

Town of Whitby

Staff Report

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Report Title: Bill 241, Municipal Accountability Act

Report to: Committee of the Whole

Date of meeting: January 20, 2025

Report Number: CLK 03-25

Department(s) Responsible:

Office of the Town Clerk

Submitted by:

C. Harris, Director, Legislative Services/Town Clerk

**Acknowledged by M. Gaskell,
Chief Administrative Officer**

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1. Recommendation:

1. That Report CLK 03-25 be received for information;
2. That the Town Clerk be directed to submit feedback based on Section 4.4 of Report CLK 03-25 to the Ministry of Municipal Affairs and Housing regarding *Bill 241, Municipal Accountability Act, 2024*; and,
3. That a copy of this resolution be sent to The Honourable Paul Calandra, Minister of Municipal Affairs and Housing; The Honourable Doug Ford, Premier of Ontario; all Durham Region MPPs; the Regional Municipality of Durham and local municipalities; the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO); and, the Association of Municipalities of Ontario (AMO).

2. Highlights:

- On December 12, 2024 the Ministry of Municipal Affairs and Housing introduced [Bill 241, Municipal Accountability Act, 2024](#) which proposes to alter the municipal

code of conduct and integrity commissioner framework and strengthen the penalty framework for serious code of conduct violations.

- Bill 241 responds to requests from the municipal sector for legislation that ensures elected officials are held to higher standards of accountability.
- Feedback regarding Bill 241 may be submitted to the Province until February 10, 2025.
- The Town's Integrity Commissioner, Principles Integrity, has advised of their intention to submit feedback directly to the Province. Based on the Town's request, Principles Integrity provided their feedback on Bill 241 for Whitby Council in Attachment 1.

3. Background:

In 2021, the Province undertook consultations to strengthen municipal codes of conduct following several high-profile workplace violence investigations against sitting Councillors. The Province was also responding to increasing pressure from advocacy groups, municipal councils, and municipal associations for action. The consultation led to several key recommendations, including mandatory training for elected officials on the code of conduct, regular reaffirmation of commitment to these codes, enhanced independence for integrity commissioners, and the establishment of minimum standards for codes of conduct.

On December 12, 2024, Minister Calandra introduced Bill 241, the Municipal Accountability Act, 2024. The stated goal of the legislation is to strengthen the municipal code of conduct and integrity commissioner framework and strengthen the penalty framework for serious code of conduct violations. The bill was drafted based on recommendations provided by the Integrity Commissioner of Ontario.

The bill would amend the Municipal Act and the City of Toronto Act to provide the province with the ability to implement a standardized code of conduct for Ontario municipalities and introduce a new integrity commissioner framework.

The bill is currently at first reading. Timing for the bill to advance further is uncertain as the House is not sitting until March 3, 2025 and further readings are not currently scheduled. The province is seeking comments on the bill through the Regulatory Registry until February 10, 2025. It is recommended that the commentary included in Section 4.4 of this Report be summarized and submitted to the Province as the Town's feedback regarding the proposed legislation.

The province has indicated that should the bill pass, they will work with the municipal sector to develop the regulations to support the new framework with a targeted implementation timeline for the new term of council in 2026.

4. Discussion:

4.1 Standardized Code of Conduct

Currently, the Municipal Act provides that municipalities establish their own codes of conduct for council and local boards. Prescribed matters that are required to be included in codes of conduct include provisions related to:

- gifts, benefits and hospitality;
- respectful conduct, including conduct towards officers and employees;
- handling of confidential information; and,
- use of property of the municipality or local board.

Beyond these four topics, it is up to individual councils to determine any additional ethical standards to apply to members.

If passed, Bill 241 would grant the Lieutenant Governor in Council the authority to enact regulations to:

- prescribe a standardized code of conduct for members of municipal councils and local boards and impose mandatory compliance;
- mandate municipal integrity commissioners to provide education or training on the code to council members and local boards; and,
- require each member of council and of a local board to complete any education or training required under the prescribed code of conduct.

4.2 Integrity Commissioner Framework

The Municipal Act requires that municipalities either appoint an integrity commissioner or make arrangements for another municipality's commissioner to serve as integrity commissioner for the purpose of applying their code of conduct, conducting investigations and inquiries into alleged contraventions of their code of conduct or the Municipal Conflict of Interest Act (MCIA), and providing advice and education to members regarding their obligations under their code and the MCIA.

Under the Municipal Act currently, municipalities are responsible for establishing their own terms of reference outlining the duties, complaint investigation protocols, and reporting procedures for their integrity commissioner.

If passed, Bill 241 would grant the Lieutenant Governor in Council the authority to enact regulations to:

- enable the creation of a standardized investigation process for municipal integrity commissioners (e.g. complaint procedures, timelines, reporting requirements and formal authority to dismiss frivolous and vexatious complaints); and,
- create a role for the Integrity Commissioner of Ontario to provide training to municipal integrity commissioners regarding the standardized code of conduct and provide advice to municipalities regarding the independence of a person being considered for appointment as a municipal integrity commissioner.

4.3 Penalties

Currently, pursuant to subsections 223.4(5) and 223.4(6) of the Municipal Act, when a municipal integrity commissioner determines that a member has contravened the code of conduct, the commissioner can recommend that the municipality impose a penalty on a member which can be either a reprimand or a suspension of remuneration for up to 90 days. There are no additional penalties prescribed by the Municipal Act, however the courts have found that integrity commissioners can appropriately recommend other actions provided they are remedial and not punitive, are permitted in law and designed

to ensure that the inappropriate behaviour does not continue, and do not prevent the member from carrying out their duties.¹

If passed, Bill 241 would strengthen the penalty framework for serious code of conduct violations by creating a mechanism for municipal councils to remove from office and disqualify for four years members of council and certain local boards for serious violations of the code, subject to a report recommending removal from their municipal integrity commissioner coupled with a concurring secondary recommendation from the Integrity Commissioner of Ontario, followed by a unanimous vote of all members of the council (except the member who is subject to the violation or members who are on approved absences or have conflicts). Following a unanimous vote, the member's seat would be declared vacant. In instances where a member serves on both lower-tier and upper-tier councils, they would be removed from office from both councils regardless of which tier the contravention and investigation occurred in.

Bill 241 provides that a municipal integrity commissioner and the Integrity Commissioner of Ontario would only be able to consider and recommend removal from office if they determine that all four of the following criteria are met:

- the member has contravened the code of conduct;
- the contravention is of a serious nature;
- the member's conduct that is the subject of the inquiry has resulted in harm to the health, safety or well-being of persons; and,
- the existing penalties are insufficient to address the contravention or ensure that the contravention is not repeated.

For the secondary review by the Integrity Commissioner of Ontario, they may also consider whether the contravention negatively impacts public confidence in the ability of the member to discharge their duties and council (or the local board) to fulfil its role, including meeting its statutory obligations.

If the Integrity Commissioner of Ontario determines through their secondary review that the criteria for removal have been met, they would make a report to council recommending that the member be removed from office. If they determine that the criteria for removal have not been met, they would refer the matter back to the municipal integrity commissioner and the municipal integrity commissioner could then recommend to council one of the other prescribed penalties in the Municipal Act (e.g., reprimand or suspension of remuneration for up to 90 days).

In an instance where the Integrity Commissioner of Ontario recommends removal of a member but all of council does not vote unanimously in favour of the recommendation, then no penalty would be applied, and council could not impose other penalties.

Further, municipal integrity commissioners may not submit recommendations to the Integrity Commissioner of Ontario for removal of a member from office after the sixth anniversary of an alleged contravention and between nomination day and voting day during a regular municipal election year. However, if a report/recommendation from a

¹ *Magder v. Ford*, 2013 ONSC 263 at para 67; *Dhillon v. The Corporation of the City of Brampton*, 2021 ONSC 4165 at para 94 [*Dhillon*].

municipal integrity commissioner is suspended due to the municipal election period, the Integrity Commissioner of Ontario can restart the inquiry if the municipal integrity commissioner makes a request to restart the inquiry within six weeks after voting day.

4.4 Commentary

Whitby Staff agree with Principles Integrity's observation in **Attachment 1** that there is a "need for some modification to the code of conduct/conflict of interest/integrity commissioner provisions found in part V.1 of the Municipal Act". Staff believe that the Province took an important first step in this regard by proposing the creation of a standardized code of conduct, standards and process requirements for inquiries, and consistent training for municipal integrity commissioners. Staff also concur with Principles Integrity that Bill 241 may be too focused on how the most serious breaches could result in removal of a member from office and thus creates a missed opportunity to strengthen provisions for handling less serious breaches.

Subject to Council endorsement, Staff will submit the following as the Town of Whitby's feedback on Bill 241 through the Regulatory Registry prior to February 10, 2025 deadline:

Standardized Code of Conduct and Training - Staff welcome the idea of a standardized code of conduct for all Ontario municipalities, standards and process requirements for inquiries, and consistent training for municipal integrity commissioners. This approach should create better awareness and understanding of ethical standards for municipal elected officials, a growing body of investigative reports that apply the same standards and allow for precedent setting, and better sharing of best practices and lessons learned between municipalities. The success of this endeavour will hinge on the details of what is included in the standardized code, and Staff look forward to reviewing and assessing once it is released for comment.

Appointment of municipal integrity commissioners – The opportunity to have the Integrity Commissioner of Ontario provide integrity commissioner services for Ontario municipalities on an opt in basis should be considered. This would mirror the current framework for ombudsman and closed meeting investigator services that each municipality is currently required to have, where municipalities can choose to appoint their own ombudsman and closed meeting investigator or default to having the Ontario Ombudsman provide those services on their behalf. Having the Integrity Commissioner of Ontario provide integrity commissioner services would not only potentially reduce the financial burden and provide an impartial option for municipalities, but it would also provide a centralized and consistent body of work by which all other integrity commissioners could reference when completing their own investigations.

Removal from office - Creating a penalty of removal from office for the most severe contraventions is welcome and requiring a secondary review from the Integrity Commissioner of Ontario is appropriate given the severity of the penalty. However, the legislation appears to only address circumstances where an individual member is causing harm to the health, safety or well-being of persons and does not account for instances where two or more members may be acting or aligned together or circumstances where an individual or individuals grossly impair the functioning of a

council. Given the need for a recommendation for removal from office from both the municipal integrity commissioner and provincial integrity commissioner, the requirement for a unanimous vote of council to apply this penalty could be reduced to a lower threshold, perhaps to a two-thirds majority vote.

Other penalties – Bill 241 should be expanded to introduce new penalties that account for severe behaviour that may not approach the threshold of removal from office. Staff agree with many of the examples of additional penalties Principles Integrity has provided on page 4 of Attachment 1.

The Town welcomes the commitment made by the Ministry of Municipal Affairs and Housing to work with and consult the municipal sector on the development of supporting regulations, the standardized code of conduct, and the revised municipal integrity commissioner framework and processes.

5. Financial Considerations:

The province has indicated that no increased ongoing costs to municipalities are anticipated due to the proposed legislative changes. They note that indirect costs to municipalities may include time required for municipal councils and certain local boards as well as municipal integrity commissioners to learn about and implement a standardized code of conduct and time required for investigative processes and the changes allowing removal and disqualification from office of a member who has been found to have violated the code of conduct.

6. Communication and Public Engagement:

N/A

7. Input from Departments/Sources:

In preparing this report, Staff have reviewed feedback regarding Bill 241 provided by the Town's Integrity Commissioner, Principles Integrity (Attachment 1), the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO), and the Association of Municipalities of Ontario (AMO).

8. Strategic Priorities:

The recommendations contained in this report advance pillar four of the Town's Community Strategic Plan, being Whitby's Government – Accountable & Responsive, by identifying opportunities to enhance the accountability of municipal government.

9. Attachments:

Attachment 1 – Principles Integrity Submission to Whitby Council regarding Bill 241