

TANTRAMAR

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Reference No. 2023-27

June 5, 2023

Honourable Minister Daniel Allain
Local Government and Local Governance Reform (LGLGR)
Via Email: Daniel.Allain@gnb.ca

RE: Bill 45 – Local Governance Commission Act

Dear Minister Allain:

On behalf of the Council of Tantramar please accept this letter which details our concerns regarding some aspects of the wording of Bill 45, currently before the Legislature. While the proposed *Local Governance Commission Act* (hereinafter the 'Act') has some benefits for municipalities, we feel the Act creates new levels of municipal oversight that are duplicative and unnecessary given the democratic and legally mandated role of municipal councils. We ask that you please consider the following:

Commission Mandate

1. Part 2, Section 4 of Bill 45 identifies five purposes/objectives of the Commission. Tantramar has questions with the first and last items as follows:
 - a. *"Provide support and assistance to local governments and regional service commissions"*. Bill 45 gives significant authority to the new Commission to oversee municipal matters. While the Act will create some land use protections, Bill 45 lacks the same accountability for the Commission that is expected of mayors and councillors. The public has a right to know how and why the Commission approaches its work. This is further addressed in our comments regarding Regulations below.
 - b. *"Perform any functions assigned to it by the Minister"*. This is a very broad statement. At what point will local governments be informed of new functions assigned to the Commission by the Minister? How will additional functions have authority? The Act should be transparent with respect to the intended role and purpose of the Commission, and we request that this open-ended purpose statement be removed.

Powers of the Commission

2. Information to the Commission: Section 15(1) states that "The Commission may at any time require a member of Council, a member of the board of directors of a regional service commission, or any officer or employee of a local government or regional service commission, as the case may be, to provide to the Commission any information relating to the affairs of the local government or regional service commission."
 - a. Does this mean the Commission has the authority to compel the disclosure of information from closed meetings held pursuant to subsection 68(1) of the *Local Governance Act* and that are otherwise protected through the *Local Governance Act* or the *Right to Information and Protection of Privacy Act*? If this is the intent, this is concerning given established authorities for local governments. If it is not the intent, the Act and associated Regulations should clarify same.

- b. As well, we note that municipal councils are comprised of members who operate as a whole, not individually, and as such any records or information of the local government should be requested from the Tantramar Clerk who is responsible to “keep the books, documents and records of the council” under the Local Governance Act.
- 3. Investigations into Breach of Code of Conduct and Alleged Conflict of Interest:
 - a. Sections 42(1) and 44 both state that if a matter pertaining to the respective issue “cannot be resolved under the *Local Governance Act*” ... “a person may request in writing that the Commission investigate...” the alleged complaint. It is unclear what this means and what process within the *LGA* is referred to. If a local government has completed an investigation pursuant to its own by-laws (e.g. code of conduct), and the result doesn’t suit the complainant, is the Commission process intended to provide the complainant with a second chance and new investigation of the same matter? In our view this scenario undermines and duplicates the work of the municipality.
 - b. The Act does not include any limitation period or timelines for the processing of such complaints and should be amended to address this.
- 4. Costs: The Commission determines the costs for investigations and has the ability/mandate to put these costs on the subject local government. These costs are potentially duplicative with alleged Code of Conduct and Conflict of Interest investigations as outlined above. It is also unclear how the Commission will be funded, and to what degree it may become desirable and/or necessary for the Commission to exercise its rights to investigate as a means of revenue generation.
- 5. Commission to conduct study and provide report respecting by-laws: When the Commission undertakes a study pursuant to Part 4, Section 76 (a request of a person to amend or repeal a municipal by-law) there appears to be no process to seek input/background/context regarding the nature of the application from the subject local government from which the by-law originated. Is it intended that the subject local government must be consulted as part of the Commission’s study and reporting process? This is currently unclear, and we request that the Act be amended to include this as a procedural requirement.
- 6. Applications to repeal or amend a by-law:
 - a. Subsection 20.2(1): It is noted that “a person may apply to the Minister to repeal or amend a by-law”. The meaning of “a person” is not defined in the proposed Act. Is it intended that this be limited to a property owner? The current language does not provide this clarification and in its current form appears to be too broad.
 - b. Subsection 20.2(3)(c) specifies that as one of the criteria for a person to apply to repeal or amend a by-law the person shall “provide evidence that the applicant has attempted, in good faith, to resolve the matter in dispute with the local government and is unable to bring about a resolution of the dispute”. We are unclear what process is intended to be used to “resolve the matter”? Local governments carry out processes in accordance with legislated frameworks (e.g. by-law amendments). Clarity is needed with respect to what process is expected of the applicant and/or the local government.

Powers of the Minister

1. Subsection 97(2) (S. 20.1) of the consequential amendments gives unilateral authority for the Minister to appeal or amend By-Laws made by a local government council. Furthermore, Subsection 97(2) (S. 20.2) allows a person to apply directly to the Minister to repeal or amend a by-law. The creation of legislation that grants a Minister unilateral authority to amend or repeal municipal by-laws is concerning and may be perceived as undermining the legislated authority of democratically elected municipal councils to make decisions in the public interest of their local constituents. In our view it is imperative that for the democratic protection of the role of municipal councils this section of the proposed Act be explicitly amended. We request that the Act be revised to ensure that all persons shall submit applications directly to the Commission.

Regulations

2. Tantramar's understanding is that further details regarding implementation of the Act will be provided in forthcoming Regulations. Lacking the benefit of reviewing draft Regulations prior to the passing of Bill 45, we suggest that the wording in Section 84 be amended from "the Lieutenant-Governor in council **may** make regulations" to "the Lieutenant-Governor in Council **shall** make regulations":
 - a. We strongly recommend that the regulations stipulate minimum qualifications for Commissioners that include municipal governance experience.
 - b. Regulations should specify that an impartial Registered Professional Planner (RPP) must be involved in all planning appeals and someone with heritage expertise must be involved in all heritage appeals.
 - c. Additionally, the regulations should include an accountability framework that ensures the public understands the manner in which the Commission is expected to conduct its work.

We acknowledge the challenging and timely work of LGLGR in carrying out further changes to facilitate the implementation of Local Governance Reform. However, we emphasize the importance of engaging local governments in the development of legislation and associated frameworks that directly affect our operations and daily work to effectively represent our citizens. As such, we are requesting a delay in the passing of Bill 45 until such time as your department have engaged local governments such as Tantramar in the development of this legislation so that it can be clear, concise, and supportive of the new municipal reality.

Thank you for your time and consideration of the concerns we have outlined. Please reach out to me, or Jennifer Borne, Chief Administrative Officer, if you have questions or would like to further discuss.

Sincerely,



Andrew Black
Mayor, Tantramar

cc: Ryan Donaghy, Deputy Minister, LGLGR
Members of Tantramar Council
Jennifer Borne, Chief Administrative Officer