

From: Frank Nicholson [mailto:fnicholson@amcto.com]

Sent: Tuesday, October 18, 2005 10:28 PM

To: Kelly, Denis

Subject: Message from AMCTO for Your Council

Denis Kelly
Clerk
Regional Municipality of York

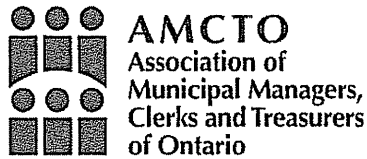
Dear Denis:

AMCTO is asking municipalities to consider its position on Bill 123, the Transparency in Public Matters Act, a private member's bill currently before the Ontario Legislature. Could you please bring the letter found at:

<http://workbench.amcto.com/lib/Db2File.asp?fileid=12329>

to you council's attention. Please feel free to contact me if you have any questions. Thank you.

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October 18, 2005

To: All Ontario Municipalities

Subject: Bill 123, the Transparency in Public Matters Act, 2005

I am writing to seek support of your municipality for the position that AMCTO, the Association of Municipal Managers, Clerks and Treasurers of Ontario, has taken on Bill 123, the Transparency in Public Matters Act, 2005.

Bill 123 is a private member's bill currently before the Ontario Legislature. It received approval in principle on second reading late last year and is currently before the Standing Committee on Regulations and Private Bills.

In its present form, Bill 123 would impose new rules for public access to meetings on a wide range of public bodies, including regulatory colleges, university boards, college boards, hospital boards, school boards and—most important from AMCTO's perspective—municipal councils and local boards. The sponsor of Bill 123 recently announced amendments that would limit the legislation to three types of bodies—hospital boards, school boards and municipal councils.

The proposed rules in Bill 123 include:

- All meetings must be open to the public subject to exceptions **similar but not identical to** those in the Municipal Act.
- Minutes must be in sufficient detail to inform the reader of any **deliberations engaged in** not just decisions made, as prescribed by the Municipal Act.
- Any person may challenge council decisions on procedural grounds by making a complaint to the Information and Privacy Commissioner.
- The Commissioner may issue orders voiding any decision, recommendation or action made at a meeting whose procedures fall short of the requirements of the act.

AMCTO previously raised concerns about Bill 123 in a position paper adopted in February 2005 and in a presentation to the Standing Committee on Regulations and Private Bills in September 2005 ([copies](#) available in the Government Relations section of AMCTO's website). While fully supporting openness, accountability and transparency in the conduct of public business, including municipal business, our submissions noted the overlap of the provisions in Bill 123 with the notice, meeting and minute provisions of the Municipal Act that—in conjunction with the electoral process—already support openness and accountability in local government. We subsequently prepared the table that you will find enclosed detailing the extent of overlap between the two pieces of legislation.

AMCTO

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Over and above the additional costs that Bill 123 will entail, regrettably, the practical effect of the bill will be to create two competing sets of statutory rules for conducting municipal meetings and two parallel systems for challenging council decisions on procedural grounds. We believe that the result will be confusion and increased litigation that will undermine the local decision-making process.

For that reason, we are continuing to press for the removal of municipalities from the list of designated public bodies in Bill 123 and for consideration of the issues raised by Bill 123 with respect to municipalities through the review of the Municipal Act that the Ministry of Municipal Affairs and Housing has underway.

Section 273 of the Municipal Act already provides that the Superior Court of Justice may, on the application of any person, quash any by-law of a municipality in whole or in part for illegality. If the Province now wants additional mechanisms to enforce compliance with procedural requirements, we believe that there are options available in addition to a system of complaints to a provincial commissioner. As an example, could compliance be achieved through training of municipal councillors on their existing obligations under the Municipal Act? Could section 239 of the Municipal Act be amended to require sign-off by the municipal solicitor or clerk of a council decision to go in camera? Could municipalities be authorized to appoint a **local** integrity commissioner to hear complaints (an idea AMCTO put forward in its October 2004 submission on the Municipal Act review)?

Bill 123 takes a "one size fits all" approach inconsistent with developing local solutions to local problems.

We would appreciate it if you could bring our letter to your council's attention asking them to adopt a resolution endorsing our position, which is that municipalities should be removed from the list of public bodies subject to Bill 123 and that any openness and transparency issues that the Province wants addressed for municipalities should be addressed through the Municipal Act review.

We are intervening in this instance because of our ongoing interest in policy, legislation and regulations that promote healthy local democracy and facilitate the efficient and effective delivery of municipal services. We believe that the Government of Ontario should respect the principle that the Minister of Municipal Affairs and Housing articulated when he described municipalities as "a level of government, duly elected just like the provincial and federal levels."

Yours truly,



John Craig, CMO
President



Overlap between Bill 123* and the Municipal Act, 2001

Subject	Bill 123	Municipal Act	Comment
Definition of Meeting	Sec. 3	Subsec. 238(1)	The two provisions are similar (e.g., both cover committee meetings), although Bill 123 provides greater precision with respect to electronic and telephone meetings, while the Municipal Act provides greater precision for the kinds of committees covered (e.g., a 20-member community advisory committee with one council member is apparently caught by Bill 123 but not by the Municipal Act).
Notice of Meetings	Sec. 4	Subsec. 238(2), sec. 240 and sec. 251	Sec. 4 of Bill 123 says that the public body “a shall give reasonable notice to the public of every of its meetings ” and post or publish a “clear, comprehensive agenda of the items to be discussed at the meeting.” The Municipal Act provisions cover the same ground. Subsec. 238(2) requires every municipality and local board to adopt a procedural by-law. Sec. 240 provides further direction on the calling of special meetings. Sec. 251 requires notice to be given “in a form an in the manner and at the times that the councils considers adequate to provide reasonable notice. (This is the general provision—there are additional notice provisions elsewhere in the Municipal Act and in other acts.)
Meetings to Be Open	Subsec. 5(1) (5)(6), sec. 6	Subsec. 239(1)	The two provisions are similar, although Bill 123 addresses electronic and telephone meetings explicitly while the Municipal Act does not.
Exceptions to Open-Meeting Requirement	Subsec. 5(2)	Subsec. 239(2)(3)	The exceptions are similar, although there is nothing in the Municipal Act comparable to the exemption found in clause 5(2)(a) of Bill 123 (“the desirability of avoiding public disclosure of them in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that meetings be open”), and the Municipal Act offers greater specificity having regard to the statutory and policy framework for municipal government (e.g., by mentioning the Municipal Freedom of Information and Protection of Privacy Act and expanding “litigation” to include matters involving administrative tribunals).

* The version analyzed is the first reading version—i.e., without the amendments that the bill’s sponsor has announced that will limit the application of the act to hospital boards, school boards and municipal councils.



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Subject	Bill 123	Municipal Act	Comment
Procedure for Going In Camera	Subsec. 5(3)(4)	Subsec. 239(3)(4)(5)(6)	The two sets of provisions are similar.
Requirements for Taking Minutes	Subsec. 7(1)(2)(4)(5)	Subsec. 228(1),	The Municipal Act designates the clerk as the person responsible for taking the minutes and stipulates that the minutes should reflect decisions, not deliberations (the clerk is “to record, without note or comment”). Bill 123 does not designate anyone as responsible for taking minutes and suggests that more of a verbatim record is expected (the minutes must “contain sufficient detail to adequately inform the public of the main subject-matters considered, any deliberations engaged in and any decisions made”).
Minutes to Be Accessible	Subsec. 7(3)(4)(5)	Sec. 253	Both statutes provide access, although Bill 123 goes further by requiring the posting of a copy of the minutes in a public place or website, whereas the Municipal Act says simply that the clerk must allow the minutes to be inspected. On the other hand, the Municipal Act requires the clerk, on request, to provide a certified copy under seal of the municipality of minutes and related documents, while Bill 123 does not appear to address this. This is in addition to the broad right of access to municipal records that the public enjoys under MFIPA.
Adoption of Procedural By-Law	Sec. 8	Sec. 238	The intent of the two provisions is essentially the same although the Municipal Act goes further by requiring council to give notice of its intention to adopt a procedural by-law.
Designation of Compliance Overseer	Sec. 9	No such provision	The general rule under the Municipal Act is that council as a whole is responsible.



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Subject	Bill 123	Municipal Act	Comment
Challenges to Procedural Decisions	Sec. 10-22	Sec. 273	Bill 123 establishes a complaint system administered by the Information and Privacy Commissioner, with the Commissioner able to identify and remedy infractions of the rules. The Municipal Act authorizes any person to apply to court for an order quashing any by-law in whole or in part for illegality. In addition, under the common law, meeting in camera inappropriately can be evidence of bad faith. Avenues of redress in addition to going to court including participation in the municipal electoral process and requesting the Minister of Municipal Affairs and Housing to launch an inquiry under sec. 10 of the Municipal Affairs Act.
Interpretation & Relation to Other Acts	Sec. 23	Sec. 9	Bill 123 prevails over other legislation except to the extent that the other legislation is stricter.
Regulations	Sec. 24	Sec. 453	Bill 123 authorizes the Province to facilitate the implementation of the Transparency in Public Matters Act, 2005, by regulation. The Municipal Act authorizes the Province to facilitate the implementation of the act by regulation.