OECD, Government at a Glance 2013, OECD Publishing, 2013, 22

Fiscal pressure

¹¹ Percentage of 'yes' in answer to question: Do you have confidence in your national government?

Local governments in Ontario are also facing a fiscal squeeze as the services they offer are becoming more expensive and complex to administer. Many Canadian municipalities are concerned about their ability to provide services to their citizens with existing sources of revenue. There is concern about both maintaining current high service standards, as well as the probable growth of complexity and demand in the future.¹² Most projections expect that municipal operating expenditures will continue to grow significantly over the next decade.¹³ Yet, despite these pressures municipalities still have relatively limited sources of revenue (figure 2).

Figure 2:
Sources of Municipal Revenue (2013):



Source: Ministry of Municipal Affairs and Housing, Financial Information Returns, 2013.

Within their current powers, the majority of municipal revenues still come from property taxes, followed by conditional grants and user fees.¹⁴ The Association of Municipalities

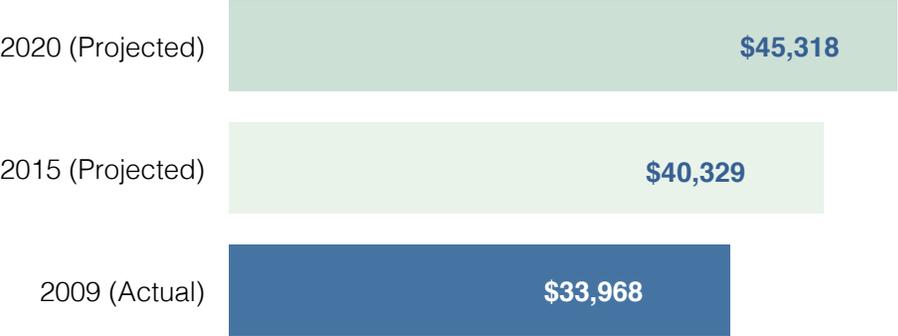
¹² Enid Slack et al., "Fiscal Health of Ontario Large Cities: Is there Something to Worry About?" Draft Paper, Conference on Measuring Urban Fiscal Health, Institute of Municipal Finance and Governance, 2013, 3

¹³ Association of Municipalities Ontario (AMO), What's Next Ontario? Imagining a prosperous future for our communities, 2015, 4

¹⁴ Slack et al., 3

Ontario (AMO) predicts that if all other sources of revenue remain unchanged, property taxes will need to increase by 4.51%¹⁵ per year over the next decade for municipalities to be able to meet current service standards (Figure 3).¹⁶ For a more detailed breakdown of projected operating costs see Appendix A.

Figure 3:
Projected Ontario Municipal Operating Costs to 2020 (in millions)



Source: Association of Municipalities Ontario (AMO), What's Next Ontario? Imagining a prosperous future for our communities, 2015, 4

The largest area of expenditure for municipalities is salaries, wages and employee benefits. In 2011 these costs represented approximately 43 percent of municipal operating spending, which was a 37 percent increase from 2001. Most municipal workers are unionized, which in combination with the highly fragmented environment for collective bargaining makes it difficult to control costs, as high agreements or settlements in one municipality act as precedents for all of the others. This problem is especially acute when it comes to emergency services. Police, fire, and paramedics are not permitted to strike, which leaves municipalities with little control over costs, as arbitrators replicate agreements in different municipalities with little regard for local economic conditions or ability to pay.¹⁷ As a result, over the past 10 years, base wages for police officers and firefighters have grown at an average of 3.3 percent per year, compared to 2.7 for other unionized municipal workers and 2.2 for those in the private

¹⁵ An earlier version of this submission put this figure at 10%. This number was based upon projections done by AMO in April of 2015, which they later retracted and revised to the current figure of 4.51%. The initial calculation did not factor other sources of revenue, while the current figure assumes all non-property tax revenue remains stable at \$21 billion annually to 2025.

¹⁶ AMO, 2015, 4

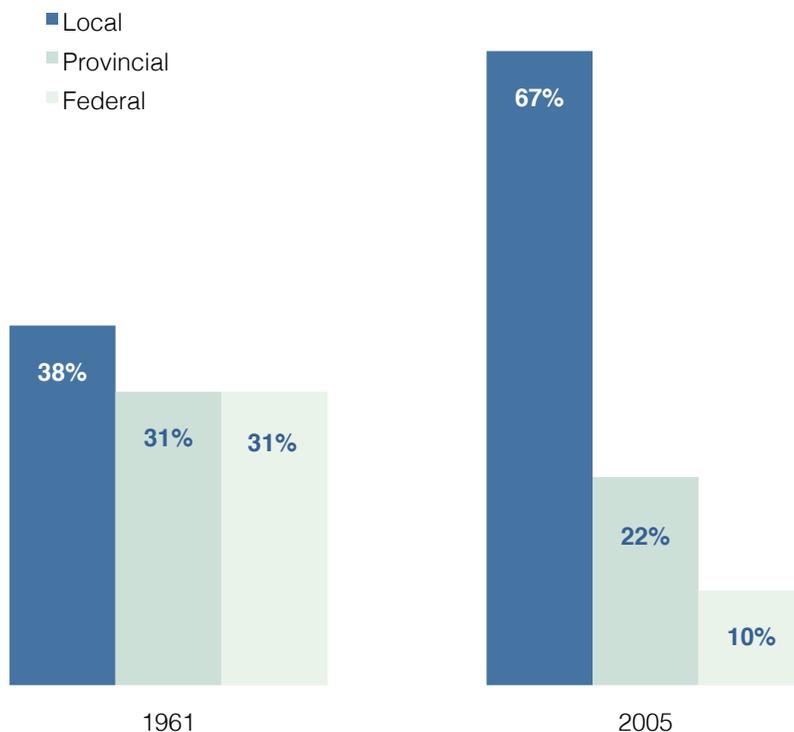
¹⁷ Cote and Fenn, 2014, 6

sector.¹⁸ Ontarians now pay the highest policing costs in the country, of which 86 percent goes to staffing.¹⁹

The infrastructure deficit

However, perhaps the most significant fiscal pressure facing municipalities is the infrastructure deficit. Approximately 40 per cent of public infrastructure in Ontario is owned by municipalities (when factoring in hospitals and educational facilities), including a number of roads and bridges, water and wastewater facilities, transit systems, social housing, and government buildings (figure 4).

Figure 4:
Federal, Provincial, and Municipal Asset Ownership, 1961 – 2005 (excluding provincially-owned infrastructure dedicated to education and healthcare)



Source: Association of Municipalities Ontario (AMO), *What's Next Ontario? Imagining a prosperous future for our communities, 2015*, 23

¹⁸ Cote and Fenn, 2014, 6

¹⁹ AMO, 2015, 13

In 2008, the infrastructure deficit was estimated to be approximately \$60 billion, not including tourism-related cultural assets, parks and recreation facilities, or the costs for social housing units, which are valued at an additional \$40 billion.²⁰ According to AMO, in order to close that gap, municipalities would have to levy an additional 3.84% of property taxes, which would mean a combined 8.35%²¹ increase in property taxes until 2025.²²

While the gas tax, as a dedicated source of predictable long-term funding, has helped, it is not enough to fill the gap. The current infrastructure deficit is too vast, and systemic to be covered under the current structure. Take the GTHA for example, where population growth and increased density are projected to increase the regional population to 8.6 million people by 2021, and where traffic congestion is said to already cost the economy \$6 billion in lost productivity a year.²³

A similar situation exists with the provinces roads and bridges. Municipalities are responsible for over 140,000 kilometers of roads and 15,000 bridges and large culverts in Ontario. The Provincial-Municipal Fiscal and Service Delivery Review in 2008 estimated that roads and bridges account for \$2.8 billion, or approximately half of the infrastructure gap. These costs are expected to grow 19 percent between 2009-2020.²⁴ This is not a problem that can be solved without bold action or direct support from senior orders of government.

Succession planning

In addition to critical infrastructure assets, many municipalities in the province are also staring down a deficit of critical human infrastructure, as the current generation of municipal professionals prepares to retire. The public sector work force is generally older than the private sector and thus more vulnerable to the effects of demographic change.²⁵ As many experienced municipal professionals leave, they will take significant accumulated knowledge, expertise and experience with them. While this provides

²⁰ Cote and Fenn, 2014, 6

²¹ An earlier version of this submission put this figure at 19%. This number was based upon projections done by AMO in April of 2015, which they later retracted and revised to the current figure of 8.35%. The initial calculation did not factor other sources of revenue, while the current figure assumes all non-property tax revenue remains stable at \$21 billion annually to 2025.

²² AMO, 2015, 4

²³ AMO, 2015, 10

²⁴ AMO, 2015, 11

²⁵ Bonnie G. Munslow, "Succession Planning: Building a strategy to address a critical need for a mid-sized municipality," *AMCTO*, 2010, 3

exciting opportunities for new professionals and new ideas to enter the sector, it also presents those same individuals with a steep learning curve. Many municipalities are working on strategies to mitigate the effects of these demographic changes that are likely to cause serious turnover in the municipal sector, as a significant number of baby-boom aged senior managers retire. Many municipalities are not.²⁶

Government transformation

In the face of all of these challenges, many governments are responding by launching both small- and large-scale transformation initiatives. In general the government transformation agenda has crystallized around a number of trends, including citizen-centred services, sharing responsibility for policy development, integrating operations across government departments, and crucially the adoption of digital technology.²⁷ It is especially the opportunities offered by emerging digital technologies, big data, and the growth of mobile computing that are pushing governments to adapt and transform.²⁸ Transactions in Canada are now increasingly happening online, as consumers and citizens alike now bank, study, socialize, shop and in some cases even vote in a completely digital environment. Many of these changes have been pushed by demographic transformation,²⁹ as traditional notions of customer service are changing, and consumers are increasingly in favour of interacting with institutions through the use of digital, streamlined, mobile-friendly, web-based applications.³⁰ Many municipalities have responded through open data/open government initiatives, and by pioneering the use of Internet voting, however, there is still significant work to be done to automate operations and modernize service delivery.

²⁶ Jessie Carson, "Managing the Future: Why Some Ontario Municipalities Are Not Engaging in Succession Planning," *Queen's University Discussion Paper*, No. 2009-01, 2009

²⁷ Sunil Johal, et al., "Reprogramming Government for the Digital Era," *Mowat Centre*, 2014, 1

²⁸ Johal, 2014, 2

²⁹ This shift is perhaps best exemplified in the rise of the sharing economy; where in Ontario 40 percent of those in the crucial 18-43 demographic are active consumers (Source: Andrea Holmes and Liam McGuinty, "Harnessing the Power of the Sharing Economy: Next Steps for Ontario," *Ontario Chamber of Commerce*, 2015)

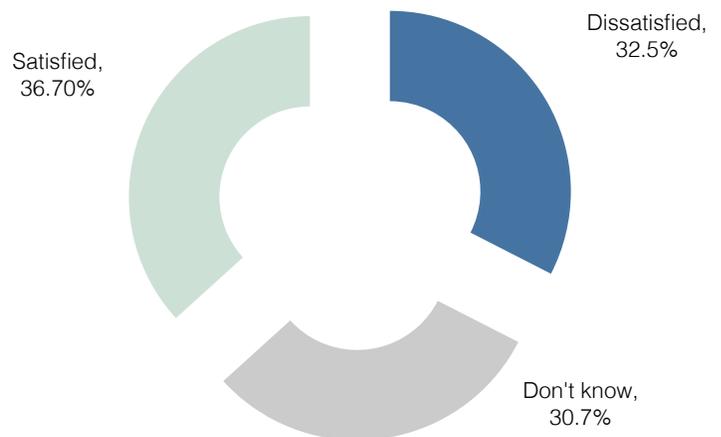
³⁰ Mitch Solomon, "Millennials Don't Want More Customer Service—They Want Different Customer Service," *Forbes*, August 27, 2015

MAKING THIS REVIEW MATTER

The motivation to transform government is largely the result of eroding public trust and steadily declining satisfaction with government services.³¹ According to research conducted by IPSOS MORI in 2014, only 36.7 percent of Canadians were satisfied with the way the government was running the country.³² While this places Canada above a number of other countries, it sets a low bar for citizen satisfaction. Declining citizen satisfaction levels are especially important for municipalities, who are the primary face of government in most communities and offer the most direct and tangible services to the public. Municipalities are also the level of government where citizens think that most decisions about public services should be made.³³

Governments at the local level are generally well managed,³⁴ and well liked by citizens, compared to other levels of government.³⁵ Yet the challenge of declining citizen satisfaction and trust remains even in the municipal sector. IPSOS MORI found the same level of citizen satisfaction (36.7) for local public services, as it did for government services at the federal level (figure 5).³⁶

Figure 5:
Overall, how satisfied or dissatisfied are you with local public services (e.g. public transportation, public education, public safety and social services)?



Source: IPSOS MORI, Global Trends 2014, <http://www.ipsosglobaltrends.com/local.html>

³¹ Emma Dudley et al., "Implementing a citizen-centric approach to delivering government services," *McKinsey & Company*, July 2015

³² IPSOS MORI, Global Trends 2014, <http://www.ipsosglobaltrends.com/local.html>

³³ IPSOS MORI, Global Trends 2014, <http://www.ipsosglobaltrends.com/local.html>

³⁴ Cote and Fenn, 2015, 1

³⁵ Michael Fenn, "Successful Staff/Council Relations: Old Lessons For New Challenges," *AMCTO Policy and Management Briefs*, Issue 02, August 17, 2015, 1

³⁶ IPSOS MORI, Global Trends 2014, <http://www.ipsosglobaltrends.com/local.html>

Given the constraints faced by municipalities, the initiatives currently underway to transform public services, and declining trust and satisfaction with government, this legislative review comes at an important time. Public servants at all levels need to redouble their efforts to improve service delivery and good governance. Municipalities need an enabling environment that encourages cooperation, innovation, continuous-improvement, and autonomy. There are a lot of ways that this can be created, from moving towards smart regulation, to empowering municipalities to become fiscally sustainable. However, there is no silver bullet; there is no one policy or program that can achieve this goal. Rather, to do so requires seizing upon every opportunity to give municipalities the tools they need to respond to and engage their citizens. This legislative review is one of those opportunities.

This submission contains recommendations across the themes of modernization, accountability and transparency, financial fairness, good governance, and clarity.³⁷ They are the result of an intensive process of research and review conducted by an advisory group of local government professionals from across the province. We would encourage the government to carefully consider these recommendations and those that are being put forward by other association and municipalities. Our goal is to ensure that the *Municipal Act* functions as an effective document that enables local governments to operate in an efficient, effective manner while offering high quality services to their citizens. There are three high-level principles that we believe will help achieve this goal, and should become essential elements of the intergovernmental framework for municipal-provincial relations going forward.

Respecting municipal diversity

Too often the province develops policy based on the assumption that all municipalities are the same. Yet the challenges and strengths of each local government is different, especially in rural vs. urban, small vs. large, and north vs. south. The default inclination to treat all municipalities as if they are same, ignores the fact that some municipalities have fewer than 5 employees who are deeply connected to the local community and some are larger than provincial governments and have robust financial controls, rigorous accountability regimes, and sophisticated policy-making functions.³⁸ This “one size fits all” approach often creates perverse outcomes that would scarcely be tolerated in other sectors. For instance, there is a substantial effort made to differentiate the regulatory and enabling environments for small businesses, compared to large- and medium-size enterprises. Yet in the municipal sector, the government frequently imposes the same regulations on Wawa as it does on Mississauga.

³⁷ This submission primarily contains recommendations for the *Municipal Act*, however, there are several recommendations with implications for the *Municipal Conflict of Interest Act* as well.

³⁸ Cote and Fenn, 2015, 3

Responsible orders of government

In addition to respecting diversity, the province should also treat municipalities like responsible orders of government. Local governments in Canada have often been referred to as ‘creatures of the provinces’ because Canada’s Constitution assigns the provinces responsibility for local institutions, and all of the provinces in Canada have some legislation governing their municipalities.³⁹ Yet the province has repeatedly declared that Ontario’s municipalities are responsible orders of government in their own right.⁴⁰ If that is so, then they should be treated as such. To do so, is the best opportunity for promoting effective governance and management at the local level. If municipalities are driven strictly by compliance and rote functionality they will struggle to truly become modern, fiscally sustainable agents of good governance, who promote professionalism, ethics, and accountability.

Legislating outcomes, and not behaviours

Nevertheless, the province is the regulator of local government and there is a role for it to play in guiding policy and practice within the sector. However, regulation should focus on outcomes and not behaviours. While there is no need for legislation with overly specific proscription, such as requirements to send documents via official mail, there is space for the province to provide broad guidance and direction. Yet far too often, policy from the province is far too proscriptive and developed without a concrete understanding of the complex factors that affect its implementation. The province should focus on legislating high-level outcomes and leave the specific implementation details to the public servants working in municipalities that bear the responsibility for understanding and executing those details.

³⁹ Slack et al., 2013, 2

⁴⁰ Ministry of Municipal Affairs and Housing, Municipal Legislation Review Public Consultation Guide, June 2015, 22

RECOMMENDATIONS:

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

RECOMMENDATION 4: Establish a clear definition of a meeting

RECOMMENDATION 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 assets and intangible property, and to deal with confidential information of government entities and third parties

RECOMMENDATION 6: Require all municipalities to adopt their own 'Codes of Conduct' for council and staff

RECOMMENDATION 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

RECOMMENDATION 8: Establish an accountability mechanism for accountability officers and meetings investigators

RECOMMENDATION 9: Clarify Council's responsibility for ensuring local boards are accountable (including BIAs and Conservation Authorities)

RECOMMENDATION 10: 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 11: Allow lower tier municipalities to factor tax arrears into their requisitions to school boards and the upper tier

RECOMMENDATION 12: Implement recommendations made by the Municipal Finance Officers Association (Appendix B)

RECOMMENDATION 13: 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 14: Enhance the enforcement provisions of the Act

RECOMMENDATION 15: Establish more precise rules for the transition period between elections

RECOMMENDATION 16: Give municipalities more flexibility to determine the time frame for filling council vacancies

RECOMMENDATION 17: Consider reorganizing the Act in a more consistent, logical manner

RECOMMENDATION 18: 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, eliminating the petition process, and requiring upper tier municipalities to adjust their council composition to ensure fair representation of each lower tier

RECOMMENDATION 19: Review the definitions and descriptions of 'administration' and 'council,' and remove the 'CEO' title from the description of the head of council

RECOMMENDATION 20: Clarify the process and tests to follow when dealing with potentially conflicting roles, responsibilities, and legislation between different orders of government

RECOMMENDATION 21: Clarify the role of municipal services corporations and the applicability of municipal provisions

RECOMMENDATION 22: Create clearer procedures for boundary lines, roads and bridges

RECOMMENDATION 23: Review how the MA interacts with MFIPPA, and look for ways to create greater alignment of MFIPPA with the Act

RECOMMENDATION 24: Remove the 'subject to the approval of the municipal auditor' wording from sec. 255(1)(3)

RECOMMENDATION 25: Provide greater clarity and a clearer definition for indirect conflicts of interest in the Municipal Conflict of Interest Act

PART I: MODERNIZATION

Over the past several decades the boom in electronic and digital technology has radically transformed society and presented governments with new challenges and opportunities. Organizations all across the public sector have begun to integrate technology into their operations, processes and services. Some sectors, such as healthcare, have firmly embraced the transformational power of technology, and are using it to introduce new service-level improvements, such as electronic health records, telemedicine, and e-prescriptions.⁴¹ Within the municipal sector, a number of local governments have embraced Internet voting, moved services online, and integrated digital automation to make their operations more efficient.

These changes represent what some are calling the “first wave of digitization”—taking simple, transactional services and moving them online.⁴² Future changes will look at more advanced functions like the current open data/open government movement, and will have even more significant implications for government. As these changes take place it is important that both the legislative and regulatory frameworks that govern society keep pace, and for the province to look for new ways to remove barriers and enable municipalities in Ontario to modernize. There are a range of options from simple things like removing the requirements to use registered mail, to more complex measures.

However, any movement towards modernization in the municipal sector will likely involve a discussion of whether or not to allow councils to meet or make decisions electronically. While there are some obvious benefits and advantages to such an idea, it is not a decision that should be taken lightly. AMCTO would urge the government to take a cautious approach when considering the possibility of electronic council meetings, and look for ways to balance the imperative of modernization with the importance of preserving and protecting the democratic process.

Outside of electronic meetings there are other ways that the government can modernize the council decision-making process. Municipal councils are now making decisions on a range of increasingly complex issues that affect public policy and administration at the local level, from wastewater treatment, to managing infrastructure, and social services. As the number and type of decisions being made by councils continues to grow, municipal councils need more flexibility in how they make decisions.

⁴¹ ITAC, *Advancing Health and Prosperity: A Brief to the Advisory Panel on Healthcare Innovation*, 2014

⁴² Johal, 2014

Currently the *Municipal Act* allows municipal councils to exercise their powers primarily through two formal legal instruments: a bylaw or resolution of council. However, while these legal instruments have generally served municipalities well, there is a range of decisions that a council must undertake that do not need to be encumbered with the weight or formality of an official bylaw or resolution. For example, according to the *Act* Municipal Clerks must all be officially appointed by bylaw. Similarly decisions about where a municipality places its traffic lights and street signs are all made with bylaws. As a result of these requirements municipalities pass an inordinate number of bylaws. The City of Toronto, for example, has already passed almost 1,000 in 2015 alone. Councils in municipalities across the province need more freedom to simply render decisions.

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

Currently the *Municipal Act* contains a detailed section on records retention. This section includes detailed and specific provisions for destruction, transfer, inspection and copying official records of the municipality. However, there are no detailed provisions for how municipalities should deal with electronic records.

The rise of the digital age has created an explosion of data and the number of electronic documents that are now being created and shared has grown exponentially. Governments in highly industrialized countries are now creating and receiving more documents, data and 'records' than could have possibly been imagined even 10 years ago. While there are no exact figures, some estimates from Europe indicate that up to 90 percent of the records generated by governments are now electronic.⁴³ While this number might be higher in Europe, where government e-initiatives have pushed more activity onto electronic platforms, it paints a picture of where we are headed in the future. Governments in Ontario, at all three levels, will continue to produce more and more electronic records. While the rise of electronic records has provided interesting opportunities for government transparency (open government) and more detailed data collection and analysis to improve policy development and program delivery, it also creates serious challenges for those tasked with managing and maintaining those records.

⁴³ James Manyika, et al., "Big Data: The next frontier for innovation, competition, and productivity," *McKinsey Global Institute*, 2011, 56

Within this context, there is a need for more clarity within the *Municipal Act* about how municipalities should handle electronic records. Key to this clarity is flexibility, ensuring that each local government has the ability to develop a policy that is appropriate for their own municipality, given that the volume and types of records varies from community to community. The protocols needed in Toronto are vastly different from those that are needed in Sioux Lookout. As the number of records produced in the digital age continues to duplicate at an exponential rate, municipalities should be given the flexibility to develop their own retention protocols, bearing in mind that each government operates in its own distinct context.

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

In addition to changes in how municipal governments make decisions and store electronic records, there is also a need for the province to recognize the changes that have taken place in the consumer market, and explore more modern approaches to regulation. At the end of September, Toronto's City Council voted in favour of incorporating ride-sharing service Uber into its regulatory framework that governs taxis. The decision came as municipalities have been struggling to respond to Uber and similar services that now make up the 'sharing economy.'

1 in 5 residents in the GTA have used Uber, while 45 per cent of Canadians are willing to rent their belongings to others, and 42 percent are willing to rent from others.

Once peripheral, these services have now become dominant players in the service industry. For instance according to research done by the Ontario Chamber of Commerce and PwC, 1 in 5 residents in the GTA have used Uber, while 45 per cent of Canadians are willing to rent their belongings to others, and 42 percent are will to rent from others.⁴⁴

The mere existence of the sharing economy is not new, nor is the change or challenges that it has introduced. However, the quick growth of services like Uber and AirBnB has exposed the limited ability of our current regulatory framework to adapt to such

⁴⁴ Andrea Holmes and Liam McGuinty, "Harnessing the Power of the Sharing Economy: Next Steps for Ontario," *Ontario Chamber of Commerce*, 2015, 4

shocks.⁴⁵ Toronto was the first municipality in Ontario to begin incorporating the sharing economy into its regulatory infrastructure, but it will not be the last. More and more municipalities will begin to follow suit in the coming months. However, the result will be a fragmented, ad-hoc regulatory framework for services that are not local in scope, but exist at the sub-national, national and international level. They are emblematic of our increasingly globalized world, and the way that many services and sectors are no longer constrained to traditional legal boundaries or borders. The province should recognize that this is not an isolated event, rather a tectonic shift in the service industry, and take the lead on a proactive and progressive set of regulations. This means taking a holistic approach, and not leaving it to the provinces 444 municipalities to attempt a piecemeal solution to what is a provincial problem.

There are precedents from other jurisdictions where higher orders of government have taken the lead, and attempted to determine the best approach to regulating the sharing economy. For instance in the in the UK, the national government launched a commission to review and better understand the economic and societal issues that the growth of the sharing economy had exposed. Following months of consultation and study, the result was reform of 1970s-era laws restricting short-term rental space and updates to zoning guidance to allow sharing parking spaces.⁴⁶ The government of Ontario could do the same.

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

⁴⁵ Sunil Johal and Noah Zon, "Policy Making for the Sharing Economy: Beyond Whack-A-Mole," *Mowat Centre*, 2015, 4

⁴⁶ Holmes and McGuinty, 2015, 5

PART II: ACCOUNTABILITY & TRANSPARENCY

Accountability and transparency are key features of democratic governance and increasingly important to Canadians. Currently at the municipal level, the infrastructure for accountability and transparency includes a range of oversight and reporting requirements. This section contains recommendations that are designed to fill gaps and ensure that accountability and transparency initiatives at the local level are effective and achieve their objectives.

Closed meeting investigations have been one of the most prominent accountability measures in the past several years. Despite some media portrayals, decision-making at the municipal level is perhaps the most transparent of any level of government in Canada. The *Municipal Act* requires that meetings of municipal councils be open to the public, and only happen behind closed doors in limited circumstances. Comparatively, most decisions made by provincial or the federal governments are made away from the public, at closed-door cabinet or caucus meetings.

Part of the process for ensuring that open meeting rules are followed is closed meeting investigations conducted under Section 239 of the *Act*. However, while these investigations are an important way of ensuring transparency and accountability, they are currently premised on an unclear definition of what defines a ‘meeting.’ Moreover different closed meeting investigators conduct their investigations using different definitions. The Ontario Ombudsman’s office, in particular, has taken an expansive view of what constitutes a meeting. The *Municipal Act* for its part does not provide a clear or specific definition stating only that a meeting is a “regular, special, or other meeting of council, of a local board or of a committee of either of them.”⁴⁷

Section 239(1): Except as provided in this section, all meetings shall be open to the public

The current ambiguity about what constitutes a meeting has had negative and perverse repercussions for municipal governance. For instance, one councilor in the City of London has taken to carrying around a flow chart listing which of his fellow councilors sit on which committees, to ensure that he is not at risk of contravening the rules for

⁴⁷ Andrew Sancton, “What is a Meeting? Municipal Councils and the Ontario Ombudsman: Draft,” *Political Science Publications*, paper 34, 2014, 10

closed meetings.⁴⁸ Even more harmful, however, the ambiguity around what constitutes a meeting has prohibited some members of council from openly discussing policy issues with their colleagues outside of the council chambers. The Mayor of Greater Sudbury for instance won't talk to other councilors or lobby for support on any issues before council because she is worried about breaking the rules.⁴⁹ While it is undeniably important to ensure that the public's business is conducted in the open, when it is reasonable to do so, it is equally important that the rules to govern that process are clear and easily understandable.

RECOMMENDATION 1: Establish a clear definition of a meeting

In addition to clarifying the rules around what constitutes a meeting, there also needs to be more clarity about the circumstances where council is permitted to meet in closed session. Given the scrutiny that surrounds closed session meetings, this is not a section of the *Act* that benefits from ambiguity. There are a number of circumstances where it is important or necessary for council to meet in a confidential setting. Whether it is to discuss human resource matters or to develop strategy for commercial negotiations or intergovernmental relations, municipalities need to have the confidence of knowing that their actions fall within the scope of reasonable behaviour.

In these circumstances, the *Municipal Act* should clearly articulate that closed meetings are appropriate and acceptable. This is especially important, given the ambiguity in the *Act* surrounding 'security of the property' and circumstances where council is requested or required by a third party (often a provincial government ministry) to meet behind closed doors. Around security of the property, in particular, while there is currently an exemption to the open meeting rule, previous rulings from the IPC and others have indicated that municipal councils should be required to hold these meetings in public, which would force them to publicly discuss the details of business negotiations.

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

⁴⁸ Patrick Maloney, "London politician forced to go to absurd lengths to avoid breaching uncle law against illegal secret meeting," *London Free Press*, September 30, 2015

⁴⁹ Sanction, 2014, 12

Many municipalities have rules and policies governing the ethical behaviour of their staff, councilors, and members of local boards. Codes of Conduct address a broad range of issues, including how to handle gifts and benefits, proper use of municipal

“The ethical culture of an organization is the set of values operating within it. Those values constitute the first line of defence against unethical behaviour, and they exert by far the most powerful influence. In any organization, there is a formal ethical culture and an informal ethical culture. Formal culture is written policy. Informal is learned behaviour of others—and it usually prevails. Ideally, formal culture and informal culture are the same, and the values set down on paper reflect the real values at work in the organization every day.”

— The Honourable Madame Justice Denise E Bellamy, *Report on the Toronto Computer Leasing Inquiry*

municipalities (with separate codes for council and staff). However, while the *Act* should proscribe that each municipality is responsible for creating a Code of Conduct, it should leave the responsibility for creating the code to municipalities themselves. This would allow each community to create a Code of Conduct that is appropriate for its municipality.

resources, proper conduct at council meetings and how to behave when acting on behalf of the municipality. These codes range from general principles to prescriptive lists of rules, and are generally left to each municipality to develop based on the unique needs of their community.

Codes of Conduct are an important and useful plank in the ethical framework of governments at all levels. While many large municipalities have created formal codes of conduct to embed proper practices for ethical behaviour, most medium or small sized municipalities have not.⁵⁰ However, if they are important for some municipalities, they should be important for all. Codes of Conduct should be made mandatory in the *Municipal Act* for all

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

Central to ensuring that municipal Codes of Conduct are upheld, are investigations and oversight provided by Integrity Commissioners. The *Municipal Statute Law Amendment Act*, 2006 (Bill 130), which amended the *Municipal Act* and entered into effect on

⁵⁰ Ministry of Municipal Affairs and Housing, *Municipal Legislation Review Public Consultation Guide*, June 2015, 7

January 1st 2007 gave municipalities the option of appointing an Integrity Commissioner, who would report to council, but functionally would be tasked with independently ensuring that the municipality is operating in an ethical manner. Initially recommended by Justice Bellamy, following her probe of the Toronto Computer Leasing program, not all municipalities handle their ICs the same way. While most look at how members of council comply with ethical standards of behaviour, in some municipalities they are also tasked with educational training or providing advice on ethics and professional conduct.

At this point, still early in the lifespan of the role of the Integrity Commissioner, there is a need for more structure to be created around the position.

There is still far too much variability in how Integrity Commissioners exercise their roles, and how they investigate and report back to council. The *Act* should contain more guidance for ICs, so that investigations are being conducted more consistently across the province. It would also be useful to broaden the range of penalties that ICs have at their disposal and give them greater powers to impose a wider range of penalties when infractions are discovered. Currently if an Integrity Commissioner reports that a member of council or local board has contravened that municipality's code of conduct, the municipality can offer either a reprimand, or a suspension of pay for up to 90 days. This is a very limited range of options, and does not provide the IC or the municipality with a range of options that might be better suited to the offence. Integrity Commissioners are important, but there is still work to be done to increase their impact, and improve consistency across the province.

RAISING THE BAR ON ETHICAL BEHAVIOUR

Recommendation 3 falls in line with a broader range of work that AMCTO has undertaken in 2015 to develop a new Code of Ethics & Values. This work is designed to heighten awareness of the importance of ethics and accountability and point towards the efforts of current public servants who are raising the bar on ethical leadership in the municipal sector. While this effort is aimed specifically at AMCTO members, it cannot replace the importance of each municipality having its own set of values and ethics.

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

Just as there are gaps in the position of Integrity Commissioner, there are similar gaps around mechanisms for ensuring the accountability of accountability officers themselves. In addition to an Integrity Commissioner, Justice Bellamy also

recommended three other accountability officers that are now available to municipalities, including a Lobbyist Registrar, Auditor General, and Ombudsman. A meetings investigator has since rounded out these positions, to monitor compliance with the *Act's* open meeting provisions.

These are all important positions critical to the oversight of municipal governance, but they are themselves not immune from ethical or professional lapses, and should not be placed outside the reach of oversight. While there is not currently a section within the *Act* that establishes an accountability mechanism for accountability officers, one should be created.

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

Finally, one remaining gap in the accountability and transparency framework surrounds the position of local boards. As agents of the municipal corporation, local boards, including Conservation Authorities and Business Improvement Areas (BIAs), should be required to maintain and uphold the same standards of ethical, professional, and accountable conduct as all other municipal representatives and employees. Yet, there are currently few provisions within the *Act* that clearly define the accountability and transparency requirements for local boards.

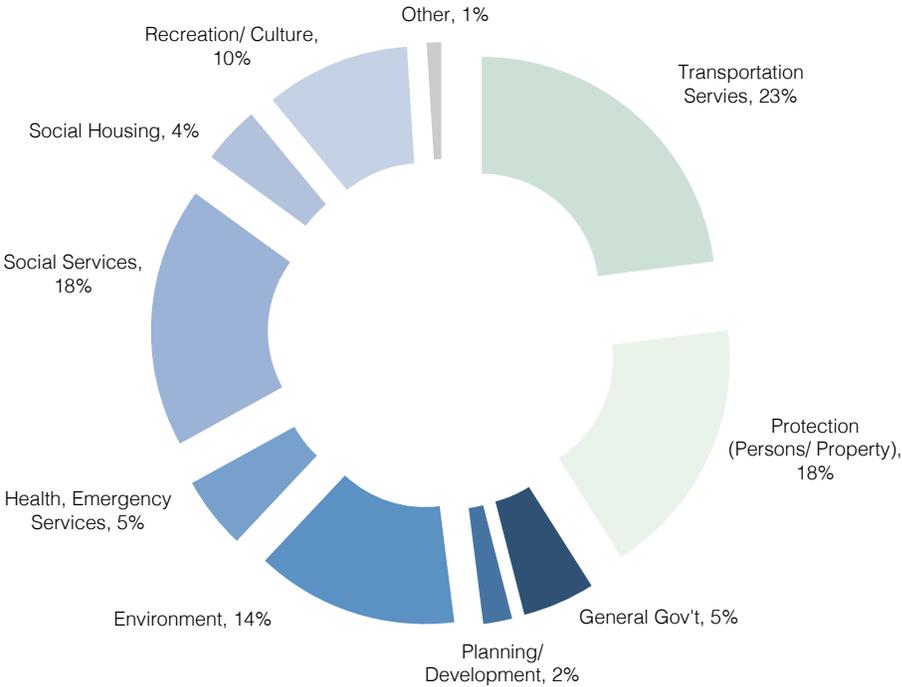
All local boards, including Conservation Authorities, BIAs, and Health, Library and Police Services Boards, should be brought into the local government accountability regime. They should be responsible for monitoring their own accountability and transparency, and upholding the same principles of the municipality they belong to. They should be regularly audited, have Codes of Conduct, be required to have open meetings, and to record minutes of all meetings and make them publicly accessible.

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

PART III: FINANCIAL FAIRNESS

The fiscal challenges faced by the province’s local governments are complex, and there is no single solution. What is needed is a broader conversation that looks beyond the current tools and revenue streams currently on offer. In the interim, however, there are a series of smaller steps that the government can take, many as part of this legislative review, to improve the financial footing of many municipalities. This section contains a series of recommendations that are designed to help improve the financial fairness for local governments in Ontario. Some of the recommendations emerged through AMCTO’s review process, while others are the work of our partner associations.

Figure 6:
Ontario Municipal Expenses, by Service (2013)



Source: Ministry of Municipal Affairs and Housing, Financial Information Returns, 2013.

One of the more significant hurdles to fiscal sustainability in the municipal sector is the province’s joint and several liability provisions, often referred to as the 1 per cent rule. This system requires that even defendants in a civil suit who are found as little as 1 per cent at fault can still be made to pay 100 per cent of the damages. This system has

often resulted in local governments, who are presumed to have vast financial resources, becoming the targets of litigation and inevitably covering the cost of other defendants, who do not have the means to pay high damage rewards, but may bear a greater proportion of the liability. Joint and several liability not only places disproportionate liability on municipalities, it has also created a context where municipalities are forced to offer generous out of court settlements to avoid protracted and expensive court battles.⁵¹

In the past AMCTO has raised its concerns about Joint and Several Liability, and the province declared its interest in reforming this system, before reversing course in 2014. However, if the province is serious about improving the fiscal sustainability of local governments, joint and several liability reform would be a good place to start. There are a range of reform options. Most come from other jurisdictions and have been successfully implemented, while providing reasonable protection for the needs of both plaintiffs and defendants. These options include proportionate liability, a reallocation model, a percentage threshold, or a specific joint and several liability that is based on the type of damage, as exists in California, New York, Mississippi, Nevada and Nebraska.⁵² Whatever the solution, there is a pressing need to implement a system that is fairer for all parties.

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

Aside from reforming joint and several liability, smaller lower-tier municipalities across the province would also benefit from greater flexibility and accommodation with respect to their requisitions to school boards and the upper tier. Specifically there needs to be consideration for the tax arrears that a municipality is holding on its books, and how this affects their ability to pay these requisitions quarterly. Lower tiers have to pay upper-tier and school board requisitions on predetermined timelines, regardless of if the municipality has collected taxes or is faced with a significant number of properties in arrears. As a result, municipalities are in effect acting as lenders for those who pay their property taxes late, or who fail to make their payments entirely. This carries significant implications for a municipality and can leave it with severe cash flow problems, and cause lower tiers to engage in unnecessary short- or long-term borrowing to cover for citizens who do not pay their taxes. Rather than borrowing to invest in priority projects,

⁵¹ Association of Municipalities Ontario (AMO), The Case for Joint and Several Liability Reform in Ontario, April 1, 2010

⁵² AMO, 2010, 27-28

these municipalities are forced to use up potential investment income to cover for negligent taxpayers. Requisition schedules for school boards and upper tier municipalities need to factor in a municipality's tax arrears position.

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

In addition to the recommendations that AMCTO has developed through our own review process, we would also like to endorse and recommend that the government implement the recommendations made by the Municipal Finance Officers Association (MFOA). These recommendations have been developed by MFOA with input and advice from treasurers and municipal finance professionals from across the province.

RECOMMENDATION 3: Implement recommendations made by the Municipal Finance Officers Association (Appendix A)

PART IV: GOOD GOVERNANCE

As the level of government closest to the people in communities across the province, municipalities provide important public services that are crucial to keep Ontario’s communities moving. It is especially important, therefore, that municipalities have the freedom and autonomy to govern well and respond to the needs of their citizens. The province has repeatedly declared that it views municipalities as responsible and accountable orders of government and that it wants to make sure that they have “the flexibility they need to govern.”⁵³ This section contains recommendations that are designed to allow municipalities to do just that.

One of the most pervasive challenges to good governance in the municipal sector is the lack of knowledge within the court system about municipal issues. AMCTO has highlighted this concern previously, specifically surrounding the *Municipal Elections Act*. Recently in *Gleeson v. Conseil Scolaire du district catholique des aurores boreales*, 2015 and *Ashby v. Town of Ajax*, 2015, the courts chose to ignore clear contraventions of the province’s election laws.

However, these issues are not limited to elections and exist throughout all areas of municipal jurisprudence. Other common issues that are endemic to the justice system include a lack of knowledge amongst Justices of the Peace about enforcement of municipal provisions, an unwillingness to utilize existing enforcement provisions, a lack of respect for by-laws passed by municipalities, and a general lack of knowledge about that statutes that govern municipal affairs. For example in *Myshrall v. Toronto* the court decided that claimants should not be responsible for identifying the date and location of an accident when making a claim related to municipal road repair, despite the fact that this makes it next to impossible for municipalities to defend themselves.

As part of its review of municipal legislation, 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.

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

⁵³ Ministry of Municipal Affairs and Housing, Municipal Legislation Review Public Consultation Guide, June 2015, 22

In addition to enhancing the capacity of the judicial system to enforce municipal provisions, the actual enforcement provisions themselves should also be reviewed. The current enforcement mechanisms do not effectively uphold the statutes. There is still considerable work to be done to ensure that enforcement provisions, such as those in Part XIV of the *Municipal Act*, are adequately structured to meet the nature of the offences. We would encourage the government to conduct a wholesale review of the penalties and oversight contained within the *Act* in order to create rules that are actually followed, and penalties that meet the nature of the offence and are upheld by the courts.

RECOMMENDATION 2: Enhance the enforcement provisions of the Act
local government issues

Outside of enforcement and the courts, there are a few other gaps and rigidities that, once addressed, will help municipalities govern more effectively. One such gap that currently exists within the *Municipal Act* relates to the transition period following an election, before a new council is sworn in. Peaceful transitions from one government to another are a hallmark of democratic governance, and therefore an incredibly important period for municipalities. However, the current guidance in the *Act* is vague. Newly elected representatives are always eager to get to work, which leaves Municipal Clerks in an uncomfortable position of trying to work with two separate councils, without clear guidelines on what to do.

The transition period would be improved by including more specific protocols and rules to govern the time after the election before the new council takes over. Specifically, there needs to be a set of guidelines for outgoing councilors and a set of guidelines for incoming members, so that both understand their responsibilities and obligations.

Municipalities would also benefit from greater flexibility to schedule and prepare for their inauguration along a timeline that best suits their particular context. As mentioned in the introduction, each municipality operates in a different environment, and uniform rules for every municipality in the province do not often produce good outcomes or lead to good governance.

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

In addition to greater flexibility to schedule their inauguration, municipalities would also benefit from greater flexibility when it comes to filling vacancies on council. Section 263 of the *Municipal Act* sets out the procedures for filling a council vacancy, namely that a municipality has 60 days following a declaration of vacancy to either appoint a replacement or pass a by-law to hold a by-election to select a replacement. However, this section is too prescriptive and does not give municipalities enough flexibility to act in the interests of good government. While 60 days may be appropriate in certain circumstances, there are others, such as holidays or the summer, where 60 days does not give a local council sufficient time to meet and determine the best course of action, or staff enough time to prepare for that outcome. Just as legislatures at the provincial and federal level break for holidays and the summer, so too do municipal councils. At present the leadership of federal and provincial governments have more flexibility about when to call a by-election and there is little justification to not give municipalities that same latitude.

Section 263: (1) If a vacancy occurs in the office of a member of council, the municipality shall, subject to this section, (a) fill the vacancy by appointing a person who has consented to accept the office if appointed; or (b) require a by-election to be held to fill the vacancy in accordance with the Municipal Elections Act.

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

PART V: CLARITY

One of the key challenges faced by municipalities when working with municipal legislation is a lack of clarity. This is a concern that was highlighted by AMCTO's submission on the *Municipal Elections Act*, and is a matter of equal importance for this review of municipal legislation. Far too many pieces of the legislation that govern municipal operations are unclear, and difficult to interpret. This problem is exacerbated by the reluctance of the Ministry of Municipal Affairs and Housing to help municipalities interpret municipal legislation. As a result local governments are left to either spend taxpayer dollars on legal opinions, or attempt to interpret the statutes themselves, creating the risk of litigation. This is a particular challenge for smaller municipalities who do not have a City Solicitor or in-house counsel. This section contains recommendations that are meant to highlight sections of the *Municipal Act* that would benefit from greater clarity.

ORGANIZATION OF THE MUNICIPAL ACT:

- Part I General
- Part II General Municipal Powers
- Part III Specific Municipal Powers
- Part IV Licences
- Part V Municipal Reorganization
- Part V Accountability and Transparency
- Part VI Practices and Procedures
- Part VII Financial Administration
- Part VIII Municipal Taxation
- Part IX Limitation on Taxes for Certain Property Classes
- Part X Tax Collection
- Part XI Sale of Land for Tax Arrears
- Part XII Fees and Charges

One of the most significant steps that could be taken to provide greater clarity to the *Act* would be to reorganize and restructure it in a more consistent, logical manner. The current *Municipal Act* has a sclerotic organizational framework that seemingly jumps from one topic to another at random. The *Act* opens with municipal powers, and then moves on to licences, municipal reorganization, accountability and transparency and doesn't discuss general items of practice and procedure (the section of the *Act* spells out the role of council, administration, and the first meeting of council) until Part VI, by which point it has already covered municipal reorganization, and accountability and transparency. It is illogical for the *Act* to discuss

reorganization of a municipality before it discusses organization, and accountability and transparency for council, before it even discusses the role of council. If this review is able to enhance the clarity of the *Act*, it should start at the beginning and reorganize it in a more consistent, logical manner.

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

Another area of the *Act* that would benefit from greater clarity is the section that lays out the power for municipalities to conduct ward boundary reviews. Section 222 of the *Municipal Act* gives local governments the power to “divide or redivide the municipality into wards or to dissolve existing wards.” What follows are provisions to deal with

Section 222: (1) Without limiting sections 9, 10 and 11, those sections authorize a municipality to divide or redivide the municipality into wards or to dissolve the existing wards.

conflicts, providing notice to citizens and MPAC, appeals to the OMB, and a process for petitions. However, these provisions remain vague, which is problematic for a process that carries such significant political implications.

There needs to be greater clarity and structure around the ward boundary review process. It would make sense for there to be greater alignment between these reviews at the local level, and those that also take place federally and provincially every 10 years. There also needs to be more coherent guidelines for how the consultations are to be conducted, ensuring that notice given and feedback sought by municipalities is both genuine and effective. A genuine and effective process for consultation and notice, however, makes the petition process redundant and unnecessary. As part of the review process, upper tier municipalities should also be required to adjust the composition of their Council to ensure that, based on census data, they are fairly and equitably representing each of the lower tier municipalities in their region.

Finally, there is now a sufficient body of case law that lays out the principles of effective representation. As these principles are fundamental to the theory and practice of democratic representation and to creating and reviewing wards, they should be embedded within the *Act*.

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, eliminating the petition process, and requiring upper tier municipalities to adjust their council composition to ensure fair representation of each lower tier

Another area that would benefit from greater clarity are the definitions of 'council' and 'administration.' As discussed in the introduction to this submission the world of local government has, and will continue to, undergo a significant period of transition. Within that context the traditional definitions of council and administration should be reviewed, to ensure that the specific definitions contained within Part VI of the *Act* are still relevant to the new environment for municipal governance. Specifically, it would be worth reexamining the definition for the CAO and the Head of Council.

Section 229: A municipality may appoint a chief administrative officer who shall be responsible for,
(a) exercising general control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality; and
(b) performing such other duties as are assigned by the municipality.

The CAO position has changed considerably over the past several decades. While originally focused on the operational management of a municipality, the role of CAO has now evolved into a position that is dedicated to strategic leadership. However, the definition currently in the *Act* still presents the role as responsible for “general control and management.” This definition no longer fits with the way that the CAO position has evolved. For one, most CAOs no longer directly manage operations or even use their institutional power or authority, preferring influence and strategic leadership.⁵⁴ Rather, the CAO is now one of the most important positions within the community, increasingly responsible for economic competitiveness, relations with other orders of government and defining the municipality's place in a world that is quickly globalizing and increasingly international.⁵⁵ The definition in the *Municipal Act* should recognize and incorporate this evolution.

Section 226(1): As chief executive officer of a municipality, the head of council shall, (a) uphold and promote the purposes of the municipality; (b) promote public involvement in the municipality's activities; (c) act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally; and (d) participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents.

and management.” This definition no longer fits with the way that the CAO position has evolved. For one, most CAOs no longer directly manage operations or even use their institutional power or authority, preferring influence and strategic leadership.⁵⁴ Rather, the CAO is now one of the most important positions within the community, increasingly responsible for economic competitiveness, relations with other orders of government and defining the municipality's place in a world that is quickly globalizing and increasingly international.⁵⁵ The definition in the *Municipal Act* should recognize and incorporate this evolution.

⁵⁴ David Siegel, “What Do CAOs Really Do?” *AMCTO Policy and Management Briefs*, Issue 01, 2015, 2 – 3

⁵⁵ Patrick Eamon O'Flynn, “The Evolving Role of the Municipal Chief Administrative Officer in Canada, 1985-2010,” *M.A. Thesis*, University of Guelph, 2011, 3 – 5

The definition of the head of council as 'Chief Executive Officer,' located in section 226.1 of the *Act*, is also deeply problematic and needs to be revisited. We typically associate the role of Chief Executive Officer as a position of asymmetrical power, with absolute authority over an organization's administrative structure.⁵⁶ However this definition does not align with the role of head of council. Ontario has what is commonly described as a 'weak mayor' system.⁵⁷ While heads of council have the power to preside over meetings of council, convene special meetings, and sit on committees, they have only one vote and generally exercise their power through more informal mechanisms, such as persuasion and consensus building. Moreover, 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.⁵⁸ The CEO definition creates confusion, and misrepresents the role of both council and its head.

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

An additional area of confusion is conflicting legislation, and the roles and responsibility between different orders of government. There is currently not enough clarity about how municipalities are supposed to react when faced with policies or laws from the provincial or federal government that conflict with their own statutes.

For example, during this year's federal election there was a dispute between a number of municipalities and political candidates over election signs. Some municipalities, such as the Cities of Vaughan and Markham, have by-laws governing the posting of election signs, specifically regarding the amount of time that they can be up for, and locations where signs cannot be placed. Lawyers representing political candidates, however, have issued letters threatening legal action, by arguing that these bylaws violate the *Canadian Elections Act*, which prohibits anyone from attempting to "prevent or impair the transmission to the public of an election advertising message without the consent of a person with authority to authorize its transmission."

⁵⁶ A.G. Lawley, "What Only the CEO Can Do," *Harvard Business Review*, May 2009

⁵⁷ Royson James, "How to be mayor in Toronto's weak-mayor system," *The Toronto Star*, November 1, 2014

⁵⁸ Ken Strong, "Heading the Round Table," *Municipal World*, April 2008, 6

A similar conflict has emerged between municipalities and Canada Post, a federal crown corporation, over its decision to end home delivery in approximately 1,000,000 homes across the country in favour of community mailboxes. Specifically municipalities have objected to Canada Post claiming its federal mandate allows it to place so called 'super-mailboxes' wherever it would like, without consent of the municipality. The City of Hamilton passed a bylaw to regulate this activity and is now engaged in a lengthy court battle with Canada Post,⁵⁹ while in Montreal the Mayor drew headlines by literally taking a jackhammer to a concrete slab of a future community mailbox in protest.⁶⁰⁶¹

There is no clear process to guide municipalities who are attempting to navigate these complex situations, and far too often the province remains silent during these disputes. The government should give some thought to how municipalities are meant to determine which laws to follow if both come from duly elected representatives of the people. There needs to be clearer tests for municipalities to follow when handling these conflicts.

The government also needs to give serious thought to the way that it determines responsibility for regulation. Municipalities still retain responsibility for regulating a set of activities and industries that are no longer neatly confined to traditional borders or boundaries. The sharing economy is one example, but there are numerous others like the towing or medical marijuana where local governments are responsible for regulating activities that operate across municipal jurisdictions, or are subject to conflicting laws from other orders of government. It's time for the province to review the way that it allocates regulatory responsibility.

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

Another area in need of clarity is the role of municipal services corporations. Outside of indicating that corporations created by municipalities "shall comply with such requirements as may be prescribed," there is no clear explanation of how or to what

⁵⁹ Samantha Craggs, "Hamilton will appeal Canada Post super mailbox court decision," *CBC*, June 18, 2015

⁶⁰ Kalina Laframboise, "Coderre delivers on promise to remove concrete base installed by Canada Post," *Montreal Gazette*, August 13, 2015

⁶¹ Shortly after the 2015 federal election, which resulted in a change in government, Canada Post announced a temporary moratorium on the end of home delivery and installation of community mailboxes, saying it would consult with the new government, which had as a central plank of its platform a pledge to restore home delivery services.

extent municipal provisions apply to municipal services corporations. Given that these entities exercise authority on behalf of the municipality, but exist with a separate “incorporator, director, officer or member,” this is an issue that is not easily resolved without greater clarity in the *Act*.

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

Greater clarity is also needed around boundary lines, roads and bridges. While section 11 of the *Municipal Act* discusses spheres of jurisdiction and section 19 provides the rules around geographic boundaries, neither specifically lays out how to determine responsibility for areas that are shared by two municipalities. Specifically there needs to be greater clarity about the planning, development, and maintenance of these bordering areas. Who is responsible for plowing a bridge that connects two separate municipalities? How should planning decisions be made along a road that splits one municipality from another? These are all questions with no clear answer, and can lead to inconsistency, conflict or inaction.

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

There also needs to be a greater balance between the *Municipal Act* and the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), specifically by finding new ways to align MFIPPA with the *Act*. Municipalities are currently faced with a difficult balancing act between the protection of privacy on the one hand, and responding to the desire of citizens to have greater transparency and accountability in government on the other. These are not irreconcilable differences, but they do require clear guidance, and an open dialogue.

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

Section 255(1)(3) of the *Municipal Act* requires that the municipal auditor approve retention periods during which “the records of the municipality and local boards of the municipality must be retained and preserved in accordance with section 254.” Records retention requirements are incredibly important for governments at all levels. They help to preserve the historical record of policy development, decision-making and execution, but also help to encourage and enhance accountability. At the local level, Municipal Clerks dedicate significant time and resources to determining the best methods to retain this information, and place great importance in their statutory responsibility to do so. This provision of the *Act*, however, does not contribute, reinforce, or even encourage their ability to do so. Requiring auditors to give their ‘approval’ for retention periods while a useful idea in theory, does not deliver sound or effective outcomes in practice. Most auditors are reluctant to give ‘approval,’ because the issues that generally arise, such limitation periods, are not in their purview. There may be a role for auditors in this process, but it should be to advise the municipality about whether the proper process was followed to derive its retention periods, and not to sign off or give approval.

Section 255(1)(3): A municipality may, subject to the approval of the municipal auditor, establish retention periods during which the records of the municipality and local boards of the municipality must be retained and preserved in accordance with section 254.

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

Finally, greater clarity is also needed around conflicts of interest. There are numerous references inside the *Municipal Conflict of Interest Act (MCIA)* to ‘indirect’ conflicts of interest. For instance sec. 5(1) states “Where a member, either in his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member....” However, despite this reference to an ‘indirect’ interest, the definition for an indirect conflict is vague and lacking specifics. As has been noted by other organizations, it is important for the municipal accountability framework to be straightforward and written in plain language so that it can be easily understood. If municipal councilors are going to be held to this standard, it needs to be explained with greater clarity.

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

CONCLUSION

Over its 77 years of representing the municipal profession, AMCTO has remained dedicated to professionalism, leadership and good governance at the local level. The recommendations in this submission are designed to improve the *Municipal Act* and *Municipal Conflict of Interest Act* and help ensure that it continues to function as an effective statutory enabler of effective municipal governance. We would encourage the government to use the occasion of this review to engage in a sustained discussion about a variety of issues, and listen to the feedback that it hears from municipalities themselves, as well as their respective associations, and other stakeholders.

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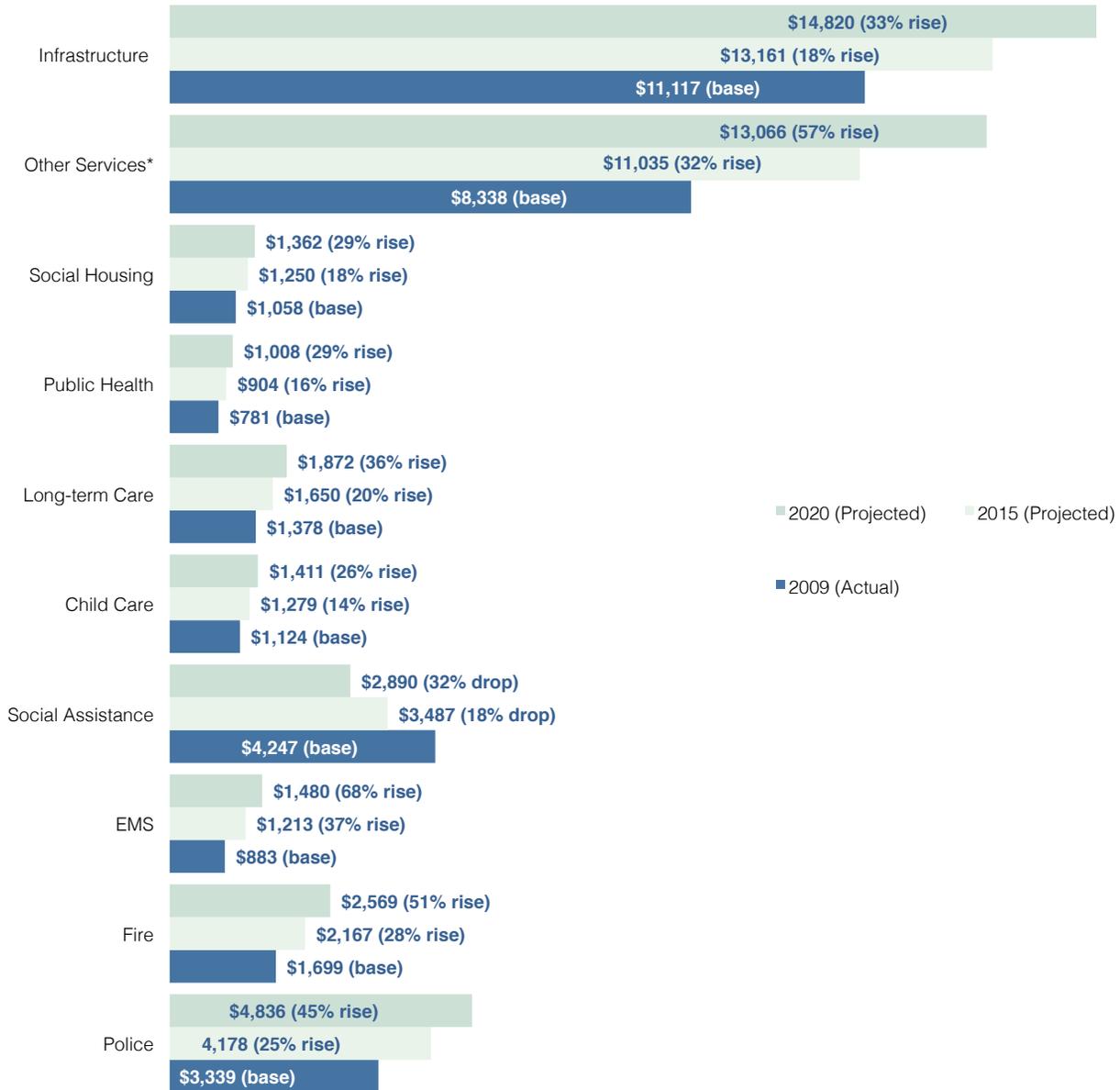
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APPENDIX A: Projected Ontario Municipal Operating Costs to 2020 (in millions)



* Other services include: general government, winter control, street-lighting, recreation, culture, libraries, etc.)

Source: Association of Municipalities Ontario (AMO), *What's Next Ontario? Imagining a prosperous future for our communities, 2015, 21*

APPENDIX B: MFOA Municipal Act Review Recommendations

Section	Currently	MFOA Position
<i>Amendments to the Municipal Act, 2001</i>		
COTA S267 "City of Toronto Revenue Tools	The City of Toronto may impose direct taxes with a few exceptions. Examples of permitted direct taxes include: land transfer, amusement, sin, billboard, and vehicle registration taxes.	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.
Hotel/ accommodation tax	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 3% destination marketing fee. The funds are earmarked for tourism marketing and development purposes, and are overseen by industry associations.	Amend the MA to include the power to impose hotel/ accommodation tax.
Tax capping	Introduced in 1998, the end of tax capping is long overdue as the program was first made redundant by the four-year phase-in program creates inequitable tax treatment, and is cumbersome to administer.	That Part IX of the Act be amended to give municipalities the authority to opt out of the provisions of tax capping.

Tax administration	<p>Multiple amendments are needed including:</p> <ul style="list-style-type: none"> • Allowing surplus funds to be collected from a readvertised tax sale (MA s 380.1) to be applied to amounts that were previously written off. • Removing the error in paragraph 3 of Form 10 Final Notice of Readvertisement, as it is in contravention of MA s 378 (1). • Expanding the list of methods of payments to include certified cheques from credit unions (Rule 25). • Eliminating the stalemate that occurs due to conflicting legislation when a purchaser has paid balance owing and has been declared the successful purchaser, but refuses to sign the documents required to register tax deed. 	That the proposed amendments for streamlining and clarifying various elements of tax administration be implemented.
MA Section 110	Restrictions in the Act are overly limiting and do not align with the broad powers of the Act.	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.
Conservation authority land	Municipalities should be able to avoid the current situation whereby conservation authorities levy municipalities to pay municipal taxes.	That the Municipal Act, 2001, be amended to include the power to exempt conservation authority land from municipal tax as it is found in section 451 of the City of Toronto Act, 2006.
MA Subsection 106(2): Bonusing	There is some ambiguity in the language in subsection 106(2) which may unintentionally limit the scope of municipal activities that would not normally be considered akin to granting a bonus.	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.”
MA Section 17: Federal Insolvency Legislation	The Act fails to the Companies’ Creditors Arrangement Act, a key piece of Canadian insolvency legislation. To be prudent, Section 17 should make it clear that the entire federal insolvency legislative regime does not apply to Ontario municipalities.	That Municipal Act, 2001, Section 17 be amended to include a reference to the Companies’ Creditors Arrangement Act.

<p>MA Section 413: Use of money received</p>	<p>To ensure funds raised via the insurance of debentures are used as intended.</p>	<p>That section 413 of 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.</p> <p>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.</p>
<p>Amendments to Regulations</p>		
<p>MA Section 323: “Heads and Beds”</p>	<p>A number of properties in Ontario are subject to taxation, but not based on current value assessment. Currently the “Heads and Beds” rate is set at \$75. This rate was established in 1987 and has not been adjusted in the subsequent 25 year period.</p>	<p>The current “Heads and Beds” rate of \$75 be raised to the \$140 beginning in 2016 and reset every 5 years with each review of the Municipal Act, reflecting inflation in the Ontario consumer price index.</p>
<p>MA Section 315: “Right of way” rates</p>	<p>The rates on railway assets and electrical corridors have not been amended since 1998.</p>	<p>That the railway “right of way” and electrical corridors tax rates be updated and reset regularly.</p>
<p>Road pricing</p>	<p>Once a regulation is made, a municipality may designate a highway as a toll highway and operate and maintain the designated highway as a toll highway. While this provision has been in the Act for over 10 years, no regulations have been formulated.</p>	<p>The Province should issue regulations under subsection 40(3) of the Municipal Act, 2001, to permit municipalities to adopt road pricing mechanisms.</p>
<p>MA Section 305: Sale of debt</p>	<p>Once a regulation is issued, a municipality may sell any prescribed debt payable to the municipality to any other person in accordance with the prescribed rules and conditions. To date no regulations have been issued.</p>	<p>The Province should issue regulations to permit the sale of debt payable to a municipality as provided in section 305.</p>

<p>Section 418: Investment</p>	<p>Expand eligible investment powers to include, prudent investor status, among other items:</p> <ul style="list-style-type: none"> • U.S. Dollar Investments • AAA Rated Maple Bonds and TransLink (New Category) • Bond Forward Agreements • 15 Percent Limit on Swapped Loans • Income Trusts and Real Estate Investment Trusts • BBB Rated Bonds 	<p>That O. Reg. 438/97 be amended to set out in the CHUMS/LAS submission to the Debt and Investment Committee and that the regulation to 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.</p> <p>That O. Reg 438/97 be amended to provide the authority to:</p> <ul style="list-style-type: none"> • unwind commodity hedges; • extend the settlement period of bond forward agreements to 365 days; and • collapse or sell bond forward agreements
<p>Section 203: Power to establish corporations</p>	<p>Members have suggested that restrictions placed on the ownership structure of municipal services corporations inhibit their usage.</p>	<p>That O. Reg. 599/06 Municipal Services Corporations be reviewed.</p>
<p>Amendment to the notional rate</p>	<p>Corrections of MPAC errors are made during the four years of phase-in, rather than on an annual basis. This omission is costly for both the province and municipalities.</p>	<p>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:</p> <ul style="list-style-type: none"> • 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, of 46 of the Assessment Act as reported by the assessment corporation.

Annual repayment limit (ARL)	No one size fits all and there are inconsistencies in the current calculation. O. Reg. 289/11 sets a precedence by amending the ARL for York Region.	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 issues		
Fixed rates in other legislation	Municipalities are affected by rates in fixed regulations of other Acts. For example, airport levies (Assessment Act, 1990), license and tonnage fees (Aggregate Resources Act, 1990), and rates for nuclear generating facilities (Assessment Act, 1990).	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.
Municipal implications of the Education Act	Section 58 of the Education Act, 1990 gives school boards the authority to refuse to pay their water and wastewater bills. This authority has not been used to date.	That the municipal fiscal implications of Section 58 of the Education Act, 1990 be reviewed.
Vacant Unit Rebates	the definition of a vacancy has been broadened since inception.	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.

APPENDIX C: Members of AMCTO's Municipal Legislation Review Advisory Team

AMCTO would like to thank the following members of its Municipal Act Advisory Team for providing the technical expertise for this submission. Please note that the recommendations and opinions included in this report are AMCTO positions, and do not necessarily reflected the views of individual members.

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- Angela Morgan, City Clerk, City of Burlington
- Pam Hillock, County Clerk, Director of Corporate Services, County of Dufferin
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- Leslie Donnelly, Deputy Clerk, City of Ottawa

