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Integrity commissioner

- In June, 2017 the Ontario Government passed Bill 68:
Modernizing Ontario's Municipal Legislation Act
- Bill 68 amended the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act*
 - Required that every municipality appoint an integrity commissioner by March 1, 2019



Functions of integrity commissioners

- Integrity commissioners are responsible for performing in an independent manner the functions assigned by municipalities with respect to the following:
 1. The application of the code of conduct for members of council and the code of conduct for members of local boards.
 2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards.
 3. The application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to members of council and of local boards.



Functions of integrity commissioners

4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
6. Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.
7. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of council and members of local boards and about the *Municipal Conflict of Interest Act*.



Municipal Conflict of Interest Act (MCIA)

- The MCIA prohibits members of local boards from participating in or influencing an issue where they have a pecuniary interest;
- It prescribes penalties for breaches of the Act that may have huge personal financial consequences for members who breach the Act.



MCIA: “local board” defined

- Per section 1 of the MCIA:
- “local board” means a school board, ..., a district social services administration board, ...



MCIA: “local board” defined

- As such, a district social services administration board (DSSAB) is a “local board” under the MCIA
- Because it is a “local board” members of a DSSAB are personally liable for contraventions of the MCIA



MCIA Contraventions

- Contraventions of the MCIA can result in a Judge doing any of the following:
 - Reprimanding the member
 - Suspending the member's remuneration for a period of up to 90 days.
 - Declaring that the member's seat is vacant.
 - Disqualifying the member or former member from being a member during a period of not more than 7 years after the date of the order.
 - If the contravention resulted in personal financial gain, requiring the member or former member to make restitution to the party suffering the loss, or, if the party's identity is not readily ascertainable, to the municipality or local board, as the case may be.



MCIA Contraventions

- In exercising his or her discretion about what to do a judge may consider whether the member
 - a) took reasonable measures to prevent the contravention;
 - b) disclosed the pecuniary interest and all relevant facts known to him or her to an Integrity Commissioner in a request for advice from the Commissioner under the *Municipal Act, 2001* or the *City of Toronto Act, 2006* and acted in accordance with the advice, if any, provided to the member by the Commissioner; or
 - c) committed the contravention through inadvertence or by reason of an error in judgment made in good faith.



Problem re MCIA Contraventions

- A judge who determines a member (meaning a member of council or a local board (which includes a DSSAB) contravened the MCIA may consider whether the member or former member disclosed the pecuniary interest and all relevant facts know to him or her to an integrity commissioner, in a request for advice under the Municipal Act, 2001
- But, a request for advice to an integrity commissioner can only be made by a member of a DSSAB if a DSSAB is a “local board” per the definition of “local board” in the *Municipal Act, 2001*
- This is the case notwithstanding that a DSSAB is a “local board” per the definition in the *MCIA*



Authority re Codes of Conduct and Integrity Commissioners

- “local boards” do not have the authority to establish a code of conduct or appoint an integrity commissioner
- Only Municipalities are empowered to do so per (s. 223.2 and 223.3 of the *Municipal Act, 2001*)



Authority re codes of conduct and integrity commissioners

- If a DSSAB is a “local board” it is subject to the “municipality’s” code of conduct and integrity commissioner
- The question becomes which municipality’s code of conduct and/or integrity commissioner?



Municipal Act, 2001: “local board” defined

- A "local board" is defined in s 1 of the *Municipal Act, 2001* as:
 - a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority



Municipal Act, 2001: “local board” defined

- Section 223.1, which sets out the functions of an integrity commissioner (among other related matters) further defines “local board”
- Per s 223.1, “local board” means a local board other than,
 - a) a society as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*,
 - b) a board of health as defined in subsection 1 (1) of the *Health Protection and Promotion Act*,
 - c) a committee of management established under the *Long-Term Care Homes Act, 2007*,
 - d) a police services board established under the *Police Services Act*,
 - e) a board as defined in section 1 of the *Public Libraries Act*,
 - f) a corporation established in accordance with section 203,
 - g) such other local boards as may be prescribed



Municipal Act, 2001: “local board” defined

- *Ontario Ombudsman v Hamilton (City)*
 - Ontario Court of Appeal interpreted the language “...or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities” used in the definition of “local board” in the *Municipal Act, 2001*
 - Held that it would only include entities of a similar nature to those enumerated in the definition (i.e. municipal services board, transportation commission, public library board etc.) that provide services that are “integral to the day-to-day operation of the business of municipalities.”



Municipal Act, 2001: “local board” defined

- However, “local board” is defined in section 269 of the *Municipal Act, 2001* as follows:
 - a) a local board as defined in section 1, excluding a police services board and a hospital board,
 - b) an area services board, a local services board, a local roads board and any other board, commission or local authority exercising any power with respect to municipal affairs or purposes in unorganized territory, excluding a school board, a hospital board and a conservation authority,
 - c) a DSSAB,
 - d) a local housing corporation as defined in the *Housing Services Act, 2011*, despite clause 26 (b) of that Act, and
 - e) any other prescribed body performing a public function.



Municipal Act, 2001: “local board” defined

- The definition in section 269 appears to mean that a DSSAB is not included in the definition of “local board” in section 1.
- As a result, it could be interpreted to mean that a DSSAB is not included in the definition of local board in s 223.1 (re the functions of the municipal integrity commissioner)



Definitional problems and MCI A Contraventions

- If a DSSAB is not a “local board” per the definition of “local board” in the *Municipal Act, 2001* then even though a DSSAB is subject to the MCI, it does not get the benefit of the provisions regarding requests for advice from integrity commissioners



Definitional problems and MCIAC Contraventions

- If a DSSAB is a “local board” per the definition of “local board” in the *Municipal Act, 2001* and, therefore, can request advice from the municipality’s integrity commissioner, then a new problem arises.
- That problem is to determine which municipality’s integrity commission a member should request advice from
- That problem becomes more significant the more municipalities a DSSAB provides services to



Definitional problems and MCIAs Contraventions

- Those members of a DSSAB who are from unincorporated municipalities are uniquely disadvantaged with respect to integrity commissioner services



Recommended solutions

1. Collectively lobby for a legislative change to clarify whether they are *required/permitted* to have an integrity commissioner
2. Apply to the court for a declaration as to whether a DSSAB is a “local board” and, therefore, *required/permitted* to have an integrity commissioner under the current legislative regime (i.e. section 223.1 of the *Municipal Act, 2001*)



Interim advise

- Members should read and know the codes of conduct of the municipalities to which the DSSAB provides services and act in accordance with them to the extent possible
- Know the MCIA (see handout)
- Ask your municipality's integrity commissioner for advice





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