



Municipal Legislation Review

Submitted to: Ministry of Municipal
Affairs and Housing

Submitted by: The Ontario Bar
Association, Municipal Law Section



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Introduction

The Ontario Bar Association (“OBA”) appreciates the opportunity to provide comments to the Ministry of Municipal Affairs and Housing (“MMAH”) on the MMAH’s review of the *Municipal Act* (“MA”), the *City of Toronto Act* (“COTA”), and the *Municipal Conflict of Interest Act* (“MCIA”), which review is focused on the themes of accountability and transparency; municipal financial sustainability; and responsive and flexible municipal government as specified in the Municipal Legislation Review Public Consultation Discussion Guide, June 2015 posted on the MMAH website (“Discussion Guide”).

The OBA

Established in 1907, the OBA is the largest voluntary legal organization in Ontario representing approximately 16,000 lawyers, law professors and students. In addition to providing legal education for its members, the OBA is pleased to analyze and assist government with dozens of legislative and policy initiatives each year - both in the interest of the profession and in the interest of the public.

This submission was prepared by the OBA Municipal Law Section, which has over 350 lawyers who are leading experts in land use planning matters representing proponents, municipalities, the public, developers and other stakeholders before courts.

Comments

As the Municipal Law Section of the OBA is comprised of lawyers representing different stakeholders and a wide range of interests, our primary objective is to ensure that any amendments to the *MA*, *COTA* and the *MCIA* will further a more efficient process while maintaining accountability and transparency. Given our primary objective, and the questions posed in the Discussion Guide, we have focused our comments on the theme of accountability and transparency as it applies to the *MCIA*. We would welcome and request an opportunity to review a draft of any proposed changes to the *MCIA*, but also any proposed changes to the *MA* and *COTA* that arise from the review process.

With respect to the *MCIA*, we have found certain parts of the legislation to be overly draconian, particularly the provisions for penalties available to a judge that are not always



proportionate to the violation. The *MCIA* currently requires that a judge who has determined a member has violated the *MCIA* must declare the member's seat vacant, unless the breach is the result of inadvertence or an error in judgment. In our experience, judges are often reluctant to order a member removed from office for what may be a minor technical violation. We recommend that the *MCIA* be amended to provide a broader range of penalties and permit judges to impose penalties less severe than declaring a member's seat vacant, such as authorizing a suspension and/or a reprimand.

We also recommend that the *MCIA* be amended to give municipal integrity commissioners the jurisdiction to investigate complaints related to conflict of interest under the *MCIA* and the authority to impose penalties. In our view, access to justice for ordinary ratepayers is adversely affected by the requirement to enforce municipal conflict of interest rules before the courts. The cost of applications, as well as the time it takes to have matters heard, make the current model inaccessible.

If our recommendations were to be adopted, then we would anticipate and support further amendments that would enable any penalty imposed by a municipal integrity commissioner under the *MCIA* to be reviewable by the courts. We would also advocate for safeguards be added to the *MCIA* to prevent and address frivolous and vexatious complaints, whether made to the municipal integrity commissioner or the courts.

Conclusion

The OBA thanks you again for the opportunity to provide our comments on the questions raised in the Discussion Guide. We look forward to continuing discussions with the Ministry of Municipal Affairs and Housing regarding the review of the *MA*, *COTA*, and the *MCIA*. We would also welcome an opportunity to review a draft of any proposed amendments, and to provide additional comments at that time.