

R-E-S-P-E-C-T: Municipal Council Members' Codes of Conduct (Find Out What it Means to Me)

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Manitoba's enhanced municipal code of conduct legislation took effect on November 1, 2020, coming into force with the amendments to *The Municipal Act* and the new *Council Members' Codes of Conduct Regulation*.

The amendments and regulations came as a result of advocacy by the Association of Manitoba Municipalities, seeking more comprehensive and effective processes to address harassment and bullying at the council level. It also stemmed from several recent, high-profile incidents of alleged bullying that attracted public attention. The call to Government was for enhancements to encourage respectful conduct, in part by beefing up provisions dealing with prevention, investigation, and enforcement of harassment and bullying complaints.



The Municipal Act and Council Members' Codes of Conduct Regulation

The amendments to *The Municipal Act* (the “Act”) require every municipal council to pass a code of conduct by-law that conforms with the Act by May 1, 2021. All sitting council members must complete mandatory training on respectful conduct by that date. All new council members will have to complete training within six months of election. Manitoba Municipal Relations is developing online training tools for council members and a template code of conduct.

The *Council Members' Codes of Conduct Regulation* (the “Regulation”) covers the additional ground and adds specifics:

Mandatory Content

Section 2 of the Regulation requires that all municipal council codes of conduct (which must be reviewed by council annually) incorporate specified values:

- Respect: courtesy and respect for others, encouraging participation, welcoming differences, and supporting a harassment-free environment;
- Professionalism: sticking to council decision-making and communication processes, behaviour that upholds public confidence, informal and collaborative complaint resolution, and sticking to the facts and ignoring irrelevant items when making council decisions;
- Accountability: appropriate use of municipal resources and being accountable (not passing the buck when it comes to municipal decisions).

Procedures and Reporting to Council

The Regulation requires all codes of conduct to include processes for:

- Completing and filing complaints;
- Time deadlines for complaints;
- Weeding out vexatious and late complaints;
- Mediation of complaints;
- Impartial investigation of complaints; and
- Reporting to council on the investigation results at *in camera* sessions, with a vote on council's decision on the complaint of any sanctions to be held in open meeting.

Sanctions

Section 6 of the Regulation sets out a broad range of sanctions that may be imposed against an offending council member, ranging from censure or reprimand, apology, mandatory training, suspension, suspension of compensation, to a fine of \$1,000. A member who fails to comply on time is prohibited from carrying on any council functions.

When applying sanctions, council must consider the nature of the offending behaviour, its duration or persistence, whether the member's contravention was deliberate, whether the member tried to remedy the contravention, and the member's past record.

Appeals

Sections 7 to 13 of the Regulation deal with appeals from a sanction decision by council. The Minister is to appoint an appeals director to hear all appeals.

Only the sanctioned member may appeal a decision (which might not go over well with a complainant or another council member who believes the penalty imposed by council to be inadequate). The only basis for appeal is whether the conduct violated the code of conduct (which might not go over well with a member whose complaint is with the severity of the sanction). An appeal holds the council sanctions in abeyance until the appeal is determined.

Notice of appeal must be filed within thirty days, along with a submission that includes the reasons for the appeal. Council must provide the appeals director with the investigation report and other background material, and its own submission, within thirty days of receiving the member's appeal. The member may reply to the council's submission.

The appeals director must make a written decision as soon as practicable. The only jurisdiction held by the appeals director is to confirm the council decision or quash it; there is no power to substitute a different sanction. All decisions are final, without further right of appeal.

Application of Codes of Conduct and Other Requirements

The Act and the Regulation do not have all of the answers. For example, what are the requirements for an impartial investigation? Who can perform it? Manitoba Municipal Relations is developing additional resources to assist municipalities, including a possible provincial intake process in conducting the preliminary screening of complaints, and lists of potential mediators and investigators.

Keep in mind that the council code of conduct is not the only source of responsibility when it comes to harassment and bullying. All council members and CAOs should be aware that Part 10 of the Manitoba Workplace Safety and Health Regulation requires employers to develop and implement a written harassment prevention policy. This applies to all employees.

According to the guide, *Preventing Workplace Harassment*, published by WorkSafe Manitoba, there are two main types of harassment that are covered under the regulation:

1. Inappropriate conduct by a person that is made on the basis of race, creed, religion, colour; sex, sexual orientation, gender-determined characteristics; marital status, family status, source of income; political belief, political association, political activity; disability, physical size or weight; age, nationality, ancestry, or place of origin; and
2. Bullying, which may involve severe, repeated conduct that adversely affects a worker's psychological or physical well-being if it could reasonably cause a worker to be humiliated or intimidated; or a single occurrence, if it is shown to have a lasting, harmful effect on a worker.

Harassment can be written, verbal, physical, a gesture or display, or any combination of these. Harassment is harassment, whether it happens only once or repeatedly. The failure to adopt and implement the harassment prevention policy can result in prosecution by Manitoba Workplace Safety and Health.

As elected representatives, there is an expectation that members of council will conduct themselves appropriately in the discharge of their council duties. There are now mechanisms by which harassment and bullying by council members can be proscribed and sanctioned.

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