

Bill 68, Modernizing Ontario's Municipal Legislation Act

2017 AMCTO Annual Conference
June 13, 2017



OVERVIEW

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3. Concerns with Bill 68
4. What should municipalities start thinking about

Background



Background:

AMCTO Work on Bill 68

JUNE 2015 Government launches review of municipal legislation and AMCTO forms advisory group to review the *Municipal Act & Municipal Conflict of Interest Act* and identify needed reforms

OCTOBER 2015 AMCTO releases submission with 25 recommendations across five themes:

1. Modernization
2. Accountability and Transparency
3. Financial Fairness
4. Good governance
5. Clarity

DECEMBER 2016 Following the release of Bill 68, the *Modernizing Ontario's Municipal Legislation Act*, AMCTO's Legislation and Policy Advisory Committee begins to review the bill

JANUARY 2017 AMCTO staff and volunteers join AMO's Bill 68 Task Force

APRIL 2017 AMCTO releases submission on Bill 68 with five recommendations approved by the Board of Directors

Background:

Overall Impressions

- Modest changes, no dramatic transformations
- Biggest implications for municipalities surround the changes to integrity commissioners
- Many small positive changes for local governments
- A number of less positive changes, but no poison pills
- Bigger story is what's not in the bill
- Modernization...kind of

**What we think the bill
got right**



What we think this bill got right #1

Codes of Conduct

- Bill 68 requires all municipalities to develop codes of conduct for council and local boards
- An important and useful pieces of the ethical framework for local governments
- Municipalities will have some flexibility about determining what is in their code
- Most municipalities have codes of conduct for their councils, some have codes of their local boards
- Codes for council and local boards can be different

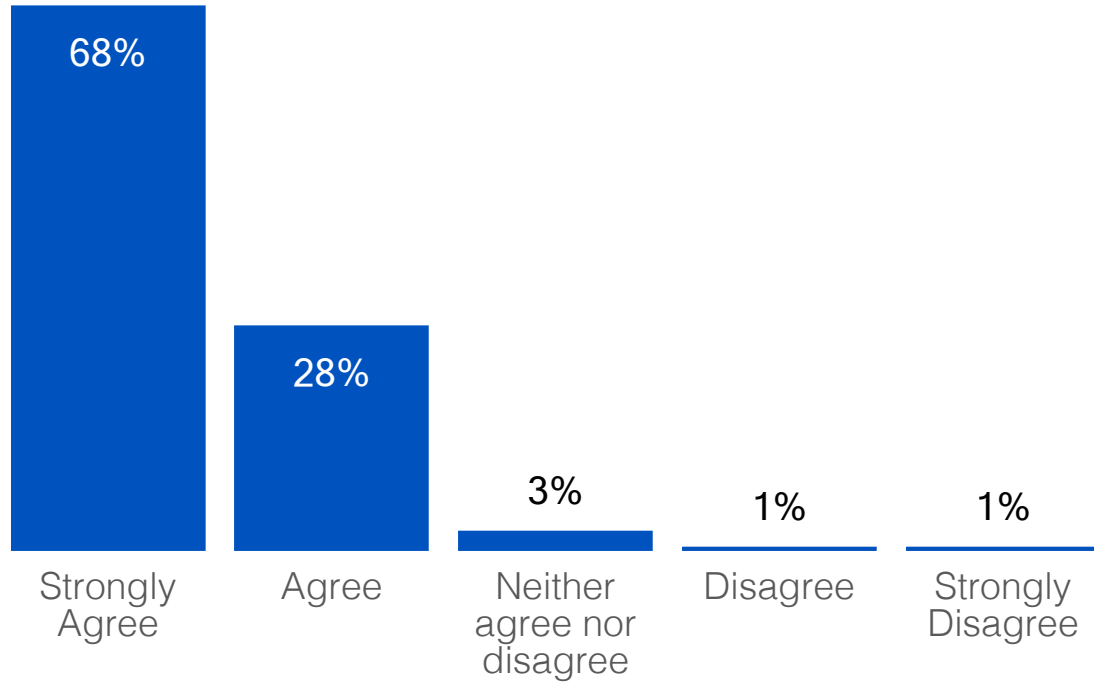
78%

of municipalities have a code of conduct for their council

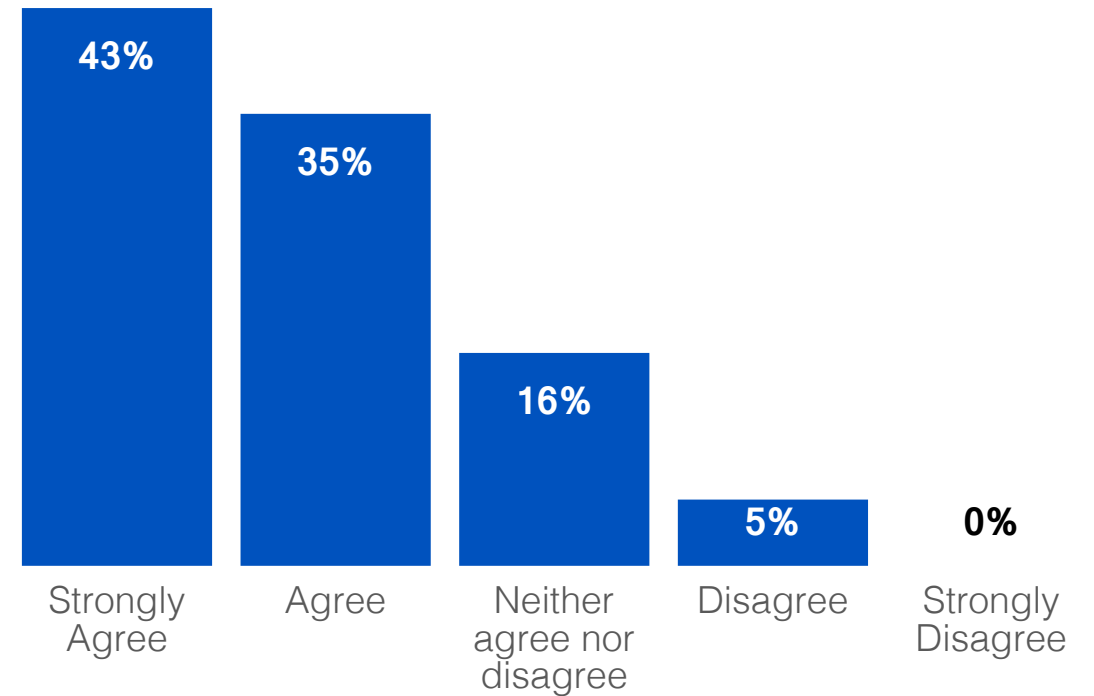
43%

of municipalities have a code of conduct for their local boards

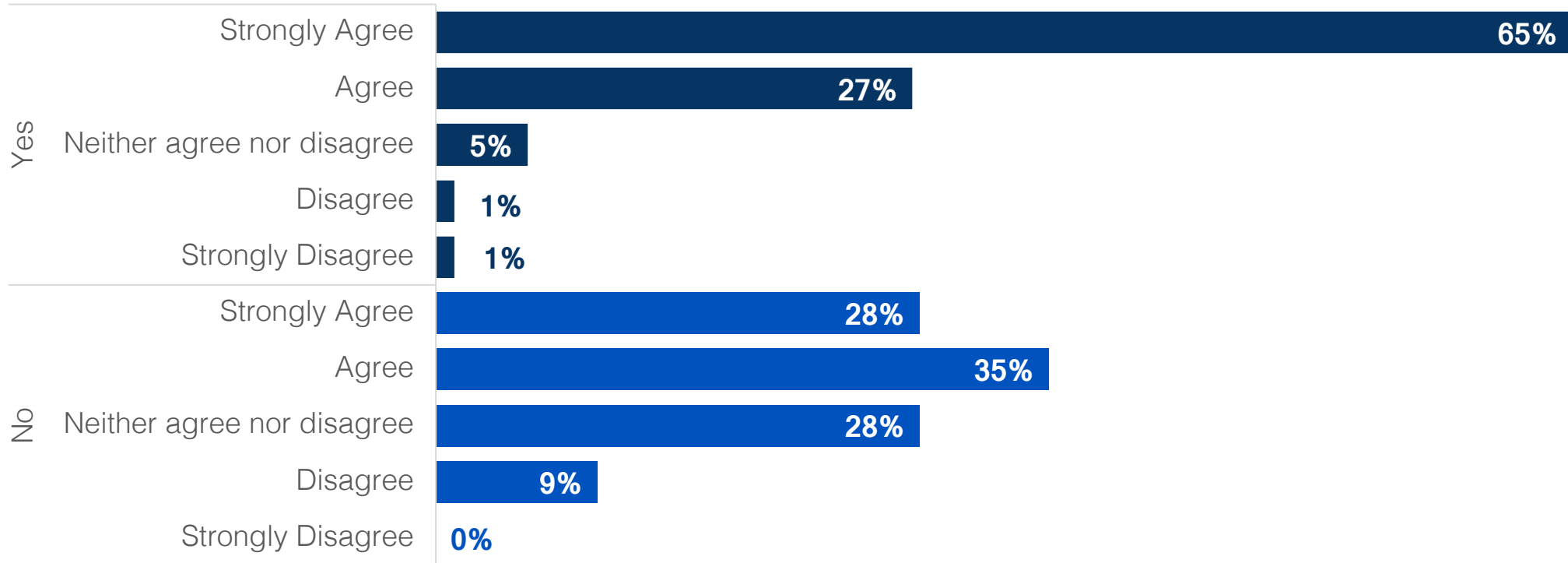
Most municipal public servants agree that municipalities should have codes for *council*



A majority also agree that municipalities should have codes for *local boards*



Respondents in municipalities that already have a code of conduct for their local boards are more likely to support their use



What we think this bill got right #2

Prudent Investor Status

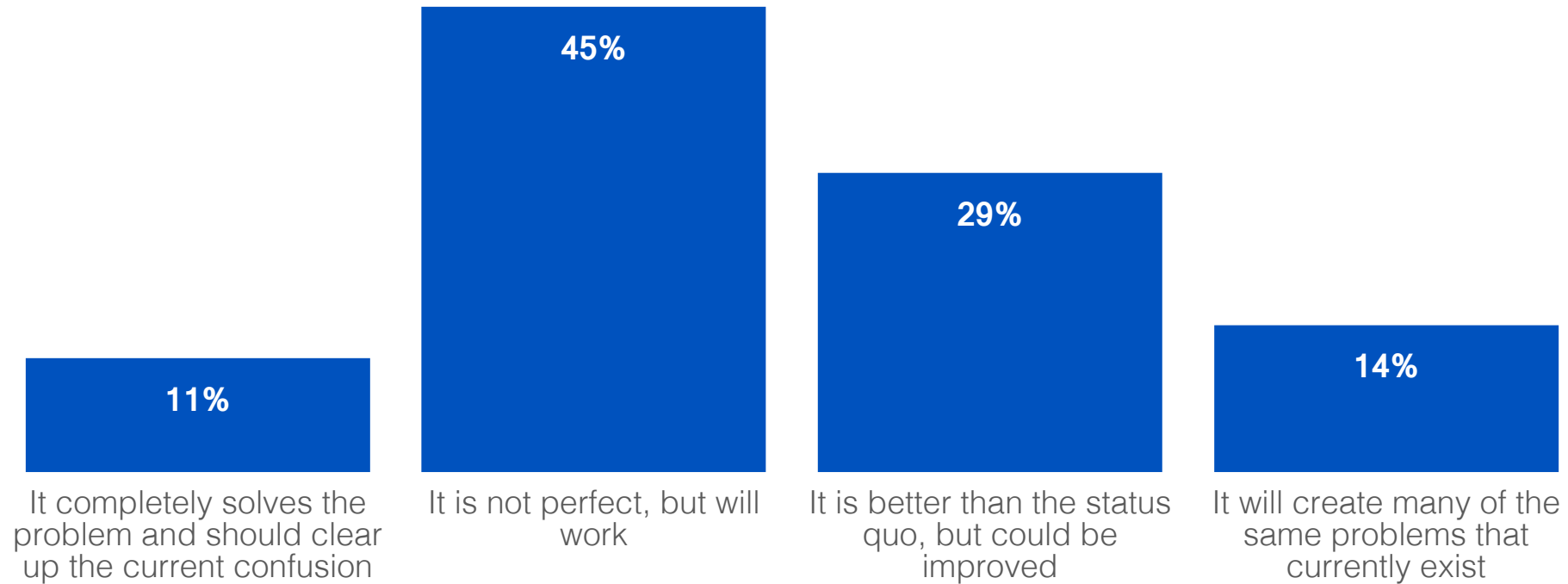
- Most municipalities in Ontario have either no investments, or investments that represent a low percentage of total revenues
- Bill 68 extends prudent investor status to municipalities beyond the City of Toronto
- Will allow municipalities to invest in a broader range of securities
- Municipalities will have to meet prescribed criteria to opt-in
- Could result in greater portfolio diversification for municipal investments, with the potential for higher returns with less risk than the current system
- Not entirely clear how many municipalities will actually benefit from accessing new standards
- A good first step, but hopefully not the only one

What we think this bill got right #3 (more or less...)

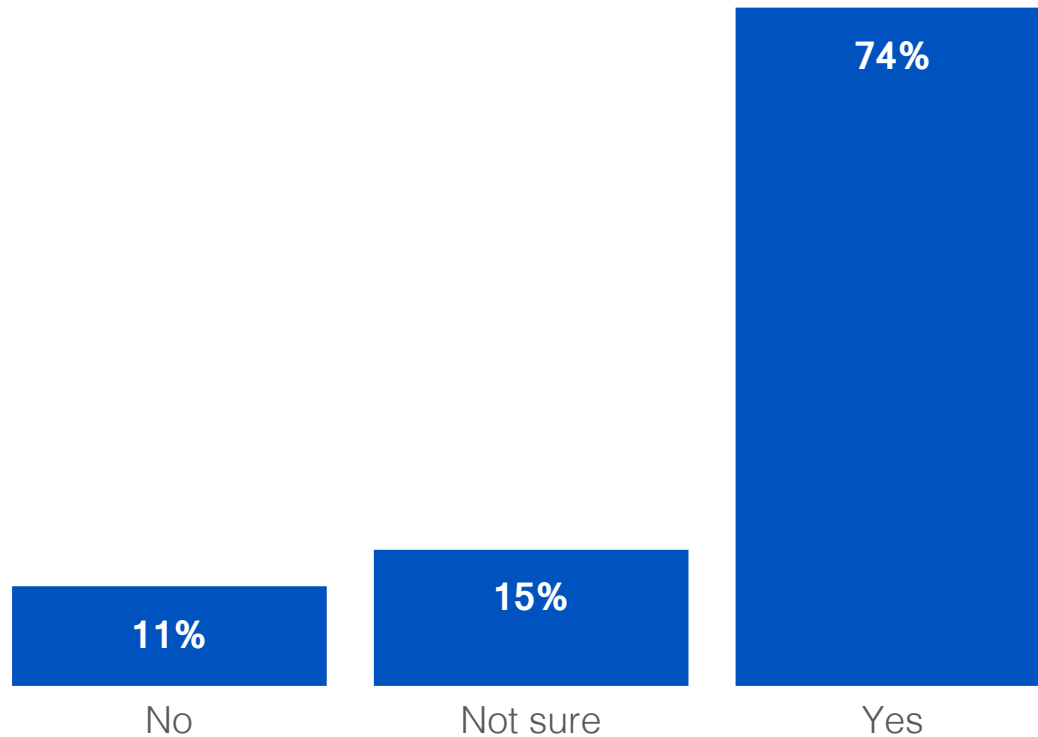
Definition of a meeting

- Bill 68 proposes a **new definition of a meeting**:
 - **25 (1) The definition of “meeting” in subsection 238 (1) of the Act is repealed and the following substituted:** “meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where
 - (a) a quorum of members is present, and
 - (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.
- Closed meeting investigations now one of the most high-profile accountability measures
- Previous definition of a meeting created ambiguity about what constituted a meeting
- New definition is not perfect, but is an improvement and can continue to be improved in the future

Support for the new definition of a meeting is mixed, but most believe that it will work



A strong majority thinks that it is an improvement over the status quo—especially clerks



70%

of respondents working in finance

79%

of clerks and those working in clerks departments

67%

of CAOs/City Managers

What we think this bill got right #4 (partly...)

Closed Meeting Exceptions

New closed meeting exemptions proposed in Bill 68:

- (h)** information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
- (i)** a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (j)** a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
- (k)** a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

New exemptions were needed

- Municipalities needed greater flexibility
- Legislation had not caught up with the needs of the sector
- Certain circumstances where existing exemptions were not sufficient
- Growing level of complexity of municipal business since the closed-meeting exemptions were initially conceived
- High-profile nature of closed-meeting investigations necessitated clear legal basis for going into closed session

But, it's complicated...

- There are risks:
 - These additional exceptions, if used indiscriminately, could negatively impact transparency
 - Will introduce more complexity into the system for clerks
 - New exemptions will need to be used selectively and with discretion
- New exemptions not meant to create a free-for-all
- Exemption “k” is simply too broad

“The proposed amendments will frustrate open and accountable government, inhibit open procurement practices, and limit the public’s existing right of access to records under MFIPPA. Moreover, we have not been provided with sufficient information to suggest that the amendments are necessary to the effective operation of municipal councils and local bodies.”

**–Brian Beamish,
Information and Privacy Commissioner of Ontario**

What the opponents say

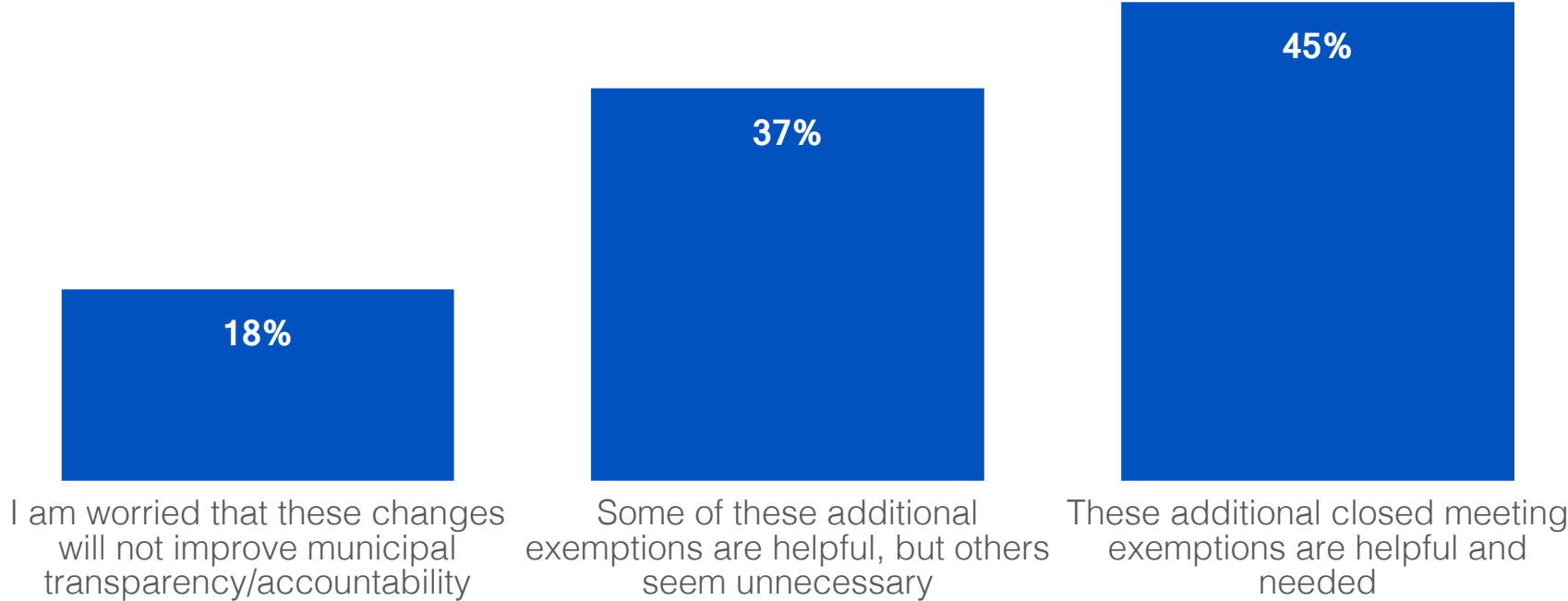
Information and Privacy Commissioner

- There is no demonstrable need for the expansion of the exceptions
- The proposed amendments will negatively impact the public's right of access to records under MFIPPA

Ombudsman:

- “The remedial nature of the open meeting rules should be respected and the exceptions drafted as narrowly as possible”
- Especially concerned with exception “K”

Opinion in the sector is mixed

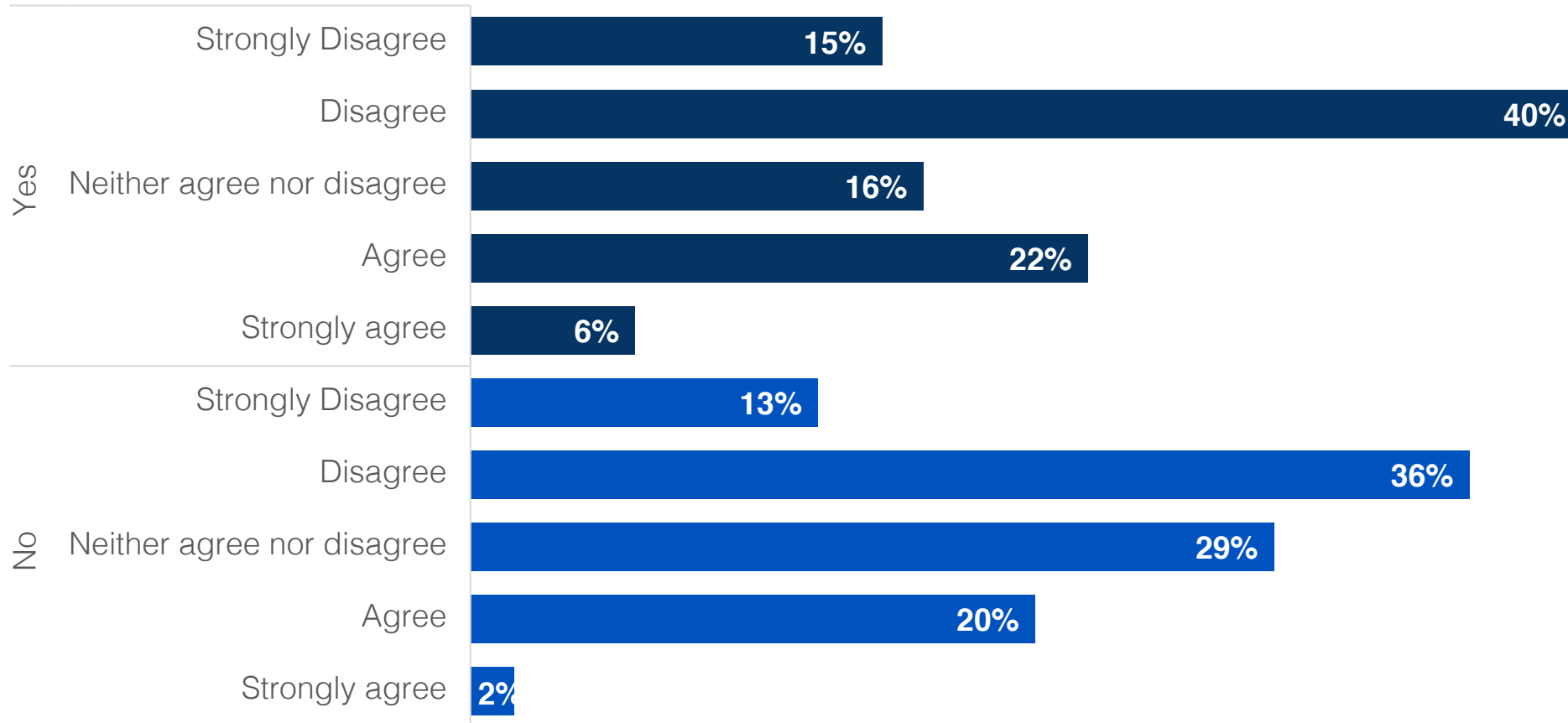


What we think this bill got right #5 (after being amended by committee...)

Integrity Commissioner Own Motion Hearings

- Original bill had a provision for ICs to conduct investigations on their own initiative
- This provision was removed during the Standing Committee on Social Policy's review of the bill
- Reasons why AMCTO and AMO supported removing this provision:
 - Could jeopardize the role ICs play as advisors
 - Advising council and individual councillors is one of the most important roles
 - Research suggests that advising councillors is how ICs spend the majority of their time
 - Could place ICs in an awkward position
 - Would be at the same time looking for evidence of wrongdoing to form the basis of new investigations, while also providing advice to councillors who may disclose potential wrongdoing
 - Could have a chilling effect and make councillors less likely to talk to an IC

50% of local public servants oppose own motion investigations—those in municipalities that have an IC are even more likely to be opposed



Other things we think this bill got right:

- Technical changes to tax and revenue collection
- Changes to allow tax sales to happen faster
- Broadening of AMP powers
- Paid parental leave
- Giving municipalities explicit authority to deal with climate change
- Ability to regulate all signs in a municipalities jurisdiction

Concerns with Bill 68



Concern #1

Peak Accountability?

- AMCTO supportive of many of the new accountability and transparency measures in the bill
- Original submission included recommendations that we felt were important to enhancing the ethical standing of Ontario's municipalities, including:
 - Developing a clear definition of a meeting
 - Requiring all municipalities to adopt codes of conduct
 - Reviewing the circumstances where council can meet in closed session
- Encouraging ethical behaviour is an organizational focus—that's why AMCTO developed a new code of ethics and values
- Many municipal public servants and AMCTO members are supportive of many Bill 68 measures

77%

of municipal public servants agree that municipalities should be required to adopt codes of conduct for local boards

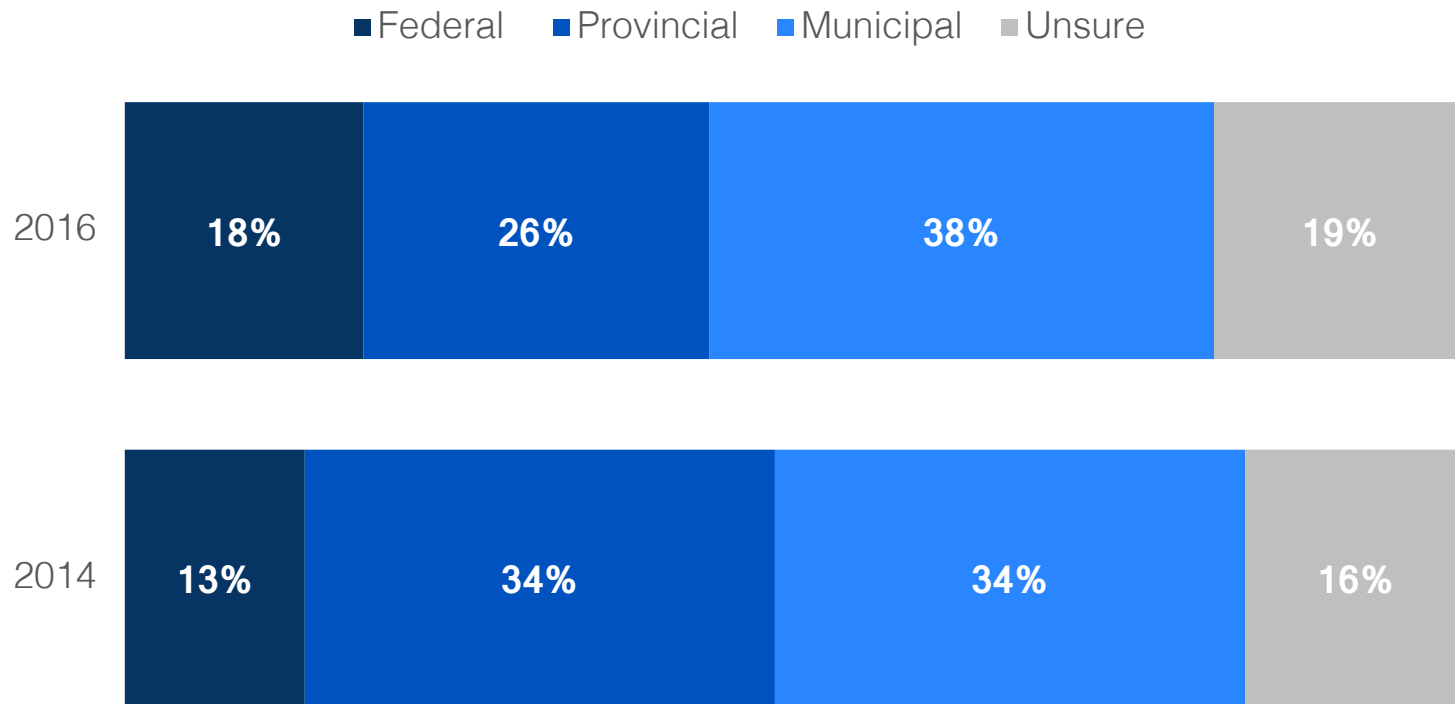
96%

of municipal public servants agree that municipalities should have codes of conduct for council

Peak Accountability

- However, there seems to be a disproportionate focus in Bill 68 on accountability and transparency, relative to other areas of municipal business and operations
- Much of provincial policy over the past 10 years has also carried a disproportionate focus on accountability and transparency:
 - Bill 130 (2006)
 - Bill 8 (2014)
- We are concerned that this gives the impression that municipalities are mismanaged and corrupt
- However, a reasonable case can be made that local governments are the most transparent order of government in Canada
- Municipalities also consistently score higher on measures of public trust than other levels of government

Most Responsive Level of Government in Canada, 2014 - 2016



Source: Nanos Research

57%

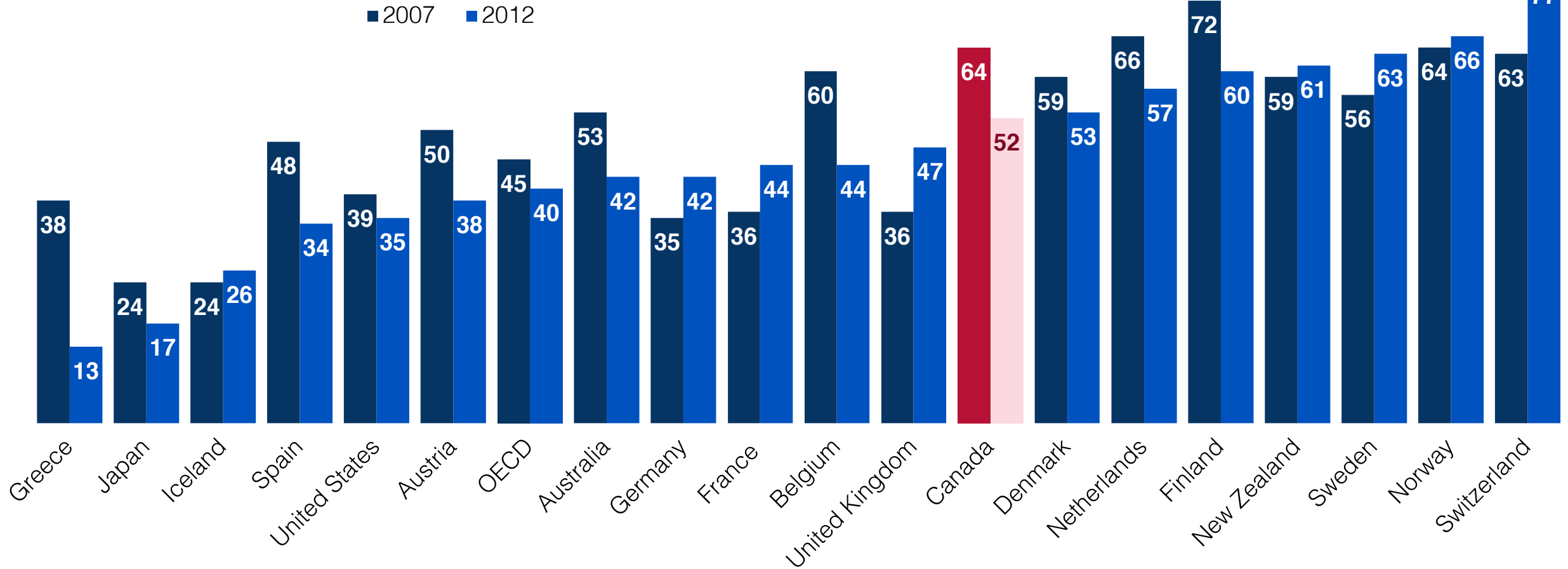
of Canadians trust their local government more than the federal government or their respective province, according to IPSOS

55%

said that they saw their tax dollars being put to better use by their municipal government than the federal government

Source: IPSOS

Trust in government, OECD Countries, 2007 - 2012



Degrading the perception of local governments

- Municipalities in Ontario not free from the unethical behaviour and corruption that afflict governments everywhere
- But also, no less accountable or transparent than the provinces or federal government—in many cases more so
- Our concern is that if the province continues to make accountability and transparency the dominant focus of its municipal policy—absent clear evidence or rationale—it will only serve to degrade and diminish ordinary Ontarians' perception of local government
- The formal ethical infrastructure for municipalities is strong, but culture and values are just as important

“The ethical culture of an organization is the set of values operating within it. Those values constitute the first line of defence against unethical behaviour, and they exert by far the most powerful influence. Formal culture is written policy. Informal is learned behaviour of others—and it usually prevails. Ideally, formal culture and informal culture are the same, and the values set down on paper reflect the real values at work in the organization ever day.”

**–Madame Justice Bellamy
(Report on the Toronto Computer Leasing Inquiry)**

Sources of municipal revenue:

41%
property taxes

21%
transfers

20%
user fees

15%
licenses/permits

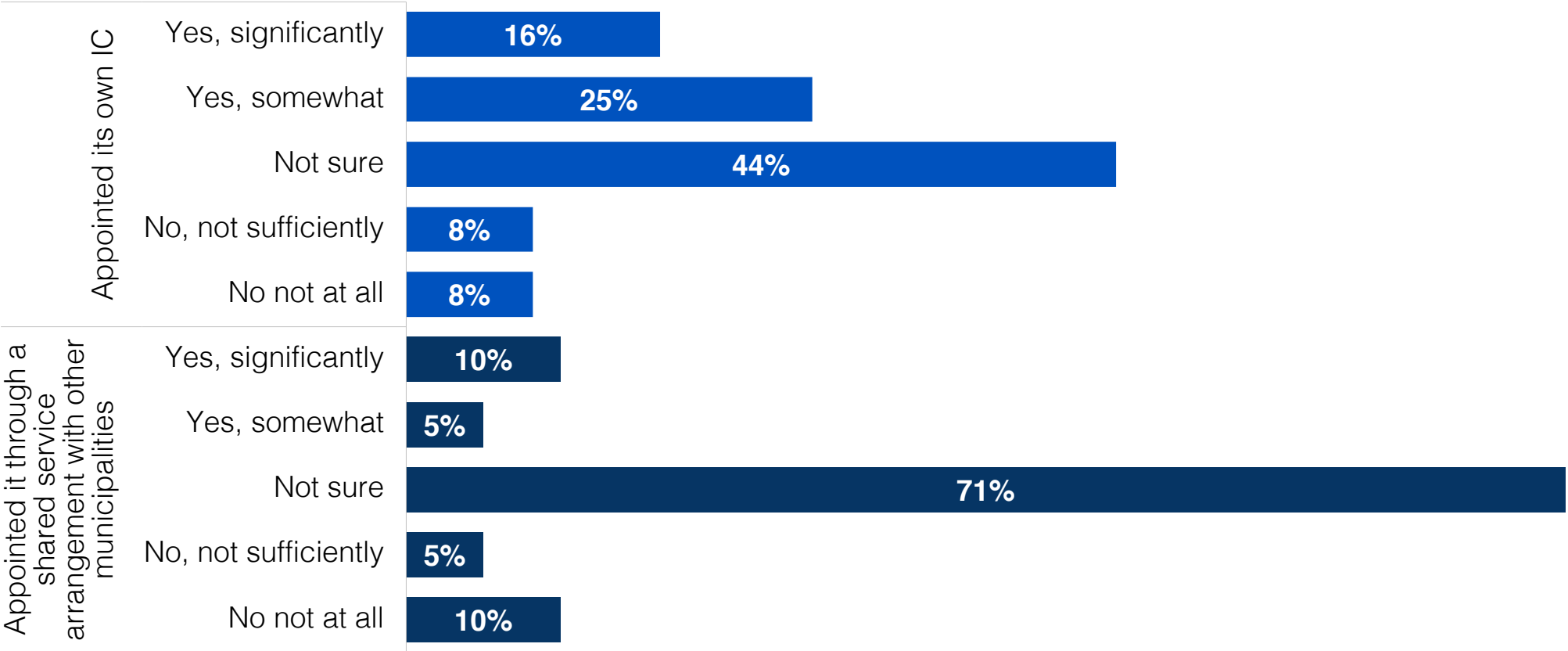
3%
other revenues

Concern #2

Financial Fairness

- Services are becoming more complex, more expensive to administer
- Revenues not keeping pace
- Most municipalities have limited sources of revenue and are still heavily reliant on the property tax base
- AMO:
 - Municipal operating costs are growing at \$1 billion annually
 - Drivers include rising insurance rates, price of electricity, increased demand for services, and aging infrastructure
 - Average gap between expenditures and revenues over the next 10 years, estimated to be \$4.9 billion
- Strong consensus that municipalities need new sources of revenue
- Bill 68 does very little to address the fiscal concerns of local governments—and even adds a number of new unfunded mandates

IC provisions likely to impact spending on ICs, unclear implications for shared services



IC provisions will introduce a high-level of uncertainty, especially for smaller communities

Some examples:

Retainers range from \$305 to \$12,000 per year

One Ontario municipality paid a \$10,000/year retainer even though their IC didn't conduct a single investigation

A municipality with a population of 18,000 and own-source revenue of \$18 million spent \$46,000 on their integrity commissioner in one year, including \$23,700 in November/December alone

A municipality is expected to be billed \$20,000 this year for a single investigation that found no merit in two allegations and recommended no sanctions

Another IC investigation cost a medium size municipality \$10,000 for having their IC "conduct a review" of a single media article

Concern #3

Closed Meeting Exception 'K'

Section 239(2)(k): A meeting or part of a meeting may be closed to the public if the subject matter being considered is “a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.”

The problem with exemption “k”:

- Extremely broad language
- Vulnerable to misuse and abuse
- Risks losing the momentum that has been built over the past 10 years towards conducting the vast majority of municipal business in public
- Could conceivably lead to clerks being pressured to move meetings that should be open to the public into closed session
- Ontario’s municipalities are currently at the forefront of open government in Canada, and this provision is a potential step backward from current levels of accountability and transparency

“I am particularly concerned about proposed new exception (k).... The language of this clause is extremely broad and might permit discussions about numerous items, which currently must take place in public view, to occur behind closed doors.”

–Paul Dubé, Ombudsman of Ontario

Concern #4

Absence of Principles to Guide ICs

- Changes to IC regime for Ontario municipalities in Bill 68 will be significant
 - Most municipalities don't have an IC
 - Role is still largely undefined
 - Little consistency about how ICs conduct their investigations, review complaints and even view their role
- Though Bill 68 vastly expands the role of IC, it is silent on what principles should guide them
- Forum of Canadian Ombudsman (FCO) has a detailed Statement of Ethical Principles
- International Ombudsman Association (IOA) has 27 Standards of Practice
- Successful roll-out of IC practice across the province, should be supported by a set of principles for ICs

Changes to the municipal integrity commissioner regime

1. All municipalities will be required to provide access to an integrity commissioner
2. The role of the IC would be expanded to include application of the MCI Act
3. ICs will be given the responsibility to conduct investigations on their own initiative
4. ICs will now be specifically empowered to provide advice to members of councils and local boards
5. The role of the IC will be expanded as it relates to public education and information for both members of council and the public
6. The range of penalties that ICs can recommend will be expanded
7. ICs will have the power to apply a judge

What municipalities should start thinking about



What you should be thinking about/ working on:

- Creating codes of conduct for council and local boards
- Hiring an integrity commissioner
- Developing procedures for how to report back on how the municipality will address a closed-meeting investigation
- Creating a registry that tracks all registered conflicts of interest
- Developing a policy on council-staff relations
- Developing a policy for the protection of a municipality's tree canopy
- Developing a policy for providing parental leave

Thank you

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AMCTO Policy Blog:

amcto.com/advocacy-policy/policy-updates

