

# Municipal Conduct Act

## Summary and Update: Municipal and Provincial Affairs

May 2022

# Background

- Stakeholder consultations identified ethical and professional behavior as a key municipal issue
- Priority for both municipal and provincial governments
- Government responded by introducing the ***Municipal Conduct Act*** (The Act)
- The *Act* replaces and clarifies existing provisions and establishes new provisions and powers

# Status

- The *Act* was passed and received royal assent in November 2021
- Guidance, training, and regulations are in final stages of development
- Anticipated the *Act* will come into legal force in Fall 2022
- Relevant provisions of the *Municipalities Act* remain in force until then
- Municipal obligations will occur in stages

# Key Purposes – Conduct Legislation

1. Increases clarity & harmonizes conflict of interest rules and procedures
2. Requires municipalities to establish two codes of conduct. One for councillors and one for all other municipal officials
3. Sets out penalties which may be imposed
4. Introduces mandatory training for councillors & senior staff

# Conflict of Interest – Primary Concerns

- Inadequate & inconsistent definitions of conflict of interest
- Penalty for conflict of interest violation = councillor's seat vacated
  - No ability to reduce/remove penalty if conflict occurs through error
  - A councillor may cautiously declare conflict when none exists
  - Ensuring fair examination of evidence when council hears conflict of interest complaint – possible reluctance to penalize colleague

# Conflict of Interest – New Provisions

- Defines conflict of interest & related concepts
- Introduces reasonableness as a legal test for conflict of interest
- Sets out procedures for councillor and CAO (most senior municipal official) disclosure of interests
- Sets out procedure for exclusion from participation where conflict exists
- Ensures quorum when multiple councilors in conflict
- Provides complaints mechanism, process for determining whether a conflict occurred, and range of penalties

# Conflict of Interest – Penalties

- Where council determines a councillor acted in conflict, it:
  - Shall vacate the seat and declare the councillor ineligible for election until next general election
  - May invalidate the decision concerned
- Where conflict occurred through inadvertence or genuine error, council may do one or more of the following:
  - Reprimanded the councillor
  - Invalidate the decision concerned
  - Require the councillor to attend training
  - Suspend from council and other duties, without remuneration for no more than three months

# Conflict of Interest – Penalties

- Where council determines a former councillor acted in conflict, it may:
  - Reprimand the former councillor
  - Invalidate the decision concerned
  - Declare the former councillor is not eligible to be nominated as a candidate until next general election

\*Different penalties for municipal officials

# Code of Conduct – Primary Concerns

- Many municipalities operating without codes of conduct
- Inconsistency between substance of codes of conduct
- Code of conduct violations could range from compromising public trust to poor attendance
- No current authority to enforce under *Municipalities Act*

# Code of Conduct – Primary Concerns

- Lack of understanding re: council authorities, responsibilities, council & staff relationships
- Many municipalities struggle to comply with legislative requirements due to lack of awareness & training
- Current councillor training – optional, low participation
- Stakeholders commonly recommended mandatory training to increase professionalism

# Code of Conduct – New Provisions

- Range of penalties for elected officials in violation of conduct rules
- Two mandatory codes of conduct: one for council & one for other municipal officials
- Sets out minimum code of conduct contents

# Code of Conduct – New Provisions

- **Mandatory Provisions:**
  - Standards of professional behavior
  - Use of influence
  - Confidentiality
  - Harassment and bullying
  - Any other matter prescribed in the regulations

# Code of Conduct – Regulations

- Code of Conduct regulations being considered :
  - Misuse of public resources and fraud
  - Preventing reprisals
  - Ensuring legislative compliance
  - Use of social media

# Code of Conduct – Template

- Fully operational code of conduct
- Will include topics required under the *Act*
- Will include other common features of municipal codes of conduct
- Will be compliant with the *Act* and other relevant legislation
- May be adopted and implemented wholesale, altered, or not used

# Code of Conduct

Note:

**The code of conduct must be compliant with, and does not replace, requirements under other legislation**

For example:

- Confidentiality provisions in the code of conduct cannot conflict with requirements in ATIPP
- OHS requirement to have a harassment prevention plan in place is not replaced by harassment and bullying provisions

Recommended that Town's seek legal advice if 'starting from scratch'

# Code of Conduct - Penalties

- Where council determines a councillor has breached the code of conduct, it may:
  - Reprimand the councillor
  - Require the councillor to attend training
  - Suspend the councillor from council and duties, without remuneration, for no more than 3 months

\*Council may reprimand a former councillor

# Code of Conduct - Penalties

- Council may apply to court seeking vacation of the councillor's seat and non-eligibility for election until next general election in instances of:
    - Loss of public trust
    - Violence or credible threat of violence
    - Multiple violations and refusal to comply
- \*Non-eligibility also applies to former councillors

# Mandatory Training Requirements

- Municipalities to provide code of conduct training to all councillors and municipal officials
- Minister may set out regulations re: mandatory training requirements
- Requires councillors & senior staff to participate in mandatory core training as prescribed by regulation
- Training not completed = cannot carry out duties

# Mandatory Training Requirements

## Mandatory Orientation Training:

- Roles and responsibilities of councillors and chief administrative officer
- Meetings and procedures of council
- Budgets and financial management
- Access to information and protection of privacy
- Other topics prescribed in regulations:  
(Conflict of interest training being considered)

# Costs

Improper conduct leads to:

- Employee turnover, low moral, increases costs for professional services (legal advice, external investigators, employee assistance), litigation, loss of resources through waste and malfeasance, negative public attention.
- Distraction from primary duties

# Costs

- Most conflicts will be resolved internally at first instance
- Prescribed guidance where conflicts cannot be resolved
- Municipalities will be responsible for costs incurred when external resources are required – as is the case now
- Establishing a reserve fund may mitigate unexpected costs

# Timelines

- Anticipated Commencement – Fall 2022
- Once in effect, councils have six months to implement codes of conduct
- Once code of conduct is adopted, councils have three months to complete code of conduct training
- Councils and municipal officials will likely have one year from date of commencement to obtain other mandatory training
- In subsequent years, training will be required to be completed within a set amount of time, generally following an election

# Next Steps

- *Act* and regulations will come into legal effect (proclamation)
- Templates and educational materials distributed
- Codes of conduct adopted
- Mandatory conduct training completed
- Mandatory core training completed