



# PMA

Professional  
Municipal  
Administrators

## Municipalities Act Review

May 1

# 2018

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Results of consultations held throughout each region of Newfoundland and Labrador on the Municipalities Act 1999. Consultations facilitated by Sandy Hounsell with notetaking and reporting conducted through LW Consulting.

WHAT WE  
HEARD

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## THE REPORT

LW Consulting (LWC) is pleased to submit this report to Professional Municipal Administrators (PMA) on the results of the consultation with its membership on the review of the *Municipalities Act, 1999* (the Act).

The Report is called “What We Heard” in reference to the term of reference under which LWC was engaged.

The Report consists of a compilation of the actual comments received from PMA members, the rationale for the opinions, and a recommendation of how the issue or concern can be addressed. Attached as Appendix “A” is a spreadsheet, containing all comments received through all venues. While all comments received during the consultation are included in Appendix “A”, only those received from PMA members are included in this analysis.

## MINISTERIAL REVIEW

The Minister of Municipal Affairs and Environment (the Minister) announced that a review of the current Municipalities Act, 1999 would be undertaken and requested input from PMA as to concerns they had with the approximately eighteen (18) year old legislation.

The review was to be undertaken in accordance with the following schedule:

- December 2017 – Phase One – open call for written submissions
- Spring 2018 – Phase Two – roundtable discussions with stakeholders
- Summer 2018 – Summary report on feedback from Phase One and Two
- Spring 2019 – Legislation to be introduced in the House of Assembly

## ENGAGEMENT

LWC was engaged by PMA to attend a series of consultation meetings across the Province with its members and report back the opinions of these members. Meetings were held at the following locations:

- Clarenville – February 16, 2018
- Stephenville – February 23, 2018
- Marystown – March 2, 2018
- Gander – March 6, 2018
- Happy Valley – Goose Bay – March 9, 2018

Prior to these meetings, a meeting was held by PMA in St. John's on November 24, 2017 and the submissions received from that meeting is also included in this Report.

Also participating in and facilitating the consultation meetings was the Regional Director of Local Government with the Department of Municipal Affairs and Environment (the Department), Mr. Sandy Hounsell. Mr. Hounsell gave an overview of the current legislation and details on the consultation process being undertaken by the Department in preparing for the development of the revised Act. Mr. Hounsell's presentation is included as Appendix "B".

PMA also undertook a survey of its membership and the comments received through the survey are included in the Report.

The Department provided an opportunity for individuals and groups to provide their opinion on the current Act. This was done through a web site developed for that purpose called EngageNL. Any submissions received through that avenue was included in the compilation of comments received and included as Appendix "A". However, only comments received through this venue that were submitted by PMA members are included in the analysis of the Report.

## OBSERVATIONS

There were a number of observations by LWC as a result of their attendance at the various consultations. Many of these observations were due to common themes being provided by PMA members. The observations and common themes are included in the following summary.

- All comments received were captured in the spreadsheet included as Appendix "A". These comments include those of non-members but only those received from PMA members are included in the analysis
- There is a general desire for simpler, more reader friendly language in the Act. Much of the current Act is bound in legalese and difficult to interpret and apply
- There is clearly a significant difference in the complexity of Municipalities governed by this legislation. Sections that effectively apply to larger Municipalities are totally ineffective and unable for smaller Municipalities to enforce, in particular with their limited resources. Similarly, some of the support required of smaller Municipalities are restrictive for larger Municipalities with greater capacity and resources. There was a consistent suggestion that, while separate Acts are not necessarily required, there needs to be a recognition of the differing capacity of Municipalities in the authorities provided in the new Act
- The issue of harassment was raised at all sessions. Administrators regularly find themselves subject to harassing acts from the public, coworkers, and Councillors. In today's environment, harassment of anyone is totally unacceptable and there is a strong demand that language be provided in the new Act to address harassment, protection for those who report harassment, and repercussions for those who harass others in the municipal sector
- It was noted that elected Councillors are required to take an Oath of Office when being sworn in to serve on Council. It was indicated that this Oath should be accompanied with a "Code of Conduct" detailing the manner in which Councillors are expected to conduct themselves while performing their municipal duties. This Code should also include the level of effort expected of

Councillors in supporting their residents and their relationship with Administrators (Managers and Clerks) and fellow Councillors

- A subject raised on a regular and consistent basis during this and other consultations is the issue of mandatory Councillor training. Councillors are essentially the board of directors of the organization and should have a great knowledge of general business practices, their role and responsibility, and those of the Administrators. These comments were not provided in a derogatory or offensive manner. They were provided through general concern that the individuals responsible for developing the policies to guide the growth and development of our communities have the appropriate skill set to do so. It is recognized that many of our Municipalities are experiencing challenges due to declining and aging population, aging infrastructure, and eroding tax bases. The opinion was expressed that the individuals tasked with guiding Municipalities through these difficult times receive appropriate training to do so. It was suggested that training be mandatory and that the receipt of Provincial funding be contingent on the completion of some basic training/orientation
- There were comments received during the consultation for which the current legislation had already addressed in the manner suggested by the member. Those comments are included in Appendix “A” but were not relevant for this analysis
- The Report primarily focuses on the existing legislation and suggested to the various sections. However, there were a number of suggestions made for which there was no related section in the existing Act. These suggestions are captured in the analysis under the title of “Legislation”
- During the consultation there were significantly divergent philosophies expressed by members. It is anticipated by LWC that these differing philosophies will create the greatest challenge for the PMA Board as to the message it provides to the Minister on the direction the new legislation should take. There were a number of comments received, primarily, but not exclusively from larger Municipalities that the new legislation should be more enabling and less prescriptive. Through this approach the Act would contain general authorities but enable the municipality to develop its own policies on how to apply the general authority. Other Municipalities, primarily smaller towns, prefer to have very prescriptive legislation in which all processes are clearly defined. These divergent philosophies may be possible in some cases by having different options available for Municipalities of different sizes or of different complexities. However, this will be difficult to accomplish in many cases. As indicated, the challenge for the PMA Board is to determine the type of legislation, enabling or prescriptive, it will lobby for on behalf of its members

## CONSULTATION RESULTS

As previously indicated, the results of the consultations are being presented with reference to the relevant section of the Act. Sample comments received from PMA members on each of the sections, the rationale for the comments, and a recommendation as to how the matter can be addressed in the new Act are put forward. Suggestions received that were not related to a specific of the existing Act are included at the end of the existing sections under the topic of “Legislation”, with a heading including for each suggestion.

### S. 8 - Publication of Orders

#### Sample Comments

- Websites and other social media should be considered



- Publication of order "should be updated to reflect Websites versus newspapers
- Electronic publishing of Orders
- Also applies to Sections 30, 109, 388

#### Rationale

Concern was expressed over the current publication requirements for a number of different reasons. It has been determined, and Municipalities advised, that the only publication in general circulation in the Province is the Telegram. While this paper does have Province wide coverage, it is not circulated in many rural areas. The purpose of any such publication is to inform local residents and others who may have an interest in the matter. Under the current requirement, this is not being accomplished.

In addition to the lack of notification, the cost of such publications in the Telegram is expensive and getting more expensive every year.

Given excessive cost and current ineffective communication methods, other alternatives to public notification are being requested.

There is an increasing greater use of social media in our lives in general, and the municipal world in particular. Many Municipalities have Websites, Facebook pages, and other social media options to engage the public. This approach is inexpensive, and more importantly, reaching the target audience.

#### Recommendation

It is recommended that social media be identified as an additional means to communicate with and inform the residents and general public.

### S. 9 – Feasibility Report

#### Sample Comments

- More streamlined process particularly for insignificant boundary revisions
- Also applies to Sections 26, 31, 33

#### Rationale

The legislated process with respect to a municipal boundary is the same, whether it is for defining the boundary during the initial incorporation of the municipality, where there is an insignificant revision to the established boundary, or where there is mutual agreement between Municipalities on a change in boundaries.

The process is lengthy, time consuming, costly, and onerous given the boundary modifications in many cases.

#### Recommendation

It is recommended that a simplified and streamlined process be established to provide for modifications of existing municipal boundary.

## S. 18 - Election of Mayor and Deputy

### Sample Comments

- The current process of electing a mayor and deputy mayor appears to be rushed and do not allow proper time for potential candidates to seek such positions, and campaign, or allow dialogue with other Councillors
- Some suggested that a separate election for the position of Deputy Mayor should be considered

### Rationale

There were two (2) matters raised with respect to this section.

- 1) The current legislation requires the first meeting of Council be held within fourteen (14) days of the election. It also requires that at this meeting the Council shall select a Mayor and Deputy Mayor. It was indicated that this time period does not provided for the proper assessment and selection of a Mayor and Deputy Mayor.
- 2) The current legislation provides for the separate election of a mayor, but not a Deputy Mayor. It was indicated that this option should also be available to Municipalities.

### Recommendation

It is recommended that the period in which a Council has to select its Mayor and Deputy Mayor be eliminated, or at least extended.

It is recommended that Council be able to hold a separate election for Deputy Mayor as it does for Mayor.

## S. 21 – Duties

### Sample Comments

- Clarify roles between Councillors and Administrator in the legislation
- Expand and define the role of the Councillor and require mandatory orientation for Councillors within three (3) months of being elected or re-elected with such orientation taking into account working Councillors (online or video orientation could be considered)
- Provide consequences for Councillors who fail to attend or take required mandatory orientation
- Provide consequences for any Mayor who fails to take action on a decision of Council in accordance with the Act whereby it states that “the mayor is subject to the direction and control of the Town Council and shall abide by decisions of the Town Council”

### Rationale

It was expressed that there is currently no specified relationship between Council and the Administrator. This leads to confusion due to no clear definition of the role and responsibility of each.

Comments were also received with respect to having training/orientation mandatory for all Councillors. It was suggested that this could be enforced by having funding eligibility contingent on training. Similar concerns were expressed about Councillors not following or adhering to decisions of Council.

### Recommendation

It is recommended that the roles of Councillors and Administrators, be clearly defined.

It is recommended that funding programs available through the Department be contingent on Councillors participating in available orientation opportunities.

It is recommended that repercussions/penalties be included in the Act for the Mayor or Councillor not adhering to or following the decisions of Council.

It is recommended that the Act provide authority for Council to sanction any Councillor who fails to support the decisions of Council, including breeches of confidentiality, in particular discussing what takes place in a privileged meetings. There should be an appropriate hearing and appeal process provided, together with a range of penalties based on the concept of progressive discipline.

## S. 24 – Rules of Procedure

### Sample Comment

- Some Councils do not have Rules of Procedure adopted although they are mandatory
- The Rules of Procedure should cover the roles of Standing Committees and the duration of terms for those appointed to such Committees
- There should be repercussions/penalties for lack of Rules of Procedure and for failure to follow or adhere to the provisions of the Rules of Procedure

### Rationale

The lack of appropriate Rules of Procedure for both Council and Committees presents major problems for Administrators from both a time and recommendation perspective and will not be adequately addressed without appropriate repercussions/penalties.

### Recommendation

It is recommended that Rules of Procedure be made mandatory for Committees in addition to Council and that there be specified repercussion/penalties.

## S. 25 – Committees

### Sample Comments

- Greater definition of a Committee to differentiate its meetings from Council meetings. A statement about the need (or not) for public Committee Meetings should be included in the Act
- Clarify if standing Committee meeting are open or privileged
- Duration of Committee membership should be defined
- Require Terms of Reference for all Committees that are approved by Council
- Require that the Terms of Reference for Committees formed by Council, other than Standing Committees, specify their obligations to the Town and the mandatory provision of documents requested by Council (Fire Department finances, and financial statements for other Committees with consequences for failure to provide the requested documents)

- Attendance at Standing Committees should be mandatory for Councillors and there should be consequences for failure to attend three (3) consecutive Standing Committee meetings

### Rationale

The current legislation provides for the establishment of Committees but provides no definition around the composition or role of such Committees. This can result in the work of Council being conducted at the Committee level, or vice versa.

Some Committees do not have Terms of Reference, documents are not being provided when requested, and some Councillors are serving on the same Committees for as long as they are elected to Council and thus not providing an opportunity for others to gain experience in the many facets of Council.

### Recommendation

It is recommended that clarity and definition be provided on the composition and role of specific Committees, and their relationship with Council.

It is recommended that Terms of Reference be required for all Council Committees.

## S. 54 – Duties

### Sample Comments

- Why separate the duties of Clerk and Manager? Duties of a Clerk and Manager are automatically required even when there is only a Clerk
- Role of Clerk/Manager is very restrictive without both titles
- Clerk has no legislated authority to spend money or give directions to other employees
- The person in charge of administration should be required to have a performance evaluation conducted annually by Council
- There should be options included in legislation that are available to Council for non-performance of duties by Administrators
- Mandatory orientation/training should be required for Administrators within three (3) months of assuming these responsibilities
- Also applies to Sections 61
- Section 30 of the Municipal Government Act of Nova Scotia addresses the relationship and division of responsibilities between the Town Manager and Council where there is a Town Manager. It states;
  1. The Chief Administrative Officer (CAO) is the head of the administration branch of the government of the municipality and is responsible to the Council for the proper administration of the affairs of the municipality in accordance with the by-laws of the municipality and the policies adopted by Council
  2. The Council shall communicate with the employees of the municipality solely through the CAO, except that the Council may communicate directly with employees of the municipality to obtain and provide information
  3. The Council shall provide direction on the administration, plans, policies and programs of the municipality to the CAO
  4. No Council member, Committee or member of a Committee established by the Council shall instruct or give direction to, either publicly or privately, an employee of the municipality

### Rationale

During the consultation many Town Clerks indicated they believed they were doing the work identified by the Act to be the duties of the Manager. Many of our Municipalities are small and do not have the capacity for the division of duties between two (2) employees. By default, and despite the title, the work requirements of the Town are being performed by the single employee.

It is recognized that many towns have designated the employee as “Town Clerk/Manager”. However, if all duties are being undertaken by one employee, include all duties under one position title. Consideration could be given to name this position Municipal Administrator or Chief Administrative Officer.

### Recommendation

It is recommended that the Act require a Chief Administrative Officer or Municipal Administrator with all administrative duties being assigned to this position with the authority for this position to delegate duties to other positions that may be approved by Council.

It is recommended that the Act clearly require that Council communication, for the purpose of operational matters of the Town, be through the Administrator.

## S. 58 – Expenditure

### Sample Comments

- Clearly define the relationship between Council and Administrator in recommendations for expenditure
- Better definition of Clerk and Manager duties
- Also applies to Sections 61

### Rationale

The relationship between Council and Administrator, with respect to expenditure, is currently outlined in the Act. With the exception of an amount approved by Council for an expenditure by the Administrator, which is nominal, if any amount is approved, the only other discretionary spending available to the Manager is during emergency situations. This relationship occasionally results in confusion and inconvenience for the Administrator.

### Recommendation

It is recommended that the relationship between Council and Administrator be better defined and that greater flexibility be provided to the Administrator in matters requiring the expenditure of funds.

## S. 59 – Clerk

### Sample Comments

- Mandatory minimum number of work hours
- Revise from Town Clerk to Town Clerk/Manager

### Rationale

Many Administrators expressed concern that the time required to complete the duties assigned to them far exceeds their normal hours of work.

### Recommendation

It is recommended that minimum hours of operation of the municipal office be defined in the Act thereby enabling the Administrator to perform required duties and to be appropriately compensated for the duties performed.

## S. 61 – Duties

### Sample Comments

- Duties of Town Clerk vs Town Manager - If only one employee should be Town Clerk/Town Manager

### Rationale

As previously indicated, in many single employee offices, the duties identified in the Act as those of the Manager are being performed by the Clerk without the appropriate designation, and therefore without the required authority.

Concern was expressed of the potential liability associated with the Clerk performing the duties identified as those of the Manager.

### Recommendation

It is recommended that, in the case of a single employee municipality in which the Clerk is required to perform the duties identified as being those of a Manager, that the designation of a Town Clerk/Manager or some comparable designation be mandatory.

## S. 62 – Clerk to Attend Meetings

### Sample Comments

- Requirement for Clerk to be at a Committee Meeting for recording keeping purposes and transparency should be changed from "may" to "shall"

### Rationale

One of the principal responsibilities of the Clerk is to be the caretaker of the records of Council. Frequently, Councils will assign the responsibility to assess and analyze matter of the Council to the various appropriate Committee. Given the significance of this function, the record of that discussion may not be adequately captured without the participation of the Clerk.

### Recommendation

It is recommended that the Clerk be required to attend all Committee meetings.

## S. 67 – Suspension

### Sample Comments

- Greater employment protection for Administrators and Department Heads

### Rationale

Recognizing the job security provided for by Provincial and Federal labour law, concern was expressed over the ability of Council to replace municipal officials without due cause. Employment opportunities are limited in many communities and concern was expressed at being vulnerable to the Act being silent with respect to the suspension and dismissal of Administrators.

### Recommendation

It is recommended that language comparable to that contained in Provincial and Federal labour law also be included in the Act. If the language is not included, a direct reference to the labour legislation be included in the Act.

## S. 68 – Dismissal

### Sample Comments

- There should be no dismissal of Administrators or Department Heads, unless for cause
- Dismiss Administrators and Department Heads for not performing their duties when appropriate due diligence has been followed with verbal and written warnings

### Rationale

Concerns expressed about this section are comparable to those of the previous section. However, given that termination of employment is the result of this section, concern was even greater. As indicated, employment opportunities in many Municipalities are limited and more and more Administrators feel vulnerable to being employed at the pleasure of Council and able to be replaced without due cause with insignificant compensation as provided for in labour law.

### Recommendation

It is recommended that the dismissal of Administrators and Department Heads be limited to situations under which the dismissal is for due cause.

## S. 69 – Retirement

### Sample Comments

- Is this section in contravention of the Human Rights Code?

### Rationale

The current legislation appears to authorize Council to retire an employee who is eligible for retirement regardless of the wishes of the employee.

### Recommendation

It is recommended that the retirement provided for in this section only be with the agreement of the employee.

## S. 72 – Pension Scheme

### Sample Comments

- Change “may” to “shall” with an opt out clause if the employee chooses to do so
- Consider making municipal Administrators eligible for pensions provided to Provincial government employees

### Rationale

Providing for retirement is becoming a much more valued benefit to employees in all fields of employment. Many Administrators dedicate their professional lives to their communities through working with Council only to conclude their working lives without an employee supported pension.

### Recommendation

It is recommended that Councils be required to contribute to a pension plan such as TRIO on behalf of their employees.

## S. 73 – Group Insurance

### Sample Comments

- Change “may” to “shall” with an opt out clause if the employee chooses to do so
- Consider making Administrators eligible for group insurance provided to Provincial government employees

### Rationale

Providing group insurance is becoming a much more valued benefit to employees in all fields of employment. Many Administrators dedicate their professional lives to their communities through working with Council and most Towns do not provide group insurance coverage.

### Recommendation

It is recommended that Councils be required to contribute to a pension plan such as TRIO on behalf of their employees.

## S. 75 – Financial Year

### Sample Comments

- Change the financial year to coincide with the Provincial and Federal financial period

### Rationale

Confusion occasionally results from having a municipal fiscal year different from that of the Provincial or Federal governments.

### Recommendation

It is recommended that the fiscal year of Municipalities align with those of the Provincial and Federal governments.



## S. 76 – Bank Account

### Sample Comments

- Enable Council to establish its own policy for signature requirements

### Rationale

Many Municipalities are increasing in complexity and no longer feel it is relevant to have the signing authority as outlined in the current Act.

### Recommendation

It is recommended that the legislation enable the Town to determine its appropriate signatories to its accounts without diminishing the required financial controls.

## S. 78 – Budget

### Sample Comments

- Current Act language does not comply with PSAB

### Rationale

It was stated that the current budget language and format does not comply with PSAB standards.

### Recommendation

It is recommended that the budget language and format be modified to comply with PSAB standards.

## S. 79 – Contents of Budget

### Sample Comments

- Remove requirement for Ministerial approval to set up a reserve

### Rationale

Many Municipalities are increasing in complexity and sophistication. Many also have the fiscal capacity to assess future fiscal requirements and budget accordingly. On this basis many feel the requirement for Ministerial approval to establish funding reserves is unnecessary.

### Recommendation

It is recommended that the requirement for Ministerial approval to establish funding reserves be removed.

## S. 86 – Financial Statements

### Sample Comments

- Create a Municipal Auditor General to review municipal financial records

### Rationale

Associated with the complexity and sophistication previously referenced, Municipalities are required to adopt comparable financial records. From the other perspective, many smaller Municipalities have limited capacity to develop and maintain adequate records and regularly require guidance in this effort.

### Recommendation

It is recommended that a Municipal Auditor General office or position be established to assist Municipalities with the development and maintenance with appropriate financial records.

## S. 87 – Appointment of Auditor

### Sample Comments

- Mandatory fixed term for an auditor
- Escalating cost of audits
- Completion time for audits
- The taking of financial records out of Town office by auditors

### Rationale

Municipalities continue to experience challenges with meeting the requirement to submit annual audits as required by the Act.

Audit costs are increasing significantly, auditors are requesting additional information that Administrators are unsure of whether such information is required. Audits are not being completed on time and Auditors are taking the financial records from the Town Office to their own offices for completion.

It is also anticipated that the Procurement Act as the replacement of the current Public Tender Act will require publicly funded bodies to issue Request for Proposals (RFP) for professional services.

### Recommendation

It is recommended that in an effort to address performance and cost concerns with preparing municipal audits that a fixed term be established after with Municipalities are required to issue a RFP for auditing services. In addition specification should be required for the purpose of issuing RFPs and the Department should form a working Committee consisting of representatives of PMA, MNL and auditors to develop a set of specifications that would include the information required for a municipal audit, include timeframes for audit completion, prohibiting the removal of financial records from Town Offices and specifying financial penalties for failure to adhere to the requirements of the RFP.

## S. 89 – Waiving of Audit

### Sample Comments

- Remove the option to waive Audit

### Rationale

The review and reporting of the manner in which public funds are being collected and spent is crucial and under no circumstances should this requirement be waived.

### Recommendation

It is recommended that the option to have the annual audit waived be abolished.

## S. 94 – Long Term Borrowing

### Sample Comments

- Allow larger Towns to borrow without Ministerial approval
- Approval to Borrow should not be required for projects that are not cost shared

### Rationale

Many Municipalities are getting increasingly complex requiring sophisticated support systems. It has been expressed that larger Municipalities with complex systems and administrations have the ability to determine their own fiscal capacity and secure funding from financial institutions without the intervention of the Department. Many capital purchases and projects undertaken do not receive financial support from the Department.

### Recommendation

It is recommended that criteria be established which when met releases the municipality from seeking Ministerial approval to borrow funds.

## S. 99 – Powers of expenditure

### Sample Comments

- Councils should be able to provide grants to non-charitable groups/organizations without requiring a two-thirds majority vote of Councillors-in-office. A simple majority vote of Councillors in attendance should be all that is required, subject to the amount of funding being in the Town's budget

### Rationale

- The opinion expressed is that if Council wishes to support the activities of charitable group/organizations that are providing significant benefit to its residents and budget to do so, a simple majority vote of Councillors in attendance at a Public Council meeting is all that should be required.

### Recommendation

It is recommended that Section 99 be amended to permit Councils to provide grants to non-charitable groups/organizations subject to their inclusion in the Town's annual budget by simple majority vote of Councillors in attendance at a regularly scheduled Public meeting of Council.

## S.101 – Imposition of Taxes

### Sample Comments

- Council should have the authority to set municipal tax payment dates. They should also be permitted to set the due date later than June 30

- Consideration must be given when setting tax deadlines of the necessity to receive sufficient tax flow to fund operational costs
- No ability to collect taxes outside your municipal boundary but inside planning boundary

#### Rationale

The opinion was expressed that the tax payment date of a municipality should not be dictated by legislation and that Municipalities should have the authority to determine their own tax deadline, even if it is later than the current requirement.

Many Municipalities have developed areas adjacent to but outside their municipal boundary and included within their planning area boundary. Many of the individuals living in these areas are former residents of the municipality and continue to avail of the services provided by the municipality.

The opinion was expressed that Municipalities should be authorized to impose taxes on individuals living within the areas outside the municipal boundary but included in the planning area boundary.

#### Recommendation

It is recommended that consideration be given to removing the mandatory tax payment deadline.

It is also recommended that Municipalities be authorized to impose taxes on individuals living within the areas outside the municipal boundary but included in the planning area boundary.

### S. 102 – Imposition of Service Charges

#### Sample Comments

- Councils are experiencing significant challenges in levying charges for the provision of services charges for fire protection, animal control, water and other services in areas outside their municipal boundaries in addition to the challenges of collecting such services fees

#### Rationale

There should be authority included in the Act for Council's to levy and collect fees for services provided to areas outside their municipal jurisdiction for fire protection, animal control, water and other services.

#### Recommendation

It is recommended that Section 102 be amended to permit Councils to levy and collect fees for services provided to areas outside their municipal jurisdiction for fire protection, animal control, water and other services.

### S. 108 – Discount Allowed

#### Sample Comments

- Provide specific authority in Act for a senior's tax discount
- This section should be changed to allow for discounts to be given to anyone 65+ and in receipt of the Guaranteed Income Supplement and/or applied for and approved by Council
- Have discounts based on income
- Need to include Seniors Discount to provide consistency across Municipalities

- Also applies to Section 111

### Rationale

The authority to grant tax discounts, particularly to seniors, was a matter that was raised in most consultation sessions. While the Department has stated its opinion that the current legislation does not provide for a discount based solely on the age of the resident, many Municipalities continue to do so.

Many stated a discount should be granted based on income to individuals with lower capacity to pay. It is recognized that many seniors have greater capacity to pay municipal taxes than residents in a lower age bracket.

### Recommendation

It is recommended that the language of the new Act clearly state the terms under which a discount can be granted, and that age not be the determining factor.

## S. 109 – Publication

### Sample Comments

- Use of newspapers for publications. Provide other venues such as social media
- Cost of publication in a newspaper is excessive. Publish notifications in other places like social media, Website, etc.
- Allowing Municipalities to use social media (Website/Texts/face book/twitter/ new technologies) for advertising and sending messages to residents. No need for print advertising
- Publish Council minutes within one week of the meeting
- Provide agendas electronically as well as in hard copy
- Place replies to access to information requests on the Town Website
- All public documents should be available on the Towns Website
- Also applies to Sections 8, 30, 388

### Rationale

*As previously stated, “Concern was expressed over the current publication requirements for a number of different reasons. It has been determined, and Municipalities advised, that the only publication in general circulation in the Province is the Telegram. While this paper does have Province wide coverage, it is not circulated in many rural areas. The purpose of any such publication is to inform local residents and others who may have an interest in the matter. Under the current requirement, this is not being accomplished.*

*In addition to the lack of notification, the cost of such publications in the Telegram is expensive and getting more expensive every year.*

*Given excessive cost and current ineffective communication methods, other alternatives to public notification are being requested.*

*There is an increasing greater use of social media in our lives in general, and the municipal world in particular. Many Municipalities have Websites, Facebook pages, and other social media options to engage the public. This approach is inexpensive, and more importantly, reaching the target audience”.*

### Recommendation

It is recommended that social media be identified as an additional means to communicate with and inform the residents and general public.

## S. 111 – Exemption and Remission

### Sample Comments

- Councils are utilizing this section of the Act to remit or exempt taxes for non-profit/charitable/community organizations and it requires a two-thirds majority vote of Councils
- Such exemptions/remissions should be able to be approved by a policy of Council approved by a majority of Council

### Rationale

There is no need for such a process when the tax exemption/remission is provided on an annual basis for organizations that provide significant benefit to the community and is absolutely necessary for the survival of many small rural communities.

### Recommendation

It is recommended that the Act be amended to provide Council the authority to approve policies for the provision of exemption/remission of taxes for non-profit/charitable/community organizations.

## S. 112 – Real Property Tax

### Sample Comments

- Should summer/seasonal properties be treated differently with levels of taxation?
- Tax everyone in the Province. Unincorporated areas currently not paying taxes
- All Federal/Provincial government buildings should be charged property/water and sewer
- Provide for varying property tax rates
- Updates similar to the Cities whereby a Town can charge varying real property tax rate classes (i.e. 8 mils serviced land, 4 mils un-serviced, 6 mils, water only)
- Also applies to Section 118
- The issue of data centers operating without appropriate permits and thereby escaping appropriate taxation must be addressed

### Rationale

There were a number of concerns expressed about the imposition of a Real Property Tax. The most common concern pertained to the requirement to avail of the services of the Municipal Assessment Agency in order to impose this tax. A detailed discussion on options to the Real Property Tax are included in this report under other legislative options not currently available.

With respect to the authority provided by the current legislation, many expressed their opinion that all residents of the Province should be paying taxes for the services they receive. This was primarily in reference to individuals not living within an incorporated municipality. Whether this payment be made to an adjacent municipality, or to a regional service provider, the general consensus heard in this consultation, and in many others, is that everyone should be paying for the services they receive.

Another opinion commonly received pertained to the payment of taxes on public buildings. Municipalities provide services to enable these Provincial and Federal buildings to operate and therefore they should carry their burden of the cost associated with providing the service.

Comments were also received pertaining to being able to impose varying property tax rates depending on occupancy. Should the owners of properties occupied on a part time basis be required to pay an equal amount of taxes paid by a full-time occupant?

#### Recommendation

It is recommended that a governance model be imposed that results in all residents of the Province paying for services received.

It is also recommended that all public buildings be subject to taxation or the payment of a Grant-in-Lieu of taxation based on their assessed value.

It is finally recommended that consideration be given to authorizing Municipalities to vary their tax rates for those that currently cannot be varied.

### S. 114 – Minimum Tax

#### Sample Comments

- Minimum property tax. Only one place in the budget to put minimum tax. Have more to address property divided by a road. Replace the "and" with an "or"
- Change (c) to allow for setting different minimum tax for vacant land tax for commercial and residential property
- Provide greater flexibility for Municipalities to establish minimum taxes (residential, commercial, vacant land, etc.) where they deem it appropriate

#### Rationale

One comment indicated that while the legislation provides for a minimum tax in a number of forms, the prescribed form provided by the Department has only one place in which the minimum tax can be included.

Other comments pertained to providing more flexibility for Municipalities to impose minimum taxes.

#### Recommendation

It is recommended that the prescribed form be updated to reflect the current budgetary requirements in this and other areas.

It is also recommended that greater flexibility be provided to Municipalities for the imposition of minimum taxes.

### S. 118 – Tax Exempt Property

#### Sample Comments

- Remove real property belonging to the Province, hospital acts, schools act

- Also applies to Section 112
- Include property of Aboriginal Government to exempt property

#### Rationale

Concern was expressed that public buildings avail of services provided by Municipalities without paying taxes.

#### Recommendation

It is recommended that public buildings be removed from the exemption category and that property of Aboriginal Government be added to the exemption category.

### S. 119 – Supplementary Assessment

#### Sample Comments

- Language should clearly identify what happens if occupancy occurs prior to Jan 1

#### Rationale

Concern was expressed about confusion resulting from including new or upgraded buildings on the supplementary assessment and when these building can be taxed.

#### Recommendation

It is recommended that clearer language be provided to identify when taxes can be imposed on new and upgraded buildings.

### S. 120 – Business Tax

#### Sample Comments

- The "no fixed place of business" should be clarified
- Authorize taxation for all data, internet and wireless providers
- Clearly define business for taxation purposes
- Extended periods in which Towns can set business tax rates to allow time for owners to adapt
- Permit Councillors to institute and levy tourism/accommodation tax
- Provide more flexibility for Councils to explore/develop additional new revenue methods, such as building campgrounds, and include approval of the Department, if absolutely necessary

#### Rationale

The issue of Business Tax causes some confusion for Administrators. There are a number of areas that result in uncertainty such as what constitutes as a business. There are many "operations" in a Town that technically provides goods or service but continue under the radar without taxation. There are also many businesses registered in other Municipalities that deliver in a particular Municipality that are not subject to taxation in that Municipality.

#### Recommendation

It is recommended that clearer language be provided to define what constitutes a business and to provide the leverage to generate revenue from these operations.



## S. 126 – Poll Tax

### Sample Comments

- Remove Poll Tax from the legislation. Difficult to collect
- Cohabitation not addressed in the Act. The second person also having to pay Poll Tax even though living together for extended period
- Clarify the conditions under which a Poll Tax can be imposed and only implement in Towns without a property tax
- Exemption from Poll Tax should only be based on income not age
- Better sharing of information between Provincial departments and Municipalities. Particularly for social service recipients and Poll Tax levies
- Abolish Poll Tax
- Consider implementing a simple Municipal service fee that can be levied on non-property owners working and living within the Town and provide greater flexibility for Councils to establish the terms and conditions for such a tax, including the provision to garnish wages for the collection of this fee

### Rationale

The clear consensus on the matter of Poll Tax was to abolish it. It is difficult to administer and enforce. The opinion was expressed that the individuals currently subject to Poll Tax should pay for the services they receive, but through another mechanism, such as a Municipal Service Fee. Further details will be provided later in this report under the heading of Legislation.

Should it be determined that the Poll Tax not be abolished, greater clarity around eligibility and enforcement is required.

### Recommendation

It is recommended that the Poll Tax be abolished, and an alternative taxation method (Municipal Service Fee) be provided which is easier to administer. Should the Poll Tax not be abolished, provide clearer language that defines who is eligible, and also language making it easier to collect.

## S. 128 – Employers Duty

### Sample Comments

- Federal agencies required to provide personal details for Poll Tax
- Collecting from out of Province companies is a problem
- If Poll Tax is maintained there must be repercussions (financial penalties/fines) for employers who fail to provide requested information for the imposition of Poll Tax

### Rationale

The two problems identified with this section is that the Federal government will not provide details on which Towns can determine eligibility and out of Province and within Province employers not responding to requests for personal information on which the tax is to be imposed.

### Recommendation

It is recommended that greater authority be provided requiring both the Federal government and out of Province and within Province companies to provide details on which the Tax can be imposed.

## S. 132 – Disconnection of Services

### Sample Comments

- When shutting off services for overdue accounts the Act needs to be clear on whether or not a rental property's water can be shut off if the tenant owes Poll Tax

### Rationale

Uncertainty exists on the conditions under which services can be discontinued to rental properties.

### Recommendation

It is recommended that language be provided that clearly identifies the conditions under which services can be discontinued to rental properties.

## S. 133 – Collection as a Civil Debt

### Sample Comments

- Garnishment of wages for collection of property/water/sewer taxes should be included
- Attach wages for any outstanding charges by the Town

### Rationale

It is generally accepted that garnishing wages works well for the specific tax it applies to. However, most of the significant taxes imposed by the Town is not subject to the garnishing of wages as a means to collect.

### Recommendation

It is recommended that the authority to garnish wages be expanded to include all taxes and fees imposed by the Town.

## S. 134 – Lien

### Sample Comments

- Cumbersome Tax Sale process. Streamline so Clerks can do the sales themselves
- Unable to provide clear title through the current process
- Timelines are too long
- Receipt of a statement by registered mail or hand delivery should be sufficient for acknowledgement of the tax
- A more straight forward and less expensive process for tax sales
- Simplify process for Town acquiring land for outstanding taxes
- Also applies to Section 147, 178

### Rationale

It is generally accepted that the ability to sell a property for outstanding taxes is an effective way to encourage payment. The process also puts ownership of property in those more likely to pay the Municipal tax bill. However, the current process is cumbersome, time consuming, and expensive.

The current process is also problematic for the purchaser of the property as clear title cannot be provided under the current legislation.

### Recommendation

It is recommended that the process be revised to make it easier for the Town officials to administer the process and that title be conferred on the purchaser.

## S. 135 – Occupied Residential Property

### Sample Comments

- Grant Council the power to subdivide lots if applicable to satisfy debts in the event that this article applies

### Rationale

The legislation prohibits any property being sold through the tax sale process that is owner occupied. Many of these properties are often included in lots of significant area. The large lot would allow for the subdivision of land with the required lot with the property located on it being retained and thus enabling the Municipality to sell the remainder of the lot through this process.

### Recommendation

It is recommended that authority be provided for the municipality to subdivide a large, owner occupied tract of land to recover outstanding taxes.

## S. 147 – Notice of Arrears

### Sample Comments

- Provide clear title when disposing of property through the non-paying tax payers
- Grant title to the purchaser except for claims by the Crown or for an easement
- Also applies to Section 134, 178

### Rationale

As previously indicated, the inability for the purchaser of a parcel of land acquiring it through the tax sale process results in a lower amount of revenue being received by the Town.

### Recommendation

It is recommended that clear title be provided to the purchaser of property acquiring the property through the tax sale process.

## S. 149 – Assessments and Levies

### Sample Comments

- Clarify language. Provide more authority to the municipality. Define who benefits and who can be charged
- Define local improvement assessment
- Provide greater flexibility for Councils to establish assessments and levies, the rationale for such assessments and levies and the methodology on how they can be assessed against property subject to such assessments being levied in an equitable and transparent manner

### Rationale

The primary concern around this section was the uncertainty associated with whom the assessment and levies can be imposed on. It is believed that the uncertainty could be addressed by clearer language.

### Recommendation

It is recommended that clearer language be provided to define assessments and levies and who is subject to the charges.

## S. 151 – Agricultural Land

### Sample Comments

- Policy debates have been encountered with the Agrifoods branch which argue the Provinces intention of property tax exemption for approved farm land also applies to business tax. This should be clarified in the act and Municipalities should be clearly allowed to charge business tax on all farming operations

### Rationale

While Municipalities accept the inability to impose a tax on an agricultural undertaking, many feel the actual business component of the operation should be treated as any other business enterprise.

### Recommendation

It is recommended that the authority to impose a tax on the business component of an agricultural undertaking be provided to Municipalities.

## S. 154 – Lien

### Sample Comments

- Arrears of a service levy should also allow sale of property to recover arrears

### Rationale

The service levy should continue to be attached to a property that has been sold for tax arrears.

### Recommendation

It is recommended that the service levy should continue to be attached to a property that has been sold for tax arrears.

## S. 159 – Right to Construct

### Sample Comments

- Should not require Ministerial approval on Crown roads within the municipality

### Rationale

The status of Crown Lands in a Municipality continues to be a matter of concern. In this instance, Towns are prohibited from entering upon lands of the crown to address concerns that exist with water or sewer systems without prior approval of the respective Minister. This approval is time consuming to acquire at a time in which repairing infrastructure in a timely manner is crucial to the continuation of the service.

### Recommendation

It is recommended that Municipalities be permitted to enter upon lands of the crown for the purpose of repairing defective infrastructure without having to receive prior approval of the Minister.

## S. 160 – Council to Give Notice

### Sample Comments

- Specify the required notification time
- Add "unless it is deemed unnecessary by the Town"

### Rationale

In accordance with certain Municipalities desire to have more prescriptive legislation, it is requested that a reasonable notification period be specified. Another opinion is that the notification only be provided when it is deemed necessary by the Municipality.

### Recommendation

It is recommended that notification only be provided when deemed necessary by the Municipality and when it is deemed necessary to be in accordance with the period specified in the Act.

## S. 163 – Ownership of Highways

### Sample Comments

- Clarification required when individuals allege roads have encroached on their property. Unnecessary cost to the Town to rectify

### Rationale

Throughout the development of roads in Municipalities there have been occasions in which property title was not acquired on which the road was constructed. This situation is rarely created on roads being developed today.

### Recommendation

It is recommended that language be provided that establishes a statute of limitations and absolves a Municipality from having to compensate an individual for land that was encroached upon prior to this limitation period.

## S. 167 – Acquisition of Property

### Sample Comments

- Should include all real property (i.e. green spaces/walking trails etc.)

### Rationale

With the existing language lands included within green spaces and walking trails could be exempt from such acquisition.

### Recommendation

It is recommended that language include lands within green spaces and walking trails as being subject to acquisition through agreement or expropriation.

## S. 171 – Names and Numbering

### Sample Comments

- Change “may” to “shall”
- Where required numbers are not provided, Council should have authority to add the numbers and the cost associated with this is the responsibility of the property owner

### Rationale

Given that identifying properties during an emergency can be vital to matters of life and safety, the naming of streets and numbering of building should be mandatory.

### Recommendation

It is recommended that the naming of streets and the numbering of building be mandatory.

## S. 172 – Removal of Vehicles

### Sample Comments

- Expand the definition of what constitutes vehicle wrecks and provide direction in the Act to help Towns deal with this problem

### Rationale

The definition of what constitutes a wreck varies from person to person. Clearer language is requested on what constitutes a wreck and the process for its removal.

### Recommendation

It is recommended that clearer language be provided to define what constitutes a wreck and the process for its removal.

## S. 174 – Recreational Facilities

### Sample Comments

- Towns should be able to buy and sell land for municipal purposes without Ministerial approval

### Rationale

The provision of services to residents requires the acquisition of infrastructure. Sometimes this infrastructure is within the municipal boundary. Occasionally it is not. The opinion was expressed that Ministerial approval should not be required for the acquisition of infrastructure associated with service delivery regardless of its location.

### Recommendation

It is recommended that Ministerial approval not be required for the acquisition of land associated with service delivery regardless of its location.

## S. 178 – Removal of Waste

### Sample Comments

- The costs for removal of waste should also create a lien as taxes create a lien on the property
- Also applies to Sections 134, 147

### Rationale

The cost of removing waste can be significant depending on the volume of waste and the required means of disposal. While this charge can be recovered from the property owner, the current language does not appear to include it as being attached to the property as a lien.

### Recommendation

It is recommended that all charges associated with the removal and disposal of waste from property be charged to the owner and subject to being attached to the property as a lien if not paid by the owner.

## S. 180 – Agreements re Policing

### Sample Comments

- While it permits Municipalities to enter into an agreement, the Province will not enter into such an agreement regarding dedicated municipal policing even if the municipality is willing to pay for such service. This is common in most other Provinces

### Rationale

Recognizing the cost of policing, many areas in the Province require this support to enforce its Bylaws and Regulations.

### Recommendation

It is recommended that the language make policing support available to Municipalities when required.

## S. 183 – Fire Department

### Sample Comments

- Define specific reporting requirements of Fire Department to Council on finances and other aspects
- Amend Act to ensure all Municipalities have some minimum Fire Department coverage

- Clarify language that defines relationship between Council and Fire Department and the mandatory requirement for the provision of financial and other documentation when requested

#### Rationale

Fire service is seen to be one of the vital services being provided by Municipalities. However, due to their not living within a service area, some residents of the Province are not in receipt of this service. It is recommended that a regional governance model be implemented to ensure that fire service is available to all residents.

Concern was also expressed over the inadequate reporting relationship between many Fire Departments and their Municipalities. The environment has evolved in some Municipalities over an extended period of time which has resulted in the Fire Department operating without clear and detailed reporting lines of communication with Council. Fire Departments exist by virtue of the Municipality and should be reporting the status of their operations and finances to Council.

#### Recommendation

It is recommended that specific reporting requirements be included in the Act which defines the relationship between Council and its Fire Department.

### S. 184 – Agreements

#### Sample Comments

- Authority to enter into agreements with individuals who are willing to purchase the service
- Only respond to emergency if fees are paid. Liability associated if responding without authority from Council
- Amend to ensure all communities have some sort of Fire Department coverage and are paying for that service

#### Rationale

The current legislation appears to enable Municipalities to enter into partnerships for the delivery of fire and other emergency services. This precludes Towns from directly billing individuals living outside its municipal boundary but availing of the service.

The most viable alternative is to require an agreement must be in place for the provision of fire protection services and where no agreement is reached the Province will institute some form of a regional fire service area for fire protection services in such an area. This will eliminate the pressure on individual Fire Departments to respond when one of their friends or family members have a fire. The question of legal liability and OHS implications when Council indicates that a response will not be provided, and the Fire Department feels pressure and do respond will be eliminated.

To take the delivery of emergency services further, and as previously indicated, a governance model should be in place to provide for the provision of emergency services on a regional basis.

#### Recommendation

It is recommended that a governance model be implemented which results in all residents being in receipt of fire and emergency services, and if not, enable Municipalities to directly bill recipients of the fire and emergency services they have the capacity to provide.



## S. 201 – Property Acquisition

### Sample Comments

- Purchasing land approval being delayed. Remove s. 201.1
- S. 201.2 - cost of advertising greater than the value of the asset
- Town's need the right to sell its own property as it sees fit. No need for Ministerial approval or tender calls
- Public notice should allow for Websites and social media
- Is there a way to accommodate requests of land exchanges which are done for public benefit – especially to non-profit organizations?
- Disposal of assets >\$500 – This limit should be increased to at least \$5,000 or higher
- Remove requirement for Ministerial approval to dispose of property
- Include provision for an auction as method to dispose of Town assets
- This section requires that property cannot be sold for less than the fair market value and there is no guidance on how to establish fair market value. Council should be given the discretion to determine if the value offered is acceptable when a property is offered publicly
- Set up an arbitration panel with specific rules and guidelines to address property acquisition and disposal with written reports available to the public

### Rationale

There were a number of concerns expressed for the acquisition and disposal of property. Many aspects were raised including the requirement of Ministerial approval, the method of public notification, and the establishment of a value for the property. Also included was that the current cost associated with the process exceeds the value of the land being disposed of.

### Recommendation

It is recommended that the requirements for Ministerial approval for the acquisition and disposal of property be removed, public notification be permitted through the Town's Website and social media, and that the process be simplified so that the cost of the disposal can be covered by the proceeds of the sale of the property.

## S. 202 – Business Improvement Areas

### Sample Comments

- Authorize Town to set rate

### Rationale

The current legislation authorizes the Municipality to implement a surcharge which is no greater than 10% of the business tax imposed to cover the operating cost of the board.

### Recommendation

It is recommended that the surcharge imposed be at the discretion of the Municipality.

## S. 203 – Economic Development

### Sample Comments

- Define Economic Development
- Establish mandatory reporting requirements to the Town

### Rationale

Many Municipalities have engaged in activities to promote economic development in their areas. However, often there are opportunities in which the Municipality is uncertain whether or not is included as economic development.

### Recommendation

It is recommended that a clearer definition of economic development be provided.

## S. 204 – State of Emergency

### Sample Comments

- Clarification on what constitutes a state of emergency

### Rationale

There are many activities and incidents occurring in Municipalities that potentially impact its residents. Often it is unclear as to whether these incidents fall within the realm of an emergency as intended by the Act.

### Recommendation

It is recommended that a clearer definition of what constitutes a state of emergency be provided.

## S. 206 – Vacancies

### Sample Comments

- A clearer process on how a seat is vacated, who is responsible for such a process, who provides the direction that the seat is vacated and the appeal process, should be clearly established
- Separate legislation for smaller Municipalities in cases where Councillors are the only person available to do the work
- Have Department officials provide approval to avoid delays in being able to get work rather than require Ministerial approval
- Have Towns be able to engage and approve Councillors to carry out work in order to avoid delays in being able to get work the work performed rather than require Ministerial approval
- In emergency situations have Towns be able to engage and approve Councillors to carry out work in order to avoid delays in being able to get work performed rather than require Ministerial approval
- Eliminate the need for Ministerial approval
- Requirements for three (3) consecutive public meetings and not three (3) consecutive months for declaring a Councillors seat vacant
- Clarity on how the office becomes vacant. Language to make it clear. It's automatic but clarify on how it is communicated and who is responsible for such communication

- That Councillors be put on leave (if Councillor is paid remuneration that it be continued) immediately upon conviction of a serious criminal offence, which offences will be defined within the Act and further that a Councillor be disqualified from holding office upon conviction of a serious criminal offence, upon the expiration of the time to file an appeal or determination of an appeal as proposed in British Columbia by the City of Pitt Meadows.

### Rationale

During the consultations one of the main topics of discussion pertained to the vacating of the office of a Councillor. This section addresses the vacating of a seat in two (2) ways. To address certain activity, the legislation automatically vacates the office of a Councillor. Questions were raised of the specific process of how these violations are determined and the process of advising the Councillor of their dismissal.

Specifically, with respect to automatic removal, it was suggested that the office of a Councillor should be vacated after their missing three (3) consecutive meetings rather than missing meetings for three (3) successive months. Many Councils hold biweekly meetings so under the current legislation a Councillor would have to miss six (6) consecutive meetings before being removed and that was believed to be excessive.

Also, under the matter of automatic removal, it was noted that in many rural areas there is limited ability to engage individuals to undertake work for the Municipality. Often the situation arises that the only individual or individuals available to perform the work required of the Town is a Councillor. While this is permitted with the approval of the Minister, often the work required is insignificant enough, or required to be performed in a timely manner, thereby not providing the opportunity for Ministerial approval to be acquired.

Individual convicted of serious criminal crimes should not be permitted to serve on Council as it brings all Councillor into disrepute.

### Recommendation

It is recommended that a process be implemented which clearly details the requirement to declare a Councillors seat to be vacated, the process for so doing, who is responsible for notifying the individual Councillor and the appeal process.

It is recommended that the requirement for Ministerial approval be removed for the engagement of Councillors to conduct work for the Town. It has been suggested that specific authority could be provided for small versus larger Municipalities. This may be accomplished by having specific provisions for the engagement of Councillors to be employed by the Town available for smaller Municipalities.

It is recommended that an independent authority be established to determine if the removal of a Councillor from Council is required.

It is recommended that all Councillors convicted of serious criminal offenses be suspended, with pay, if applicable and their seat declared vacant upon conviction of a serious criminal offence, upon the expiration of the time to file an appeal or determination of an appeal

## S. 207 – Conflict of Interest

### Sample Comments

- Have Department officials more involved in opinions
- Develop working group to develop an inventory of court cases dealing with Conflict of Interest which could be used in training sessions for both Councils and Administrators
- Having it the responsibility of Councils results in inconsistency of application
- Clearer step by step process to deal with Conflict of Interest allegations
- Court often overturning of dismissals is due to Councils not doing due diligence
- An independent review process, similar to the Regional Appeal Process, outside of Council, should be made to review a Conflict of Interest allegation due to the effect on the Municipality and the resulting damaged relationship with Council, in particular, if the dismissed Councillor is returned to Council
- There should be a range of penalties to be levied against a Councillor for being in conflict from mandatory training to dismissal with the independent review process being able to recommend the appropriate penalties that are binding on Council and which are only subject to appeal to the Courts
- Should be required to fall under the premise that a hearing is necessary and outline the process for conducting the hearing. Include fair hearing prior to dismissal in the event of infraction. This would be in line with the Rules of Natural Justice
- Small Towns often have too many people related, putting many in conflict
- Who reports the conflict? When blatant conflict who reports? Duty of the Mayor, Deputy Mayor, or Administrator. It was suggested that there should be an onus on the Municipal Administrator to advise individual Councillor and Mayor of potential Conflict of Interest situations as they are the one most aware of what is included in individual Councillor's Disclosure Statements
- The Act requires a Councillor to leave following a declaration of conflict however what happens if the Councillor leave his seat and sets in the gallery? Penalties for such infractions by Councillors must be legislated
- When Councillors are in conflict on issues that come before Council who speaks on their behalf to ensure Council has all relevant facts and information?
- If an Administrator is required to report potential Conflict of Interest situation there must be protection built in for the Administrator
- Councillors do not want to deal with infractions by fellow Councillors, thus some conflicts are not dealt with appropriately
- Relationships not defined that could have individuals feel they are in conflict i.e. cared for by or lived with a Cousin
- Include Administrators and Department Heads under the Conflict of Interest legislation because they are required to file disclosure statements and include appropriate penalties for infractions of Conflict of Interest
- Where should the conflict apply? Only to Council or Committees or include emails as well.
- Notification to Councillors of seat being vacated due to conflict. Friendly Hearing under Rules of Natural Justice.
- Broaden the definition of Conflict of Interest to include such items as Town Committee affiliations, non-profit organizations, and other Committees where Councillors serve in Executive capacity and make decisions to request funding from Council and then vote to provide funding to such organizations as a Councillor

- Clearer definition on monetary interest
- Clearer direction and clarification on what constitutes “an interest distinct from an interest led in common with the other citizens” particularly in one-industry Towns
- Current legislation is working well when chosen to apply it properly
- Councillor should not be in conflict only due to living on a particular street
- Set a time limit for the alleged breach to be able to be brought forward and to be heard by Council

### Rationale

Similar concerns were expressed about this section as it was for the previous one. Some specific areas included broadening the scope of the Councillor’s activity to include other Committees in which the Councillor is involved in by virtue of being a Councillor, providing a clearer process on how to address Conflict of Interest situations, having potential violations heard by an independent tribunal, and having graduated penalties for violations rather than a single penalty regardless of the severity of the violation.

### Recommendation

It is recommended that a specific process be developed clearly identifying actions that put a Councillor in a position of conflict. This process should define the activity and relationships that would put an individual in conflict, and an independent process by which a potential violation could be reviewed and ruled on and a range of penalties for infractions.

## S. 208 – Disclosure

### Sample Comments

- Currently where the number of Councillors declaring a Conflict of Interest results in a loss of a quorum decisions of Council can no longer be made without direction from the Minister to permit the remaining Councillors to make a decision.
- The Cities Act of Saskatchewan, Section 119 – Effect of Conflict of Interest on quorum states:
  1. Any member of a Council who declares a Conflict of Interest pursuant to section 117 is not to be counted for the purpose of determining whether a quorum of the Council is present when the question or matter is put to a vote
  2. If the number of members of Council declaring a Conflict of Interest on a matter pursuant to section 117 results in a loss of quorum at a meeting with respect to the question or matter, the remaining number of members is deemed to be a quorum for that question or matter, unless that number is less than two (2)

### Rationale

This type of revision would eliminate a lot of instance where a quorum is lost due to Conflict of Interest situations and is particularly relevant in one-industry Towns and also in small Municipalities where many individuals are related to each other.

### Recommendation

It is recommended that revisions similar to Section 119 of the Cities Act of Saskatchewan be made to the Act.

## S. 209 - Decision of Council

### Sample Comments

- Further clarity is required on who reports the conflict, should the Administrator bring it to the attention of the individual Councillor or Council. What happens if it is clearly a Conflict of Interest and Council votes it isn't?

### Rationale

It was suggested that Councils have been under undue influence to declare a Councillor as not being in conflict when they are clearly in conflict and this creates a potential problem.

### Recommendation

It is recommended that clearer language be included where some liability rests with Council when they declare a Councillor is not in conflict when there is obvious prima facie evidence before then that there is a conflict.

## S. 210 – Disclosure Statement

### Sample Comments

- Clearer definition of what an interest is in regard to disclosure statements
- Disclosure statements should also include volunteer/non-profit organizations where the Councillor holds an executive position
- Should include disclosure of all interests of a Councillor inside or outside the municipality
- Sanctions for not totally disclosing interests
- Should include the names of relatives that are defined as those that could create Conflict of Interest situations for Councillors. The same provision should be applicable to Administrators who have to file Disclosure Statements. Such a process would provide this necessary information to all of Councillor and Administrator

### Rationale

It was suggested that the scope of what is currently to be included on the statement is not broad enough. Many Councillors have interests that go beyond their immediate Council and Municipality that can influence the manner in which they conduct the business of their own Town.

### Recommendation

It is recommended that the scope of the legislation be broadened to include other organizations and interests outside the immediate Municipality.

## S. 213 – Privileged Meetings

### Sample Comments

- There are certain topics such as human resource matters where Council should be able to make a decision without going public for the privacy and protection of employees or with respect to legal matters
- Identify certain decisions that do not require ratification at a public meeting - HR issues

- Define what can be addressed at privileged meetings and require an agenda with such issues only being addressed at privileged meetings

#### Rationale

The primary concern expressed with respect to privileged meetings was that a consensus reached must then be tabled at a public meeting for the actual decision. This is potentially inappropriate and in conflict of ATIPPA if personal identifiers are released in the public decision.

#### Recommendation

It is recommended that certain activity that includes legal, human resource, or other matters of a sensitive nature not have to be ratified at a public meeting.

### S. 214 – Public Tenders

#### Sample Comments

- Tendering by a board set up by Municipalities to provide a municipal service
- Acquire assets through public auction
- Use auctions rather than public tendering for equipment, purchases, etc.
- Ministerial approval to acquire asset. Allow Towns the authority to purchase and acquire assets
- Towns should be able to buy and sell assets or services from one another without going through the Public Tender Act

#### Rationale

It is appreciated that the public tendering process is intended to ensure that the expenditure of public funds results in the most economical outcome for the Municipality. However, under certain situations, better economic results can be attained through transactions between Councils without going through the public tender process. An example of this is purchasing a vehicle from a private auction house.

#### Recommendation

It is recommended that Council be provided the option to acquire goods or services through public auction opportunities or from other Municipalities.

### S. 215 – Inspection of Documents

#### Sample Comments

- Have outstanding taxes available through 215 or have it available to Council through another means
- Councillors feel they need to know the names of individual tax payers who are in arrears for tax collection purposes, write-offs and to ensure they are not in Conflict of Interest when dealing with such tax arrears for specific relatives
- Should be revised so that Assessment Rolls are not included in the documents made available to the public due to the Privacy Act
- Ensure consistency with ATIPPA requirements

### Rationale

There were opinions expressed that the items included under this section be broadened while other thought the scope should be narrowed.

### Recommendation

It is recommended that the information available through this section be consistent with that available through ATIPPA.

## S. 219 – Joint Ventures

### Sample Comments

- Define Towns role in economic development

### Rationale

As previously indicated, what is included under the realm of economic development is unclear.

### Recommendation

It is recommended that a clearer definition of economic development be provided.

## S. 221 – Private Services

### Sample Comments

- Allow Towns to do private work and bill back to the owner
- Provide more flexibility to generate additional revenue by less restrictions to competition with other private providers

### Rationale

Many Municipalities are struggling to identify alternative means of generating revenue. One of the ways suggested is to enable Municipalities to offer their services to the public and charge competitive rates for the work. While it is recognized that using public assets to compete with the private sector may not be deemed acceptable, in many Municipalities the options available to engage such services are limited.

### Recommendation

It is recommended that Municipalities be authorized to perform services for residents for which it has the capacity and charge competitive rates for providing this service.

## S. 387 – Local Service Districts (LSD)

### Sample Comments

- All LSD & Unincorporated areas (UI) should have to be incorporated or pay taxes to the nearest incorporated municipality
- Eliminate LSD

### Rationale

It was the general consensus that a governance model be implemented that provided for the abolishment of LSD and unincorporated areas.



### Recommendation

It is recommended that LSD be abolished through their incorporation as a Municipality or being included within an adjacent Municipality.

### S. 388 – Publication of Order

#### Sample Comments

- More publication methods should be added
- Also applies to Sections 8, 30. 109

### Rationale

As previously indicated, the current methods of publication and notifying the residents is expensive and ineffective.

### Recommendation

It is recommended that social media be identified as an additional means to communicate with and inform the residents and general public.

### S. 404 – Council Orders

#### Sample Comments

- Need better language for cleaning up dilapidated properties and wrecks
- Clear definition of vehicle wrecks and better process for dealing with them
- Better definition of solid waste and what adversely affects surrounding properties
- Greater authority to address derelict and vacant buildings and property
- Greater authority for orders. Authorize issuing tickets for minor property violations
- Clarity or clearer language on defining noxious substances
- Simplify process for cleaning up dilapidated buildings and property

### Rationale

It was the general consensus that the current legislation is vague and unclear. Little direction is provided on what constitutes dilapidated buildings or vehicle wrecks. It was also indicated that greater authority is required for Councils to adequately address such undesirable situations. The ability to issue tickets as has been authorized to specific Municipalities was presented as an option.

### Recommendation

It is recommended that clearer language be provided which better defines dilapidated buildings and car wrecks and that greater authority be provided to Towns to address these situations.

### S. 406 – Service

#### Sample Comments

- Ability to serve orders on more than a director or CEO (i.e. other managers employed by corporation). CEO is a defined term. Should this be broadened to include CAO, CFO, etc.?
- Broaden language on whom Orders can be served

### Rationale

The current language is very restrictive as to who an order can be served on by a Municipality.

### Recommendation

It is recommended that the individuals on which a Municipal Order can be issued on be broadened.

### S. 407 – Service

#### Sample Comments

- Councils should have the right to withhold permits for outstanding taxes or fees

### Rationale

It would only make sense to withhold permits where taxes and fees are outstanding and would provide another appropriate tax collection method.

### Recommendation

It is recommended that the Act be amended to provide Council with the authority to withhold permits for outstanding taxes and fees.

### S. 409 – Appeal

#### Sample Comments

- Use of newspapers. Provide other venues. No local paper in some Towns
- More stringent enforcement of appeal periods regarding the hearing by the Board
- Appeals should be heard by a commissioner, not an appointed appeals board. Appeals are taking way too long to be heard

### Rationale

Most of the concerns received pertained to the delays being experienced in the hearing of appeals by the Regional Appeal Boards. Also, the method of publication is expensive and ineffective.

### Recommendation

It is recommended that a process be implemented which reduces the time to have an appeal heard. This can be accomplished through the use of a single appeals commissioner rather than a multi person board. This would also reduce the cost of such a tribunal.

It is also recommended that social media be identified as an additional means to communicate with and inform the residents and general public.

### S. 411 – Liability of Councillors

#### Sample Comments

- Sometimes Councillors act outside authority. Should Administrators have mandatory reporting requirements?

- More accountability for Councillors making motions/decisions that are in direct contravention to their own policies/regulations and the Provincial Legislation
- Consequences for interfering with the day to day operation of Administrators and Department Heads within their perspective roles
- Staff should have same protection
- There should be consequences for Councillors who act in contravention of the Act
- Act requires a clear and appropriate investigative process with the flexibility to levy a variety of penalties or sanctions for failure to comply with the Act
- Clarification and repercussions to individual Councillors who act on their own with proper Council authority

#### Rationale

It is understood that Councillors should be personally absolved from any liability when conducting their business in good faith. It was suggested that this absolution be specifically provided to Administrators as well.

It was also indicated that there should be greater clarity around the implications for Councillors who blatantly act outside their specific authority.

#### Recommendation

It is recommended that the Act provide absolution for Administrators who are acting within their specific authority.

It is also recommended that there should be greater clarity around the implications for Councillors who blatantly act outside their specific authority.

### S. 416 – Lieutenant Governor in Council Regulations

#### Sample Comments

- Clearer and updated language in the Remuneration Regulations

#### Rationale

Associated with Council activity are the Councillor Remuneration and Reimbursement Regulations.

#### Recommendation

It is recommended that clearer and updated language be provided on which Councillors are authorized to reimburse themselves for time and expenses incurred in the conduct of their Council business.

### S. 420 – Penalty

#### Sample Comments

- Authorize Councils to impose fines for by law violations
- Where there is a MEO, the Municipality should be able to ticket for those offences and penalties in addition to other remedies prescribed
- Changes to allow for the use of tickets for certain offences to be issued by the Municipality.  
Allow greater municipal controls

- Increase penalties

#### Rationale

Concern was expressed that the current system of imposing fines is complex, time consuming, and expensive. The court system is far removed from many Municipalities and that a simpler and more efficient process of imposing fines be implemented.

#### Recommendation

It is recommended that Municipalities themselves be authorized to impose fines and penalties for the violation of Municipal Bylaws and Regulations.

### S. 421 – Prosecutions

#### Sample Comments

- In the past, it fell to the RCMP to enforce Community By-Laws and Regulations. With the disappearance of local police from small Towns Municipal By-Laws and Regulations are presently unenforceable. Small Towns have no real authority to enforce By-Laws and Regulations. The only solution Council sees is for the Province to find a way for small rural communities to issue warning fines to be followed by small monetary fines when repeated violation of Municipal By-Laws and Regulations occur

#### Rationale

Many Municipalities have experienced positive support from police forces in their efforts to enforce their Bylaws and Regulations. With the reduction of resources, and the greater demand for their service, the level of support being received from these agencies has been reduced. While many Municipalities do not currently have the capacity to fill the enforcement void on their own, introducing language to enable those who can to issue tickets and fines may alleviate some of the enforcement deficiency being experienced.

#### Recommendation

It is recommended that language be provided to authorize Municipalities to play a greater role in prosecuting violators of Municipal Bylaws and Regulations and have the discretion to issue violation notice for such infractions where appropriate, subject to having the required resources by themselves or in conjunction with other Municipalities.

### Legislation – Specific Authority for Small Municipalities

#### Sample Comments

- Should there be specific legislation for smaller Municipalities - Urban vs Small Towns

#### Rationale

There is currently a significant gap between the capacity of larger and smaller Municipalities in this Province. This may be addressed by providing the larger, and the smaller Municipalities, with their own specific and appropriate authority to provide local municipal services.

### Recommendation

It is recommended that specific authority be provided to large and small Municipalities which would enable them to adequately deliver the services required by their residents.

### Legislation – Verbal Requests

#### Sample Comments

- Council often receives repeated verbal requests from individuals that are put in writing and does not come via an ATIPP Request

#### Rationale

Councillors feel obligated to response to all verbal requests however this is time consuming and sometimes it is not clear what information the individual requires.

### Recommendation

It is recommended that Council be given the authority to require that requests for information be made in writing or that the individual requesting information be required to make a presentation to the appropriate Committee to request the required information in order to clarify what information is being requested of Council.

### Legislation – Municipal Ombudsman

#### Sample Comments

- Have protection from actions like a Municipal Ombudsman or Auditor General for Councils

#### Rationale

Many aspects of our society have an overseer assigned to receive and assess concerns associated with their respective authority. No such avenue is available to Councillors and Administrators.

### Recommendation

It is recommended that an office be established, such as a Municipal Ombudsman, to provide a venue for Councillors and Administrators who feel they have been subject to an injustice by some aspect of the sector.

### Legislation – Provincial Tax Credit

#### Sample Comments

- Province should allow Municipal tax payers to receive a Tax Credit on their Provincial taxes for municipal taxes paid

#### Rationale

Individuals in the Province are subject to some of the highest taxes in the country.

### Recommendation

It is recommended that Municipal tax payers receive a Tax Credit on their Provincial taxes for Municipal taxes paid.

## Legislation – Default Regulations

### Sample Comments

- Province should create a default set of regulations that are to be in-force if a Town does not issue their own regulations

### Rationale

Many Municipalities do not have the capacity to develop appropriate regulations or bylaws.

### Recommendation

It is recommended that the Province create a default set of regulations that are to be in-force if a Town does not issue their own regulations.

## Legislation – Fees Applicable Outside Municipal Boundaries

### Sample Comments

- Town's should be permitted to charge residents outside municipal boundaries(LSD/UI/Etc.) fees for services such as fire, recreation, waste, etc.

### Rationale

This matter was previously raised and pertains to the provision of services by Municipalities outside their boundaries and not being appropriately compensated for the service. This matter can be addressed by creating regional bodies to provide such service, or authorizing Municipalities to impose fees for service outside their Municipal boundary.

### Recommendation

It is recommended that Municipalities be authorized to impose fees and taxes outside its Municipal boundaries for the services provided to such areas.

## Legislation - Harassment

### Sample Comments

- Define harassment and have a Committee in place to investigate such activity
- Extend the proposed new Provincial harassment/respectful workplace policy to include Municipalities
- Disrespect and verbal abuse to Administrators or other staff in the work place and/or at public/privileged meeting
- To have an effective harassment policy some form of whistleblower legislation is required to provide protection to staff who report harassment
- There should be a designated person, ombudsman, privacy commissioner, or independent party, to investigate incidents of harassment and be provided with authority to impose penalties up to and including removal of Councillors from office, depending on the severity of the harassment

### Rationale

One of the primary concerns expressed pertained to harassment in the workplace. This harassment can be from residents, coworkers, or the employer. It is generally accepted that any type of harassment in the workplace is totally unacceptable.

### Recommendation

It is recommended that legislation be introduced or a provision be added to the Municipalities Act to address the current harassment being experienced in many Municipal offices.

## Legislation – Code of Conduct

### Sample Comments

- Code of Conduct to hold office. Workers require it so why wouldn't elected officials?
- Language to require Councillors to participate between meetings as part of a Code of Conduct
- Introduce a Code of Conduct for Councillors
- Such a Code of Conduct should include similar provisions as contained in the Ontario's Municipal Act whereby penalties can be imposed for breaches of the Code of Conduct including a reprimand and a suspension of remuneration payable to the Councillors for up to ninety (90) days

### Rationale

Many Administrators expressed concern with the manner in which their Councillors were conducting themselves. This included their conduct in the community, as well as their attendance and participation in Council meetings and other functions. There is a certain expectation that those in the municipal world should hold themselves to a certain standard and conduct themselves accordingly.

### Recommendation

It is recommended that in addition to the Oath of Office taken by Councillors that a Code of Conduct be introduced by the Department, to govern the manner in which elected officials conduct themselves in fulfilling their duty and that appropriate repercussion/penalties be provided for breaches of the Code of Conduct.

## Legislation – Enforcement of Bylaws and Regulations

### Sample Comments

- Traffic issues and issues that would have to be covered by RCMP
- There should be different section all together for small Towns with rules pertaining to what we can do

### Rationale

This pertains to two (2) subjects previously introduced: bylaw and regulation enforcement, and separate legislation for smaller Municipalities.

### Recommendation

It is recommended that legislation be provided pertaining to small Municipalities and the manner in which they can enforce their Bylaws and Regulations.

## Legislation – Municipal Service Fee

### Sample Comments

- Abolish the Municipal Assessment Agency so Towns can do their own
- Provide additional taxation authority to Municipalities
- Provide other alternatives such as a service fee
- Municipal Service Fee

### Rationale

The assessment of property is required with the implementation of the current property tax system and will continue to be so. Many Municipalities currently imposing the property tax have expressed concern that a tax based on the value of property is regressive and not a fair representation of the cost to provide the service to the individual. A fairer method of taxation would be one more closely related to the cost of providing the service.

This authority is not based on the value to the specific property thereby no longer requiring the Municipality to incur the cost of the annual assessment.

### Recommendation

It is recommended that legislation be introduced providing Municipalities with the option to implement a Municipal Service Tax which is based on the cost of the service. It is proposed that this Tax be affixed to the property as is the current Property Tax.

## Legislation – Councillor Working for the Town

### Sample Comments

- Allow the Town to engage a contractor who is a Councillor

### Rationale

In many Municipalities there is little ability to engage individuals to conduct the sporadic and insignificant duties required of the Town. Often the only individuals available are the elected Councillors. It is recognized that this can currently be accomplished by obtaining prior Ministerial approval. Depending on the requirements of the work, this opportunity is often not an option due to the time required to obtain this approval.

### Recommendation

It is recommended that authority be provided for Council to engage Councillors to undertake work of the Council when other individuals are not available without obtaining Ministerial approval.

## Legislation – Crown Land

### Sample Comments

- Greater control over Crown Lands



### Rationale

Many individuals expressed concern over the control of Crown Land. This matter has been raised in a number of forums in recent years.

### Recommendation

It is recommended that the Province consider giving control over existing Crown Land within a Municipal boundary to the Municipality.

## Legislation – Greater Autonomy for Large Municipalities

### Sample Comments

- Greater autonomy for larger Municipalities without having to seek Ministerial approval

### Rationale

Many Municipalities in the Province are quite sophisticated and have considerable capacity. It has been suggested that these Municipalities be given greater autonomy in the delivery of their services. This is consistent with previous reference to having specific legislation and authority assigned to Municipalities based on their size and capacity.

### Recommendation

It is recommended that specific authority be provided to large and small Municipalities which would enable them to adequately deliver the services required by their residents.

## Legislation – Municipal Elections NL

### Sample Comments

- Establish Municipal Elections NL to assist Municipalities

### Rationale

Conducting Municipal elections and maintaining election records is a significant undertaking with approximately 275 Municipalities in the Province. There is considerable effort required to support this activity and maintain the integrity of the process.

### Recommendation

It is recommended that the Province establish the office called Municipal Elections NL to assist Municipalities in the conduct of the Municipal election process.

## Legislation – Taxation of Utilities

### Sample Comments

- Clearer legislation for taxing utilities. Collect for all revenue received within a municipality

### Rationale

Municipalities have experienced significant challenges imposing and collecting from utility providers. It is recognized that this authority is provided by the Taxation of Utilities and Cable Television Companies Act.

### Recommendation

It is recommended that greater authority be provided to implement and enforce the collection of taxes from utility companies.

### Legislation – Mandatory Councillor Training

#### Sample Comments

- Have legislation requiring a certain percentage of Councillors attending training to make them eligible for funding
- Have training mandatory for Administrators as well
- Mandatory Councillor Training tied to funding or Municipal Operating Grant (MOG)
- There should be consequences for Councillors who do not attend orientation/training
- The requirement for training for Councillors should be made mandatory on an annual basis, should be a requirement for Councillors similar to the requirement to attend Council Meetings and also should be included as part of Councillor's Oath of Office

#### Rationale

The matter of mandatory training for Councillors was raised in all consultation sessions. It is believed that the role of a Councillor is significant and the understanding of their role by the Councillor is crucial. Many residents serve as Councillors for many years without attending training session to gain a better understanding of their role, and the role of the Administrator. Newly elected Councillors should be required to take mandatory orientation/training. Training should not only occur upon taking office but periodically throughout the term of office of Councillors.

### Recommendation

It is recommended that the attendance of a roles and responsibility training/orientation session by Councillors be mandatory and attached to the approval of Provincial funding support.

### Legislation – Province Defending Court Actions by Municipalities

#### Sample Comments

- The Department should defend actions of the Council when performing as the Act requires
- The Department should be providing more assistance with the interpretation of legislation by Municipalities as it is the Department's legislation
- Consider establishing a Review Panel to provide interpretation rather than advising Municipalities to obtain legal advice
- This would provide more consistency in the interpretation of legislation and would be less costly to Municipalities
- Some Municipalities cannot afford lawyers to defend their actions and this results in decisions based on insufficient or incorrect information that negatively affects other Municipalities

#### Rationale

In a number of cases Councils have been forced to defend their actions taken under legislation provided by the Province. This particularly applies to the vacating of the office of a Councillor for violating the

Conflict of Interest provisions of the Act. It is believed that the cost to defend the action, when the action is dictated by the Act, should not be borne by the Municipality but by the Province.

#### Recommendation

It is recommended that the Province commit to defend actions undertaken by Municipalities when the action is required of the Municipality by the Act or other legislation.

### Legislation – Seasonal Homes to Be Included In MOG Calculation

#### Sample Comments

- MOG should not exclude seasonal homes from the calculation of MOG's payable to Municipalities
- While some Municipal services may not be provided to seasonal homes others such as fire protection, road repair, snowclearing and water and sewer infrastructure repair and replacement are all required to such seasonal homes

#### Rationale

With continuing Municipal services being required and operational and capital cost ongoing it is only reasonable and fair to have seasonal homes included in MOG payment calculation.

#### Recommendation

It is recommended that seasonal homes be included in the calculation of MOG payable to Municipalities.

### Legislation – Statutory Holidays, Pay and Benefits

#### Sample Comments

- Some Municipalities provide Statutory Holidays, pay and benefits consistent with those provided to larger Municipalities and Provincial government employees while others only provide for the Statutory, pay and benefits as stipulated under the Labour Standards Act

#### Rationale

Municipal employees throughout the Province should be treated equitably in the provision of Statutory Holidays, pay and benefits that is similar to other Municipal employees in larger Municipalities and to Provincial employees. With continuing Municipal services being required and operational and capital cost ongoing it is only reasonable and fair to have seasonal homes included in MOG payment calculation.

#### Recommendation

It is recommended that provisions be made to have all Municipalities provide standardized Statutory Holidays, pay and benefits for employees.

## Legislation - Cannabis

### Sample Comments

- The issue of the legalization of cannabis is raising concerns for many Municipalities, including Municipal taxation, permits, regulations, etc. and more guidance will be required by the Department on this new emerging issue

### Rationale

Municipal employees and Councils will need more information on the implications of the sale of cannabis from retail outlets and also from a regulatory perspective and timely and beneficial guidance and information will be required from the Department.

### Recommendation

It is recommended that a working group consisting of MNL, PMA, Department, lawyers and planners be formed to prepare Municipalities for the impacts on Municipalities of the legalization of cannabis.

## Conclusion

Administrators noted that this review was welcomed and long overdue as it has been approximately twenty (20) years since the last major review of the Municipalities Act, although many amendments have been made to the Act during this period. It is recommended that a Standing Municipalities Act Review Committee, consisting of representatives of the Department, MNL, and PMA, should be put in place to continually review the Act for necessary amendments and that the Act should have a mandatory review every five (5) years.

## Issues That Arose Outside the Municipalities Act

Although it was acknowledged that this review was limited to a review and amendments to the Municipalities Act, and the three Cities Act, there was clear acknowledgement of the need for a review and amendments to the following legislation:

### Municipal Affairs Act

This Act be reviewed to provide the Minister with clear authority to investigate and take action where Councils are not acting in accordance with the intent of the Municipalities Act; acting in opposition to the principals of good governance; creating and/or instigating conflict with Administrators and the general public; harassing Administrators; creating stress for Administrators and fellow Councillors; and bringing the operation of Municipalities into question

### Taxation of Utilities and Cable Television Act

Municipalities are experiencing significant difficulties in raising and collecting revenue and are seeing the amount of revenue collected from the major television companies, Bell and Rodgers, declining significantly. There are many other providers of television services, telephone services, and satellite television that are providing services and Municipalities are unable to levy fees or collect fees from those competitors to Bell and Rodgers. There is an urgent need to review this legislation and remedy the current unfair situation

### Urban and Rural Planning Act 2000

Municipalities are encountering significant challenges in dealing with issues surrounding Crown Lands, in particular, jurisdiction over Crown Lands within municipal boundaries; controlling buildings to be erected or erected on Crown Lands; conflicts in dealing with the Lands Act; and the current method of dealing with purchase notices under the Act

### Assessment Act, 2006

Municipalities are searching for ways to reduce, what they consider, to be unnecessary expenditures. One of these is the necessity to pay for assessment fees when there is very little, if any, sales of property, in many small, rural municipality at a time when house values are declining. Municipalities view the use of assessed value as one of a number of methods to distribute taxes on properties to residents and they are encountering significant challenges to explain to residents why there are changes in their assessed values. Municipalities would like to explore other avenues to distribute taxes. It is suggested that the implementation of a municipal services fee that attaches a lien on property would be a more practical and less expensive method to distribute and collect taxes. A move to such a system would require a review of the Assessment Act, 2006

### Municipal Elections Act

Many questions were raised in the 2017 municipal election as well as previous municipal elections, in particular, the definition of a resident; the authority of the Returning Officer to seek legal advice when questions are raised that require legal advice when they are in charge of the election; clarification on the use of proxy voting in the Advance Poll and on Election Day, and the setting of an additional nomination date when insufficient Councillors are nominated during the regular scheduled municipal election. To address these concerns and other issues a review of the Municipal Elections Act is required

## MEMORANDUM

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Hand Delivered

Date: March 9, 2018  
To: Mr. Stephen F. Penney  
From: Jessica L. Habet  
Re: Proposed Amendments to the Municipalities Act, 1999  
File: SM053061-1

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### STATEMENT OF ASSIGNMENT

You asked me to do research to assist you in providing suggestions for changes to the *Municipalities Act, 1999*, SNL 1999 c M-24 (the “Act”) on the provisions regarding conflict of interests.

This research memorandum focuses on three areas

1. Implementing a threshold for determining whether a conflict of interest exists and flexible penalties;
2. identifying a body separate from the Town Council to decide whether there is a conflict of interest; and
3. identifying what happens to a resolution that was passed when a councillor had a conflict of interest.

### ORGANIZATION

The first part of the memorandum outlines the conflict of interest provisions in our jurisdiction and offers a case that illustrates some problems with the legislation.

The second part identifies what other jurisdictions have recommended and/ or are doing in the three focus areas noted above.

## DISCUSSION

### PART I: Newfoundland and Labrador

A conflict of interest exists where a councillor, a councillor's relative, or a councillor's employer has a monetary interest in the matter.<sup>1</sup> A councillor is prohibited from voting on or discussing issues tabled at the meeting when she herself, her relative, or her employer has a monetary interest in the matter. The councillor must not only refrain from discussing or voting on the matter in which they have a conflict, she is required to leave the meeting while the matter is being considered.<sup>2</sup> The Council is required to declare vacant the office of a councillor where there is a conflict of interest.<sup>3</sup> If a councillor is unsure if she has a monetary interest, she must disclose the situation to the council, and the council will proceed to decide by majority vote.<sup>4</sup>

A councillor who has been found to be in conflict of interest can appeal to the Trial Division.<sup>5</sup> The Court can uphold the vacancy or reinstate the councillor; uphold, amend, or rewrite the resolution; or make another decision that he or she considers appropriate in the circumstances.<sup>6</sup>

There is no provision for dealing with a conflict of interest outside the court process.

### Illustrating the problem: *Fewer v Harbour Main-Chapel's Cove-Lakeview (Town)*

*Fewer v Harbour Main-Chapel's Cove-Lakeview (Town)*<sup>7</sup> exemplifies the current problems with our conflict of interest provisions. Bernard Fewer ("Fewer") was an elected member of the Town Council for Harbour Main-Chapel's Cove-Lakeview (the "Council"). Fewer and his son lived in two of sixteen houses on a road being considered by Council for water and sewer services. Fewer voted on matters relating to the water and sewer extension project (the "Project") in October 2005. Sometime after, a resident of the Town called the Department of Municipal Affairs to complain that Fewer was in a conflict of interest regarding the Project.

The Council found Fewer to be in conflict of interest pursuant to the Act and declared his seat vacant in October 2006.

Prior to passing these unanimous resolutions, however, Council took several measures to understand their responsibilities pursuant to the legislation

(1) Council obtained legal advice: Council first addressed the issue of conflict of interest on November 1, 2005 and decided to obtain legal advice. At another meeting on November 8, 2005, Council discussed the legal advice received.

(2) On November 16, 2005, the Mayor wrote to the Minister of Municipal and Provincial Affairs seeking assistance on the conflict of interest issue pursuant to s. 208(5) of the Act. He wrote that after consultation with personnel from his office and from a lawyer, all Councillors except him

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<sup>1</sup> *Municipalities Act, 1999*, SNL 1999 c M-24, s 207 [*Municipalities Act*].

<sup>2</sup> *Ibid*, s 208(3).

<sup>3</sup> *Ibid*, s 206.

<sup>4</sup> *Ibid*, s 209.

<sup>5</sup> *Ibid*, s 410.

<sup>6</sup> *Ibid*, s 410(6).

<sup>7</sup> 2007 NLTD 91 [*Fewer*].

would be in a conflict of interest or possible conflict of interest regarding two different projects. For each project, the Councillors either lived in the area under consideration or had siblings.

(3) The Minister attended Council meeting on January 31, 2006 and agreed to follow up on the conflict of issues situation.

(4) On May 26, 2006, the Director of Regional Operations for the Department of Municipal and Provincial Affairs responded to the Mayor's letter of November 16, 2005, and confirmed that there were conflicts of interests and informed Council that there were two other potential conflicts of interests that were not raised in the Mayor's letter. An excerpt of the letter is copied below:

*Issues 1, 3 and 4 as outlined above appear to place Councillor Fewer and Mayor Woodman in conflict of interests situations. This being the case, Section 206(2)(b) of the Municipalities Act states:*

*The council shall, by resolution, declare vacant the office of an elected councillor where that councillor discusses or voted on a matter on which he or she has a conflict of interest.*

*This Section requires the Council to declare vacant the office of any Councillor who violates the conflict of interest provision of the Act. This is a statutory obligation placed on all Councillors.*

*From your correspondence, you inform that you have consulted with legal counsel on some of the aforementioned issues. Therefore, the Department recommends that Council seek further guidance from its solicitor before proceeding with any declaration of vacancy. This will insure [sic] that Council is acting properly from a legal perspective and is being given the proper advice to its obligations. Also, it will insure [sic] that the Rules of Natural Justice are being met.*

The Council obtained legal advice and discussed it at a meeting on July 19, 2006. A conflict hearing was held on October 19, 2006. Orsborn J noted from the minutes of Council meeting on September 2006 that the members of Council were unsure of how to proceed with the hearing.

### **(1) Preliminary procedural issues**

Orsborn J raised with counsel the scope of section 410<sup>8</sup> and whether or not it contemplated an appeal of Council's determination of the existence of a conflict of interest. He explained that it

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<sup>8</sup> s. 410 (1) A councillor whose seat has been vacated under paragraphs 206(1)(c), (d), (e), (f), (g) or (h) or declared vacant under subsection 206(2) may appeal to a judge of the Trial Division by filing a notice of appeal with the court within 21 days of the date on which he or she is notified by the clerk of the council that his or her position as councillor is vacant and upon paying into the court a sum, or upon giving a bond for the sum, that the judge considered sufficient to defray the costs of the appeal.

(2) A copy of the notice of appeal shall be filed with the clerk by the appellant or by his or her solicitor.

(3) The notice of appeal shall set out in detail the allegations of the appellant and the grounds of the appeal and shall be signed by the appellant or his or her solicitor.

(4) The appellant shall, within 14 days after the service of the notice of appeal under this section, apply to the judge for the appointment of a day for the hearing of the appeal.

(5) A clerk shall, not less than 4 days before the date of the hearing of the appeal, produce before the judge all papers and documents in the possession of the council relevant to the appeal.



may be that the actual determination of a conflict of interest can be challenged not by way of appeal but only by way of judicial review. Counsel advised Orsborn J that the conflict of interest provisions of the Act were under review and may be amended, but both counsel were willing to address the conflict of issue as part of the appeal and previous court decisions had followed that approach. Further, both counsel proceeded on the basis that provisions of s. 410 did not contemplate any degree of deference by the Court to Council's decision and considered that the appeal should proceed by way of a hearing *de novo*.

Orsborn J proceeded with the trial as advised by counsel but stated, "I express no opinion on whether or not a Council's formal determination of a conflict of interest is in fact a proper subject of appeal under s. 410."<sup>9</sup>

Orsborn J held that Fewer's office was properly declared vacant by Council. Fewer argued that it was unfair and contrary to the intention of the Act that he should in October 2006 be declared to be in a conflict of interest and subject to removal for participation in meetings of 2005. It was not disputed that all knew that Fewer and his son lived in the Project area at the time of the meeting. Further, the Mayor in passing the resolution stated that the resolution was passed "in duress" as he felt he had no other choice. The Mayor wrote, "I feel we are compelled because if this resolution does not agree with what Municipal Affairs wants us to vote, there will be drastic terms imposed on an already financially

Orsborn J explained that the Act requires that the Council declare the councillor's office vacant and that a lesser sanction is not available.<sup>10</sup> Once the necessary pre-conditions are established under subsection 206(2), removal is the only sanction.

Orsborn J explained a councillor's obligation as it relates to conflict of interest:

*36 Further, the obligation to identify and disclose a conflict or a potential conflict rests with the individual councillor. Even though a councillor's circumstances may be common knowledge, each councillor should be aware of the provisions of the Act and at the earliest opportunity should seek a determination whether a conflict of interest exists. The provisions of the Act are quite clear; they prohibit a councillor's participation in matters where a conflict of interest exists. It is not sufficient for a councillor, if no one else chooses to raise the issue, to simply sit back and participate in discussions when a conflict may exist. In large measure the proper working of the conflict of interest provisions depends on the integrity of the councillors; the onus is on each individual councillor to recognize any potential conflict and act accordingly. If the councillor is in any*

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(6) A judge shall hear the appeal and the evidence brought forward by the appellant and the council in a summary manner and may

(a) uphold the vacancy or reinstate a councillor whose seat was vacated under paragraphs 206(1)(c), (d), (e), (f), (g) or (h);

(b) uphold, amend or rewrite the resolution made under subsection 206(2); or

(c) make another decision that he or she considers to be appropriate in the circumstances.

(7) A judge may make an order as to costs, either for or against the appellant or the council, and may fix the amount of the costs.

(8) A person who has filed an appeal under this section is not entitled to sit as a councillor while the appeal is being heard.

<sup>9</sup> *Ibid*, para 33.

<sup>10</sup> *Ibid*, para 35.

*doubt, the onus is on the councillor to seek a determination of Council pursuant to s. 209.*<sup>11</sup>

## **PART II: OTHER JURISDICTIONS**

All provinces and territories have enacted legislation which governs municipal conflict of interest, either through existing municipal legislation or stand-alone municipal conflict of interest statute.<sup>12</sup>

### **(1) Manitoba**

In January 2016, the Manitoba Law Reform Commission (MLRC) published a 132-page report which offered recommendations to the municipal conflict of interest legislation. The recommendations have not been implemented but those that relate will be summarized in the corresponding section below.

### **(2) Alberta**

Alberta's *Municipal Government Act*, RSA 2000 c M-26, is undergoing several amendments. Some amendments became effective in January 2018 while others will become effective in April 2018. The *Municipal Government Act* is one of Alberta's largest pieces of legislation and contains more than 650 sections. Because there are so many changes being made, the Government of Alberta's website offers explanations for the changes and implementation checklists for the municipalities to use.<sup>13</sup>

### **(3) Ontario**

Ontario is also implementing changes. Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017*, received Royal Assent on May 30, 2017, and introduced amendments to several statutes including the *Municipal Conflict of Interest Act*, RSO 1990 c M-50.

## **1. THRESHOLD FOR CONFLICT OF INTEREST AND FLEXIBLE PENALTIES**

All provinces have strict rules governing situations where there are financial relationships between a councillor and her municipality. The councillor must disclose pecuniary interests and liabilities arising during the course of official business and is subject to penalties for failing to disclose such relationships.

Where a councillor is in a conflict of interest, the consequence in most jurisdictions is that the councillor's seat is vacated, coupled with the requirement to make restitution in some circumstances, unless the violation was made unknowingly or through inadvertence.

The following table describes the remedial provisions in each province or territory's municipal conflict of interest legislation.<sup>14</sup>

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<sup>11</sup> *Ibid*, para 36.

<sup>12</sup> Manitoba, Ontario, Nova Scotia, the Northwest Territories, and Nunavut have stand-alone conflict of interest legislation.

<sup>13</sup> These changes can be found at the website <<https://mgareview.alberta.ca/whats-changing/>>

<sup>14</sup> Manitoba Law Reform Commission, *Modernizing the Municipal Council Conflict of Interest Act: Accountability, Enforcement & Oversight*, January 2016 [MLRC]. I have checked to ensure that these provisions have not been amended. Manitoba revised its legislation since this publication but the

<u>Province or Territory</u>	<u>Legislation</u>	<u>Remedial Provision</u>
Manitoba	<i>Municipal Council Conflict of Interest Act</i> , CCSM, c M255, s 21(1); 21(2).	<p>Judge may:</p> <p>declare that the councillor has violated a provision of the Act; or</p> <p>refuse to make the declaration.</p> <p>Where the judge declares the councillor has violated a provision of the Act, the judge:</p> <ul style="list-style-type: none"> <li>• shall declare the councillor's seat vacant; and</li> <li>• may order restitution.</li> </ul>
British Columbia	<i>Community Charter</i> , SBC 2003, c26, s 111(6).	<p>The court may declare:</p> <ul style="list-style-type: none"> <li>• that the person is qualified to hold office,</li> <li>• that the person is disqualified from holding office, or</li> <li>• that the person is disqualified from holding office and that the office is vacant.</li> </ul>
Alberta	<i>Municipal Government Act</i> , RSA 2000, c M-26, ss 176(1)-(2).	<p>Judge may:</p> <ul style="list-style-type: none"> <li>• declare the person to be disqualified and the position on council to be vacant;</li> <li>• declare the person able to remain a councillor;</li> </ul> <p>or</p>

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remedial provisions remain the same. Ontario has revised its legislation since the report's publication; those amendments are discussed below.

		<ul style="list-style-type: none"> <li>dismiss the application.</li> </ul> <p>If a judge declares a person disqualified, he or she may order the person to pay the municipality a sum of damages.</p>
Saskatchewan	<i>Municipalities Act</i> , SS 2005, c M-36.1, s 148(6)-(7).	<p>Judge may:</p> <ul style="list-style-type: none"> <li>declare the person to be disqualified and a position on council to be vacant;</li> <li>declare the person able to remain a member of council; or</li> <li>dismiss the application.</li> </ul> <p>If a judge declares a person disqualified, he or she may order restitution.</p>
Quebec	<i>An act respecting elections and referendums in municipalities</i> , CQLP c E-2.2, ss 303-304.	<p>Disqualification from office.</p> <p>The disqualification shall continue for five years.</p>
Nova Scotia	<i>Municipal Conflict of Interest Act</i> , RSNS 1989 c299, ss 10(3)-(4).	<p>Judge may:</p> <ul style="list-style-type: none"> <li>disqualify the member for a period of not more than ten years; and</li> <li>order restitution.</li> </ul> <p>Where the contravention has been made for the purpose of personal financial gain, the judge shall impose a penalty of not more than \$25,000 or, in default of payment thereof, imprisonment for a term of not more than twelve months.</p>
New Brunswick	<i>Municipalities Act</i> , RSNB 1973, c M-22, s 90.9.	<p>A person who fails to comply with conflict of interest provisions commits an offence under <i>The Provincial Offences Procedure Act</i>.</p> <p>In addition, the Court may:</p> <ul style="list-style-type: none"> <li>order the person to resign his office or position on such terms and conditions as the Court prescribes;</li> <li>prohibit the person from holding that office or position or any other specified office or position during such period of time as the Court prescribes;</li> <li>where the contravention has resulted in financial gain to the person or a family associate, to return any gain realized thereby in accordance with terms and conditions imposed by the Court; or</li> <li>make any other order that the Court considers appropriate in the circumstances.</li> </ul> <p>A failure to comply with any such order shall be deemed to be a contempt in the face of the Court and is punishable as such.</p>

Prince Edward Island	<i>Municipalities Act</i> , RSPEI 1988, cM-13  <i>Charlottetown Area Municipalities Act</i> , RSPEI 1988 c C-14.	Not specified. <sup>415</sup>
Newfoundland & Labrador	<i>Municipalities Act</i> , SNL 1999 c M-24, s 206; 410(1); 410(6).	<i>No provision for an elector to bring application to court.</i>  Council shall, by resolution, declare vacant the office of a councillor where the councillor fails to disclose a conflict of interest or discusses or votes on a matter in which he or she has a conflict of interest.  A councillor whose seat has been vacated may appeal to a judge. The judge may: <ul style="list-style-type: none"> <li>• uphold the vacancy or reinstate the councillor;</li> <li>• uphold, amend or rewrite the resolution; or</li> <li>• make any other decision that he or she considers appropriate.</li> </ul>
Northwest Territories	<i>Conflict of Interest Act</i> , RSNWT 1988, c C-16, s 6(1).	Supreme Court shall declare the seat of the member vacant and may: <ul style="list-style-type: none"> <li>• disqualify him or her during a period not exceeding five years; and</li> <li>• impose a fine not exceeding \$5,000.</li> </ul>
Nunavut	<i>Conflict of Interest Act</i> , RSNWT (Nu) 1988, c C-16, s 6(1).	Nunavut Court of Justice shall declare the seat of the member vacant and may: <ul style="list-style-type: none"> <li>• disqualify him or her during a period not exceeding five years; and</li> <li>• impose a fine not exceeding \$5,000.</li> </ul>
Yukon	<i>Municipal Act</i> , RSY 2002, c 154, s 198.	The Supreme Court may make a declaration: <ul style="list-style-type: none"> <li>• confirming the member of council in their office; or</li> <li>• disqualifying them from continuing in office as a member of council and declaring the office vacant.</li> </ul>

## Alberta

Section 174 of Alberta's *Municipal Government Act* sets out the circumstances which disqualify a councillor. This includes voting on a matter in which he or she has a pecuniary interest or liability; or where the councillor uses information obtained through his or her seat on council to gain a

pecuniary interest. A councillor who is disqualified must resign immediately. The council does not make the decision to remove the councillor.

If the councillor does not resign immediately, the council can apply to the Court of Queen's Bench for an order determining whether the person was never qualified to be or has ceased to be qualified to remain a councillor, or an order declaring the person to be disqualified from council. The option of empowering the judge to declare the person able to remain a councillor has been interpreted to mean that, if upon finding that a councillor did in fact contravene the statute, the judge can still allow the councillor to remain on council in spite of the breach.<sup>15</sup>

If the judge finds that the councillor is disqualified, the judge may still dismiss the disqualification if it arose inadvertently or by reason of a genuine error in judgment.<sup>16</sup>

## Ontario

Like Newfoundland, a councillor is required to disclose a pecuniary interest prior to a meeting and cannot discuss or vote on the matter. The amendments will add a provision which prohibits a councillor from using his or her office to attempt to influence any decision or recommendation being considered by the municipal or local board employees and persons who are acting on delegated authority from council, if the member has a pecuniary interest in the matter.

The current remedial provisions<sup>17</sup> will be repealed on March 1, 2019, and substituted with the following:

### *Power of judge*

*9 (1) If the judge determines that the member or former member contravened section 5, 5.1 or 5.2, the judge may do any or all of the following:*

- 1. Reprimand the member or former member.*
- 2. Suspend the remuneration paid to the member for a period of up to 90 days.*
- 3. Declare the member's seat vacant.*

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<sup>15</sup> *Ibid*, p 29.

<sup>16</sup> *Municipal Government Act*, RSA 2000 c M-26, s 177.

<sup>17</sup> Who may apply to judge

9 (1) Subject to subsection (3), an elector may, within six weeks after the fact comes to his or her knowledge that a member may have contravened subsection 5 (1), (2) or (3), apply to the judge for a determination of the question of whether the member has contravened subsection 5 (1), (2) or (3). R.S.O. 1990, c. M.50, s. 9 (1).

Contents of notice of application

(2) The elector in his or her notice of application shall state the grounds for finding a contravention by the member of subsection 5 (1), (2) or (3). R.S.O. 1990, c. M.50, s. 9 (2).

Time for bringing application limited

(3) No application shall be brought under subsection (1) after the expiration of six years from the time at which the contravention is alleged to have occurred. R.S.O. 1990, c. M.50, s. 9 (3).

*4. Disqualify the member or former member from being a member during a period of not more than seven years after the date of the order.*

*5. If the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, if the party's identity is not readily ascertainable, to the municipality or local board, as the case may be.*

*(2) In exercising his or her discretion under subsection (1) the judge may consider, among other matters, whether the member or former member,*

*(a) took reasonable measures to prevent the contravention;*

*(b) disclosed the pecuniary interest and all relevant facts known to him or her to an Integrity Commissioner in a request for advice from the Commissioner under the Municipal Act, 2001 or the City of Toronto Act, 2006 and acted in accordance with the advice, if any, provided to the member by the Commissioner; or*

*(c) committed the contravention through inadvertence or by reason of an error in judgment made in good faith.<sup>18</sup>*

Ontario is also adding a "Principles" section which includes the importance of integrity, independence and accountability in local decision-making; and the importance of certainty in reconciling public duties and pecuniary interests of members.

Another amendment will allow an elector, an Integrity Commissioner of a municipality, or a person demonstrably acting in the public interest to apply to a judge for a determination of whether the member has breached the Act.

## **2. IDENTIFYING A BODY TO DETERMINE WHETHER A CONFLICT OF INTEREST EXISTS**

### **Saskatchewan expanded the Provincial Ombudsman's mandate to include municipalities.**

The Barclay Report was written as a result of the inspection of the Rural Municipality of Sherwood for conflict of interests allegations.

Honourable R. L. Barclay, former justice of the Saskatchewan Court of Queen's Bench, recommended the establishment of a municipal conflict of interest ombudsman who would be able to provide independent advice, provide access to a specialized set of information, and serve as a screening device to determine whether a legal opinion is necessary to obtain. The ombudsman would have the power to conduct an investigation in respect to a breach of the Act or the code of conduct and would be able to convert an investigation into an inquiry.<sup>19</sup> If an inquiry is conducted and the ombudsman finds that a councillor has contravened the Act or code, council may issue and reprimand or suspend the salary of the councillor for up to 90 days. His explanation is helpful:

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<sup>18</sup> Modernizing Ontario's Municipal Legislation Act, 2017, SO 2017, c.10, Sched 3. s 7.

<sup>19</sup> He noted that an inquiry is an important middle ground between a regular investigation by the Ombudsman and a full judicial inquiry. By converting an investigation into an inquiry, the ombudsman can exercise powers under the *Inquiries Act* to obtain information.

*Based on the very nature of municipalities, council members are often important members of the local community and often have significant land holdings and other business interests within their municipality. Because of this common scenario, conflicts of interest frequently arise within municipal council chambers. Municipalities and their council members are currently left with a narrow range of options to address this oft occurring issue. The council member, with the aid of his colleagues and/ or staff, can choose to internally assess the matter and determine whether the interest is a disqualifying interest. Alternatively, the municipality can obtain a legal opinion and incur the cost associated with its preparation.*

*Neither of these two options currently available to address conflicts of interests are ideal. Municipal council members and staff should not be expected to reach determinations on what are often nuanced legal issues. Outside of scenarios where there is a clear conflict of interest, the municipality should have access to expertise on the matter which does not come at a significant expense to the municipality and its ratepayers.<sup>20</sup>*

The provincial ombudsman's mandate was expanded to include authorities. The powers of the ombudsman are set out in *The Ombudsman Act, 2012*, SS c O-32. The Ombudsman can investigate a matter; refuse or cease to investigate a matter; resolve the problem through the use of negotiation, conciliation, mediation or other non-adversarial approaches. The Ombudsman can report her opinion and reasons to the appropriate municipal entity and may any recommendations she sees appropriate. Any member of the public can refer a complaint to the Ombudsman. The Minister can also refer a complaint. The Ombudsman may review a matter on her own initiative.

If the Ombudsman is investigating a councillor, she will inform the mayor or reeve; if the Ombudsman is investigating the mayor or reeve, she will inform the Minister of Government Relations.

### **The Manitoba Law Reform recommends the appointment of a Municipal Conflict of Interest Commissioner.**

The Recommendations include the appointment of a Municipal Conflict of Interest Commissioner. The legislation has not been amended to reflect this recommendation. Below is a summary of the recommendations relating to the appointment of a commissioner:

Provide for the establishment of a Municipal Conflict of Interest Commissioner with responsibility for administering, interpreting and enforcing the Act for all municipalities.

- (a) The Commissioner should be appointed by the Lieutenant Governor for a fixed term and be required to report annually to the Legislature on the activities of her office;
- (b) the Commissioner should have four primary roles
  - (i) provide advice and guidance to councillors;

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<sup>20</sup> The Honourable R L Barclay, *Final Report of the Inspection and Inquiry into the RM of Sherwood No 159*, (Saskatchewan, 30 December 2014), online at <https://www.saskatchewan.ca/government/municipal-administration/municipal-inquiries>.



- (ii) educate councillors and public regarding ethical obligations
- (iii) investigate alleged breaches of the Act; and
- (iv) enforce the Act;
- (c) the Commissioner should be required to respond to requests from councillors for advice and guidance as to their responsibilities under the Act
- (d) the Commissioner should be required to promote awareness and understanding by councils, councillors, and members of the public of ethics in municipal government in general and rules surrounding conflicts of interest in particular;
- (e) the Commissioner may make inquiries that she considers appropriate and shall give councillors opinions and recommendations, where requested. If a councillor has requested a formal opinion, the opinion must be in writing;
- (f) any written opinion of the Commissioner shall be filed with the municipality and made available to the public in the same manner that the statement disclosing assets and interests is available;
- (g) the Act should be amended to provide that a councillor who acts on the written opinion and recommendations given by the Commissioner is not in contravention of the Act with respect to the matters dealt with in the opinion and recommendation;
- (h) the Act should authorize the Commissioner to conduct an inquiry arising from a request made by council, a councillor, or a member of the public, as to whether the councillor has contravened the Act;
- (i) the Commissioner should have the discretion to refuse a request to investigate where she is satisfied that the request is frivolous, vexation, or not made in good faith, or where she is satisfied that there are insufficient grounds for an investigation;

In Manitoba, the Ombudsman is responsible for investigating municipal conflict of interests under *The Ombudsman Act, CCSM c O45*.

### **Alberta is expanding the mandate of the Alberta Ombudsman.**

#### **(1) Alberta Ombudsman**

Alberta is expanding the mandate of the Alberta Ombudsman to include municipalities. Presently, the Alberta Ombudsman's authority only extends over the provincial government and certain professional organizations. The Alberta Ombudsman will objectively investigate complaints which can be brought forward by Albertans. Citizens will also be able to petition the Minister for an audit or inspection on matters of municipal affairs that includes the conduct of councillors. The changes come into effect April 1, 2018.

Currently, Albertans often call on the Minister of Municipal Affairs to get involved when they believe a municipality is not following rules.

## **(2) Composition on Local Appeal Boards, and Reporting Structure of the Municipal Government Board**

Previously, councillors and public members were able to sit on municipal appeal boards. Councillors who may approve projects while in their elected roles, were also able to sit on appeal boards ruling on those decisions because of the difficulty to recruit, train, and retain public members to those positions, especially in smaller municipalities where appeals are infrequent.

The changes now prohibit municipal councillors from forming the majority of any legislated appeal board hearing panel. The Chair of the Municipal Government Board will be appointed by Cabinet and report directly to the Minister of Municipal Affairs. These changes were made by aligning the existing rules for Subdivision and Development Appeal Boards with those for Assessment Review Boards.

### **Ontario expanded the role of the Integrity Commissioner.**

Ontario's amendments require that municipalities provide access to an Integrity Commissioner. While all Integrity Commissioner responsibilities must be provided by an Integrity Commissioner, municipalities will have flexibility in meeting these requirements: (1) Municipalities can appoint an Integrity Commissioner; or (2) make arrangements for Integrity Commissioner responsibilities to be provided by an Integrity Commissioner of another municipality; or (3) a combination.

Responsibilities of an Integrity Commissioner:

- the application to members of council and members of certain local boards of the municipality of:
  - the local codes of conduct
  - rules governing the ethical behaviour of the members
  - key sections of the *Municipal Conflict of Interest Act*, RSO 1990 c M-50 (MCIA)
- conduct inquiries upon complaint for the Act and code of conduct matters
- provide advice to members of councils and local boards respecting their obligations under (1) the local code of conduct (2) the local ethical behaviour procedures, rules, or policies (3) the Act
- provide educational information to the public, the municipality and members of council and local boards about local codes of conduct and MCIA

New Powers of Integrity Commissioner:

- investigate MCIA complaints from electors or persons demonstrably acting in the public interest
- after completing an investigation, an Integrity Commissioner could decide to apply to a judge for a determination as to whether the member contravened the MCIA
- if after investigating an MCIA complaint an Integrity Commissioner decided not to apply to a judge, the person making the complaint might do so

### **Newfoundland's Provincial Conflict of Interest Legislation**

You referred me to the Commissioner for Legislative Standards. The Commissioner for Legislative Standards is responsible for hearing the appeals of public office holders under the *Conflict of Interest Act, 1995*, SNL 1995 c C-30.1 (the "Conflict of Interest Act").sas

The *Conflict of Interest Act* provides for a Conflict of Interest Advisory Committee, comprised of five persons – an official of the Public Service Commission, a senior official in the Department of

Justice, and three other persons representing government departments and agencies of government. The committee is responsible for advising the head of an agency or deputy minister as to whether a public office holder is in a conflict of interest; educating public office holders as to what constitutes a conflict of interest; monitoring the administration and enforcement of the statute to ensure consistency of application to public office holders; and advising deputy ministers and chief operating officers of their duties under the statute.

Whether a public office holder has breached the Act is determined by his or her minister, deputy minister or chief operating officer. Where it is determined that a public officer holder has failed to fulfil an obligation under the Act, the minister, deputy minister, or chief operating officer may reprimand the public officer holder, or decide that the public office holder (1) divest herself of the interest (2) place the interest in a trust in a manner approved (3) resign (4) be transferred to another position.

The public officer holder has thirty days to appeal the decision to the Commissioner. If the public office holder is a member of political staff, a chief operating officer, or a deputy minister, they can appeal to the Trial Division. If an appeal upholds the decision of the minister, deputy minister or chief operating officer, they may reprimand, suspend or order restitution or compensation, or dismiss the public office holder.

## **MISCELLANEOUS CHANGES**

### **Alberta**

The use of codes of conduct was voluntary. Councillor accountability and conduct was addressed through the election process, boards, the courts, or ministerial directives. The amendments now require all municipalities to develop and adopt codes of conduct that (1) do not allow councils to remove councillors from office for breach of the code; (2) meet standards established in a regulation (that will be developed); (3) and address enforcement and administrative procedures at the municipal level.

### **Ontario**

Ontario is also introducing codes of conduct. A councillor will be able to participate but not vote in a meeting where the matter under consideration is whether to impose the code of conduct penalty to suspend the member's pay for up to 90 days.

## **PART III: IDENTIFYING WHAT HAPPENS TO A RESOLUTION THAT WAS PASSED WHEN A COUNCILLOR HAD A CONFLICT OF INTEREST**

I researched to find out whether their legislation provided for what occurred if a resolution was passed while a councillor had a conflict of interest but did not find anything concrete.

## MEMORANDUM

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Date: March 20, 2018  
To: Stephen F. Penney  
From: Giles W. Ayers  
Re: Recommendations re: harassment in the *Municipalities Act, 1999*

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The office of a municipal councillor is governed by the *Municipalities Act, 1999* (the "Act"). Municipal councillors have powerful tenure under the Act. Section 206 of the Act provides for a limited set of circumstances in which a councillor's seat automatically becomes vacated, as follows:

- where the councillor resigns
- where a council or councillor is dismissed under the *Municipal Affairs Act* as a result of the mismanagement of the affairs of the municipality
- where a councillor stops being ordinarily resident in the municipality;
- where the councillor has been absent from the municipality for more than one year
- because of indebtedness to the council
- where the councillor is not sworn into office or does not attend regular public meetings of council for 3 successive months;
- accepting officer or employment under the council for remuneration without ministerial permission; or
- failing to a vote on a matter before the council when required to do so.

Section 206(2) provides that council shall vacate the seat of a councillor by resolution where the councillor fails to disclose a conflict of interest or discusses or votes on a matter in which he or she has a conflict of interest.

Section 206 does not provide any way to vacate the seat of a municipal councillors for harassment of other councillors or municipal staff. While strong protections are important for municipal councillors to protect democratic legitimacy, this loophole is serious and harmful should be closed.

At the outset, I also note that municipalities struggle to restrain the conduct of municipal councillors who harass municipal employees is endemic across the country. I have enclosed with this memorandum news articles outlining the effects of this issue in jurisdictions across Canada.

### **1. THERE IS NO WAY TO CURTAIL HARASSMENT BY MUNICIPAL COUNCILLORS**

Not only can municipal councillors not be removed from office, municipalities in Newfoundland and Labrador are limited in what protective measures they can put in place to protect other councillors or municipal staff from harassive councillors. For example, harassive municipal councillors cannot be banned from council meetings, where they will be free to harass their fellow municipal councillors or town staff. This poses a serious problem where other councillors are the target of harassment. As outlined above, if councillors do not attend regular meetings of council for three months, their seats are automatically vacated. This forces harassed councillors to abandon their public office or duty or be subjected to harassment. This is an impossible choice that should not be forced on anyone.

Similarly, some staff are also required to be present in council meetings. Under s. 62 of the Act, town clerks are required to be present at Council meetings to take minutes. A town clerk being harassed by a councillor would be forced by operation of law to attend regularly in meetings with her harasser and to therefore be harassed. The only recourse of the town clerk in this situation would be to abandon his or her livelihood and seek other employment. Further, some municipalities only have one staff member who is responsible for all of the Town's needs. It would be impossible for such a staff member to avoid a harassive municipal councillor who is at all involved in the discharge of his or her proper obligations.

### **2. THE TOWN HAS DUTIES AS AN EMPLOYER**

Most municipalities in Newfoundland and Labrador are employers, if only of one part time staff member. Employers have responsibilities under common law and statute to provide a safe workplace that is free from harassment or discrimination. Allowing municipal councillors the freedom to harass staff without recourse undermines the municipality's duty to provide a safe, harassment free workplace, with serious consequences.

Harassed staff can develop serious psychological problems forcing them to take long or short term disability. Staff who develop such problems can sue the town for constructive dismissal or negligence. Staff can also make human rights complaints against municipalities under the *Human Rights Code*. And without any ability to vacate the seats of harassive councillors, there is nothing that the municipality can do about it.

To summarize, without an ability to vacate the seats of harassive councillors, municipalities are obliged to maintain, until and unless the councillor is defeated in the next election, a permanent health and safety hazard for employees and councillors and a permanent source of legal liability for the town.

Many municipalities in Newfoundland and Labrador are caught between a demographic crisis and the uncertain economy. They simply cannot afford harassive councillors with irrevocable tenure.

### **3. THE BALLOT BOX IS NOT A SUFFICIENT REMEDY**

It is not sufficient that voters can remove a harassive councillor in the next election.

First, municipal elections come only every four years. Four years is a long time, especially for municipal staff or councillors being subject to constant harassment at work.

Second, harassment of an employee or fellow councillor is uniquely unsuitable to be made into an election issue. Forcing the victims of harassment, who deserve privacy and confidentiality in

seeking recourse, to litigate their complaints in the public sphere would be inhumane and would chill any such complaints coming forward.

Third, even repeated and serious harassment is not guaranteed to be important or determinative for voters. Municipalities are capable of re-electing councillors accused of heinous acts, including harassment.

Most importantly, municipal employees should not have to rely on the discretion of their fellow residents to protect their legal rights. The right and interest of everyone to come to work without fear of harassment or discrimination should not be subject to a town vote.

#### 4. IT IS IMPERATIVE TO PRESERVE RESIDENTS' TRUST IN THEIR MUNICIPAL OFFICIALS

The justification and philosophy underlying the Act's conflict of interest provisions applies equally to harassment by municipal councillors.

The purpose of the conflict of interest provisions is to preserve the integrity of municipal councils democratic legitimacy of our municipal councils. In *Payne v. Cow Head (Town)*,<sup>1</sup> Justice LeBlanc stated as follows for our Supreme Court in a case concerning a conflict of interest.

*33 While I recognize that the job of an elected representative in the community is in many ways a thankless task, the importance of maintaining some degree of integrity and fairness to ensure the citizens trust in a municipal council's actions must be an overriding concern in cases such as this.*

In *Crane v. Upper Island Cove (Town Council)*<sup>2</sup> Justice Wells also cited the following instructive passage from an Ontario decision:

*[45] In Halton Hills, supra, Belleghan, J., wrote in reference to the Municipal Conflict of Interest Act, R.S.O. 1990, c. M-50 (Ontario):*

*"The Act is crystal clear. It is harsh. It must be. It controls the actions of Council members. They are the repositories of the citizens highest trust. ... They must not only be unshirkingly honest - they must be seen to be so - by those who voted for them, and those who voted against them. Their role, though noble in its calling, is demanding in its execution. It is onerous in the extreme."*

It is clear that unrestrained and ungoverned harassment will undermine the public trust and confidence in a municipal council. An office "noble in its calling" will not remain noble when occupied by a serial harasser.

Repeated harassment also undermines the integrity and legitimacy of councils in another way. As summarized above, if another councillor is the subject of harassment, that councillor – who has been democratically chosen by the citizens of the municipality – must either endure it or be forced out of office. Uncensured harassment thereby has the power to revoke the decision of the municipality's electors of their representative. Where the chosen representative of residents can

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<sup>1</sup> 2001 CanLII 33790 (NL SCTD)

<sup>2</sup> 1999 CanLII 19770 (NL SCTD)

be drummed out of office by a harassive colleague, the exercise of representative democracy in municipalities is in peril.

Harassment is also akin to a conflict of interest for other reasons. Conflict of interest provisions are informed by the idea that municipal councillors should not be governed by their interests which are not the same as the interests of the public.<sup>3</sup> It is not in the interest of the public for councillors to create, with their behaviour, the serious liabilities for the municipality discussed above. It is not in the interest of residents and ratepayers to pay for constructive dismissal or human rights litigation on behalf of councillors governed by malicious motives. Councillors who undermine the public interest by being governed by their improper or malicious motives in harassing others should be treated the same as councillors who undermine the public interest by being governed by their financial self-interest.

## 5. THE ONTARIO MODEL

In May of 2017, Ontario introduced the *Modernizing Ontario's Municipal Legislation Act, 2017*. This legislation requires

1. That all municipalities in Ontario adopt a Code of Conduct; and,
2. That all municipalities create the office of an Integrity Commissioner (or arrange for the services of the Integrity Commissioner of a related municipality)

Penalties for breach of a municipal code of conduct are set out in s. 223.4(5) of Ontario's *Municipal Act*, and include either a "reprimand," or the suspension of remuneration for a period of up to 90 days.

These provisions are a good start, but are not sufficient and do not solve the problems discussed above. There are no obvious consequence for a "reprimand," and there is no reason why a provision such as 223.4(5) is necessary. A municipal council can vote to reprimand a harassive councillor without the benefit of section 223.4 (5). Further, it is not clear that suspension of remuneration would solve the foregoing issues. Municipal councillors in Newfoundland and Labrador perform their duties part-time and a majority of municipal councillors receive only a small honorarium. As long as a councillor is able to forego the small honorarium, he or she will be able to continue harassing with no recourse.

## 6. PROPOSED NEWFOUNDLAND MODEL

As summarized above, vacating the seat of a municipal councillor for harassment should operate on similar principles as vacating the seat of the municipal councillor for a conflict of interest. In both situations, vacation of the seat would protect public confidence in the municipal council as a democratic body and would protect the public interest from the misfeasance of councillors in exercising their own improper motives. The vacation of seats for harassment should therefore be dealt with in section 206 of the Act, like the vacation of seats for conflicts of interest.

Municipalities should not be obliged to draft a code of conduct as required in the Ontario legislation, for two reasons. First, this would download the responsibility, financial and otherwise, for drafting a code of conduct onto municipalities, many of which are already struggling with inadequate resources. Second, the obligations of councillors and the protections for town staff

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<sup>3</sup> For example, *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, 1990 CanLII 31 (SCC), [1990] 3 S.C.R. 1170,

should be uniform across the province, rather than a patchwork of different obligations and protections. Further, it would not be prudent to allow for the possibility that a municipality would neglect to draft a code of conduct as required, and therefore be unable to resolve issues posed by a harassing councillor.

Therefore, new regulations under the Act should set out a universal code of conduct or harassment policy for every municipality in the province, in a manner analogous to ministerial development regulations issued under section 36 of the *Urban and Rural Planning Act, 2000*.

The proposed code of conduct or harassment policy would contain obligations similar to codes of conduct, respectful workplace policies, and harassment policies in use in the private sector, which include definitions of harassment similar to the following:

*"offensive or objectionable conduct or comment toward another person or persons, including sexual harassment, the instance or persistence of which is known or ought reasonably to be known from the perspective of a reasonable in the position of the complainant to be intimidating, offensive, or unwelcome..."*

Similar to the Ontario legislation, there should be created a separate Provincial office or commission to determine whether a councillor's conduct is in breach of the code of conduct or harassment policy and to determine an appropriate sanction. The Act should include a range of sanctions, including the suspension of remuneration, and, for serious or repeated breaches of the harassment policy or code of conduct, vacation of the seat. Possible complainants should include councillors, staff members, and members of the public.

To preserve procedural fairness, as with the other ways a seat can be vacated under s. 206 of the Act, an appeal should lie to the Supreme Court of Newfoundland and Labrador of both (1) the finding of a breach, and (2) the appropriate remedy. The complainant, the municipality, or another member of the public should have a right of appeal.

## **7. SUMMARY**

At present, municipalities, their residents, and the provincial government have no power to remove municipal councillors from their seats for harassment, outside of an election. This should change. Harassing municipal councillors undermine the democratic legitimacy of their important office and present an irremediable source of liability for Towns that cannot afford them.

Including a provision in s. 206 of the Act allowing for the removal of harassing councillors is a necessary change to the municipal legislation of this province. It protects the health and safety of municipal councillors and municipal staff, eliminates a major source of liability for municipalities, and would make Newfoundland and Labrador a leader in municipal legislation across Canada.





North Cowichan councillor Joyce Behnsen has been disciplined for bullying and harassing a municipal employee. (File photo)

# Joyce Behnsen disciplined for bullying and harassing municipal employee

The North Cowichan councillor rejects investigation's findings

ROBERT BARRON / Nov. 28, 2017 2:04 p.m. / LOCAL NEWS / NEWS

"Corrective measures" have been imposed on Joyce Behnsen, a councillor in North Cowichan, for the bullying and harassment of a municipal employee.

Mayor Jon Lefebure read a statement at the beginning of a public budget meeting on Nov. 27 stating that the municipality had received complaints from one of its employee claiming to have been bullied and harassed by Behnsen between April and May, 2017.

Lefebure said North Cowichan hired an investigator and carried out an investigation of the allegations, and concluded that Behnsen's conduct amounted to bullying and

harassment of the employee.

“Coun. Behnsen was given the opportunity to respond, but she rejected it,” Lefebure said.

“Corrective measures have been imposed.”

Lefebure said the matter is considered confidential so he isn't able to disclose the nature of the corrective measures, but confirmed that Behnsen is still a sitting councillor.

Behnsen said she is also limited as to what she can publicly say about the issue, but she has been standing up for the citizens of the municipality for many years, long before she was elected councillor.

She said the Community Charter states that councillors must always consider the well being and interests of the municipality and the community, and contribute to the development and evaluation of policies and programs of the municipality, while respecting its services and other activities.

“This is very important to me,” Behnsen said.

“I see myself as a representative of the people, but when I question staff about their performance on how the public is dealt with, it's seen as bullying and harassment.”

After she spoke at Monday's meeting in response to the statement read by Lefebure, she received applause from some members of the public in attendance.

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robert.barron@cowichanvalleycitizen.com

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Politics February 6, 2018 6:46 pm

Updated: February 7, 2018 10:25 am

# Port Hope councillor resigns amid workplace harassment accusations



By Greg Davis

Videographer Global News

A Port Hope councillor has tendered his resignation prior to a report coming to council which alleges incidents of workplace harassment.

On Tuesday afternoon, the Town of Port Hope announced Robert Polutnik resigned his council seat and the office is vacant, effective immediately.

"The sanctions recommended by the Integrity Commissioner in his report included on the February 6, 2018 Regular Council agenda are no longer applicable, as the member is no longer in office," the release states.

**READ MORE: Team to handle harassment complaints established by PMO last October**

Council on Tuesday night was scheduled to review the report filed by integrity commissioner Robert Swayze who recommended Polutnik have his pay suspended for 30 days or up to 90 days until he completed a series of mandatory courses on respect in the workplace.

In his report, Swayze says he received a complaint from a Port Hope woman alleging Polutnik "sexually harassed her multiple times" when working at his art gallery business in December.

This harassment included allegations of "sexual remarks and inappropriate touching," the report states.

The unidentified woman quit and retained a lawyer who advised her not to pursue criminal charges.

During his investigation of these allegations, Swayze says he discovered another complaint against Polutnik from 2015, that involved Devanne Kripp, a former Port Hope municipal employee who agreed to have her name made public.

The report says her accusations against the councillor include telling her "she was only here because she was pretty."

**READ MORE: TVO host Steve Paikin faces sexual harassment allegations from Sarah Thomson**

After a series of meetings with municipal staff, Polutnik promised to demonstrate appropriate and respectful behaviour, according to the report.



Robert Polutnik, a Port Hope councillor, has resigned.

*CHEX News file*

The report also says he told the integrity commissioner his remarks to the two complainants were only "teasing."

"I have concluded that the evidence of 'inappropriate touching' is inconclusive for a finding of sexual assault," Swayze stated in the report.

The municipal council's code of conduct reads in part: "Council members must be courteous and demonstrate sensitive behaviour that does not discriminate against people. Council will conduct themselves in a manner that will not reflect unfavourably on council, maintain mature and constructive working relationships based on mutual trust and respect, and conduct the relationship with courtesy and respect."

Council members must complete a series of courses on respect in the workplace.

According to the report, Polutnik had not completed them.

"The clerk will bring forward a report at the next regular council meeting to begin the process of filling the vacant seat," the town stated.

*More to come.*

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## Edmonton council may be guilty of bullying, harassing staff, mayor admits

'Individually, you're not so scary but collectively you can be,' says city manager

By Natasha Riebe, [CBC News](#) Posted: Nov 20, 2017 5:18 PM MT Last Updated: Nov 21, 2017 10:51 AM MT

Edmonton Mayor Don Iveson admits his council may be guilty of harassing behaviour toward city employees.

"We've seen some bullying and harassment and intimidation from elected officials of staff," Iveson told media outside an audit committee meeting on Monday.

"I think unfortunately — we heard this feedback from staff in the audit — that creates a signal that that's acceptable behaviour."

The admission came on a day that started with an apology from the city manager to city employees who say they've been harassed or experienced discrimination in the workplace.

*'You are hard on issues and sometimes that feels like hard on people' - Linda Cochrane, city manager*

"For staff who've come forward in obvious pain, I am sorry," city manager Linda Cochrane said at the beginning of the audit committee meeting.

The committee met to review the corporate culture report released last Thursday, which shows nearly one in five staff who responded to a survey said they were harassed.

At city hall meetings, administration often gets grilled by councillors.

Iveson said he's going to try harder to moderate debate between council and staff to keep it respectful.

Coun. Andrew Knack, who is generally seen as having a moderate approach to issues before council, admitted to going "over the line" when questioning city staff on issues in the past four years.

Cochrane described how she felt having to report to council when she was a director years ago.

- **Nearly one in five city employees say they've been harassed, report shows**

"[It was] long before any of you were here and I was scared to death," she said.

"You may not intend that. Individually, you're not so scary but collectively you can be."

She acknowledged the bullying may not be intentional but said that reporting to council can still be intimidating.

"You are hard on issues and sometimes that feels like hard on people."

## Internal versus external

Staff can file complaints of harassment or discrimination directly to their supervisors, to human resources or to the union. However they are filed, the complaints always end up in an internal review.

Cases can take up to a year to resolve, said Lanny Chudyk, president of Civic Service Union 52.

"It's just a bad process as it currently sits," he said.

A registered social worker, Linda Crockett, showed up at the committee meeting to urge the city to have a third-party agency run a confidential staff survey.

She suggested the city create a second panel of experts, including human resources consultants, coaches, medical experts and therapists, which would be tasked to review the survey results and monitor progress.

Crockett has worked with people in several industries and said she's heard cases of harassment across the board.

"They are too afraid to report the truth," she said. "They see other people have been terminated. Many people are on sick leave. That means the current policies are not working."

Coun. Tony Caterina called on staff to create a completely external process.

"I would like to see exploration of an independent solution to this versus an in-house with some external consultant," Caterina told the committee.

"We know the trust is gone," he said. "There is no trust from employees to report — whether it's a whistle-blower hotline or any other mechanism — if it goes back to HR and an internal reporting system."

Cochrane said the city had been discussing the changes with unions over the past couple months.

"I will commit to continue to work with the unions, particularly now as we move into this totally independent external advisor," Cochrane said.

Chudyk said the union has made progress on the issue.

"I was a bit surprised that the city has at least entertained the thought of a completely external process," he said.

Chudyk said the union has six pending respectful workplace complaints involving several city employees.

"It remains to be seen what it's going to end up looking like," he said. "I'm encouraged that they appear to have changed some of their position on this."

Council is asking staff to come back with an action plan on the external reporting process by May, 2018.

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## Wabana councillor put some staff 'through hell,' says former deputy mayor

David Foley says allegations Mayor Gosine made about him are "completely untrue"

By Terry Roberts, [CBC News](#) Posted: Oct 30, 2015 11:27 AM NT Last Updated: Oct 30, 2015 3:03 PM NT

Wabana's former deputy mayor says Coun. David Foley put some municipal staff "through hell" and should resign as soon as possible.

- [Forensic audit sought as furor divides Wabana council](#)
- [Fired Wabana clerk learns of dismissal on Twitter](#)

Brian Kent served on the Bell Island community's town council for 18 years, including a stint as deputy mayor prior to his resignation more than a year ago.

Kent told CBC News Friday he quit because of a health challenge in this family, but added the behaviour of Coun. Foley was also a "good part of it."

He said Foley was continually disruptive and prone to personal attacks against Mayor Gary Gosine and some of the employees.

"I had enough of it," Kent said, describing Foley as "very bullyish" and constantly "dictating" and threatening staff with termination.

"Some staff went through hell with this guy," said Kent.

## Majority want Foley's resignation

Council voted by a margin of 5-1 on Oct. 15 to formally ask Foley to resign, though the motion is purely symbolic since council cannot terminate an elected member.

Foley, who is serving his second term on council, did not attend the meeting and only Coun. Ben Warford opposed the motion.

The town issued a news release this week about the Oct. 15 motion, saying it was precipitated by an independent investigation carried out by a human resources firm.

The investigation was launched "following a very stressful and turbulent period" that included the resignation of two staff, and deputy mayor Kent.

The town said it will not release the report due to privacy laws, but Mayor Gosine said Thursday it details a very "toxic environment" at the town office.



Foley and Warford led a charge late last year to have a forensic audit of the town's finances after a review of the town's 2013 financial statements discovered some shortcomings.

A letter from the town's auditor found that of 40 receipts tested, "we could not agree 10 samples to the bank statements."

Council refused the call for a forensic audit, and an investigation of council by the Department of Municipal Affairs found "nothing significant with regards to the overall operations and administration of the town."

## Foley responds

In a letter written to CBC, David Foley said the allegations that Mayor Gosine made about him are "completely untrue."

"Gary Gosine stated in a previous CBC interview that he and his camp want to do things in the best interest of the taxpayers," Foley wrote.

"If so, they should have agreed to a motion that was made by Coun. Ben Warford to have a forensic audit done to determine what happened to taxpayers money."

Foley said Gosine wouldn't allow the audit to take place, which is against the Municipalities Act. As well, he said the mayor demonstrated "inappropriate behaviour" during union talks.

He said the allegations against him are not only false, but are a waste of the time and money of the Town of Wabana.

"Once again it is not David Foley who should resign, let's be clear, it's Gary Gosine and his camp that should resign," Foley wrote.

"Gosine and his camp should be spending their time concentrating on running the affairs of the Town of Wabana instead of being involved in the character assassination of David Foley."

## Ben Warford writes letter supporting Foley

Coun. Ben Warford also sent a letter to CBC News, expressing his support for David Foley.

"As a town councillor elected by the people of Wabana, I cannot sit idly by and say nothing about these malicious attacks on Coun. Foley," he wrote.

"Coun. Foley is one of the best town councillors in the history of the province, very smart and hardworking and always acts in the best interest of our town's taxpayers. The problem, as I see it, is Gosine and his camp are not acting in the best interest of taxpayers."

Warford said Gosine has wasted nearly \$80,000 in his legal action against Foley, which he feels warrants an investigation.

"I add [hastefully] that Foley and I as members of the HR Committee and Mr. William Peddle who was fired publicly have not told our side of the story," he wrote.

"Gosine and others should be made [to] pay back to the taxpayers the monies spent and the Minister through investigation should ensure this happens immediately."

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