

Legal and statutory obligations

Bill 39

Greater Powers for Municipalities

Nearly two years after its assent, the *Act to amend the Act respecting municipal taxation and other legislative provisions* (Bill 39) continues to reveal certain nuances in the new powers granted to municipalities. The *Municipal Powers Act* (MPA), which clearly defines jurisdiction over housing, now gives municipalities and RCMs significant leverage in certain cases, particularly in the housing sector. To clarify the main opportunities and obligations associated with these new provisions, *Scribe* spoke to Michelle Audet-Turmel, a lawyer at Tremblay Bois.

These changes have come at just the right time, providing municipalities with greater flexibility in the context of Québec's housing crisis, which affects everyone. This recognition, which was already outlined in the *Cities and Towns Act* and the *Municipal Code of Québec*, is now enshrined in the MPA and has expanded housing-related powers.

"Municipalities can provide financial assistance for transitional housing for people in need; increase or maintain the supply of social, affordable, or student housing; promote the construction or development of rental units (except for tourist accommodation); or support the acquisition of land for new residents," says Michelle Audet-Turmel, a lawyer at Tremblay Bois.

However, she adds that, "the MPA sets out the procedures for implementing each of these powers of assistance. In some cases, ministerial approval may be required."

: "Before the introduction of these new provisions, fire trucks, for example, sometimes had to travel several extra kilometres to avoid a local gas station in which a member of the municipal council held an interest."



Mrs. Michelle Audet-Turmel
Lawyer at Tremblay Bois

Reflexes to develop

Faced with these new possibilities, the lawyer advises directors general to develop three essential reflexes. "First, identify the provision of the Act that permits financial assistance to be paid out. Second, ensure compliance with the *Municipal Aid Prohibition Act*, as it limits or may even preclude support for industrial or commercial establishments."

Third, be careful when dealing with individuals or non-profit organizations, as they could be considered commercial or industrial establishments depending on their activities.

Once these boxes have been ticked, all that's left to do is to implement the financial assistance according to the terms and conditions. As Michelle Audet-Turmel reminds us: "The recipe is in the appropriate section! All you have to do is follow it if the criteria have been met."

Municipal contracts: limited exceptions

Bill 39 could also solve a recurring problem in small municipalities, namely by allowing them to enter into contracts with businesses in which a council member has an interest.

"Before the introduction of these new exceptions to the prohibition on council members having a direct or indirect interest in a contract with the municipality, fire trucks, for example, sometimes had to travel several extra kilometres to avoid a local gas station in which a member of the municipal council held an interest. From now on, these contracts will be possible, provided that the municipal by-law on contract management is amended and certain information is published on the municipal website. The contracts must also be tabled twice a year at a council sitting. And because prevention is better than cure, I strongly recommend updating the code of ethics and conduct for elected officials accordingly," she insists.

A similar mechanism also permits certain contracts for the purchase or lease of goods from a business in which a municipal officer or employee has an interest.

Leverage in housing

- Transitional accommodation for people in need
- Increasing or maintaining the supply of social, affordable, and student housing
- Programs promoting the construction or development of rental units (except for tourist accommodation)
- Assistance with land acquisition to encourage new residents to settle in the territory

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Contracts with a business in which a council member has an interest: flexibility with boundaries

The new section 305.0.1 of the AERM (along with its counterpart, MC s. 260.9.1) now authorizes certain contracts when:

- The business concerned is the only one in the territory of the municipality that offers the type of goods sought, and it is closer to the place where the sittings of the council are held than any other business offering the same type of goods in the territory of a neighbouring municipality; OR there is no business in the territory of the municipality that offers the same type of goods, the business is in the territory of a neighbouring municipality, and it is closest to the place where council sittings are held.
- The municipality has amended its contract management by-law.
- Details of the contract are published on the municipality's website and updated at least twice a year, in addition to being tabled at a municipal council sitting at the same frequency.

NOUVEAU

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