SP-17

ISSN 1710-9477

Legislative Assembly
of Ontario

Second Session, 41st Parliament

Assemblée législative
de l'Ontario

Deuxième session, 41e législature

Official Report of Debates (Hansard)

Tuesday 11 April 2017

Journal des débats (Hansard)

Mardi 11 avril 2017

Standing Committee on Social Policy

Modernizing Ontario's Municipal Legislation Act, 2017

Comité permanent de la politique sociale

Loi de 2017 sur la modernisation de la législation municipale ontarienne

Chair: Peter Tabuns
Clerk: Katch Koch

Président : Peter Tabuns
Greffier : Katch Koch

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7400.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7400.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

CONTENTS

Tuesday 11 April 2017

Modernizing Ontario's Municipal Legislation Act, 2017, Bill 68, Mr. Mauro / Loi de 2017 sur la modernisation de la législation municipale ontarienne, projet de loi 68, M. Mauro SP-343

Office of the Information and Privacy Commissioner of Ontario SP-343
Mr. Brian Beamish

Association of Municipalities of Ontario SP-346
Ms. Mary Ellen Bench
Ms. Lynn Dollin

Ms. Suzanne Craig SP-349

Municipality of Charlton and Dack SP-352
Mr. Merrill Bond

Office of the Ombudsman of Ontario; Bureau de l'Ombudsman de l'Ontario SP-354
Mr. Paul Dubé
Ms. Barbara Finlay

Amberley Gavel Ltd. SP-357
Mr. Nigel Bellchamber
Mr. Fred Dean

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Tuesday 11 April 2017

Mardi 11 avril 2017

The committee met at 1600 in room 151.

MODERNIZING ONTARIO'S MUNICIPAL LEGISLATION ACT, 2017

LOI DE 2017 SUR LA MODERNISATION DE LA LÉGISLATION MUNICIPALE ONTARIENNE

Consideration of the following bill:

Bill 68, An Act to amend various Acts in relation to municipalities / Projet de loi 68, Loi modifiant diverses lois en ce qui concerne les municipalités.

The Chair (Mr. Peter Tabuns): Good afternoon, committee members. I'm calling this meeting to order to consider Bill 68, An Act to amend various Acts in relation to municipalities.

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO

The Chair (Mr. Peter Tabuns): Our first witness is the Information and Privacy Commissioner, Brian Beamish. Mr. Beamish, if you'd come forward. You have up to 10 minutes to present and then there will be questions from all three parties, about three minutes per party. If you'd start by introducing yourself, that would be great.

Mr. Brian Beamish: Great. Thank you, Mr. Chairman. I'm Brian Beamish. I'm the Information and Privacy Commissioner for the province. Thank you for the opportunity to come here today and present my views on Bill 68. As you know, my office has the responsibility for the access to information laws of the province and the privacy laws of the province.

I'm here to speak to you about one single aspect of Bill 68 that impacts, in my view, on the access to information side of my mandate. That's a proposal that would expand the occasions when municipal councils would be able to go into closed meetings. Those are, specifically, subsection 239(2) of the Municipal Act and subsection 190(2) of the City of Toronto Act. In my comments, I'll refer just to the Municipal Act to avoid confusion.

These amendments, as I say, would add four additional circumstances for when municipal councils could go into closed meetings, for example, if they've received information from another level of government or if they have commercially sensitive information from a third party that meets certain conditions. Important from my point of view is that those four sections are basically taken word for word from the Municipal Freedom of Information and Protection of Privacy Act. Those four sections allow a municipality, in response to a freedom-of-information request, to refuse disclosure of information.

The Ombudsman is here. He has responsibility for open meetings. I know you're going to hear from him later in the day. I certainly defer to him on his expertise on open meetings. I have had a chance to review his draft submission, and I fully support his comments.

But my office has also had a real interest in openness and transparency as a natural extension of our freedom-of-information responsibilities. We have viewed open meetings, whether at the municipal level or other levels, as an important part of accountability and the ability of the public to scrutinize the activities of elected individuals and public servants. As a result, I think any time there's a proposal to limit that openness, it should be given a high degree of scrutiny.

I have two main issues, if I can turn to the proposals in the bill. The first is that I'm not satisfied that there is an identified need for expanding the situations when municipalities may close meetings. I'm particularly concerned that, to date, I haven't seen any solid evidence of a harm that needs to be addressed. At the time that the bill was introduced for first reading, we did contact the Ministry of Municipal Affairs and Housing to ask for the justification for expanding closed meetings. We were expecting specific examples of instances where confidential information had been made public or harm had been suffered. We didn't get that. Instead, we were advised that municipalities needed more flexibility to deal with sensitive matters. We didn't get what I would call substantial evidence of harm. Given that, and the importance of open meetings, I would propose that those amendments not be adopted in Bill 68.

The second impact, and this is my primary concern, is that even if there is evidence that there is a need for more closed meetings, that will have an impact on people's access to information rights. I recognize that talking about closed meetings on one hand and access to information may seem like a bit of a tangent, but let me explain how they are connected.

Let me start with the Municipal Freedom of Information and Protection of Privacy Act. I'm going to call it

MFIPPA because that's a bit of a mouthful. Section 6 provides an exemption to that general right of access that the public enjoy, where an institution like a municipality goes into an authorized closed meeting and considers matters before it. In other words, if a member of the public put in an FOI request for something that was dealt with in a closed meeting, the municipality could refuse that freedom-of-information request. To the extent to which there are more closed meetings under the Municipal Act, it will have a direct impact on the ability of people to request information under the Municipal Freedom of Information and Protection of Privacy Act.

You may ask, what is the harm? I want to stress that that impact on access rights is not theoretical. Let me provide you with an example. I'm going to use the issue of public access to information about procurement, particularly contracts. In our view, the procurement process, particularly contracts, should be open. The public has a right to scrutinize how government organizations are spending their money. It's the public's money, and they should have the ability to see what contracts are being let out and what's being paid for. To me, that's a basic, fundamental principle for transparency in government, and it also brings fairness to the procurement process itself, when transparency is brought to it.

We've made a lot of progress in the province over the last few years in terms of transparency and contracting. At the municipal level as well, there are some really good examples of municipalities in the province that are very open about the contracts that they give out. However, my worry is that this particular amendment would have a negative impact on that.

That is because the wording that is being proposed to be added to the Municipal Act is identical to wording that's in MFIPPA. We call it the third-party commercial exemption. That wording has been relied on by municipalities to deny access as a response to an FOI request to contracts. In my view, and properly, that wording does not cover contracts. We consistently issue orders in our office requiring the disclosure of contracts even though organizations have relied on that wording, and that has been upheld by the courts. Most recently, two months ago the Divisional Court issued an order agreeing with us that that wording should not be used to deny access to a contract.

However, the proposal is to add that wording to allow municipalities to go into closed meetings. I believe that inevitably, that wording will be used by municipalities to hold closed meetings when they're dealing with contractual issues, and that's improper. It's going to restrict the public's right to access to that information. I think that would be a huge step backwards.

In my closing time, I want to propose a solution. The first solution, as I mentioned, would be not to make that amendment, not to open up the closed meeting provisions. However, if the committee does think it's necessary and that there's a case to open up the closed meetings, there is a way to do it in a manner that doesn't impact on access to information rights. You'll see what I think is a very simple solution contained in my submission at pages 5 and 6.

There is a precedent for that. Currently, section 239 of the Municipal Act allows a closed meeting if the meeting is for training and education, but there is another provision, section 239(9), that says that even if a closed meeting is held for those purposes, it doesn't impact on an individual's right to access that information through MFIPPA. My proposal would be to add a similar provision to this bill. If the committee believes that there is a case for greater closed meetings, my proposal would say, then also amend the Municipal Act to say that those closed meetings do not impact individuals' right to access under MFIPPA. In that way, it would maintain the status quo that we currently enjoy in the province.

Thank you very much. I'm happy to take questions.

The Chair (Mr. Peter Tabuns): Thank you, Mr. Beamish. We go first to the opposition. Mr. Coe.

Mr. Lorne Coe: Welcome, sir. Thank you very much for your presentation.

For the purposes of the committee, can you tell us the last time that you requested the information, as you describe it, the compelling evidence supporting what's being proposed—

Mr. Brian Beamish: It would have been after first reading of the bill.

Mr. Lorne Coe: That's the only time you asked for it?

Mr. Brian Beamish: That's right.

Mr. Lorne Coe: All right. And in your view, in the absence of that information, as you put it, you're concerned that the proposed amendments negatively impact the public's right of access to government-held information. Is that correct?

1610

Mr. Brian Beamish: That's right. I will acknowledge that my experience is primarily on that one section I mentioned, which is the third-party commercial. I can see a definite negative impact on the right to access through that section. I haven't seen any evidence for the other three cases, but I'm willing to acknowledge that those are not my area of expertise.

Mr. Lorne Coe: To my colleague, please.

The Chair (Mr. Peter Tabuns): Mr. Hardeman.

Mr. Ernie Hardeman: Thank you very much for your presentation.

The issue of the information on the contracts and commercial—how do you deal with, if you have it open to freedom of information, the proprietary protection that a bidder would have on some of the information that they're bidding on, that they keep that from becoming public?

Mr. Brian Beamish: The section that I mentioned does allow for true proprietary information or trade secrets to be withheld. The problem is that in most cases the view is that the entire contract itself is proprietary. Generally, what people want to get if they put an FOI request in is how much the person is being paid. They're not really interested in any trade secrets. They want to

know what the bottom line is. We have consistently said that that is not proprietary information; that the sum of the contract is not proprietary. As I mentioned in my remarks, that view has been upheld by the courts. They've also agreed that the bottom line of a contract is not proprietary. To the extent that there is a true trade secret, the section can be applied to withhold that information. It can be severed out of the contract.

Mr. Ernie Hardeman: On the bottom line: Is that not going to be public information when they pay?

Mr. Brian Beamish: It definitely should be.

Mr. Ernie Hardeman: But even if it was passed and approved within a private meeting, in an in camera meeting, the pay has to go through publicly. It would be in the public accounts of the municipality, wouldn't it?

Mr. Brian Beamish: It would. I think you're asking people to go potentially through a lot of work to find out what's being paid out to contracts rather than simply giving out the contract. As I mentioned, some municipalities do this well. They proactively release that information; you don't have to ask for it through an FOI request.

The Chair (Mr. Peter Tabuns): I'm sorry to say we're out of time with this questioner. We'll move on to Mr. Hatfield.

Mr. Percy Hatfield: Welcome, sir. Thank you for coming in.

Would you be okay if (h), (i) and (j) stayed in, but (k) went out?

Mr. Brian Beamish: If you would just indulge me for a second—

Mr. Percy Hatfield: Sure. So (k) is "a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board."

Mr. Brian Beamish: I would be worried about (i) going in there. That's what I call the third-party commercial. That's the section that is relied on to deny access to contracts. I would be concerned if municipalities could go into closed session for that and then rely on section 6 of the Municipal Act to refuse access to that information.

Again, I've had direct experience with that section. I have not had direct experience with (h) or (j), so I haven't seen the evidence that it's required, but it may be there.

Mr. Percy Hatfield: For example, if I wanted to find out how much the Windsor Spitfires—whatever their deal was with the WFCU Centre in the city of Windsor, and I'm told that it's a trade secret because it's proprietary compared to the other teams and the other rinks around the league. Is that indeed proprietary?

Mr. Brian Beamish: That's a really good example. On one hand, the city and the Spitfires may argue that that's proprietary. On the other hand, I think it's also fair to say that taxpayers should know, if the pot is being sweetened for the team to be there, how much is the pot being sweetened?

Mr. Percy Hatfield: So if that comes to you, what's your ruling?

Mr. Brian Beamish: We would take a look at the agreement and see what was truly proprietary.

Mr. Percy Hatfield: Just tell me again your reservations about (k). How wide open is this? How wide is that net?

Mr. Brian Beamish: The issue I have with (k) is that it's very broad. When I read the current closed-meeting section of the Municipal Act, to me it's already covered off. Section 239 of the Municipal Act allows for a closed meeting if you're discussing labour relations or employee negotiations. When I read (k), that seems very broad to me. There already is a capability in the Municipal Act to have a closed meeting.

Mr. Percy Hatfield: Thank you.

The Chair (Mr. Peter Tabuns): Thank you, Mr. Beamish. We go to the government and Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you, Mr. Beamish, for being here today and for your presentation. We have your deck here. A couple of questions that maybe you could clear up for us: We consulted with many stakeholders and, of course, municipalities prior to drafting this, which obviously impacts them probably more than anybody else. They are the ones who asked us to align discretionary open-meeting exceptions with existing records exemptions in MFIPPA. Would you elaborate on how you feel MFIPPA requirements should differ from open-meeting exemptions?

Mr. Brian Beamish: As I said, it strikes me that the provisions that are currently in the Municipal Act that allow for closed meetings are sufficient. But if you have evidence that they aren't, that's why I've proposed what I would call the compromise solution in my submission. Go ahead and expand the circumstances where municipalities can go in closed meetings under (h), (i), (j), (k), but put a provision in the Municipal Act that that does not impact on people's access to information rights. So allow the closed meetings, but keep the status quo in terms of access to information. I think that if there is evidence that there is a need for those sections—if municipalities have come forward and built the case—then fine, make the amendment, but I would ask you to consider also amending it to ensure that people retain their access to information rights, and that the municipalities simply couldn't say, "We discussed that in a closed meeting, so you can't get it."

Mr. Lou Rinaldi: Thanks very much for that. On another piece—and I know you focused on one particular section in that. I get it and I understand that, but I think this is related. Bill 68, as it's written, proposes that members of council and local boards follow a written conflict of interest statement for board meetings. Do you think this is beneficial from a transparency standpoint, that they actually have to put something down in writing?

Mr. Brian Beamish: It sounds like a very good idea to me, yes. I mentioned that our office does focus on transparency and accountability as a natural adjunct to our information responsibilities. I think any information that we can put in the public sphere like that is always a benefit.

Mr. Lou Rinaldi: You stressed leaving things the way they are as far as closed meetings, but based on your expertise, can you provide the committee, although you—

The Chair (Mr. Peter Tabuns): Mr. Rinaldi, I'm very sorry to say—

Interjection.

The Chair (Mr. Peter Tabuns): I know, you're just getting your stride. I understand that. But you're out of time.

Mr. Beamish, thank you so much.

Mr. Brian Beamish: Thank you very much.

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Chair (Mr. Peter Tabuns): Next presentation, then: Association of Municipalities of Ontario, Lynn Dollin, president, and Mary Ellen Bench. Mary Ellen, very nice to see you again.

Ms. Mary Ellen Bench: Likewise.

The Chair (Mr. Peter Tabuns): As you probably heard, you have up to 10 minutes to present and then we go to questions from each party. If you would start off by introducing yourselves for Hansard.

Ms. Lynn Dollin: I will. Thank you very much.

My name is Lynn Dollin. I'm the president of the Association of Municipalities of Ontario. I'm also the deputy mayor of the town of Innisfil. With me today is Mary Ellen Bench, city solicitor with the city of Mississauga. I want to thank you for providing us with the opportunity to speak with you today on Bill 68.

AMO's membership includes 425 municipal governments from all parts of the province. This lets us tap the knowledge of municipal lawyers, clerk-administrators and chief administrators, who have helped us review this bill, its policy, its intent and its workability. This front-line talent is crucial to helping you get it right as you review this legislation.

Today, I will speak mainly to the new integrity commissioner regime, because it's where our concerns are most concentrated. A list of our amendments is contained in appendix A. I do say that there are many helpful clarifying provisions, and if I had unlimited time, I'd go through them all and thank you, but I won't. We're not commenting on those, but in our short time we'll focus on critical, needed changes. Let me give you some important context to begin.

1620

While most people live in 65 of Ontario's largest municipal governments, there are 379 municipal governments with less than 50,000 population, of which 190 have fewer than 5,000 population. Some of these governments are great distances from urban centres.

When the province passes one-size-fits-all legislation, you have to remember that the capacity to implement is far from the same. For those 190 very small municipal governments, their administrative support falls on two to six full-time staff. They have to administer the Municipal Act and hundreds of other statutes and regulations, and more are coming, such as a new asset management planning regulation.

More and more unfunded mandates put increasing pressure on property taxes, the core municipal financing tool. Did you know that for 50% of Ontario's municipal governments, a 1% tax increase equates to less than $50,000? The pile-on of unfunded new mandates means increased taxation or a reduction in services or less capital investment in our infrastructure.

The capacity of municipal governments is not endless. A mandatory IC will be challenging financially, not to mention access to qualified people and the act's administrative requirements. There is not much solace in the ability to share an IC or assign the functions of an IC. Large urban governments have similar concerns.

Let me be blunt: Most of the proposed regime came out of several local circumstances, including Justice Cunningham's report. We understand that it can be hard for you to deviate from such reports. Yet we know what happens when one situation bears on everyone else: You get a rash of unintended consequences.

Municipal governments are not averse to transparency and accountability. In fact, if one truly examines the practices of public access and outreach, municipal governments are by far the leaders compared to any Legislature or other public sector bodies.

Let's quickly look at your own Members' Integrity Act, which, for ease, we've copied in appendix B. Only a member of the assembly can complain to the provincial Integrity Commissioner, yet for municipal governments, Bill 68 says "any person" can. Literally, that means anyone in the world. How unreasonable is that? How would a treasurer even try to prepare a budget proposal for this? You might say the likelihood of an IC finding merit in a complaint made by someone living somewhere else in the province is small and would not attract costs. How wrong you would be. Any complaint means IC action: To open a file, do a preliminary examination of the merits and to close the file with a finding of no merit. I can tell you from local experience that this level of work is about $2,500. Any person outside of a municipality could exploit the system at the expense of the municipal ratepayers.

Please replace "any person" with "municipal ratepayers, people living and working in a municipality, and anyone doing business with the municipal government."

Another point of comparison: Your own act is very sensitive to provincial elections by suspending an inquiry when a writ is issued. There is no similar approach in this bill. I do not think any of you would deny the political gain that could be had by the mere suggestion of a complaint being made. In fact, your act goes even further to say that the provincial IC shall suspend an inquiry if a member whose conduct is concerned resigns his or her seat. Neither of these are in Bill 68 and they should be.

The proposed new municipal IC regime is multi-faceted and untested. That is why we are recommending that the IC regime's application to local boards be deleted

or, at the very least, not proclaimed until tested on municipal elected officials. We need to evaluate its workability before it is sprung on the thousands of community members who volunteer on local boards. In fact, if an IC regime applies only to members of council, it would solve another flaw in the bill as to which IC would have jurisdiction in the case of joint local boards. It would also allow the reduction of the 180 days within which an IC must complete an inquiry.

Another problematic provision is that integrity commissioners will be able to investigate based on "own initiative." In other words, if no one complains, the IC can initiate. This is on top of an IC's authority to educate, advise members, and investigate and rule on complaints. This "own initiative" is very broad and unfettered authority and will confound the complaint-based integrity systems. Our recommendation is to delete this authority. You could replace it with a provision that, should an IC see patterns in conduct, they must be granted any request to address council about these matters.

We also believe it is wise to include in the act, for the public's clear understanding, that an IC has the authority to find a complaint frivolous, vexatious or not made in good faith, or that there are insufficient grounds for an inquiry. While an IC can make this finding, it should be set out in the bill, as it is in your act, as well as other pieces of legislation like the Planning Act.

I also want to comment that implementation of the IC regime, even with the requested changes, is not something that can occur in months. For many, sharing of an IC or finding ways to assign IC functions will take effort, involving consultation and negotiation of service agreements, not to mention finding an IC with the necessary qualifications. Based on the closed-meeting investigator experience—and I'm talking about the former closed-meeting investigators—the IC regime should not take effect before January 2019.

There are other proposed changes in Bill 68 that we fully support; for example, the definition of a "meeting." I would observe that the need for this definition was a direct consequence of the varying definitions of a "meeting" held by different closed-meeting investigators. We can only hope that the IC regime, with different practitioners appointed as ICs, does not generate its own set of issues when it is operationalized.

Time does not permit me to go through all of our proposed changes. I strongly encourage you to take the time to do so.

Let me conclude with a general statement: The greater the prescription and the more there is a one-size-fits-all approach placed on municipal governments, the less responsive they can be to their own community's needs. The simple fact is that Ontario's 444 municipal governments are diverse and that diversity can change over time. That is why the Municipal Act, 2005, embraced flexibility, by moving to broader authority, spheres of jurisdiction and natural person powers.

Thank you. I'd be happy to try to answer any of your questions. I'll leave the hard ones to Mary Ellen.

The Chair (Mr. Peter Tabuns): That's a wise decision. Thank you, Ms. Dollin.

First, Mr. Hatfield.

Mr. Percy Hatfield: Hi, Lynn. It's nice to see you again. I know the Chair didn't mean to not mention you when he said it was nice to see Mary Ellen again.

The Chair (Mr. Peter Tabuns): We used to work together.

Mr. Percy Hatfield: Well, so did we.

The Chair (Mr. Peter Tabuns): Well, then, say, "Hi."

Mr. Percy Hatfield: Okay.

Laughter.

Mr. Percy Hatfield: I'm having fun, obviously.

Of the 190 with populations fewer than 5,000, of the AMO membership of 444, are you aware of any statistics as to how many complaints have come in about councillors that could have or should have been sent to an integrity commissioner?

Ms. Lynn Dollin: I don't have that data. Do you have that, Mary Ellen?

Ms. Marry Ellen Bench: I can't think of a way to track that data without a system, to be honest—because who would you complain to?

Mr. Percy Hatfield: I get it. I guess what I'm getting at in trying to support your request is, how much of a problem has it been for all of Ontario's municipalities? Are we trying to correct something that doesn't have an impact on everyone? Is it a cookie-cutter approach that doesn't necessarily apply across the province?

Ms. Lynn Dollin: I would suggest that some municipalities, including the one that I am a member of, have gone ahead and done this already. We've had an integrity commissioner for about three years. We have had to make changes to the process—one of them being "any person" to people living within the municipality, because of the cost, mainly. I think it's really unfair to ask municipal taxpayers to pay for someone who has an axe to grind in another part of the province.

Mr. Percy Hatfield: If the government put a pot of money together in a budget to cover off the cost of implementing this new regime, is that something you would look favourably upon?

Ms. Lynn Dollin: That would be most helpful—anything that could help in resourcing this, including in northern and remote areas. You can understand that even if there's a shared integrity commissioner, the geography of trying to get everywhere is not generally that easy.

1630

Mr. Percy Hatfield: Based on your experience, how long does it normally take a community of your size to reach a conclusion once a complaint has been filed?

Ms. Lynn Dollin: To be honest, if the "own initiative," which I mentioned in my notes, was done away with, I would think that the 180 days is too long. Let's face it: When there is that cloud hanging over a municipal government, it gets in the way of getting business done, and it creates angst or tension. The sooner that

these things can be dealt with, the better. But the "own initiative," in my opinion, requires it to be longer.

Mr. Percy Hatfield: All right. And from your presentation today, what is your—

The Chair (Mr. Peter Tabuns): Mr. Hatfield, I'm sorry to say, as pleasant as it is, you've run out of time.

We go to the government: Mr. Rinaldi.

Mr. Lou Rinaldi: Good to see you again, Lynn. Thank you for all the work you do, of course, personally and through AMO in representing some 425 municipalities. That's quite a task, and I know that you undertake it quite well. AMO does a fantastic job.

A couple of questions that I have—oh, and the other piece is, thanks for your recommendations. I think AMO and the government have had a good relationship, and your help has always been to bring the focus that's on the ground to us here at Queen's Park. It has always been appreciated.

You mentioned very briefly the definition of "meeting," and that you welcome that new definition, or clarifying that. Can you elaborate on that a little bit more, on where we're going and your support behind it?

Ms. Lynn Dollin: Certainly. I'd be happy to. It represents corrective action, because the previous Ombudsman decided not to use the court's definition, whereas the closed-meeting investigators did, so it did cause havoc and confusion across the province. It's a classic case of what I meant in my notes by unintended consequences.

Mr. Lou Rinaldi: The other question I would have, and I think I mentioned it in my preamble: We're at the stage of Bill 68 for amendments, and hopefully it will get back in the House and get passed in some form. For committee members, can you maybe tell us about AMO's involvement in consultation prior to this? Obviously I would hope there was some dialogue between ministry folks and AMO, because this is a big chunk.

Ms. Lynn Dollin: Yes, we have been consulted with a number of times. I couldn't give you an exact number, but I've got to tell you that although we have to adhere to hundreds of different pieces of legislation, this is our bible. This is what we are going to have to live by, so we want to make sure that it's right.

Mr. Lou Rinaldi: Thank you.

Are you going to cut me off again?

The Chair (Mr. Peter Tabuns): You have 30 seconds.

Mr. Lou Rinaldi: Oh, wow.

The Chair (Mr. Peter Tabuns): Go wild.

Mr. Lou Rinaldi: I've got a bunch of other questions. Maybe we can talk off-line. Thank you for being here today.

Ms. Lynn Dollin: Thank you.

The Chair (Mr. Peter Tabuns): Thank you, Mr. Rinaldi.

Mr. Hardeman.

Mr. Ernie Hardeman: Thank you for being here today. Just a quick couple of comments, one that I've asked a number of people who have been presenting: Under the new rules, a closed meeting has to be a meeting where the issues at council aren't materially advanced. If it's materially advanced, then it can't be a closed meeting; for anything else, the discussion would be appropriate. I know there have been a number where the commissioner had ruled that it was a meeting when it wouldn't have met that.

How would you describe "materially advanced"?

Ms. Lynn Dollin: I'll pass that on to the lawyer. That sounds like a good lawyer question.

Ms. Mary Ellen Bench: The closed-meeting sessions where matters cannot be materially advanced—I think you're speaking to the education sessions where you're providing information—

Mr. Ernie Hardeman: No, in the definition of what is allowed as not being considered a meeting, if something is materially advanced, if a council issue is materially advanced, then it would be called an illegal council meeting. If it's not materially advanced, you can have a meeting. It's not how many members of council are there; it's what's happening at that meeting that counts. I just wondered how you would define "materially advanced."

Ms. Mary Ellen Bench: Okay. Maybe I read those sections a little bit differently. Things can be materially advanced in camera when it meets the criteria, such as labour and employment matters. They don't get voted on in camera, but they will get discussed and decisions will be formed in people's minds. So "materially advanced" to me would be when you walk into a room and you've got a certain level of information about a topic, and you come out and you have a position about the topic in your mind so that you know how you're going to vote when you come into public session.

Mr. Ernie Hardeman: Okay. The other one you mentioned, to replace "any person" with "municipal ratepayers, people living and working in the municipality, or anyone doing business with the municipality"—would that suit the purpose for AMO as to the criteria for who should be allowed to raise an objection?

Ms. Lynn Dollin: Absolutely. I think when we first went to our board with this we talked about it being a taxpayer, but then we realized in some municipalities there are many residents who have been there for a long time—I think we had "any electors." There are many who aren't electors, but have lived in a municipality for a long time, but are not eligible to vote in a municipal election. At that point we suggested it should be "ratepayer" since the integrity commissioner—unless there's going to be a pot of money, the taxpayers and the ratepayers are going to be the ones who are going to have to pay for these investigations. It should be somebody doing work within the municipality, somebody directly involved that has a stake in the game as opposed to somebody from another country who could decide that they wanted to question this.

The Chair (Mr. Peter Tabuns): With that, I'm sorry to say we're out of time. Thank you both for your presentation today.

Ms. Lynn Dollin: Thank you, Mr. Chair. Thanks very much.

MS. SUZANNE CRAIG

The Chair (Mr. Peter Tabuns): The next presenter is Suzanne Craig. Ms. Craig, as you've heard, you have up to 10 minutes to present and then there will be questions posed by each of the three parties. If you would introduce yourself for Hansard. Please begin.

Ms. Suzanne Craig: Thank you, Mr. Chair, and members of the committee. My name is Suzanne Craig. I am a municipal integrity commissioner for various jurisdictions in Ontario. Currently, I am the appointed integrity commissioner for the city of Vaughan, the city of Barrie, the township of Georgian Bay, West Lincoln and Whitchurch-Stouffville, and the accountability officer for Waterfront Toronto. I previously was the integrity commissioner for several small municipal organizations including Parry Sound, St. Catharines, Fort Erie, Orillia, Pickering, Niagara-on-the-Lake, Newmarket and several others.

I'm here before the committee today to reiterate many of the comments that you have heard from various speakers, including the integrity commissioner of the city of Toronto, Ms. Val Jepson. I'm here to point out some of the issues that, respectfully, I would like to still see addressed by this committee as you go forward. I will be speaking about the context within which this bill is going forward. I will speak about the potential impact on municipalities and I will speak about the recommendations that I would like the committee to consider.

A recent decision handed down by the Divisional Court, which I've provided to you as an attachment to my statement, referenced the role of the expertise of a municipal integrity commissioner. Justice Marrocco stated that in a municipal government the Office of the Integrity Commissioner is valuable for several reasons. He cited many of the comments made by Justice Bellamy in her Bellamy inquiry:

—"Busy councillors and staff cannot be expected to track with precision the development of ethical" dilemmas;

—"An integrity commissioner provides significant profile to ethical issues inside city government...;

—"No matter how comprehensive the rules, there will on occasion be situations where the ethical course of action is not clear" and you need ethical expertise; and

—"Without enforcement, the rules are only guidelines. Although research shows that a values-based approach to ethics policy, focusing on defining values and encouraging employee commitment, is preferable to a system of surveillance and punishment, where the public interest is involved, there should be a deterrent in the form of consequences for bad behaviour. The rules must have teeth."

The current municipal framework: We have codes of conduct. I started my role as integrity commissioner at the city of Vaughan in 2009, and I was asked to draft a code of conduct, which was modelled on the city of Toronto's code of conduct and the Members' Integrity Act of the province of Ontario. As you know, codes are currently disparate in the provisions they contain and often lack the consistency that has led to many councils approving a light version of the code of conduct. What happens is, from time to time, we will see that municipal councils will include what they see fit to include in a code of conduct. For this reason, many of the integrity commissioners that form part of a loosely held group known as the municipal integrity commissioners of Ontario applaud the fact that there is a requirement in Bill 68 to have all codes of conduct at least have minimum standards included in the code.

1640

I'd like to talk about the appointment of an integrity commissioner. Generally speaking, municipalities engage an integrity commissioner in reaction to ethical breaches of significance in relation to a member of council. Anecdotally, it is my understanding that in terms of larger municipalities in Ontario, only the city of Ottawa created an accountability framework instituted by a desire for enhanced accountability and transparency.

On the other hand, many councils in Ontario have to scramble to find an integrity commissioner and scramble to put together an accountability framework, and this under the glare of public and media scrutiny. Oftentimes, as many have said to you in discussing the amendments to the Municipal Act, we have the squeaky wheel which is driving the desire to have an accountability framework. If we look at Bellamy, if we look at Justice Cunningham, we're looking for an accountability regime that does not speak to just the problems, but a public interest of accountability in the jurisdiction.

One of the most problematic issues facing municipal integrity commissioners to date, in my experience, is the issue of tenure of office and indemnification. The absence of provisions to address these issues I respectfully submit runs the risk of seriously eroding the independence of integrity commissioners and therefore the very accountability and ethics regime contemplated by the legislation.

In the absence of a term of appointment, the integrity commissioner's independence is often compromised when he or she, in fulfillment of her role as accountability officer, submits a report with recommendations unfavourable to one or more members of council. There exists the real risk that the ability of the integrity commissioner to faithfully and thoroughly investigate a code complaint is compromised by the ability of council to deny budgetary funds required to carry out the integrity commissioner's mandate and to end the integrity commissioner's appointment arbitrarily.

I speak to this because I have been an integrity commissioner when, having submitted an unfavourable report to council, there were questions of whether my tenure would continue. There were questions as to whether I would have the budget necessary to fulfill my role as an integrity commissioner and continue to investigate complaints.

The types of recommendations that I am looking for are on page 5 of my submission. First and foremost, I would reiterate the comment submitted to this committee by my colleague Ms. Valerie Jepson, where she states that the City of Toronto Act and the Municipal Act be amended to empower and require municipalities to protect all accountability officers against risks of pecuniary loss or liability related to the performance of their duties.

While I come before committee today speaking as an individual, there are many integrity commissioners who have stated very clearly that a risk to their independence is the very fact that there are no indemnification or immunity provisions in the act.

I respectfully recommend, if committee members turn their attention to page 6 of my statement, that you look at the submissions that were put forward by Ms. Valerie Jepson. I concur with these and I strongly recommend that the proposed bill include language to insert an immunity provision, an indemnification provision and a testimony provision, so that an integrity commissioner will not risk liability for carrying out her function.

I would like to close by stating that the penalties and corrective actions in this proposed bill are very helpful, but oftentimes what I hear from people when I conduct education sessions with the public is that the codes don't have teeth, that integrity commissioners don't have teeth.

If it is the public interest that is being addressed with the enhanced powers of an integrity commissioner, I would respectfully recommend, if you turn to page 7 of my statement to the committee, that in addition to the existing penalties of a reprimand and suspension of remuneration to the member of up to 90 days, that the committee recommend the insertion of other sanctions or penalties or corrective action, including the removal of a council member from a local board, suspension of duties of office for a period of up to 89 days—I say 89 because 90 days would then vacate his or her seat—and any other action recommended by the commissioner that is intended to remediate the circumstances.

I'd like to close by stating that given the significant changes proposed by Bill 68, municipalities and offices of accountability officers will have to put time and effort into bylaws and protocols to be in compliance with the new legislation. In addition, in fairness to the sitting members of council, to ensure that those who will be governed by this legislation are held accountable and are fairly informed of their obligation, this implementation of these proposed amendments ought to take place after the next election in Ontario.

I'm available for any questions you may have. I turn your minds and your attention to the annual report of the city of Vaughan, which I submitted to the council, to give you an idea of some of the work that an integrity commissioner does, and the Divisional Court decision that came down in 2016 that also sets out the roles and responsibilities of an integrity commissioner in Ontario very clearly.

The Chair (Mr. Peter Tabuns): Thank you, Ms. Craig. We go to Ms. Vernile.

Ms. Daiene Vernile: Good afternoon, Ms. Craig. Thank you very much for appearing before this committee and for your very comprehensive presentation this afternoon.

I want to turn your attention to section 448 of the Municipal Act, which already provides integrity commissioners, as officers of the municipality, with immunity. Does that satisfy you?

Ms. Suzanne Craig: No, it doesn't. What we're looking for in terms of integrity commissioners is also an opportunity to have indemnification. Where an integrity commissioner submits a report that is unfavourable—and it is a right of a respondent to a code complaint to ask for an application for judicial review of that order, but what has happened is most people who fulfill the job of integrity commissioner have to bear the responsibility financially of any court action. What we're looking for is not to have to be submitted to long procurement-type contracts before we can engage in our role, but rather that it be built right into the statute that the municipality must indemnify the integrity commissioner; that they cannot be compelled to speak before a court for fulfilling their duty, and they have immunity insofar as the information that they hold and that they have used in carrying out their function cannot be used against them.

If you look at page 6, as my colleague stated yesterday, immunity, indemnity and testimony are the three issues that we'd like to have included to be able to protect the independence of the office of the integrity commissioner. Right now, what happens is there will be an RFP for an integrity commissioner—you have 190 who are saying, "We need an integrity commissioner,. You have a 50-page document that's similar to whether a contractor is going to build a bridge in the municipality, and the integrity commissioner must fulfill an insurance policy of upwards of $2 million before they can even be considered by the municipality.

Ms. Daiene Vernile: You're serving as the integrity commissioner in Vaughan, along with a number of other municipalities. Some smaller communities are concerned, on a budgetary level, with what it's going to cost them to have an IC. Do you see sharing an integrity commissioner as a viable option?

Ms. Suzanne Craig: Thank you for your question. I've had the opportunity not only to be the integrity commissioner of smaller municipalities with populations of less than 50,000, but also to provide training to the smaller municipalities. The opportunity for sharing is somewhat problematic because there have been discussions—and I can't speak to being a participant in that conversation, but I've heard anecdotally that a municipality will say, "You use that integrity commissioner more than we do. How do we draft a sharing agreement?" It's certainly an option and I certainly think there are opportunities for that.

If you look at regional government, they have a regional integrity commissioner who is integrity commissioner for many of the regional municipalities.

However, in response to one of the comments by a previous speaker, an integrity commissioner with

expertise can look at a complaint and can determine that it is frivolous and vexatious. Oftentimes—

The Chair (Mr. Peter Tabuns): Ms. Craig, I'm sorry to say you're out of time.

We go to the official opposition. Mr. Hardeman.

Mr. Ernie Hardeman: I just want to go back to the question about the sharing of the integrity commissioner. Presently, you're doing it for a number of municipalities. Are you actually the integrity commissioner for each one of those municipalities, or are you an independent contractor who provides services that each municipality calls upon from time to time and you're being held by a retainer?

Ms. Suzanne Craig: Thank you for your question. I am a contractor for the city of Vaughan. I am not an employee, but I am on a part-time basis with the city of Vaughan, and that is a contractual arrangement. With the other municipalities, I have a retainer and an agreement, on an as-needed basis. So they have me as their integrity commissioner. Should there be a complaint that comes forward, should there be a need for a councillor to speak to me to obtain advice or recommendations and if they need training, they will call on me and I will represent that particular organization on an as-needed basis.

Mr. Ernie Hardeman: With the new legislation, do you see that that would need to change, or do you believe that that system that you presently have will define that each municipality must have an integrity commissioner?

1650

Ms. Suzanne Craig: Thank you for the question. Through the Chair, I think that it's an unmanageable situation for smaller municipalities. What they would have to do is call out to those who carry out this function, ask if they would like to become their integrity commissioner, sign off on an agreement, and have a retainer or what have you. It becomes problematic for financial reasons and just for logistics of location.

I respectfully submit that there would be an opportunity for some sort of cost-sharing at the provincial level for those smaller municipalities. Certainly, many of my colleagues function on an as-needed basis. They have 10 or 11 municipalities for which they are the integrity commissioner on an as-needed basis. If a complaint comes in, they will go and investigate.

Mr. Ernie Hardeman: When you talk to the indemnity clause that's required—how would that work, going forward, if there was a lawsuit that was provided by your smallest client? They would then have to have insurance to cover that? Or would the indemnity insurance be applied to you, as the practitioner?

Ms. Suzanne Craig: I can speak very clearly as it relates to one municipality, the township of Georgian Bay. In my agreement with the township, I have put in an indemnification clause such that their insurance will cover me in the event of any lawsuit as it relates to me carrying out my function.

Mr. Ernie Hardeman: Thank you.

Ms. Suzanne Craig: My statement to the committee, however, is that in the absence of this ability—where the council or the township does not want to engage in this sort of discussion—the integrity commissioner either has to subsume the liability themselves, or they will not be engaged.

Mr. Ernie Hardeman: Thank you.

The Chair (Mr. Peter Tabuns): Mr. Hatfield.

Mr. Percy Hatfield: Welcome to the committee. When I was looking at the Vaughan report, I noticed you had received 137 inquiries from staff. Could you generalize on what types of complaints they would have been?

Ms. Suzanne Craig: Thank you for your question. Through you, Mr. Chair, they were generally about harassment. What happened is we had two streams of complaints that I received from members of staff at the city of Vaughan. There were those who received actions and behaviour from members of council that rose to the level of harassment.

Conversely, there were complaints from an employee against another staff member. I'm not responsible for those types of complaints, but they came in to my office nonetheless, because at the city of Vaughan and many other jurisdictions, they do not have a local ombudsman.

Mr. Percy Hatfield: Thank you. When you're dealing with the smaller municipalities, not Vaughan, what length of time would it take you normally to adjudicate a complaint?

Ms. Suzanne Craig: Through you, Mr. Chair, usually it's very swift. I do not have long investigations, for the most part. I'm often able to informally resolve the matter. If it is a formal investigation that I must conduct, it usually takes upwards of a month, two months. Most of the code complaints require that it is completed by 90 days, and so it usually is.

Mr. Percy Hatfield: If it's not proprietary, what would be the normal cost, the average cost, of getting one of those complaints from start to finish?

Ms. Suzanne Craig: There are many integrity commissioners, with various fees. I'm on the low end of fees. To conduct an investigation that is not too complex, with interviewing not too many individuals, it could be a ceiling of $5,000. There are many that go much higher than that—time involved, people who have to be spoken to and research involved. So I certainly am not the norm.

Oftentimes, informal resolution is applicable to the situation. Getting the parties together and speaking with them can resolve the situation expeditiously.

Mr. Percy Hatfield: Yes, because we do hear from some municipalities saying it's going to be cost-prohibitive for them to get into this.

Ms. Suzanne Craig: Certainly it will, sir. If you have own-motion investigation powers and you have MCIA investigations, the numbers will increase and the money involved in investigating those complaints will increase.

Mr. Percy Hatfield: Would you suggest that the clause that you have on self-indemnification—if that's the word—should that be in all contracts, or should there be something different that covers you in this act?

Ms. Suzanne Craig: Through you, Mr. Chair, we are recommending—many of the integrity commissioners—

and I am certainly recommending, that it be placed directly into the statute.

Mr. Percy Hatfield: Thank you.

The Chair (Mr. Peter Tabuns): Thank you, Ms. Craig. We appreciate it.

Ms. Suzanne Craig: Thank you, Mr. Chair.

MUNICIPALITY OF CHARLTON AND DACK

The Chair (Mr. Peter Tabuns): Our next presentation, then, from the municipality of Charlton and Dack: Merrill Bond, reeve. Mr. Bond, as you've heard, you have up to 10 minutes to present, and then there will be questions from the three parties. If you would introduce yourself for Hansard.

Mr. Merrill Bond: My name is Merrill Bond. I come from a small municipality in the north called Charlton and Dack. We have a very diverse area. I have three town sites and many, many farmlands where I come from.

I'm here today to speak to you regarding a new requirement in Bill 68 that anyone wishing to run for office on a council must submit the signatures of 25 voters supporting the nomination. The individuals providing the signatures will each have to sign a declaration stating that they were eligible to vote in the municipality on the day that they signed the endorsement. I would ask that this committee reconsider this requirement and allow it to be a local decision, the same as was allowed for ranked-ballot elections in the 2018 municipal election.

But first I'd like to speak on the accessibility issue. As I said, I have a lot of farmlands, and I have three different town sites. The Accessibility for Ontarians with Disabilities Act was put in place in 2005 to improve accessibility standards for Ontarians with physical and mental disabilities. This was and is a great goal, and all municipalities, including my own, are working hard to ensure that Ontario is fully accessible.

In rural Ontario, we have extra challenges when it comes to accessibility, including limited access to transit. In rural Ontario, walking along the sidewalk and stopping in an apartment building for 25 signatures does not exist. We live on gravel roads, and the use of a vehicle is necessary to get from one home to another. On these gravel roads, you must drive from house to house, up long driveways, walking up stairs to a doorway, often without railing support, sometimes five and six steps, just to find no one at home.

There are many Ontarians with no vehicle or an accessibility issue where 25 signatures would be a hindrance and essentially make it impossible for them to run for council. Discouraging these residents from running for council would be a huge loss, losing out on these experiences just because they were physically unable to obtain an arbitrary 25 signatures. Please keep in mind that those with a disability or without access to a vehicle can still be an asset to municipal councils across Ontario.

Secondly, life is very busy, and many families move frequently. These new residents in their communities may have yet to meet anyone in the area, and getting 25 signatures to run as a municipal councillor may not be feasible for them. They may have qualifications or past experiences that would bring fresh, new ideas to a municipality, which is always needed.

The 25-signature requirement favours incumbent councillors at the expense of new councillors. In other communities, as the complexity and responsibilities continue to increase, many in rural areas are finding it harder to find applicants who are interested in sitting on local municipal council.

In a very short period of time, I've collected almost 50 resolutions, which you have in front of you, in support from myriad municipalities throughout Ontario that understand the implications of this decision. I also have resolutions from the Federation of Northern Ontario Municipalities, the Temiskaming Mayors Action Committee and my local MPP for Timiskaming–Cochrane, John Vanthof, which all represent an even larger number of communities. With even more time, I know that all rural communities will stand behind my request to this committee to allow rural municipalities to opt out of the requirement to have 25 signatures to run for municipal council, and encourage access to local councils for all Ontarians.

Thank you for your time. Do you have any questions?

The Chair (Mr. Peter Tabuns): Thank you very much. We go first to the official opposition. Mr. Coe?

Mr. Lorne Coe: Thank you, Reeve, for your presentation. It was an excellent presentation. I just wanted to get your opinion on a few areas of the legislation, some of which you've touched on and some of which I have some questions on. I'll need to put my glasses on for this.

The legislation proposes to allow consideration of certain third-party information supplied in confidence in a closed meeting. Do you think there needs to be some clarification with respect to defining third-party information supplied in confidence?

Mr. Merrill Bond: That may work. It's possible, but I haven't considered that as much as I just considered changing the legislation, so that municipalities would all have their own say, because we're so diverse. As you know, in Ontario—you all know this—we're so diverse. Each and every community has a lot of different things going on.

To restrict someone from running, putting more hurdles in front of them, is the way I feel this legislation is, to be honest. When they're already under a disability, it really isn't fair. Like I say, for myself, I could walk up to stairs, and so it's five or six stairs, I can just walk up there. But if I'm in a wheelchair and there are no handrails, how am I to get there to even get the signature?

1700

So yes, that's feasible; that third party is fine. But my main concern was that I thought if the bill was just changed, if the wording was just changed, it would solve everyone's problem and there would be no residual effects or problems from it.

Mr. Lorne Coe: I'd like to move to another. There's a proposed amendment to the Municipal Conflict of Interest Act. It would allow a person, which could include a non-resident, a corporation or a municipality to apply to a judge for a determination on whether a council member violated the act. What's your view of that? Do you think that that should be removed in favour of the existing requirement that an elector can apply for such a determination rather than a non-resident or a corporation?

Mr. Merrill Bond: I would like to see the resident myself, but again, that's my opinion. But I would think that would be fair.

Mr. Lorne Coe: Okay. My next question is, do you think that the current legislation goes far enough in clarifying an elected official's determination of what a pecuniary interest is, including a conflict of interest?

Mr. Merrill Bond: I think so. I've never had a problem with that. Now, I'm new at this. I've only been at it seven years, so I'll tell you that, but I have never had a problem with that yet on my council.

Mr. Lorne Coe: All right. Thank you, Chair.

The Chair (Mr. Peter Tabuns): Thank you very much. We go to Mr. Hatfield.

Mr. Percy Hatfield: Thank you, Chair, and thank you, Merrill, for coming in and making the trip down here. You really drive home the point that there's no cookie-cutter approach to Ontario when we draft legislation. I'm no mathematician, but as I understand it, your population is about 671?

Mr. Merrill Bond: That's correct.

Mr. Percy Hatfield: So you've got to get 25 people out of 671. I'll make it up: 3% or 4%. If you live in a community with 100,000 people and you've got to get 3% or 4% of that, you're talking what, 3,000 or 4,000? Why can we expect somebody in a large—100,000—3,000 to 4,000 signatures to sign your nomination papers? It's kind of ludicrous. And the same math, the same percentage—

Mr. Lou Rinaldi: Why are you looking at me?

Mr. Percy Hatfield: I'm looking at you because it's a government—25 signatures. We don't take into account the north and the rural areas. We don't—I shouldn't say "we"—the government bill does not take it into account.

I thank you so much for coming in to drive this point home, because if you think about it, it doesn't sound—I come from 220,000; 25 signatures is no big deal if I'm running for council. With 671, spread out—how long does it take you to drive from one end—

Mr. Merrill Bond: It would be quite a way. We have a large township. It's very large.

Mr. Percy Hatfield: Yes.

Mr. Merrill Bond: That's what I was trying to explain. It's hard for the people to actually get around.

Mr. Percy Hatfield: I hope you get the point. I hope the guys at the back table get the point, and I hope they're working on an amendment now because there should not be a cookie-cutter approach to this. There should be some way of dealing with it for smaller, northern, rural municipalities so that you don't need the same number of signatures that you need in a larger area. I don't know what the cut-off point is, Reeve, but I really thank you for coming in and making that point.

It just doesn't make a lot of sense to me. I don't know if it's just hitting me on this day, Chair, in this warm room, but—

Mr. Ernie Hardeman: It's your blood pressure.

Mr. Percy Hatfield: I don't think my blood pressure is going up. It doesn't make a lot of sense. I hope that we can work something out.

The problem with the way that we structure this committee is that after we hear the witnesses, there's no opportunity to address the people who framed the bill and ask them what we heard, why they did it and would they like to change it before we make an amendment, and you guys shoot them all down. There should be an opportunity to have that discussion. We don't have that opportunity. We have to work within the system.

That's why, when someone as astute as this reeve comes in and hits us over the head with a hammer and says, "Look at what you're doing to the north and the rural areas," we should be listening. I hope we do and I hope you'll accept amendments later on to exactly this point.

Thank you, Reeve.

The Chair (Mr. Peter Tabuns): Thank you, Mr. Hatfield.

Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you. I'm not sure I can follow the member's passion, but—

The Chair (Mr. Peter Tabuns): Try.

Mr. Lou Rinaldi: You know what? I know him very well and I respect his views. He's a hard-working member. Let me put it that way.

First of all, thank you for being here. Obviously, by your submission, you went through a lot of work—or your council did.

Mr. Merrill Bond: Well, yes. I'm still working at it, actually.

Mr. Lou Rinaldi: And we appreciate it.

I don't want to burst your bubble, but what you bring forward to this committee for this bill is not addressed in this bill. That was Bill 181. I'm not sure what amendments we can make here. Although we accept this, and I think it's a lot of work and I think it's certainly worth consideration, it's not part of this bill. I'm not sure how we amend something that's not here. I just say that, but certainly it will not be forgotten.

As Mr. Hatfield said, I think that we need to pay attention to the difference between communities. I come from a small community—not as small as yours—and I was on municipal council for 12 years—started with 5,000 and then 10,000 after amalgamation.

Putting that aside, can you tell me, in a community as small as yours—and there are others; I mean, there are, I believe, 80 municipalities below 1,000 people in the province of Ontario.

Mr. Merrill Bond: That's right.

Mr. Lou Rinaldi: If somebody had a complaint about your council, how do you deal with it now?

Mr. Merrill Bond: Well, it would go to my clerk, and then we would have to find an IC commissioner.

Mr. Lou Rinaldi: Okay. How do you build that relationship? I mean, do you just go through the phone book?

Mr. Merrill Bond: No. Actually, there are several councils that are getting together now. We feel we would—as this gentleman over here suggested—get together because it will be more feasible to have one IC commissioner for the whole area. So all of our rules will be the same.

Mr. Lou Rinaldi: Let me congratulate you on that piece, because I understand the small municipality. It is a burden; let's put it that way. I'm glad that your council is looking at a collective with other—

Mr. Merrill Bond: Yes, we are. We're looking at a collective group.

Mr. Lou Rinaldi: I'm not sure how deep you went into the bill, but we also suggest that integrity commissioners also have the ability to not wait until something breaks, but council sometimes goes for advice. Do you think that that's a good way to approach it? Not only use them when you have a problem, but, for example, if council is struggling with how to deal with an issue, would you consider going to an integrity commissioner to get their best advice?

Mr. Merrill Bond: Most definitely. That would be the best thing for my community and that's what I want, so I definitely would do that first. Get advice, get all the advice you can get.

Mr. Lou Rinaldi: Thank you for making such a long trip. I'll be honest with you, my colleague here had to look at a map today to see where you were, and I said, "My, my, my."

Mr. Merrill Bond: Yes, we're a ways up there.

Mr. Lou Rinaldi: But, anyway, obviously, you're passionate about this—

Mr. Merrill Bond: Yes, I am.

Mr. Lou Rinaldi: —and your thoughts are—

The Chair (Mr. Peter Tabuns): Mr. Rinaldi, I'm sorry to say, you're out of time.

Mr. Lou Rinaldi: Thank you for being here.

The Chair (Mr. Peter Tabuns): Thank you, Reeve. We appreciate your presentation.

Mr. Merrill Bond: Thank you. Thank you for your time.

OFFICE OF THE OMBUDSMAN OF ONTARIO

BUREAU DE L'OMBUDSMAN DE L'ONTARIO

The Chair (Mr. Peter Tabuns): The next presentation then is Paul Dubé, Ombudsman. Mr. Dubé, as you've heard, you have up to 10 minutes to present, and then there will be questions from the parties. If you'd introduce yourself for Hansard. Welcome.

Mr. Paul Dubé: Thank you. I'm Paul Dubé, the Ontario Ombudsman. I'm accompanied by Barbara Finlay, the deputy ombudsman, and Laura Pettigrew, general counsel. If the questions get too tricky, I have backup.

I want to say thank you for the invitation and good afternoon to members of the committee. As an officer of the Legislature, the Ontario Ombudsman has been promoting fairness, transparency and accountability in the provincial public sector for more than 40 years. Since 2008, we've also acted as the closed-meeting investigator for about half of Ontario's 444 municipalities. Since then, we've addressed more than 900 complaints about improperly closed meetings. Since the Public Sector and MPP Accountability and Transparency Act came into effect last year, we've seen full oversight of all Ontario municipalities, universities and school boards added to our mandate.

We've dealt with more than 4,000 complaints and inquiries related to municipalities so far. In fact, this is one of the areas that generates the most complaints to our office. This work with municipalities across Ontario, together with our extensive expertise and oversight of provincial government bodies, has given my office a unique perspective on how to improve transparency, accessibility and accountability in the municipal sector.

Ce travail avec les municipalités partout en Ontario, conjugué avec notre vaste expérience de la surveillance sur les organismes du gouvernement provincial, a donné à mon bureau une perspective unique sur la manière d'améliorer la transparence, l'accessibilité et la responsabilisation dans le secteur municipal.

The three areas that I'd like to focus on today are closed-meeting complaints, local complaints resolution and integrity commissioners. The first thing I want to make clear is that I see Bill 68 as a positive step forward and one that is long overdue.

1710

There are several elements that I supported wholeheartedly: a clear definition of what constitutes a meeting, the notion of quorum included; mandatory codes of conduct; and mandatory integrity commissioners with expanded roles will all be significant advances for municipal accountability. I have also prepared a written submission to accompany my remarks.

First on the closed-meeting complaints: Bill 68 proposes several amendments to the open-meeting requirements in the Municipal Act and the City of Toronto Act. These address such long-standing issues as the lack of a good definition of what constitutes a meeting. In our experience, municipal officials are often confused about whether the definition of "meeting" extends to gatherings outside of council chambers.

Sometimes, a quorum of council members will attend a meeting called by a third party and inadvertently violate the open-meeting rules. Sometimes, council members will socialize together, which is perfectly fine, but sometimes they will improperly engage in business and decision-making while doing so.

However, based on my experience with the enforcement of open-meeting rules, I am concerned that that definition of "meeting" proposed in Bill 68 may have unintended consequences. It states that a quorum of members of a local body must be present to constitute a meeting. This makes sense, because valid decisions cannot be taken when a legal quorum does not exist.

It also proposes that members who take part in meetings through electronic means should not be counted in determining a quorum. This concept, in isolation, makes sense as well.

However, it's the combined effect of these provisions that a meeting would only be considered to have taken place if a quorum of members is physically present. We see a problem here, because my office has seen numerous cases where municipal bodies have materially advanced business or decision-making without being physically present through serial phone calls, meetings or emails. You have several examples in my written submission.

At present, such actions are considered contraventions of the open-meeting rules, and rightly so. These rules are to ensure that citizens can exercise their right to witness the democratic decision-making process in action. But under this bill, as it stands, serial and electronic meetings would be insulated from scrutiny.

To ensure that the new definition of "meeting" does not drive municipal decision-making back into the shadows, I propose adding a provision to Bill 68 that prohibits councils, local boards or committees from materially advancing business or decision-making through electronic or serial communication.

We have also found that many municipal bodies do not realize that they are local boards, which are required to comply with the open-meeting requirements. The open-meeting rules also apply inconsistently to municipal corporations, depending on whether they are classified as municipal service corporations. I propose that a new definition of "local board" be developed to ensure clarity and more consistent application of the rules.

Bill 68 also proposes that municipalities and local boards must pass a resolution in response to the reports that they receive from closed-meeting complaint investigators. To ensure consistency and promote greater accountability, I propose that the requirement to respond also apply to the reports that I make to municipalities and local boards.

I want to stress one more important thing about the rules themselves. The open-meeting rules promote accessibility, transparency and accountability in municipal governance. The requirement for local councils to meet in public is the foundation upon which democratic local governance is built, and exceptions to it should be limited and narrowly interpreted.

Bill 68 proposes several new exceptions to the open-meeting requirements. I am particularly concerned about the new proposed clause 239(2)(k) of the Municipal Act and the corresponding section of the City of Toronto Act. This new exception would allow municipal bodies to go behind closed doors to discuss positions, plans, procedures and criteria to be applied in negotiations. We know that "negotiations" is a broad field; there can be all kinds of negotiations.

The language of this clause is extremely broad and can mean that many discussions that are now required to take place in public will take place in private. I'd be afraid that this new clause would be used as a sort of a municipal notwithstanding clause to exempt a wide variety of discussions from the open-meeting rules.

My fellow officer of the Legislature, the Information and Privacy Commissioner, shares this concern. I've had the opportunity to review his submissions to the committee, and I concur with them. Mr. Beamish is the expert in the access to information issues in the municipal sector, and I support those recommendations.

With regard to the local complaint resolution: As Ombudsman, I promote administrative fairness throughout the public sector. This includes encouraging public sector bodies to develop consistent, transparent policies and procedures for dealing with public complaints.

At present, the city of Toronto is the only municipality required to establish a formal complaint process through the appointment of an ombudsman. Our office routinely advises municipalities to develop public complaint processes, and my proposal to you is that the legislation should require all municipalities to do the same.

As well, local accountability services should be free of charge. Unfortunately, there are several municipalities that charge fees for complaining, whether the complaint is to an integrity commissioner, a local ombudsman or a closed-meeting investigator.

The price for municipal accountability should not be paid by individuals who raise concerns. Access to accountability should not come at a price. My submission proposes amendments to prevent municipalities from charging fees in these circumstances.

When people complain to our office about municipalities, the most common topic by far is the conduct of council members. I fully support the provisions in Bill 68 that will require all municipalities to have a code of conduct, as well as an integrity commissioner to enforce it. These provisions go a long way to address this area of public concern. However, I am aware that some municipalities do not let members of the public file complaints to their integrity commissioner. I propose that the bill be amended to ensure all Ontarians have such access to local accountability officers.

My remarks today are based on many years of Ombudsman oversight experience, including in the municipal sector. While I am the first to admit I am not a legislative drafter, I have suggested amendments that I believe would enhance the bill and achieve improved transparency, accessibility and accountability in the municipal sector. Thank you.

The Chair (Mr. Peter Tabuns): Thank you, Mr. Dubé. We go first to Mr. Hatfield. Mr. Hatfield?

Mr. Percy Hatfield: Oh, thank you, Chair. I'm still reading, trying to keep up.

Thank you for coming in today, sir, and bringing your guest with you. I was just reading how many municipal governments have violated the open meeting. The one where Thousand Islands improperly discussed council business while decorating a float for the local Christmas parade: Who knew?

You have received, what, 4,000 complaints? And you also have heard the presentation from Mr. Beamish earlier. Do you agree with his suggestion on changing (h), (i), (j) and (k) of a certain section? Did you agree with that?

Mr. Paul Dubé: Generally speaking, especially on the access to information, obviously I defer to his expertise in that area. I share the concern that we have not seen evidence of the need and of the harm that has resulted in cases where it's a reference to proprietary information, trade secrets or that kind of thing.

I have to admit that when we have that issue raised with us when we investigate a closed-meeting complaint, we don't go on to investigate whether it was actually a proprietary or a trade secret; we just determine whether or not it breached the law as it now stands. So if the committee is thinking of going in that direction, I would just emphasize that the priority should be on accessibility and transparency, and any exceptions to that rule, any exception to the closed-meeting obligations, should be very narrowly construed and very exceptional.

With respect to (k), as I alluded to in my remarks, I have serious concerns about that clause. I think that certain subsection is much too broad. Anybody could drive a truck through that one, I think.

Mr. Percy Hatfield: Let me throw a curveball at you. After hearing Merrill Bond, the reeve of Charlton and Dack, if he approached you with a complaint that the requirement for 25 signatures to run was a violation of something, would you take that as a serious complaint, that in a municipality of 671 people, trying to get 25 signatures from such a vast township is onerous?

Mr. Paul Dubé: I don't think we typically get involved in whether a policy is correct. If that is what the state of the law is, we don't typically take complaints on policy decisions on whether the law is correct or not or whether the law should change. We deal more with processes and whether they are fair.

Mr. Percy Hatfield: Thank you.

Mr. Paul Dubé: Thank you.

The Chair (Mr. Peter Tabuns): Thank you very much. We go to Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you very much for being here today—a very well-put-together presentation. Thank you for what you do each and every day through your office. I think it's really, really important.

A couple of things, more for your comments and advice: You've heard today while you were here—and I think you've been here a good part of the afternoon—the difference between the rules for bigger municipalities like Vaughan, Toronto or Ottawa versus a municipality of 600, because there is a cost attached to this. That's what we hear. We had AMO here presenting as well.

What advice could you give us? I know you're not involved in policy; you're just there to make sure the rules are followed. But based on the work you've done, what advice can you give us?

Mr. Paul Dubé: And I heard Ms. Craig's comments, too, that there may be some difficulties, but I am not convinced that it is not feasible to share resources.

1720

I came from a small town as well and I saw communities coming together to share dumps, to share hospitals, to share fire departments, to share hockey rinks and to share pools. I would think that communities with enough goodwill can come together and work out some kind of a plan, some kind of a platform upon which they could share integrity commissioners. I think that's doable.

Mr. Lou Rinaldi: Good. I know you briefly touched on this, and I think I heard you right, that for municipalities to have mandatory codes of conduct consistent, the access to integrity commissioners will help increase municipal accountability. I think you supported that. Can you elaborate a little bit more?

Mr. Paul Dubé: It's a fundamental concept of democracy that people need to be able to complain about perceived improper conduct, and that is the way to do it. I think there should be consistency in that, however, and that's why I think that our office should maintain oversight over the integrity commissioners, because we have seen, in certain instances, some inconsistency in the quality of the reporting or the way the reports were done. But I think that is a good thing for democracy.

Mr. Lou Rinaldi: The part about expanding—well, I wouldn't say "expanding"—allowing a municipality not only to go to the IC when there's a complaint or there's an issue you have to deal with, but also for advice, what are your thoughts around that?

Mr. Paul Dubé: I think that is a very positive thing too, because if you can prevent complaints from happening, then it's in everybody's interests. We're talking about the costs associated with investigating complaints. Whatever you can do, whatever you can invest in, that will prevent complaints from happening is a good thing.

Mr. Lou Rinaldi: Thank you. I think I'm out of time. Correct?

The Chair (Mr. Peter Tabuns): You nailed it so well, Mr. Rinaldi. Thank you.

Mr. Lou Rinaldi: I'm getting better.

The Chair (Mr. Peter Tabuns): You're very good.

We go to the official opposition: Mr. Hardeman.

Mr. Ernie Hardeman: Thank you very much, and welcome back to Queen's Park.

Mr. Paul Dubé: Thank you.

Mr. Ernie Hardeman: I just wanted to quickly go first to the issue of what is considered a meeting. The new definition changes it to "materially advances" an issue. In your opinion, what is the difference between "advancing" council's position and "materially advancing" the position?

Mr. Paul Dubé: Thank you for that question. I think that any advancement that is within the municipality's

jurisdiction or responsibility or authority is a material advancement.

I've heard some other comments, or read some of the other submissions, where it is proposed that "materially" be some sort of measurement or quantum along the continuum of advancing. My respectful submission is that anything that is relevant, if it's advanced, is material.

When we talk about a material witness, we don't talk about a 600-pound witness or a nine-foot-tall witness. It's the relevancy of that witness. My submission is that materiality should be equated to relevancy, not a measurement of how far something goes.

I've heard submissions, or suggestions, during the course of the last year that "materially advance" means they should get to a conclusion or they should get to a resolution. I disagree with that interpretation. Anything that is relevant is material, so, frankly, anything that advances the decision-making process or council business is material if it's relevant or within the authority of the municipality.

Mr. Ernie Hardeman: But then why is the word "materially" used at all?

Mr. Paul Dubé: Because if they're advancing something—

Mr. Ernie Hardeman: It must have some significance.

Mr. Paul Dubé: Yes. I think it's the relevance to council business. If they're advancing something, if they're talking about something, that's not relevant to council business and it's not material, then it's not covered by the legislation.

Mr. Ernie Hardeman: Okay. You were also talking about the electronic, and we should have something in the bill that prohibited having a discussion over the telephone on an issue, because that very well may be materially advancing the issue. Are you suggesting that councillors should not be able to talk to each other on the phone?

Mr. Paul Dubé: No. They should not be able to materially advance council business. They should not be having meetings over the phone that should be in open session. They should not be allowed to circumvent the rules of open meetings by having serial conversations on the phone or by sending emails, which some councils are intent on doing, quite frankly. That has been our experience, and it's a matter of grave concern to us.

I don't know if my colleagues have anything to add on that point, but it's a big issue for us. We see several councils doing that.

Ms. Barbara Finlay: I can give you a very quick example. We had a report we issued on a municipality that needed to buy a fire truck very quickly. The reeve phoned around and got the approval of all the municipal councillors by telephone, to approve the purchase of the fire truck on short notice, because they weren't familiar with the procedural bylaws on how to organize a special meeting. That was where they actually had a meeting where they made a decision over the telephone. No one's saying councillors shouldn't be able to talk on the phone, but if you're going to use the phone or any sort of offline forum to do council business—that's what the act is trying to prevent. It's trying to ensure that openness—

The Chair (Mr. Peter Tabuns): I'm sorry to say that you're out of time. My apologies. Thank you all. We appreciate the presentation.

AMBERLEY GAVEL LTD.

The Chair (Mr. Peter Tabuns): We go next to Amberley Gavel Ltd.: Nigel Bellchamber and Fred Dean. Gentlemen, as you've heard, you have up to 10 minutes to present, then there will be questions from the three parties. The Clerk will come and get copies of your report. When you start, if you would please introduce yourselves for Hansard.

Mr. Nigel Bellchamber: Good afternoon, Mr. Chairman, and members of the committee. Thank you for the opportunity to appear before you. My name is Nigel Bellchamber. Beside me is my colleague, Fred Dean. We are principals in a firm called Amberley Gavel Ltd. It has served since 2008 as closed-meeting investigator for over 150 Ontario municipalities. It also serves as integrity commissioner for several municipalities at the present time. Our integrity commissioner clients have populations ranging from 2,500 to 300,000.

Our personal experience in municipal government in Ontario dates back to the 1970s. Fred has worked as a municipal solicitor in a number of municipalities, including 23 years as city solicitor for the city of Sudbury. I've held a number of municipal positions, including municipal clerk, treasurer and chief administrative officer, involving both rural counties and a large urban municipality.

For the last 15 years, we've provided education and assistance to municipal elected and appointed officials. We've conducted hundreds of education sessions over the years across the province, including AMO's effective municipal councillor series, which we designed and delivered. From that vantage point, it's with respect to the changes proposed in Bill 68 for additional opportunities for councils and local boards to close meetings to the public and to the added responsibilities for what will soon be mandatory integrity commissioners that we would like to direct our remarks today.

We're not surprised that municipalities have asked for additional reasons for which they might exclude the public from some of their discussions. We are, however, surprised at how broad the proposed exceptions appear to be in response to those requests. We expect that private sector interests will attempt to use these new closed-session possibilities to negotiate directly with municipal councils in the absence of public scrutiny. Whether or not a municipality uses these new exceptions properly will turn on the facts with respect to each particular situation.

What we do know is that had these new provisions been in place, there are only a handful of situations in the over 100 closed-meeting investigation reports that we have issued wherein our conclusions would have been

substantially different. We also know that public confidence will certainly be diminished if controversial subjects are discussed with greater frequency behind closed doors as a result of these additional possible exceptions. Rather than fewer complaints for closed-meeting investigations, we think that the additional categories will actually lead to more complaints. Transparency will be seen to have been reduced.

Now I'm going to turn it over to Fred to speak to the integrity commissioner section.

Mr. Fred Dean: Mr. Chair, with respect to the role of integrity commissioner, Bill 68 expands this role of the accountability officer to be unlike any other accountability officer that we're aware of.

If Bill 68 passes in its current form, the integrity commissioner will be an adviser to individual members of council; an educator to councils, staff and the public; someone who deals with complaints pursuant to the codes of conduct and who publicly recommends specific penalties for consideration by councils; and an investigator of complaints under the Municipal Conflict of Interest Act who will make a determination following the complaint whether or not there was a breach of that act and who can then choose to refer it to a court for further consideration. On top of all this, he or she can decide to pursue investigations on his or her own initiative, on either the code of conduct or the Municipal Conflict of Interest Act.

In some situations, the individual integrity commissioner could be expected to be an educator, an adviser, an investigator on complaint or on own motion and the judge on a matter. The role has unprecedented scope.

1730

We acknowledge that Bill 68 is intended to remedy the current imbalance between the complainant and the member in relation to municipal conflict-of-interest matters. As committee members are aware, an elector currently must go to some length and expense to prosecute a conflict-of-interest claim against a member of municipal council.

What's proposed in Bill 68 is the transfer of the cost of investigation and prosecution to the municipal taxpayer at no risk to the complainant. The pendulum would swing completely. The complainant will have little or no skin in the game. We believe there will be a significant increase in the number of complaints to integrity commissioners and to the courts; all will be funded by local taxpayers.

We would not be surprised to see elected officials who are the subject of conflict-of-interest complaints hiring their own legal counsel right at the outset of a complaint that is referred to an integrity commissioner in order to protect their personal interest. These investigations will not be simple processes, given what's at stake.

It's not clear to us if elected officials might be able to insure themselves for the legal costs if they're found not to have breached the act in an investigation by the integrity commissioner. Municipalities currently can purchase insurance for legal costs of a complaint that is brought before the courts when the member is found not to be in breach. But even then, it's certainly not unprecedented for a municipality to be requested to pay the legal fees of a member who was found not to have breached the act and where the legal fees exceed the insurance coverage.

When a complaint is referred to the court under the proposed protocol, we suggest that at least in some cases not only will the elected official complained about be engaging legal counsel, but the integrity commissioner will also require representation. The municipality certainly would be paying that fee as well as whatever time was involved by the integrity commissioner. The municipality may also need to be separately represented at the court.

It's clear that all lawyers will benefit from this process, at taxpayers' expense.

And if this legislation means that opinions given by the integrity commissioner are legal opinions, it would mean that non-lawyers will be prevented from serving as integrity commissioners.

We've heard this today: The expenses may well be within the reach of a Kingston or a London or a Thunder Bay, but they would have a significant impact on the budgets of a Brighton or a South-West Oxford or a Shuniah.

Mr. Nigel Bellchamber: Mr. Chairman, we have two final items.

The first is that it will take some time for municipalities currently without comprehensive codes of conduct and without integrity commissioners to develop these codes, recruit commissioners and train elected officials with respect to the contents and impacts. We suggest that January 1, 2019, would be the earliest practical date for the implementation of the expansion of the code of conduct and integrity commissioner provisions of the bill.

Finally, we think it would be wise for the Legislature to require every municipality to indemnify under their policy of insurance the activities of their integrity commissioner. We know that this has been recommended to you by others, so we won't go into the details. However, we're strongly supportive of this change for all commissioners.

Thank you very much, Mr. Chairman and members.

The Chair (Mr. Peter Tabuns): Thank you very much. Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you, Fred and Nigel, for being here and for your commitment to this particular bill and your submission today. You bring some issues to the table that have been raised by others, though sometimes with a bit of a different approach.

I have a couple of questions—but more in the sense of your best opinion to give us as we try to get through this particular bill. Would you agree that in some cases it is in the public interest to keep certain limited discussions confidential? I know you touched on that a little bit. There's certainly a place for that to happen. In a broad sense, where would you draw the line?

Mr. Nigel Bellchamber: Well, at the present time, municipalities can discuss in closed session and provide direction to staff or agents with respect to the amount of money they're willing to pay to acquire a particular piece of property or what they're willing to accept to sell. That's a reasonable principle.

The court will provide direction to someone who's negotiating for an employment contract with a new CAO. Those are reasonable, long have been, and continue to be. There are instances—

Mr. Lou Rinaldi: Yes, but you also have to have some cut-off point, I guess, to that—

Mr. Nigel Bellchamber: I'm sorry?

Mr. Lou Rinaldi: You've got to have some kind of cut-off point—like, what's in and what's out? Do you think what's in place now is adequate? Is that what I hear from you, that without broadening—

Mr. Nigel Bellchamber: In terms of the additional circumstances?

Mr. Lou Rinaldi: Yes.

Mr. Nigel Bellchamber: There are four additional circumstances, as I read them. Properly used, those circumstances may be appropriate in some very limited circumstances. Where we are concerned, I think, is that they will probably be used more broadly than they were intended to. In fact, it's been referred to in section (k). Most of the negotiations that you need to do, in fact, we're not aware of any other negotiations you need to do that you can't already do with the existing circumstances.

Mr. Lou Rinaldi: So in your role now, you indicated, I think, that you have somewhere over 100 municipalities that you provide your services to. The part about the municipality coming to you for advice prior to something going wrong: Do you find that there's a demand for that? Do you think it's something wise to put in there? Is it something that you do already?

Mr. Nigel Bellchamber: Is this with respect to closed-meeting investigations or codes of conduct?

Mr. Lou Rinaldi: No, in general. If a municipality has to make a decision that they don't know—

Mr. Fred Dean: Mr. Chairman, the answer to that question is yes. They come to us on a regular basis. We spend a great deal of time with municipal councils and senior staff dealing with issues and, in fact, training council. Both our lives are involved in spending days with councils and with senior staff to help them understand the context of the rules under which they work.

The Chair (Mr. Peter Tabuns): With that, Mr. Rinaldi, you're out of time.

Mr. Lou Rinaldi: I'm sure I'm being shortchanged.

The Chair (Mr. Peter Tabuns): No, but I understand your concern.

We go now to the official opposition. Mr. Coe.

Mr. Lorne Coe: Thank you, gentlemen, for your presentation. It was very good.

You were in the audience and you were listening, I'm sure, carefully to my colleagues' questions to the Ombudsman about "materially advances." It still remains an issue. It would suggest to us and others—we've all heard from municipalities that we represent—that there is some clarity still required in interpreting how and when a meeting materially advances matters. I would be interested in your opinion, please.

Mr. Fred Dean: Mr. Chair, let me refer you to the current legislation, because I think it's important to put this in context. The current act talks about education and training at a closed meeting. What's the test for that? No member can materially advance the business. To put it in that context, if there's an education and training session, I think that means a member cannot say, for example, "I'll support that position that the consultant's putting forward or the advice the lawyer's giving us." That's materially advancing. You're trying to move the business of the municipality forward.

That same test applies in the circumstance where it's been looked at in the act now. I think you have to look back at the definition and how it has been used since 2006, because that's when it came into the act. That's the helpful starting point, in my respectful opinion, in terms of how the committee should be looking at it.

Mr. Lorne Coe: I thank you for that. The views I've heard from municipalities—and I'm sure others have, because we have five people who have served on municipal councils over the years. What they've said to me is, "Every word in a statute must have a meaning, and it is not appropriate statutory interpretation to ignore a word's function or application." That's their view.

Mr. Lou Rinaldi: Who said that?

Mr. Lorne Coe: The town of Whitby.

Notwithstanding, I'd like to move to another area, please, Chair, through you. I'd like your opinion on this as well, please. The proposed discretionary exemptions to allow consideration of certain third-party information supplied in confidence in a closed meeting: Do you think it should be clarified by further defining "third-party information" and "supplied in confidence"?

Mr. Nigel Bellchamber: There are some precedents that you would look at if you had a complaint under this.

Mr. Lorne Coe: Yes.

Mr. Nigel Bellchamber: Some of the precedents you would look at and some of the things the clerks would look at in advising their councils would be decisions from the Information and Privacy Commissioner that dealt with similar wording. From what I've seen, there's no clear, single definition, so it would be a challenge and you'd have to deal with it on the merits of that particular situation. I can see—

The Chair (Mr. Peter Tabuns): And with that, I'm sorry to say, you're out of time with this questioner.

We go to Mr. Hatfield.

Mr. Percy Hatfield: Two of the most highly regarded municipal people in the province here—in fact, I got a kick out of you giving Nigel some rules before he started because I've only been to about 10 AMO meetings, but he's the guy who chairs the bear-pit sessions and he's the guy who lays out the rules for everybody else. It was interesting for you to do this.

I'm trying to figure out why, in your honest opinion—not that you'd give me a dishonest opinion—would the ministry draft such changes if indeed, in your opinion, it's going to open the door for more complaints?

Mr. Nigel Bellchamber: I don't think I can comment on what the rationale was. I don't think that would be appropriate.

Mr. Percy Hatfield: I take it they had good intentions; I'm sure they did. But as you say, they're going to erode public confidence, a greater frequency of behind-closed-door meetings. I mean, how—okay, you don't want to say; that's fair. But when I look at it and, in your opinion, it's going to end up costing taxpayers more because those who complain won't have skin in the game, and all the costs are going to be picked up by somebody—it could be, as the president of AMO said, from any place in the world as opposed to a ratepayer or someone doing business with the community in question. Why is the door so wide open in these proposed changes?

Mr. Nigel Bellchamber: For the closed-meeting investigation process, it's any person now, but I think what you're referring to and what the president of AMO was referring to was the integrity commissioner complaint. Fred, do you want to speak to that, particularly respecting municipal conflict of interest?

Mr. Fred Dean: The current conflict-of-interest legislation requires that it be an elector, someone who is grounded within the community. I think that should be the test. Whether you pick elector or whether you pick some other test, it should be someone grounded in the community, has an interest in the community. "Elector" has served well over the years, since 1972, when the Municipal Conflict of Interest Act came into effect. Maybe that's a good test to follow.

Mr. Percy Hatfield: So even if they change "elector" to "ratepayer"—I mean, we have called for ratepayers to have a vote. If you're not a Canadian citizen, but if you're using the library services, using the transit services, you've been here for 10 or 20 years, your kids are in school, shouldn't you be able to decide who represents you on a school board or in your ward as a councillor?

Mr. Fred Dean: That's a much broader issue than this discussion.

Mr. Percy Hatfield: Yes. But that's the definition: ratepayer versus taxpayer.

Mr. Fred Dean: That's right. My view is it should be someone invested in the community.

Mr. Percy Hatfield: Right.

Mr. Fred Dean: I think that's appropriate. It broadens it out to the ratepayer base.

Mr. Percy Hatfield: Have you had discussions with the government prior to coming here today to give them your opinion—

The Chair (Mr. Peter Tabuns): Mr. Hatfield?

Mr. Percy Hatfield: Yes?

The Chair (Mr. Peter Tabuns): I have to tell you—others have heard me say similar things—you're out of time.

Gentlemen, thank you very much for your presentation today.

Members of the committee, I just wanted to remind you, the deadline for filing amendments to Bill 68 is 12 noon on Tuesday, April 18, 2017. Clause-by-clause consideration of the bill is scheduled for Monday, April 24 and Tuesday, April 25, 2017.

With that, this committee is adjourned.

The committee adjourned at 1745.

STANDING COMMITTEE ON SOCIAL POLICY

Chair / Président
Mr. Peter Tabuns (Toronto–Danforth ND)

Vice-Chair / Vice-Président
Mr. Jagmeet Singh (Bramalea–Gore–Malton ND)

Mr. Lorne Coe (Whitby–Oshawa PC)
Mr. Vic Dhillon (Brampton West / Brampton-Ouest L)
Mr. John Fraser (Ottawa South L)
Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)
Mrs. Gila Martow (Thornhill PC)
Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Westdale L)
Mr. Lou Rinaldi (Northumberland–Quinte West L)
Mr. Jagmeet Singh (Bramalea–Gore–Malton ND)
Mr. Peter Tabuns (Toronto–Danforth ND)

Substitutions / Membres remplaçants
Mr. Bob Delaney (Mississauga–Streetsville L)
Mr. Ernie Hardeman (Oxford PC)
Mr. Percy Hatfield (Windsor–Tecumseh ND)
Ms. Daiene Vernile (Kitchener Centre / Kitchener-Centre L)

Clerk / Greffier
Mr. Katch Koch

Staff / Personnel
Mr. Michael Vidoni, research officer,
Research Services