

**Speaking notes for Standing Committee on Social Policy re Bill 68  
(Tuesday, April 11, 5:20 p.m.)**

- 1 I greatly appreciate the opportunity to address the Standing Committee today.
- 2 As an Officer of the Legislative Assembly, the Ontario Ombudsman has been promoting fairness, transparency and accountability in the provincial public sector for more than 40 years. Since 2008, we have also acted as closed meeting investigator for about half of Ontario's 444 municipalities. We have addressed more than 900 complaints about improperly closed meetings.
- 3 And since the *Public Sector and MPP Accountability and Transparency Act* came into effect last year, we have seen full oversight of all Ontario municipalities, universities and school boards added to our mandate. We have dealt with more than 4,000 complaints and inquiries related to municipalities so far. This is one of the areas that generates the most complaints to our office.
- 4 This work with municipalities all across Ontario, together with our extensive expertise in oversight of provincial government bodies, has given my Office a unique perspective on how to improve transparency, accessibility and accountability in the municipal sector.
- 5 Ce travail avec les municipalités partout en Ontario, conjugué à 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.
- 6 The three areas I would like to focus on are:
  - Closed meeting complaints;
  - Local complaints resolution; and
  - Integrity commissioners
- 7 The first thing I want to make clear is that I see Bill 68 as a positive step forward. One that is overdue.
- 8 There are several elements which I support wholeheartedly.
- 9 A clearer definition of what constitutes a meeting (the notion of quorum included); mandatory Codes of Conduct; mandatory Integrity Commissioners with expanded roles, will all be significant advances for municipal accountability.
- 10 I have also prepared a written submission to accompany my remarks.
- 11 First, closed meeting complaints: Bill 68 proposes several amendments to the open meeting requirements in the *Municipal Act* and *City of Toronto Act*. These

address such longstanding issues as the lack of a good definition of what constitutes a “meeting.”

- 12 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.
- 13 However, based on my experience with enforcement of the open meeting rules, I am concerned that the definition of “meeting” proposed in Bill 68 may have unintended consequences.
- 14 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 legal quorum does not exist.
- 15 It also proposes that members who take part in meetings through electronic means should not be counted in determining quorum. This concept in isolation might make sense.
- 16 However, the combined effect of these provisions is that a meeting would only be considered to take place if a quorum of members is **physically present**.
- 17 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 email.
- 18 At present, such actions are considered contraventions of the open meeting rules, and rightly so. The rules are there 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.
- 19 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.
- 20 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 services corporations.” I propose that a new definition of local board be developed to ensure clarity and more consistent application of the rules.

- 21** Bill 68 also proposes that municipalities and local boards must pass a resolution in response to the reports 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.
- 22** I want to stress one more important point about those 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 any exceptions to it should be limited and narrowly interpreted.
- 23** Bill 68 proposes several new exceptions to the open meeting requirements. I am particularly concerned about the proposed new 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 to negotiations.”
- 24** The language of this clause is extremely broad and could mean many discussions that are now required to take place in public will occur in private.
- 25** My fellow Officer of the Legislature, the Information and Privacy Commissioner, shares this concern. I have had the opportunity to review his submission to this committee, which recommends removing the proposed new exceptions unless the Ministry provides a detailed justification for them, with other modifications. Mr. Beamish is the expert in access to information issues in the municipal sector, and I fully support his recommendations.
- 26** Now, with regard to 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 complaints processes, and my proposal to you is that the legislation require all municipalities to do so.
- 27** 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, local ombudsman or a closed meeting investigator. The price for municipal accountability should not be paid by individuals who raise concerns. My submission proposes amendments to prevent municipalities from charging fees in these circumstances.
- 28** 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 of Bill 68

that will require all municipalities to have a code of conduct, as well as an integrity commissioner to enforce it. These provisions will go a long way to address this area of public concern.

- 29** However, I am aware of some municipalities that do not allow members of the public to file complaints to their integrity commissioner. I propose that the Bill be amended to ensure all Ontarians have such access to local accountability officials.
- 30** 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 municipal administration.