

Civility in Council: New Municipal Code of Conduct Legislation Pending

Authors: John Stefaniuk, K.C.

published 12/04/2018

'Tis the season for new councils and new council members. In the past I have written articles and given presentations directed to explaining the basic legal duties and responsibilities of municipal councillors. In the broadest terms, they are:

- the duty to act in the best interest of the municipality as a whole (not necessarily that of specific constituents, nor that of the member's ward, and certainly not that of the council member);
- the duty to maintain strict confidentiality of matters discussed in a properly constituted in camera meeting of council;
- the duty to maintain the confidentiality of third party personal, business and other confidential information protected by The Freedom of Information and Protection of Privacy Act and other privacy legislation;
- the duty to understand and abide by the rules of procedural fairness and follow the law (such as The Planning Act) when conducting hearings;
- the duty to avoid and disclose conflicts of interest and to refrain from attempting to influence any matter in which a conflict has been identified in accordance with The Municipal Council Conflict of Interest Act; and
- the duty to abide by the municipality's council code of conduct.



That is a very broad range of responsibilities.

Partly as a result of some well publicized incidents of council members behaving particularly badly, there has been a growing movement toward requiring municipalities to implement specific codes of conduct for council members. This has resulted in the introduction in the

Manitoba Legislature of The Municipal Amendment Act (Strengthening Codes of Conduct for Council Members) on November 22, 2018. This Act will, when proclaimed, amend The Municipal Act to add a new section that will allow the Minister to spell out the requirements of codes of conduct by regulation and to expand available sanctions that may be applied against council members who breach the code.

Codes of conduct for council members are themselves a relatively recent development. Amendments to the Municipal Act in 2012 require the council of every municipality to establish by by-law, a code of conduct that sets “guidelines that define the standards and values that the council expects members to meet in their dealings with each other, employees of the municipality and the public”. The only remedy provided in the 2012 amendment is public censure for a breach of the code in the form of a resolution of council passed by a majority of members plus one.

The new amendments will impose mandatory requirements on municipalities and, in particular, councils, which are arguably intended to give some teeth to the codes of conduct. As a start, councils will be required to include, in their codes of conduct by-law, a process for receiving reports of and dealing with reported contraventions, as well as the sanctions that may be imposed and the remedial measures that a council member may be required to take if they are found to have contravened the code. The Minister may also impose additional requirements on municipal councils by regulation. Specifically, that regulation can include requirements for the content of the code of conduct, the procedures to be followed in implementing a code of conduct, the sanctions that may be imposed on council members, appeal processes (including responsibility for costs of appeal) and ensuring that codes of conduct are regularly updated and made available to the public.

To support the objectives of these amendments and to support the implementation of codes of conduct, all municipalities will be required to arrange for training to be provided to council members. Council members will be required to undergo the training within six months of being elected or re-elected. The first round of training will have to take place within six months of the amendments coming into force. At a minimum, the training will have to include the course specified by the Minister. Municipalities may opt for additional training.

Where a council member does not complete the mandated training, the CEO must report that failure to council. Failure to complete the training within the specified time will result in the suspension of that council member’s powers and duties until training is completed.

Although the range of sanctions that will be available to council (or the delegated body that will deal with alleged contraventions) will be set by regulation yet to be enacted, it appears clear that suspension from council will be one of the available punishments. The amendments state that if a sanction results in a member being absent from a regular council meeting, that

absence will be considered to be with the leave of council, and will not count towards the three consecutive absences that would automatically disqualify a member from council under the Act.

Codes of conduct go beyond regulating the behaviour of council members at council and committee meetings. Codes of conduct usually include provisions relating to issues of general integrity, how confidential information is dealt with, discrimination and harassment, corruption or influence peddling, inappropriate use of municipal resources and staff for purpose unrelated to the council member's duties (including for campaign purposes), maintaining a respectful relationship between the council members and municipal staff, adherence with expense policies, and restrictions on conduct in respect of lobbying and lobbyists and limits on the receipt of gifts, benefits or hospitality. A key feature is that complaints can be registered by a member of the public, staff, other council members or by council as a whole.

The tests can be different too. For instance, The Municipal Council Conflict of Interest Act requires proof in court that a council member attempted to influence or vote on a matter in which he or she (or a select family member) had a "direct or indirect pecuniary interest". A council code of conduct may define improper behaviour much more broadly. While that legislation results in the forfeiture of the member's seat, code of conduct violations will result in lesser sanctions, ranging from reprimand, to removal from committees to suspension of council duties.

While some may argue that it is unfortunate that the Government of Manitoba has seen it necessary to mandate this training and up the ante on sanctions, the ability to hold elected officials accountable for their bad behaviour is welcomed by many. In a time where civility and common sense are sometimes less than common, having a rulebook and referee under a fair and transparent process can only improve the performance of council duties for the end benefit of the municipalities and their residents.

DISCLAIMER: *This article is presented for informational purposes only. The content does not constitute legal advice or solicitation and does not create a solicitor client relationship. The views expressed are solely the authors' and should not be attributed to any other party, including Thompson Dorfman Sweatman LLP (TDS), its affiliate companies or its clients. The authors make no guarantees regarding the accuracy or adequacy of the information contained herein or linked to via this article. The authors are not able to provide free legal advice. If you are seeking advice on specific matters, please contact Keith LaBossiere, CEO & Managing Partner at kdl@tdslaw.com, or 204.934.2587. Please be aware that any unsolicited information sent to the author(s) cannot be considered to be solicitor-client privileged.*

While care is taken to ensure the accuracy for the purposes stated, before relying upon these articles, you should seek and be guided by legal advice based on your specific circumstances. We would be pleased to provide you with our assistance on any of the issues raised in these articles.