

AMCTO SUBMISSION *on* **BILL 68, MODERNIZING ONTARIO'S MUNICIPAL LEGISLATION ACT**

APRIL 2017

I. BACKGROUND

In November of 2016 the government tabled Bill 68, the *Modernizing Ontario's Municipal Legislation Act*, which introduced a series of reforms to the *Municipal Act*, *Municipal Conflict of Interest Act*, and several other pieces of municipally-relevant legislation. AMCTO believes that a number of the changes proposed in Bill 68 are positive for municipalities—including many that we advocated for in our submission on the *Municipal Act* in 2015. However, while there is much in this bill for that is good for the municipal sector and AMCTO members, there are also several areas of concern, and sections of the legislation where we think that changes need to be made. This submission outlines two broad areas of concern that we have with the bill and presents five concrete recommendations that will believe will strengthen it.

II. OVERARCHING CONCERNS

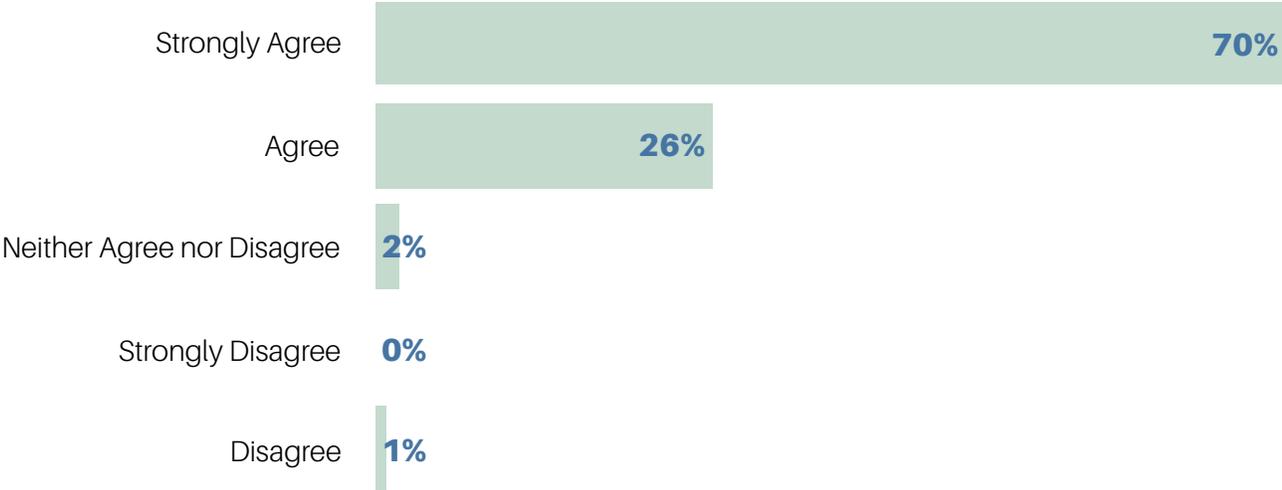
Peak Accountability?

Bill 68 has a strong focus on accountability and transparency. Ensuring municipal accountability was one of the themes of the government's review of municipal legislation in 2015, and it is the area of the *Municipal Act* that Bill 68 will most significantly alter. We are largely supportive of the new accountability and transparency measures in the bill. Our original submission in 2015 included a number of recommendations that we felt were important to continue to enhance the ethical standing of Ontario's municipalities, including developing a clear definition of a meeting, and requiring all municipalities to develop codes of conduct. As seen in figures 1 and 2, a number of the changes proposed in Bill 68 also have strong support

among AMCTO members. For instance, 96% of our members agree that municipalities should be required to adopt codes of conduct for their councils and 77% agree that municipalities should be required to adopt codes for their local boards.

Figure 1:

Do you agree that municipalities should be required to adopt codes of conduct for their councils?

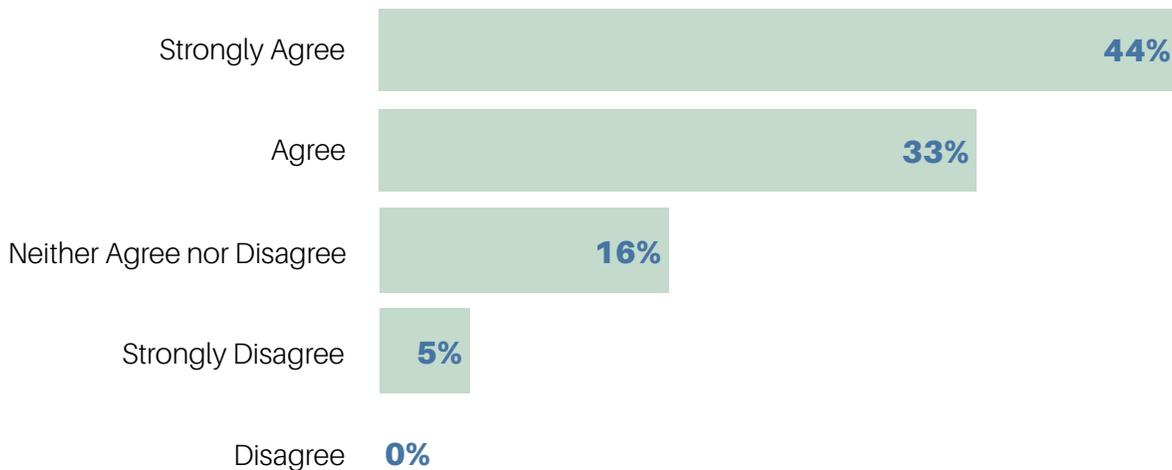


Source: AMCTO Bill 68 Survey, March 2017, n = 313

However, despite our support for certain measures of accountability and transparency that this legislation will introduce, we are concerned about what seems to be a disproportionate focus in Bill 68 on accountability and transparency, relative to other areas of municipal business and operations. In this way, Bill 68 is largely consistent with other major municipal policy constructed by the province over the past 10 years, which has also carried a disproportionate focus on accountability and transparency and peddled the dubious narrative that municipalities lack accountability. For example, the province’s last review of the *Municipal Act* in 2006 was also deeply influenced by accountability and transparency. Bill 130, introduced in 2006, required municipalities to adopt accountability and transparency regimes with a mix of mandatory and voluntary elements (Alcantara et al., 2012, 113). Similarly, in 2014 the province passed Bill 8, the *Public Sector and MPP Accountability and Transparency Act*, a wide-ranging piece of legislation that enacted broad provincial oversight over matters that had previously been the sole discretion of municipalities (Mascarin and Dean, 2015, 8).

Figure 2:

Do you agree that municipalities should be required to adopt codes of conduct for their local boards?



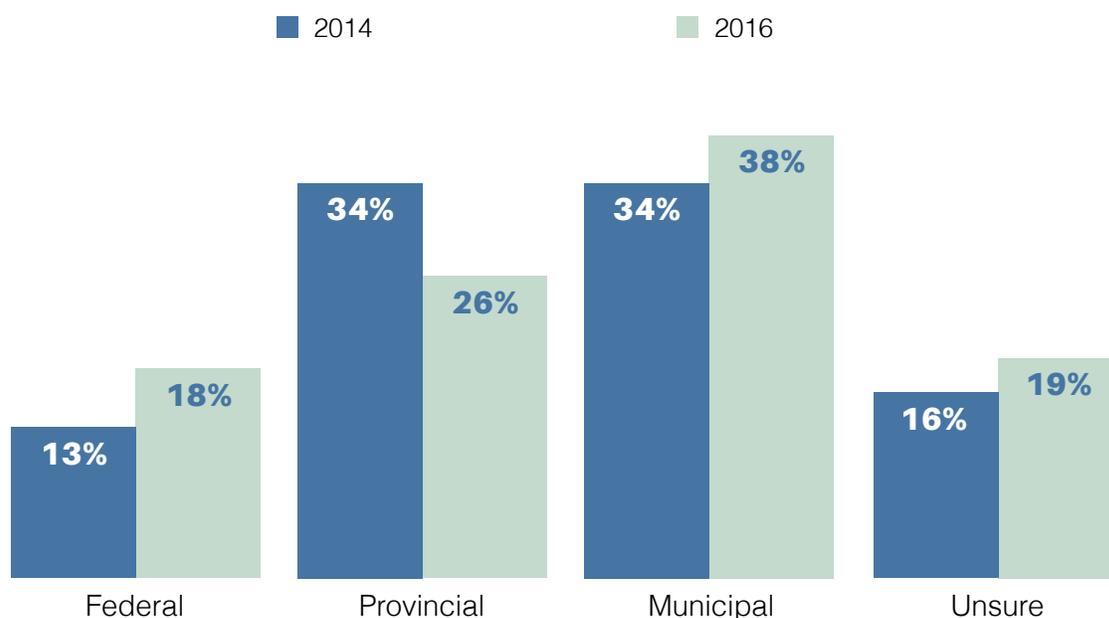
Source: AMCTO Bill 68 Survey, March 2017, n = 313

Yet, despite negative media portrayals of municipalities, a reasonable case can be made that local governments are the most transparent order of government in Canada (Muller, 2016, 5). While parliament and provincial legislatures maintain their right to meet in secret—and usually do (Sancton, 2015, 428)—the *Municipal Act* requires that all municipal council meetings be open to the public by default, and only held behind closed doors in a limited number of circumstances. In contrast, most decisions made by the provincial and federal governments happen in cabinet or caucus meetings that are closed to the public. A municipal government that attempted to operate in a similar fashion would be found in contempt of the *Municipal Act*, and publicly reprimanded.

Municipalities have also consistently scored higher on measures of public trust than other levels of government. For instance, an Ipsos Reid poll conducted in 2012 found that 57% of Canadians trust their local municipal government more than the federal government or their respective provincial government, while 55% said that they saw their tax dollars being put to better use by their municipal government than the federal government (Global, 2012). Research conducted by Nanos in 2014 and 2016 also found that Ontarians viewed their municipality as the most responsive level of government in Canada (Figure 3).

Figure 3:

Most Responsive Level of Government in Canada, 2014-2016:



Source: Nanos Research

Ontario's municipalities are not free from the unethical behaviour and corruption that afflicts governments everywhere. But they are also no less accountable or transparent than the governments of Ontario or Canada, and in many cases, appear to be more so. That's why it is concerning for us, and many others in the sector, that the province continues to legislate as though municipalities are a threat to accountable governance, rather than strong examples of it. 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 municipal governance.

In the case of Bill 68, while we support many of the measures in this bill, other proposals appear to be solutions in search of a problem. As with Bill 130 and Bill 8 before it, some of the measures in Bill 68 seem to have been motivated by bad headlines and anecdotes, rather than extensive information and detailed analysis. The consequences for municipalities are nevertheless significant. The provisions associated with accountability and transparency in Bill 68 will have administrative and financial costs. These will be significant, but not as damaging as the potential reputational harm that this bill could cause to the trust that Ontarians have in their local governments. The provisions around integrity commissioners are especially noteworthy. Accountability officers, such as integrity commissioners, have a considerable ability to influence public opinion about the performance of municipal officials, often to a degree that is significant enough to influence the electoral fortunes of elected officials and the

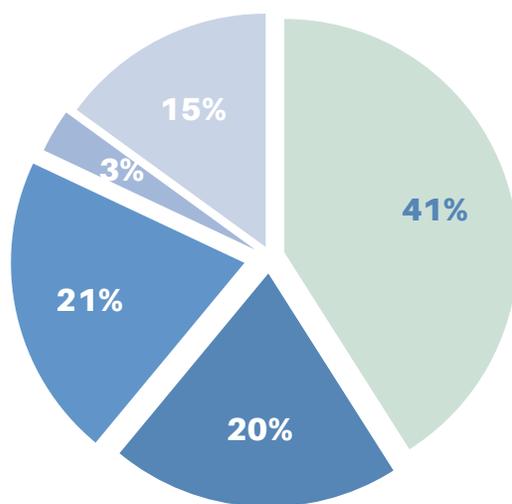
career prospects of public servants (Sancton, 2017, 1). Yet, the loss of faith in government, expressed by many Canadians, is not simply a question of electoral viability for municipal politicians or career longevity for public servants—it is about compromising the very centre of democratic legitimacy and raises questions about the effectiveness of the institutions that give voice to the democratic will (Lynch, 2015, 1).

Fiscal Sustainability

Our other broad concern with this bill relates to its failure to address the precarious fiscal position that many municipalities find themselves in. For most of Ontario’s local governments, the services they offer are becoming more complex, expansive and expensive to administer. In many communities, municipal officials are concerned that they will no longer be able to deliver high quality services for their citizens with their existing sources of revenue. The range of services that municipalities are responsible for delivering, from wastewater, to roads, transit, social services, and public safety, has led many to argue that the current sources of revenue that municipalities have access to are not sufficient or appropriate for funding municipal business (Kitchen and Slack, 2016, 1).

Figure 4:
Sources of Municipal Revenue (2014)

● Property Taxes ● User Fees ● Transfers ● Licenses and Permits ● Other Revenues



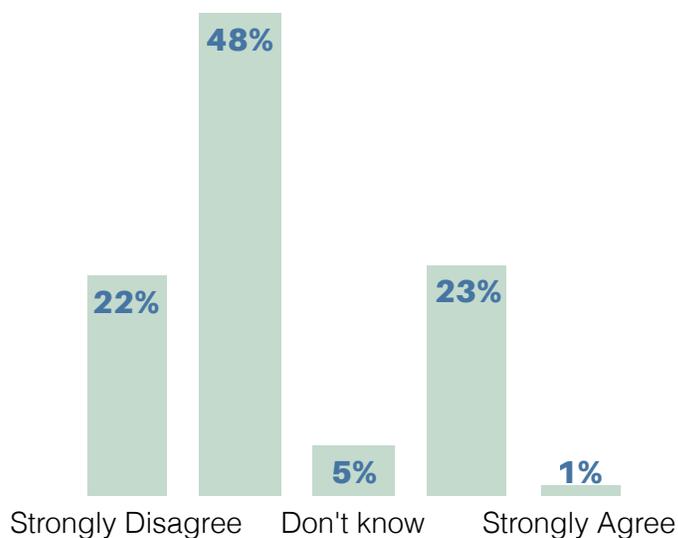
Source: Ministry of Municipal Affairs and Housing, Financial Information Returns, 2015

Most local governments have limited sources of revenue (Figure 4), and still fund the majority of their operations and services using property taxes (Slack et al., 2013, 3), which are subject to shifting political pressures and widely unpopular amongst residents. The use of conditional transfers are an important stopgap, but they often

come with mandated service standards, cumbersome reporting requirements and little predictability.

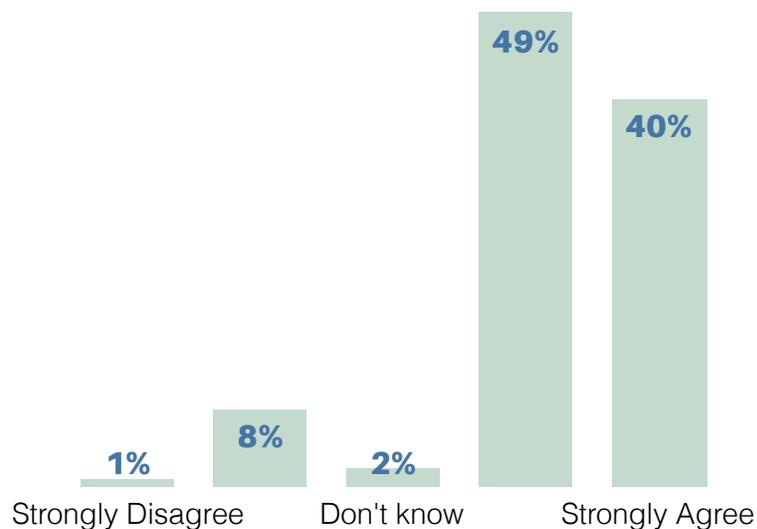
Across the world there is a growing recognition that local government's need to have greater control over their financial destiny. Countries such as France, Ireland, and the Slovak Republic are all reforming their local government taxation systems to give municipalities greater fiscal responsibility and stronger, more predictable streams of revenue (Cote and Fenn, 2014, 20). As seen in Figure 5, most municipal public servants surveyed by AMCTO do not believe that municipalities are fiscally sustainable and close to 90% believe that municipalities need access to new revenue tools (Figure 6).

Figure 5:
Municipalities are Fiscally Sustainability



Source: AMCTO Pre-budget Survey, November 2016. n = 321

Figure 6:
Municipalities in Ontario Need New Revenue Tools



Source: AMCTO Pre-budget Survey, November 2016, n = 321

The fiscal challenges faced by the province's local government are complex, and there is no single solution. Large cities are not confronting the same problems as those faced by small communities. The shared challenge is that both need greater flexibility to generate revenue. Rather than imposing a blanket solution to the fiscal challenges faced by municipalities, we have continually advocated for the government to look at giving municipalities access to a

range of new sources of revenue, and allowing each community to decide what's right for them. This recommendation has been in our last two pre-budget submissions, and our submission on the *Municipal Act* in 2015, where we joined the Association of Municipalities Ontario (AMO) and the Municipal Finance Officers Association (MFOA) in urging the government to give municipalities new revenue tools.

This bill does very little to address the fiscal concerns of local governments. While it includes some measures that we support and believe are important, such as its expansion of Prudent Investor Status, and a number of technical changes to tax and revenue collection, these are relatively minor when viewed within the context of the budget shortfalls that municipalities are projected to face in the future.¹ Moreover, many of the positive changes in fiscal policy contained in Bill 68 are likely to be completely or partially offset by the new unfunded mandates included in this legislation, which are likely to drive costs up for municipalities. For small municipalities, the problems are especially significant, as the costs for many of the provisions in Bill 68, such as hiring an integrity commissioner are not relative to a municipality's size. Small municipalities will have to pay retainers and per/hour investigative rates that are the same or comparable those in larger communities.

BOX 1: Reducing the Administrative Burden on Municipalities

While municipalities need new sources of revenue, there is much that the government can also do to enable local governments to be more effective and efficient. One of the ways that the province could reduce the administrative burden on municipalities is to reduce the reporting burden that most local governments carry. In February of 2017 AMCTO published *Bearing the Burden: An Overview of Municipal Reporting to the Province*, a research report that argued that far from achieving the goals of good governance and accountability, municipal-provincial reporting is hindering the ability of municipalities to function like responsible orders of government. This report is available on the AMCTO website.

One of the areas that is likely to lead to increased and unpredictable costs for municipalities is the new regime for integrity commissioners (see figure 7). While it is difficult to predict the full fiscal impact of these changes at this point,² there are some troubling examples that we can point to. From our research we know that retainers for an integrity commissioner alone can range from \$305 to \$12,000 per year. One municipality paid a \$10,000/year retainer even though their IC didn't conduct a single investigation (Strader, 2014). In municipalities where the integrity commissioner has conducted investigations, the costs are often high, especially for smaller communities. Another municipality with a population of approximately 18,000 and only \$18 million in own-source revenue spent \$46,000 on their integrity commissioner in one year, including \$23,700 in November and December of that year alone (Adams, 2017). Individual

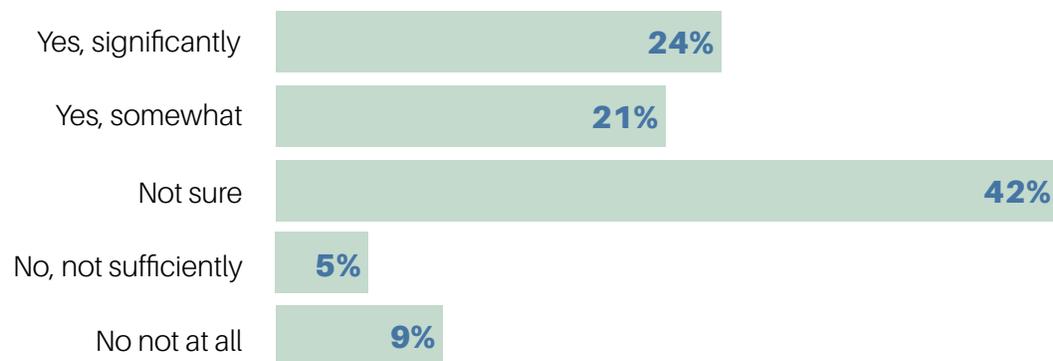
¹ For more on this topic see AMO's What's Next Ontario project.

² Costs associated with many of the new provisions, such as allowing ICs to conduct investigations are their "own initiative, are very difficult to project.

investigations can also be costly. One 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 (Helmer, 2017). Another IC investigation costs a medium-size municipality \$10,000 for having their IC “conduct a review” of a single media article (Guelph Mercury, 2012).

Figure 7:

In your opinion, are the changes to ICs outlined in Bill 68 likely to affect how much your municipality spends on its IC?



Source: AMCTO Bill 68 Survey, March 2017, n = 313

The province needs to address the fiscal challenges facing the municipal sector, for the sole reason that municipalities are not legislatively empowered to do so themselves. There are a range of options from other jurisdictions, from new service charges, such as those possessed by the City of Toronto, to a dedicated share of provincially-administered taxes. The government continues to indicate that it is waiting to hear from the sector on new revenue tools, but the sector has been clear. In this review and yearly as part of the budget process, municipalities, associations, and other stakeholders have identified a range of options for the government. It is time for the government to act.

III. RECOMMENDATIONS

RECOMMENDATION 1: Include principles for how ICs conduct their duties (and investigations) either in the legislation or in a separate regulation

One of the most significant changes proposed in Bill 68 is the new regime it would create for integrity commissioners. As seen in Box 2, in addition to requiring that all municipalities provide their citizens access to an IC, the bill would also significantly expand the role of integrity commissioner, broadening it to include oversight of the *Municipal Conflict of Interest Act*

(MCIA) and allowing ICs to recommend a wider range of sanctions.

These changes will dramatically alter the landscape for ICs in Ontario. Currently the majority of municipalities in Ontario don't have an integrity commissioner (see Figure 8). Even for those municipalities that already have an IC, Bill 68 will nevertheless usher in a period of transition and change. The role of integrity commissioner in Ontario is still largely undefined, and there is little consistency in how ICs conduct investigations, review complaints, and view their role. However, while this bill drastically expands the powers and responsibilities of ICs, it is largely silent on what principles should guide ICs as they discharge their duties.

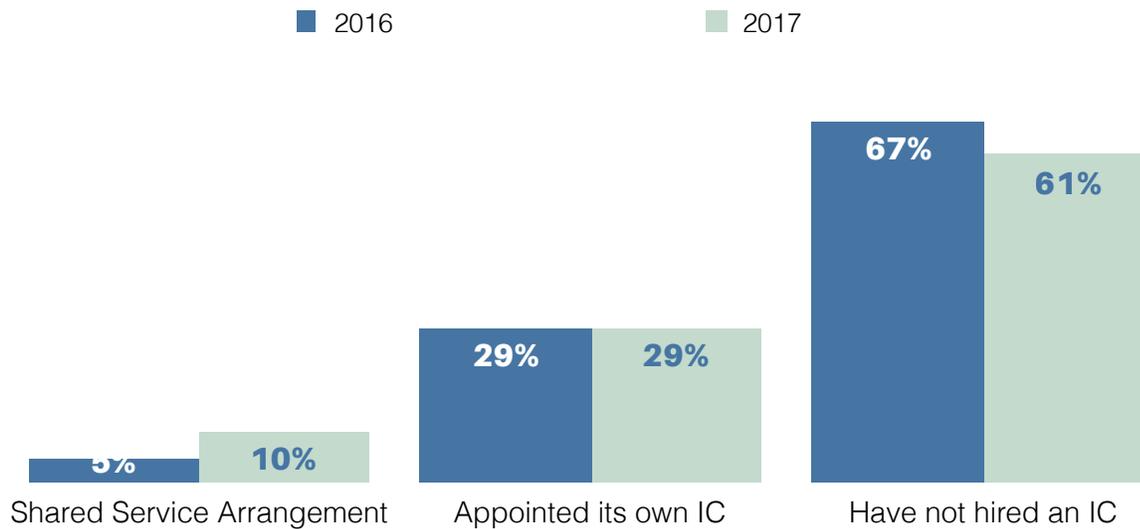
BOX 2: Changes to the Municipal Integrity Commissioner Regime

1. All municipalities will be required to provide access to an integrity commissioner
2. The role of the IC would be expanded to include the application of the Municipal Conflict of Interest Act (MCIA)
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 to a judge

Ombudsmen, by contrast, are guided by a set of broad principles. For instance, the Forum of Canadian Ombudsman (FCO), has a *Statement of Ethical Principles* that sets key principles and values to which Ombuds should adhere (Appendix A). The Statement declares that Ombuds' conduct should be rooted in the principles of fairness and natural justice. It goes on to instruct them to take into account relevant laws and regulation as well as to ensure that her or his actions promote transparency and accountability. Similarly, the International Ombudsman Association (IOA) has 27 standards of practice (Appendix B). They cover a range of issues including neutrality, impartiality, confidentiality, and informality. Standard 1.1 dictates that Ombuds must be independent, 2.1 that they are neutral, impartial, and unaligned, and 2.5 that a basic standard of an investigation is that an Ombudsperson will "consider the legitimate concerns and interests of all individuals affected by the matter under consideration." While many of broad principles outlined by the FCO and IOA many seem obvious, there are already numerous examples in Ontario where ICs, in the course of discharging their duties, have failed to uphold these basic standards. In several cases in Ontario integrity commissioners have not adequately distinguished between their advisory and investigative roles, not interviewed all the subjects implicated in an investigation, and inconsistently applied sanctions to councillors found to have violated their code of conduct.³

³ For examples see: Reevely, David, "Ontario's freelance integrity commissioners indulge some sloppy politicians," *Ottawa Citizen*, November 3, 2016; Schliesmann, Paul, "Integrity commissioner rules city councillor had conflict," *Kingston Whig-Standard*, July 11, 2016; Simpson, Barbara, "Sarnia Mayor Mike Bradley must 'change his ways for the good of the City of Sarnia,' says integrity commissioner," June 24, 2016; Adams, Ian, "Wasaga integrity commish bill tops \$40,000 for 2016," *Simcoe.com*, February 26, 2017

Figure 8:
Adoption of Municipal Integrity Commissioners, 2016-2017:



Source: AMCTO/AMO Bill 8 Survey, January 2016, n = 143 and AMCTO Bill 68 Survey, March 2017, n = 313

The integrity commissioner role is difficult, and the issues that ICs frequently deal with are very complex. Most often integrity commissioners are examining the ethical behaviour of individual councillors, a fraught topic about which most citizens will have strong opinions, and may even feel qualified to make their own judgements (Sancton, 2017, 6). Given this context, it is crucial that their investigations are grounded in a clear set of guiding assumptions that can be applied uniformly. We believe that if Bill 68 is going to be successful, it needs to include principles for how integrity commissioners will conduct their duties; principles that can be exercised by ICs consistently across the province. It is unreasonable to forcefully expand the role of the integrity commissioner without first setting out in legislation the basic principles for how that role should be practiced. If the province does not set out such basic principles, the implementation of Bill 68's new powers for integrity commissioners will be characterized, not by enhanced accountability, transparency or good governance, but by a patchwork of approaches and inconsistently applied outcomes.

RECOMMENDATION 2: Remove the provisions from Bill 68 that would allow an integrity commissioner to launch an investigation on their "own initiative"

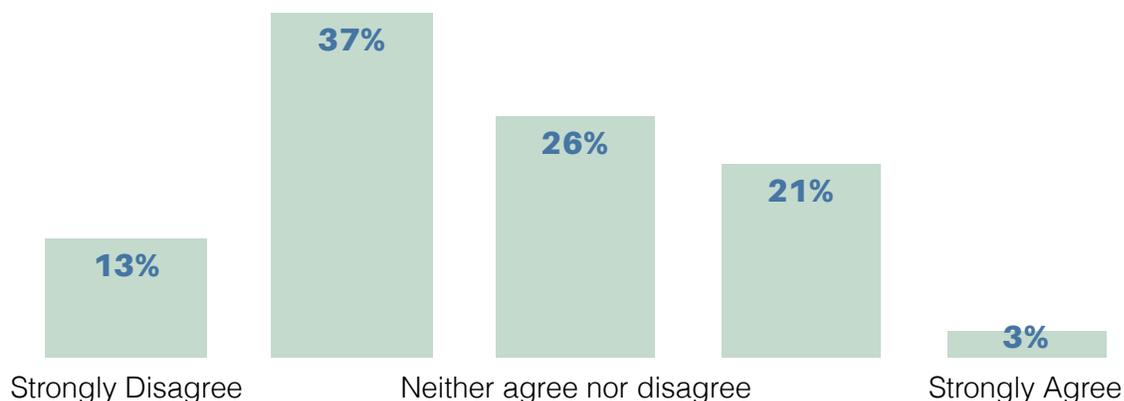
As part of its expansion of the role of integrity commissioner, Bill 68 would also give ICs the power to initiate investigations on their own initiative. As seen in Figure 9, AMCTO members are

uncomfortable and unsure about this provision, and we have serious concerns with its inclusion in Bill 68.

One of the most important roles that ICs play is to educate and inform council and provide advice to councillors and the council itself about potential conflicts or violations of the code of conduct (Fleming, 2016). In fact, some recently published research suggests that advising councillors in confidence about how to respond to perceived ethical dilemmas is how integrity commissioners spend most of their time and effort (Sancton, 2017, 6).

Figure 9:

Do you agree that ICs should be able to conduct investigations on their own initiative?



Source: AMCTO Bill 68 Survey, March 2017, n = 313

Allowing ICs to initiate investigations on their own initiative, however, could jeopardize this important role. It could place individual integrity commissioners in an awkward position where they are at the same time looking for evidence of wrongdoing to form the basis of new investigations, while also providing advice to members of council who may disclose a potential incident of wrongdoing. We believe that this could have a chilling effect, and reduce rather than enhance accountability in municipalities. If members of council are concerned that information they may disclose to an IC could potentially be used in an investigation being launched by an IC, they may be less likely to seek the advice of that IC in the first instance. It will make it difficult for councillors to determine when they talk to an IC whether they are investigating or advising, or doing both at the same time. This dilemma is precisely why the City of Calgary has appointed an ethics advisor as well as an ethics commissioner—one to provide advice and the other to conduct investigations (Sancton, 2017, 9). While such a formal separation is not likely necessary in Ontario, much of the risk could be mitigated by ensuring that integrity commissioners are not able to conduct investigations on their own initiative,

effectively separating the advising and investigating functions. There is already one example in Ontario where the integrity of an integrity commissioner was called into question by providing advice to two members of council while simultaneously investigating their conduct (Sancton, 2017, 8-9).

We believe that it is in the best interests of integrity commissioners, municipal councillors, and the general public for the government to remove the provision of Bill 68 that allows integrity commissioners to initiate investigations on their own initiative. The role that an integrity commissioner plays advising members of council on contentious or unclear issues of ethical behaviour is too important to risk compromising by also giving ICs the responsibility of launching investigations on their own initiative.

***RECOMMENDATION 3:
Remove closed meeting
exception “K” from the list of
added circumstances in
section 239 where councils
can move into closed session***

During the government's review of the *Municipal Act* in 2005, the issue of closed meetings and closed meeting investigations was one of the primary concerns identified by the municipal sector. Bill 68 introduces a new definition of a meeting. As proposed in the current draft, a meeting would occur whenever there is (1) a quorum of council members; (2) if those present discuss issues in a way that “materially advances” the business or decision making of council.

Bill 68 also adds a number of new exemptions for when council meetings could go into closed session (Box 3).

Section 239(2) of the *Municipal Act* allows a municipality to hold a meeting or part of a meeting behind closed doors if it conforms to one of a series of proscribed situations. Bill 68 would add four new exceptions to the seven that are currently contained in the *Municipal Act*.

In our 2015 submission on the *Municipal Act* we recommended that the government review the circumstances where council can meet in closed session. Our recommendation was premised

**BOX 3: Additional 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.

on the belief that given the high-profile and scrutiny of closed-meeting investigations, this was not a section of the *Act* that benefited from ambiguity. While we welcome the flexibility that the additional closed meetings provide, we do have some concerns, especially exemption “K.”

The problem with exemption “K” is that it is simply too broad. It is worded so loosely that it is prone to misuse and abuse. Over the past ten years municipalities have adapted to the open meeting regime in Ontario, and now conduct the vast majority of their business in public. If the government moves forward with exemption “K” it risks losing that momentum. As an organization that is committed to promoting ethics and accountability, we believe that closed meeting exemption “K” must be removed from Bill 68. It is too broad, too prone to abuse, and too likely to reduce the level of transparency that currently exists in municipalities.

RECOMMENDATION 4: Keep the current date for starting a new session of council as December 1st

Bill 68 also proposes changing the start of a new session of council from December 1st to November 15th. While we know that this change is designed to shorten the lame duck period, we have heard from many municipalities that it will create administrative, logistical, and governance challenges. For many municipalities, the transition between elections is already logistically challenging. Following an election, staff are busy preparing for the new session of council. These preparations range from the complex (potentially conducting recounts, creating orientation materials and onboarding procedures) to the mundane (painting offices, buying new computers).

BOX 4: New Municipal Responsibilities Proposed in Bill 68

- Create and adopt codes of conduct for council and all local boards
- Develop procedures for how to report back on how the municipality will address a closed-meeting investigation
- Hire an integrity commissioner
- Create a registry that tracks all registered conflicts of interest
- Develop a policy on council-staff relations
- Develop a policy for protection of a municipality’s tree canopy

If the date for beginning a new session of council is moved forward to November 15th, local governments of all sizes could face challenges. While we have heard from some municipalities that shortening the lame duck period is a priority, there seems to be a stronger policy rationale for leaving the date for the start of a new session of council as December 1st, rather than moving it forward.

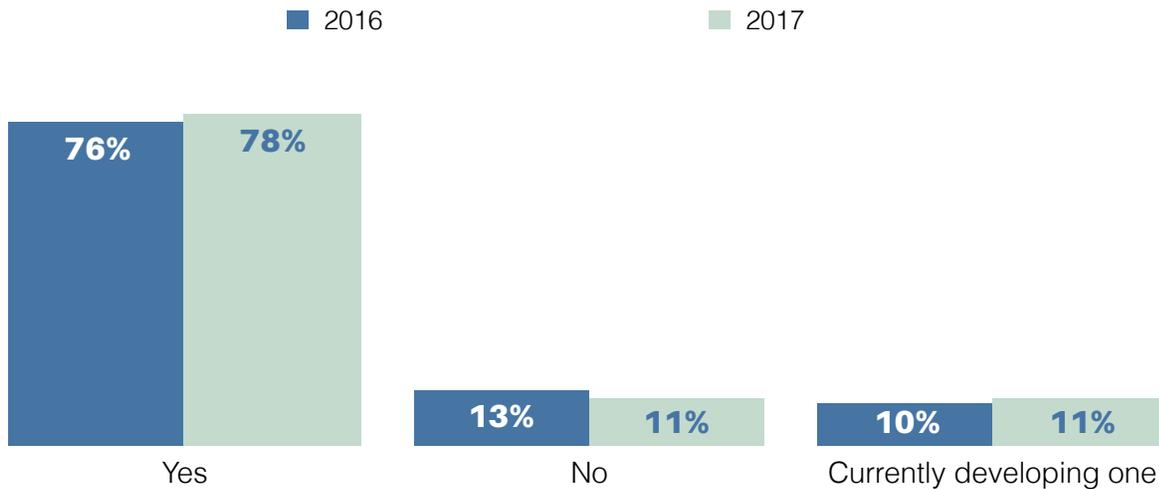
RECOMMENDATION 5: Establish a lengthy transition period before Bill 68 is proclaimed

Our final recommendation concerns the period in between the passage and implementation of Bill 68. We believe that this bill needs a lengthy transition period before it enters into force. The

reason is simple: the amount of work that this bill requires municipalities to do is significant (see Box 4).

Figure 10:

Does your municipality have a code of conduct for council?

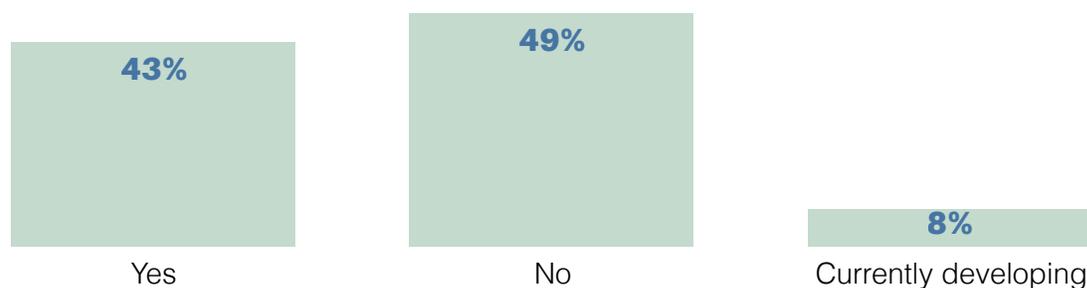


Source: AMCTO/AMO Bill 8 Survey, January 2016, n = 143 and AMCTO Bill 68 Survey, March 2017, n = 313

All communities, but especially smaller municipalities, will need enough time to develop new policies, hire integrity commissioners, and develop new codes of conduct. As seen in Figure 8, research done in 2016 by AMCTO/AMO and in 2017 by AMCTO indicates that far fewer than half of all municipalities currently have an integrity commissioner. Similarly, more than 20% of municipalities don't have a code of conduct for council, and more than half do not have codes of conduct for their local boards (Figure 10 and Figure 11). All municipalities will need significant time to adjust to the changes ushered in by Bill 68.

Figure 11:

Does your municipality have a code of conduct for its local boards? (2017)



Source: AMCTO Bill 68 Survey, March 2017, n = 313

IV. SOURCES:

Adams, Ian, "Wasaga integrity commish bill tops \$40,000 for 2016," Simcoe.com, February 26, 2017.

Alcantara, Christopher, Roberto Leone, and Zachary Spicer, "Responding to Policy Change from Above: Municipal Accountability and Transparency Regimes in Ontario," *Journal of Canadian Studies*, Vol. 46, No. 1, 2012.

AMCTO/AMO Bill 8 Survey, January 2016, n = 143

AMCTO Pre-budget Survey, November 2016, n = 321

AMCTO Bill 68 Survey, March 2017, n = 313

Cote, Andre and Michael Fenn, "Approaching an Inflection Point in Ontario's Provincial-Municipal Relations," *IMFG Perspectives*, No. 6, 2014.

Fleming, John, "Complaints in Rural Municipalities: The Role of the Ontario Ombudsman and the Integrity Commissioner," Conference Presentation at the 2017 Rural Ontario Municipal Conference, January 30, 2017: <https://www.roma.on.ca/ROMA-Docs/Conference/2017-Presentations/Monday/ComplaintsinRuralMunicipalitiesJohnFleming.aspx>

Global News, "Canadians trust municipal powers more than fed gov't, poll shows," July 2, 2012.

Guelph Mercury, "Guelph paying more than \$10k for integrity commissioner report," July 12, 2012.

Helmer, Aedan, "Rift between Carleton Place mayor and councillor 'damaging the town,' integrity commissioner warns," *Ottawa Citizen*, February 24, 2017.

Kitchen, Harry and Enid Slack, "New Tax Sources for Canada's Largest Cities: What are the Options?" *IMFG Perspectives*, No. 15, 2016.

Lynch, Kevin, "Restoring balance and respect in our system of governance," Policy Brief--Johnson Shoyama Graduate School of Public Policy, November 2015.

Mascarin, John and Laura Dean, "Bill 8 Or: how Municipalities Learned to Stop Worrying About Oversight and Love the Ombudsman," *The Six Minute Municipal Lawyer 2015*, Law Society of Upper Canada, May 2015.

Ministry of Municipal Affairs and Housing, *Financial Information Returns*, 2015

Muller, Eric, "Municipal Accountability and Transparency In the Wake of Bill 8," *AMCTO Policy and Management Briefs*, Issue 04, May 17, 2016.

Reevely, David, "Ontario's freelance integrity commissioners indulge some sloppy politicians," *Ottawa Citizen*, November 3, 2016

Sancton, Andrew, "Accountability Officers and Integrity in Canadian Municipal Government," IMFG Perspectives, No. 17, 2017.

Sancton, Andrew, "What is a meeting? Municipal councils and the Ontario ombudsman," Canadian Public Administration, Vol. 58, No.3, September 2015.

Schliesmann, Paul, "Integrity commissioner rules city councillor had conflict," Kingston Whig-Standard, July 11, 2016

Simpson, Barbara, "Sarnia Mayor Mike Bradley must 'change his ways for the good of the City of Sarnia,' says integrity commissioner," June 24, 2016

Slack, Enid et al., "Fiscal Health of Ontario's Large Cities: Is There Something to Worry About?" Draft Paper, Conference on Measuring Urban Fiscal Health, Institute of Municipal Finance and Governance, 2013.

Strader, Matthew, "Having an integrity commissioner with no cases creates a headache for Caledon council," Caledon Enterprise, December 11, 2014.

APPENDIX A: Forum of Canadian Ombudsman Statement on Ethical Principles



(Approved by the Membership at the Annual General Meeting, June 2014)

The purpose of this document is to confirm the key principles and values to which Ombudsman/person (Ombuds) should adhere and to provide ethical guidance to FCO members who occupy an Ombuds role or work in an Ombuds Office.

INTRODUCTION

In the exercise of their role, Ombuds shall promote and abide by the values of justice, fairness, equity, respect, empathy, honesty, rigour and transparency. The Ombuds shall hold him/herself to the highest standards in the areas of independence, impartiality, fairness, confidentiality and credibility.

INDEPENDENCE

The Ombuds should be clearly and visibly independent in purpose, administration and decision-making, from the institution / organization/ government administration about which it has the mandate to receive complaints.

An Ombuds should serve only in this one capacity within the institution / organization/ government administration and should not have any decision making role therein. Information regarding the Ombuds' mandate, sources of funding, method of appointment and reporting rules shall be publicly-available.

IMPARTIALITY

The Ombuds reviews all information in an objective manner and without bias. He/she remains impartial and unaligned, in fact and perception and acts only to identify and address fairness concerns.

An Ombuds shall not engage in any activity which could possibly lead to a possible conflict of interest. If any such situation arises, the Ombuds shall immediately declare it and refrain from intervening in any way with regard to the situation or file.

FAIRNESS

The Ombuds' conduct is rooted in the principles of fairness and natural justice and he/she shall act accordingly. The Ombuds considers fairness to be a factor of process, interpersonal relations and outcome. He/she pursues resolution of conflict using the approach that is appropriate to the circumstances, taking into account the relevant law and regulations, the general principles of good administration and good practice, professional standards and any relevant Code of conduct that may apply.

CONFIDENTIALITY

The Ombuds shall hold in confidence all private communications, documents and other information received in the course of his/her interventions subject, however, to the needs of the investigation/intervention and the requirements of the law. The extent and limits of his/her confidentiality duty shall be clearly explained.

The Ombuds shall take all reasonable steps to safeguard such confidentiality. He/She shall vigorously resist attempts to compel disclosure of such information, in any judicial or administrative hearing or inquiry.

CREDIBILITY

The Ombuds shall act in good faith. His/Her behaviour and mode of operation shall be such as to strengthen the integrity and effectiveness of the Ombuds' process. The Ombuds shall act so as to be recognized and respected by other members of the Ombuds community including the Forum of Canadian Ombudsman and by the constituents who are served. The Ombuds reports on its activities and on how the resolution of disputes is undertaken in whatever forum is appropriate given the circumstances, so as to promote transparency and accountability.

APPENDIX B: International Ombudsman Association Standards of Practice



PREAMBLE

The IOA Standards of Practice are based upon and derived from the ethical principles stated in the IOA Code of Ethics.

Each Ombudsman office should have an organizational Charter or Terms of Reference, approved by senior management, articulating the principles of the Ombudsman function in that organization and their consistency with the IOA Standards of Practice.

STANDARDS OF PRACTICE:

INDEPENDENCE

1.1 The Ombudsman Office and the Ombudsman are independent from other organizational entities.

1.2 The Ombudsman holds no other position within the organization which might compromise independence.

1.3 The Ombudsman exercises sole discretion over whether or how to act regarding an individual's concern, a trend or concerns of multiple individuals over time. The Ombudsman may also initiate action on a concern identified through the Ombudsman's direct observation.

1.4 The Ombudsman has access to all information and all individuals in the organization, as permitted by law.

1.5 The Ombudsman has authority to select Ombudsman Office staff and manage Ombudsman Office budget and operations.

NEUTRALITY AND IMPARTIALITY

2.1 The Ombudsman is neutral, impartial, and unaligned.

2.2 The Ombudsman strives for impartiality, fairness and objectivity in the treatment of people and the consideration of issues. The Ombudsman advocates for fair and equitably administered processes and does not advocate on behalf of any individual within the organization.

2.3 The Ombudsman is a designated neutral reporting to the highest possible level of the organization and operating independent of ordinary line and staff structures. The Ombudsman should not report to nor be structurally affiliated with any compliance function of the organization.

2.4 The Ombudsman serves in no additional role within the organization which would compromise the Ombudsman' neutrality. The Ombudsman should not be aligned with any formal or informal associations within the organization in a way that might create actual or perceived conflicts of interest for the Ombudsman. The Ombudsman should have no personal interest or stake in, and incur no gain or loss from, the outcome of an issue.

2.5 The Ombudsman has a responsibility to consider the legitimate concerns and interests of all individuals affected by the matter under consideration.

2.6 The Ombudsman helps develop a range of responsible options to resolve problems and facilitate discussion to identify the best options.

CONFIDENTIALITY

3.1 The Ombudsman holds all communications with those seeking assistance in strict confidence and takes all reasonable steps to safeguard confidentiality, including the following: The Ombudsman does not reveal, and must not be required to reveal, the identity of any individual contacting the Ombudsman Office, nor does the Ombudsman reveal information provided in confidence that could lead to the identification of any individual contacting the Ombudsman Office, without that individual's express permission, given in the course of informal discussions with the Ombudsman; the Ombudsman takes specific action related to an individual's issue only with the individual's express permission and only to the extent permitted, and even then at the sole discretion of the Ombudsman, unless such action can be taken in a way that safeguards the identity of the individual contacting the Ombudsman Office. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm, and where there is no other reasonable option. Whether this risk exists is a determination to be made by the Ombudsman.

3.2 Communications between the Ombudsman and others (made while the Ombudsman is serving in that capacity) are considered privileged. The privilege belongs to the Ombudsman

and the Ombudsman Office, rather than to any party to an issue. Others cannot waive this privilege.

3.3 The Ombudsman does not testify in any formal process inside the organization and resists testifying in any formal process outside of the organization regarding a visitor's contact with the Ombudsman or confidential information communicated to the Ombudsman, even if given permission or requested to do so. The Ombudsman may, however, provide general, non-confidential information about the Ombudsman Office or the Ombudsman profession.

3.4 If the Ombudsman pursues an issue systemically (e.g., provides feedback on trends, issues, policies and practices) the Ombudsman does so in a way that safeguards the identity of individuals.

3.5 The Ombudsman keeps no records containing identifying information on behalf of the organization.

3.6 The Ombudsman maintains information (e.g., notes, phone messages, appointment calendars) in a secure location and manner, protected from inspection by others (including management), and has a consistent and standard practice for the destruction of such information.

3.7 The Ombudsman prepares any data and/or reports in a manner that protects confidentiality.

3.8 Communications made to the ombudsman are not notice to the organization. The ombudsman neither acts as agent for, nor accepts notice on behalf of, the organization and shall not serve in a position or role that is designated by the organization as a place to receive notice on behalf of the organization. However, the ombudsman may refer individuals to the appropriate place where formal notice can be made.

INFORMALITY AND OTHER STANDARDS

4.1 The Ombudsman functions on an informal basis by such means as: listening, providing and receiving information, identifying and reframing issues, developing a range of responsible options, and – with permission and at Ombudsman discretion – engaging in informal third-party intervention. When possible, the Ombudsman helps people develop new ways to solve problems themselves.

4.2 The Ombudsman as an informal and off-the-record resource pursues resolution of concerns and looks into procedural irregularities and/or broader systemic problems when appropriate.

4.3 The Ombudsman does not make binding decisions, mandate policies, or formally adjudicate issues for the organization.

4.4 The Ombudsman supplements, but does not replace, any formal channels. Use of the Ombudsman Office is voluntary, and is not a required step in any grievance process or organizational policy.

4.5 The Ombudsman does not participate in any formal investigative or adjudicative procedures. Formal investigations should be conducted by others. When a formal investigation is requested, the Ombudsman refers individuals to the appropriate offices or individual.

4.6 The Ombudsman identifies trends, issues and concerns about policies and procedures, including potential future issues and concerns, without breaching confidentiality or anonymity, and provides recommendations for responsibly addressing them.

4.7 The Ombudsman acts in accordance with the IOA Code of Ethics and Standards of Practice, keeps professionally current by pursuing continuing education, and provides opportunities for staff to pursue professional training.

4.8 The Ombudsman endeavors to be worthy of the trust placed in the Ombudsman Office.
www.ombudsassociation.org

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