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Submissions with respect to Bill 241, Municipal Accountability Act, 2024
from the
Office of the Integrity Commissioner Toronto

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Introduction and Background

I am the Integrity Commissioner for the City of Toronto, an appointment I have held since December 1, 2024. In this role I am independent from the Toronto City Council and administration. These submissions are my views and, to the best of my ability, the views of the Office of the Integrity Commissioner Toronto's (ICT) 20 years experience.

The ICT is a key part of the most well-developed municipal accountability framework in Canada. The Office was created in response to a judicial inquiry into a procurement scandal following the City's 1998 amalgamation. Toronto was the first Canadian municipality to appoint an integrity commissioner, prior to a legislative requirement to do so. The office has a rich history and celebrated its 20th anniversary in 2024.

Toronto City Council also has enacted a bylaw¹ with safeguards for the independence of its accountability officers and clarity and expanding the roles and responsibilities of the Integrity Commissioner, Auditor General, Lobbyist Registrar and Ombudsman. In Toronto, the Integrity Commissioner's independence is further protected by their fixed term five-year appointment. The Commissioner is employed in this role full-time and has in-house legal counsel. The office oversees three separate codes of conduct, and more than 120 local and adjudicative boards, with over 1,000 members subject to City Codes of Conduct. Those members seek and receive advice from this office and are subject to fair complaint investigation procedures. This is a system that works.

Summary of submissions

At the core of Ontario's municipal integrity commissioner regime is an accountability officer to oversee ethical conduct rules for members of municipal councils and local boards. For 443 municipalities, the *Municipal Act* provides the statutory framework. For the City of Toronto, it is the *City of Toronto Act, 2006*² (COTA).

The ICT welcomes efforts by the province to address several issues that have arisen since 2019 when it required all municipalities to have a municipal integrity commissioner role. There have been challenges across municipalities and inconsistencies in implementing the integrity commissioner function. The ICT recognizes the need to evolve the regime, and Bill 241 proposes new directions to do so. The ICT respectfully submits these comments on the proposal.

While the ICT recognizes many municipal integrity commissioner frameworks in Ontario require enhancements, we have concerns about the dilution of sophisticated systems in municipalities with comprehensive Codes of Conduct and carefully developed investigative procedures which are industry best practices. Uniformity should not be the province's focus; the goal should be raising minimum standards. If the City of Toronto cannot be carved out of Bill 142's prescribed code of conduct and investigative

¹ Chapter 3 of the Toronto Municipal Code.

² S.O. 2006, c.11, sched. A.

procedures, which would be preferred, the legislation should allow municipalities to enhance the legislated requirements beyond minimum standards.

While the ICT agrees there should be a legislative path to allow the removal of a council member for serious misconduct, the proposed mechanism is impractical. Unanimity at municipal council is rare and unlikely in a case that could end a colleague's term in office. Additionally, we seek clarity about the role of the Integrity Commissioner of Ontario in a removal recommendation. Do they conduct a new inquiry or act as an administrative review body? Finally, the Bill creates a perverse outcome, that is, no penalty, when a municipal Council does not unanimously agree with two integrity commissioner's findings that the misconduct is of a serious nature, requiring removal. Why would no alternate penalty be available?

Concerns with imposing a universal code of conduct on the City of Toronto

Under s. 1(1) of the Bill, the City of Toronto's Codes of Conduct, established and updated by Toronto City Council, would be repealed and replaced. Bill 241 states the Lieutenant Governor-in-Council may make regulations:

(a) prescribing a code of conduct for members of city council and of local boards (restricted definition) and requiring such members to comply with the code of conduct; ...

A literal reading of this section indicates that the intent of legislation is that there will be a "universal" Code of Conduct applicable to 444 municipalities. While this would create consistency, that may not be the goal to which the province should aspire.

Ontario's municipalities differ widely in size, sophistication and priorities. Some small municipalities' elected officials are employed outside their elected position and in their elected role have no staff and a narrow and simple mandate including road and waste management and community events. Elected officials in large municipalities work in that capacity full time, are appointed to multiple boards, have their own professional staff and vote on complex, large-scale projects. Their policy scope includes transit systems, social housing and social services.

The ICT submits that "one size does not fit all." While certain "core" provisions can be applied to all 444 municipalities, the Codes of Conduct for Toronto may be different from smaller municipalities and enhanced for important reasons, and these enhancements should be respected. A universal Code of Conduct may "water down" the Codes of Conduct in experienced municipalities.

It appears Bill 241 intends to address the fact that some municipalities' codes of conduct are lacking key elements the Province would like included. The Province previously

mandated³ all codes of conduct include provisions on four subjects: gifts, respectful conduct, confidential information, and the use of municipal property.

The Ombudsman of Ontario⁴ recommended the Province could apply the same approach to address deficiencies. Ombudsman Dubé recommended legislating more mandatory code of conduct provisions on subject matter such as non-*Municipal Conflict of Interest Act* conflicts of interest, conduct during meetings, and remedial measures.

Rather than a universal Code of Conduct, the province should provide only a minimum standards model or floor which municipalities could adapt to their own circumstances.

The implementation of a broader floor for municipal Codes of Conduct, rather than the implementation of a universal Code of Conduct would better serve to address systemic deficiencies, while still allowing municipalities some regional flexibility.

Further, Bill 241 provides no indication as to how a universal Code of Conduct could be updated. Requiring provincial approval for enhancements would place a burden on both levels of government to make, consider and respond to requests. Municipalities should be able to update any universal Code of Conduct without provincial oversight. There should be a set process to review and enhance the new Code of Conduct

The ICT is also concerned about the process to establish the universal Code of Conduct. The ICT was not consulted concerning Bill 241 and there is no indication in the Bill or in the supporting documentation as to the involvement of any municipalities, much less municipalities with deep institutional history and experience on the topic.

The legislation should be explicit as to the process to review and update the Code of Conduct and require mandatory consultation with stakeholders.

Concerns with uniform procedural requirements for investigations

In addition to establishing a universal or common Code of Conduct, Bill 241 also seeks to establish the process requirements for the investigation of a complaint.

Bill 241 amends section 160 of COTA as follows:

(10) The Minister of Municipal Affairs and Housing may make regulations prescribing content requirements, standards and process requirements for inquiries conducted under this section, including prescribing,
(a) the manner in which complaints shall be provided to the Commissioner; and
(b) the types of complaints in respect of which the Commissioner may refuse to conduct or continue an inquiry.

The ICT has concerns about this provision. The ICT has evolved its investigative processes and procedures for twenty years without any successful challenges. The ICT

³ [Regulation 58/18](#) to the *City of Toronto Act, 2006* (Regulation 55/18 in the *Municipal Act*).

⁴ August 25, 2021 Ontario Ombudsman's [Submission to the Ministry of Municipal Affairs and Housing - Ontario Ombudsman](#)

submits there is no basis for Bill 241 to impose a different set of processes or requirements within a regime that has evolved and worked for so long.

Again, there is no indication in the legislation that the processes and procedures proposed would set a “floor” and allow municipalities to enhance those processes and procedures. If the ensuring regulations did establish that the provincial requirements were a “floor,” the ICT submits the City of Toronto should be able to enhance those processes and procedures without seeking provincial approval.

In establishing a floor of required Code of Conduct subject matter, the province should consult with the ICT and other municipal integrity commissioner leaders in the field.

Concerns with provisions to have a member’s seat declared vacant

A primary purpose of Bill 241 is to provide a mechanism to remove an elected member of Council from their position, in a narrow range of misconduct cases that are of a serious nature and have caused harm to someone’s health, safety or well-being.

First, it may be practically impossible to remove a Council member due to the threshold in Bill 241, requiring a unanimous Council vote⁵. In the Toronto experience, unanimity at Council is difficult to achieve, even on less contentious issues. A subset of members may believe on principle that removal of any member of Council should only occur through the democratic process. With this not uncommon belief among elected officials, one or more members is likely to vote against removal, even if they find the member’s conduct repugnant.

In addition, the ICT requests legislative clarification of the review the Provincial Integrity Commissioner would conduct in removal cases. From Bill 241’s wording, it is unclear if the inquiry would be a *de novo* investigation, requiring documentary evidence collection, witness interviews and forensic analysis, or if it would be an administrative review of the municipal commissioner’s report. If the latter, what standard of review would the Provincial Commissioner apply? Must the decision be only reasonable, or correct?

Third, there appears to be a legislative drafting anomaly, such that if both integrity commissioners agree that a member’s misconduct is serious enough to warrant removal, but a Council does not unanimously approve the recommendation to declare a member’s seat vacant, there is no alternative penalty.⁶ Outside the removal process, the local integrity commissioner might have recommended a reprimand or suspension of remuneration for up to 90 days. The wording in Bill 241 may result in a perverse incentive so that municipal integrity commissioners choose to not recommend removal

⁵ Others have also voiced this concern: [Ontario bill would allow sacking of municipal councillors who violate code of conduct](#)

⁶ Section 60.0.4 (6) states:

No vacancy or penalty

(6) If city council does not approve the recommendation under subsection (1),

(a) the member of city council or of the local board (restricted definition) is not removed from their seat and the seat is not declared vacant; and

(b) the city council and the local board (restricted definition) cannot impose the penalties described in subsection 160 (5).

in serious cases, as if it is not approved by Council, there will be no penalty for a serious offence. This should be addressed.

Other enhancements to the Bill

The ICT understands the Ontario Integrity Commissioner filed a report in September 2024 with respect to municipal integrity commissioners, which is not publicly available. However, the media reported several recommendations in the report,⁷ some of which are not included in Bill 241. For example, it recommended integrity commissioners be required to file investigation reports on a central database. This would be a welcome addition and improve the quality of decisions.

Section 157(1) of Bill 241 permits regulations requiring municipal integrity commissioners to provide training or education to members. If the province imposes new Code of Conduct and process requirements, the province should resource any training on this.

Summary and request to be consulted at committee

The ICT recognizes the need to address various issues in ensuring all 444 municipalities have a robust and generally consistent regime pertaining to furthering municipal integrity goals. However, Bill 241 and its supporting documents do not provide any rationale as to why the province would impose a new Code of Conduct and investigative protocol on the City of Toronto when the City has evolved its own over twenty years and become the industry leader. The same submission would be made for other municipalities with sophisticated municipal integrity regimes.

The ICT recognizes the need, in exceptional cases, for provisions that facilitate the removal of councillors. As noted above, there are various issues that needs to be addressed in the legislature to clarify the role of the Integrity Commissioner of Ontario and to reconsider the high threshold to removal, that is, a unanimous Council vote from of all members eligible to vote.

Finally, should Bill 241 proceed to public hearings, the ICT would kindly ask to appear as a subject matter expert and present more specific submissions.

⁷ [November 27, 2024 CBC News Online.](#)