



OBA Submission on Bill 3, *Strong Mayors, Building Homes Act, 2022*

Date: August 29, 2022

Submitted to: The Standing Committee on
Heritage, Infrastructure and
Cultural Policy

Submitted by: Ontario Bar Association



ONTARIO
BAR ASSOCIATION
A Branch of the
Canadian Bar Association

L'ASSOCIATION DU
BARREAU DE L'ONTARIO
Une division de l'Association
du Barreau canadien



Table of Contents

Introduction.....	2
Executive Summary.....	2
Comments.....	3
Recommendation and Conclusion.....	4



Introduction

The Ontario Bar Association (“OBA”) appreciates the opportunity to provide comments to the Standing Committee on Heritage, Infrastructure and Cultural Policy on Bill 3 the *Strong Mayors, Building Homes Act, 2022*.

The Ontario Bar Association (OBA)

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with over 16,000 members who practice on the frontlines of the justice system, providing services to people and businesses in virtually every area of law in every part of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decisionmakers in the interests of both the profession and the public and delivers over 325 in person and online professional development programs to an audience of over 12,000 lawyers, judges, students, and professors.

This submission was prepared by members of the OBA Municipal Law Section, which represents approximately 300 lawyers who are leading experts in municipal and land-use planning law matters representing proponents, municipalities, residents, developers, and other stakeholders. Though we represent a broad spectrum of clients with diverse and sometimes competing interests, our goal is to provide decision-makers with commentary that represents a balance of the various interests of our members and their clients, and, to that end, these submissions should not be taken to represent the views of any one client or group of clients, including any municipal Council.

Executive Summary

Legal Services to Municipal Councils

As the governing bodies of municipalities, municipal Councils must be entitled to receive the best possible legal advice from their lawyers, whether from in-house counsel or from



external counsel they employ for that purpose. Some municipal Councils directly appoint their counsel. However, even if municipal counsel is not directly appointed by a municipal Council, the By-laws and the Rules of Professional Conduct established by the Law Society of Ontario pursuant to the *Law Society Act* make it clear that a lawyer's obligation where the client is an organization, like a municipality, is to provide that advice to the governing body of that organization.

A municipal lawyer's advice is subject to lawyer/client privilege that can only be waived by the municipality's Council. The significance of the lawyer/municipal client relationship is illustrated by subsection 14(4) of the *Ombudsman Act* which excludes from the Ombudsman's otherwise broad jurisdiction the power to "investigate any decision, recommendation, act or omission [...] of any person acting as legal adviser to the [municipality] or as counsel to the [municipality] in relation to any proceedings [...]."

In our respectful submission, Bill 3 should ensure that municipal Councils remain entitled to receive advice from, and provide instruction to, their legal counsel consistently throughout the Province, regardless of how those counsel are employed.

Comments

Approximately sixty-five Ontario municipalities employ in-house counsel and at least one of such counsel in each municipality will be the "head of [a] division or the head of [a] part of the organizational structure". As Bill 3 is currently drafted, such in-house counsel would be subject to a "strong" mayor's proposed powers to "to hire, dismiss or exercise any other prescribed employment powers with respect to" the counsel with the potential, therefore, to directly interfere with the counsel's professional duties to the municipal Council or to deny the municipal Council's choice of counsel. The perception of the possibility of such interference would itself irretrievably impair the lawyer/municipal client relationship.

The OBA does not express a view about the proposed change to a "strong" mayor model except to acknowledge a corresponding diminution of the jurisdiction of the municipal



Council as a whole. This underscores the importance of ensuring that the municipal Council is not also denied its choice of counsel or the benefit of legal advice that is and is perceived to be free of influence by any one member of the municipal Council.

It is noteworthy that Schedule 1, section 2 would amend the *City of Toronto Act, 2006* to add subsection 226.4(3). Schedule 2, section 1 would correspondingly amend the *Municipal Act, 2001* to add subsection 284.6(3). Each subsection scopes a “strong” mayor’s powers respecting the municipality’s organizational structure to exclude “the power to hire, dismiss or exercise any other prescribed employment powers with respect to any of the [listed] persons”. The list is currently comprised of statutory officers but includes “any other prescribed persons”.

Bill 3’s policy for such scoping of powers is sound to the extent that the various statutory officers are directly accountable to the municipal Council at least to the extent of their statutory duties. It is for that reason that the policy applies at least as equally to employed municipal lawyers. It is in a municipality’s interests that the lawyer/client relationship between its Council and the municipality’s employed lawyers is neither impaired nor perceived to be impaired by a single member of Council.

This issue is of sufficient importance that Bill 3 should be amended to include “a lawyer employed by a municipality” within the list of individuals for whom a strong mayor’s powers respecting the municipality’s organizational structure are scoped. The issue should not be left to be addressed by regulation.

Recommendation and Conclusion

It is respectfully recommended that:

- a) Bill 3, Schedule 1, section 2 be amended by adding to City of Toronto Act, 2006, subsection 226.4(3) a new paragraph 10.1 as follows: “A lawyer employed by the City”; and that



- b) Bill 3, Schedule 2, section 1 be amended by adding to Municipal Act, 2001, subsection 284.6(3) a new paragraph 10.1 as follows: “A lawyer employed by the municipality”.

The OBA thanks the Committee for its consideration of this submission and looks forward to responding to any questions you may have regarding our submission.