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**From:** AMO Communications [mailto:communicate@amo.on.ca]  
**Sent:** July 8, 2014 3:52 PM  
**To:** clerk@hamilton.ca  
**Subject:** AMO Report to Members - Accountability Act

## TO THE IMMEDIATE ATTENTION OF THE CLERK AND COUNCIL

July 8, 2014

### ***Accountability Act Introduced Today***

The Premier's commitment to introduce new rules on transparency and accountability for the Province again captures other parts of the broader public sector, including municipal governments.

In response to the Association's letter to all the party leaders during the election, the Liberal Party stated with respect to the *Accountability Act*, that: "Ontario Liberals remain committed to expanding accountability in the public sector. If we form another government, we will work with AMO and the entire Broader Public Service to identify the best ways to expand accountability and give Ontarians confidence in their public service".

AMO President Russ Powers wants the Association's membership to know that AMO is very concerned that it has not been given any opportunity to work with the government prior to the Act's reintroduction. A request for an urgent meeting has been sent to the Premier. "This government has an outstanding track record of pre-consulting and getting input and feedback, so this is an extremely surprising and disappointing situation" says the AMO President.

We have been advised that this re-introduced Bill has been amended to address another area but apparently there is no change to the municipal government section. If the Bill introduced today is identical to the one previously introduced, then:

- A municipal government must appoint a municipal Ombudsman, no matter its size and if it does not, then the Provincial Ombudsman becomes the municipal Ombudsman by default. The *Municipal Act* currently describes the function of an Ombudsman (S.223.13.(1)) as reporting to a council on an investigation of any decision or recommendation made or act done or omitted in the course of the administration of the municipality. Investigations can be triggered by individuals or by the designated Ombudsman.
- Even if there is a municipally appointed local ombudsman, the Ontario Ombudsman would have the jurisdiction to investigate complaint(s) after a municipal Ombudsman has completed and reported on a complaint of maladministration or decides a complaint has no merit and dismisses it. In practice, this means an investigation undertaken by an independent ombudsman is not necessarily the last stop. It would also permit the Ontario Ombudsman to

undertake a systemic investigation where she/he believes there is a more universal maladministration issue than in just one municipality.

- In terms of closed meeting investigations, there is no change to the appointment of an investigator. In other words, the current default model continues such that if no one is appointed by the Council then the provincial Ombudsman has jurisdiction. However, as above for maladministration complaints, there will be an 'appeal' process to the Provincial Ombudsman.
- For those municipal governments who do not appoint and by default fall under the services of the Ontario Ombudsman, there is no ability to have a review of his/her decision. In other words, there is no ability to have the decision of the Ontario Ombudsman reviewed.
- The Bill also does not scope in anyway the review of a municipal ombudsman or closed meeting investigation.
- There is no change to the legislative function of either an ombudsman or closed meeting investigation. The law continues to require that the function of these positions be independent and impartial; to maintain confidentiality and have credible investigative processes.
- In terms of application to local boards, AMO was advised that the original Bill would not capture police services boards, library boards, boards of health, boards of long-term care and Children's Aid Societies and municipal corporations created under S. 203 of the *Municipal Act*.

This means that these entities would remain out of the jurisdiction of any closed meeting investigator or ombudsman. At the time the Ontario Ombudsman had been promoting that his Office would have jurisdiction for these boards. AMO received written confirmation in the spring from the Minister of the day that Ontario's Ombudsman would not oversee them. We assume that this has not changed; however, we do not have a copy of the Bill nor its intended regulations to ascertain this.

The additional oversight approach contained in this Bill suggests that all the closed meeting investigators – all learned professionals, including lawyers, are not trusted. Yet, there has been no evidence provided by the government that in its eyes the system is not functioning to meet the existing Acts' provisions for independence and impartiality, confidentiality and a credible investigative process.

Again, we call on the Province to engage in active discussion with us before this legislation proceeds any further.

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