



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 109
(2010, chapter 27)

Municipal Ethics and Good Conduct Act

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Passed in principle 23 September 2010
Passed 30 November 2010
Assented to 2 December 2010

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EXPLANATORY NOTES

This Act places local municipalities and regional county municipalities whose warden is elected by universal suffrage under a new obligation to adopt a code of ethics and conduct applicable to their elected officers and to revise it after each general election. It imposes a further obligation to adopt a code of ethics and conduct applicable to municipal employees.

The codes are to set out the main ethical values of the municipality concerned and the rules of conduct that must be observed by elected municipal officers or municipal employees, as the case may be.

The rules framed in the code of ethics and conduct of elected municipal officers must address such issues as independence of judgment versus private interests, favouritism, embezzlement, breach of trust and other misconduct, gifts and other benefits and the use of municipal resources as well as post-term issues.

The Act prescribes the formalities to be observed in adopting a code of ethics and conduct of elected municipal officers. If a municipality fails to adopt such a code, the Minister of Municipal Affairs, Regions and Land Occupancy may make any regulation that is required to remedy the failure. A regulation made to that end is deemed to be a by-law adopted by the council of the municipality.

Under the Act, every member of a council of a municipality who has not already participated in a professional development program on municipal ethics and good conduct is required to participate in such a program. Council members are also required to make an oath that they will fulfill the duties of their office in accordance with the code of ethics and conduct and that they undertake to observe post-term rules.

In addition, anyone may ask the Minister to examine the conduct of an elected officer if it is believed to be in violation of the code of ethics and conduct of the municipality concerned. The Act establishes rules for the examination of the conduct by the Minister and for the referral of the matter to the Commission municipale du Québec for an inquiry.

The Act further establishes certain rules that are to guide the Commission inquiries. If the Commission finds that the conduct of a member of the council of a municipality constitutes a violation of the applicable code, it will have the power to impose a sanction from among those provided for in the Act.

Lastly, various adjustments are made to the Act respecting the Commission municipale and the Act respecting elections and referendums in municipalities in light of the new obligations and requirements.

LEGISLATION AMENDED BY THIS ACT:

- Act respecting the Commission municipale (R.S.Q., chapter C-35);
- Act respecting elections and referendums in municipalities (R.S.Q., chapter E-2.2);
- Act respecting the Ministère des Affaires municipales, des Régions et de l’Occupation du territoire (R.S.Q., chapter M-22.1).

Bill 109

MUNICIPAL ETHICS AND GOOD CONDUCT ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

PURPOSE

1. The purpose of this Act is to ensure that the members of every council of a municipality explicitly adhere to the main ethical values of the municipality, and to provide for the adoption of rules of conduct and the application and enforcement of those rules.

CHAPTER II

CODES OF ETHICS AND CONDUCT

DIVISION I

MUNICIPALITIES CONCERNED

2. Every municipality must have the codes of ethics and conduct described in Divisions II and III.

The first paragraph does not apply

(1) to a northern, Cree or Naskapi village;

(2) to a municipality whose council, in accordance with the Act establishing or governing the municipality, is not composed of persons elected by its citizens;
or

(3) with respect to the code described in Division II, to a regional county municipality whose warden is not elected in accordance with section 210.29.2 of the Act respecting municipal territorial organization (R.S.Q., chapter O-9).

DIVISION II

CODE OF ETHICS AND CONDUCT OF ELECTED MUNICIPAL OFFICERS

§1. — *Scope*

3. A code of ethics and conduct adopted under this division applies to every member of any council of the municipality.

However,

(1) the code of ethics and conduct of a regional county municipality applies only to its warden elected in accordance with section 210.29.2 of the Act respecting municipal territorial organization; and

(2) the code of ethics and conduct of the central municipality of an urban agglomeration that is subject to the Act respecting the exercise of certain municipal powers in certain urban agglomerations (R.S.Q., chapter E-20.001) does not apply to the urban agglomeration council members who do not represent the central municipality.

§2. — *Content of code of ethics and conduct*

A. — Ethics

4. The code of ethics and conduct must set out the main ethical values of the municipality, including the following values:

- (1) the integrity of the members of every council of the municipality;
- (2) the honour attached to the office of council member;
- (3) prudence in the pursuit of the public interest;
- (4) the respect to be shown to the other council members, to the employees of the municipality and to the citizens of the municipality;
- (5) loyalty to the municipality; and
- (6) the quest for equity.

The values set out in the code must guide council members in their understanding of the rules of conduct that apply to them.

B. — Conduct

5. The code of ethics and conduct must also set out

(1) the rules that must guide the conduct of individuals as members of a council, committee or commission of the municipality or as members of another body in their capacity as council member;

(2) the rules that must guide the conduct of those individuals after the expiry of their term as council member.

The rules must, in particular, aim to prevent

(1) any situation where the private interest of a council member might impair his or her independence of judgment in carrying out the duties of office;

(2) any situation that would be contrary to sections 304 and 361 of the Act respecting elections and referendums in municipalities (R.S.Q., chapter E-2.2); and

(3) favouritism, embezzlement, breach of trust or other misconduct.

6. The code of ethics and conduct must include rules prohibiting a member of a council of the municipality from

(1) acting or attempting to act, or omitting to act, in any way, in carrying out the duties of office, so as to further his or her private interests or improperly further those of another person;

(2) using his or her position to influence or attempt to influence another person's decision so as to further his or her private interests or improperly further those of another person;

(3) soliciting, eliciting, accepting or receiving any benefit, whether for himself or herself or for another person, in exchange for taking a position on a matter that may be brought before a council, a committee or a commission on which the council member sits;

(4) accepting any gift, hospitality or other benefit, whatever its value, that may impair his or her independence of judgment in carrying out the duties of office, or that may compromise his or her integrity;

(5) using the resources of the municipality or of any other body referred to in subparagraph 1 of the first paragraph of section 5 for personal purposes or for purposes other than activities related to the duties of office;

(6) using or communicating, or attempting to use or communicate, whether during or after his or her term, information obtained in or in connection with the carrying out of the duties of office that is not generally available to the public so as to further his or her private interests or those of another person; and

(7) within 12 months after the expiry of his or her term, serve as a director or officer or senior executive of a legal person or hold employment or any other position so as to obtain for himself or herself or another person undue benefit from his or her prior office as council member.

The rules must also require a member of a council of the municipality to file a disclosure statement in writing with the clerk or the secretary-treasurer of the municipality within 30 days after receiving a gift, hospitality or other benefit not prohibited under subparagraph 4 of the first paragraph that is not of a purely private nature and whose value exceeds the value specified in the code, which may not be greater than \$200. The disclosure statement must contain an accurate description of the gift, hospitality or benefit received and specify the name of the donor and the date on which and the circumstances under which it was received.

The clerk or the secretary-treasurer keeps a public register in which such disclosure statements are recorded.

At the last regular council sitting in the month of December, the clerk or the secretary-treasurer tables an extract from the register containing the disclosure statements filed since the last sitting at which such an extract was tabled.

7. The code of ethics and conduct must reproduce section 31, with the necessary modifications.

§3. — *Formalities*

8. Any decision relating to the adoption of the code of ethics and conduct is made by a by-law adopted in accordance with this subdivision.

9. In the case of the central municipality of an urban agglomeration that is subject to the Act respecting the exercise of certain municipal powers in certain urban agglomerations, only its regular council may adopt a by-law under section 8.

10. The by-law must be adopted at a regular council sitting; its adoption must be preceded by the tabling of a draft by-law and the publication of a public notice as required by sections 11 and 12.

11. The draft by-law must be tabled at a sitting of the council by the council member giving the notice of motion; in the case of a regional county municipality, only the warden may give the notice of motion.

The notice of motion may not be replaced as provided for by the fourth paragraph of section 445 of the Municipal Code of Québec (R.S.Q., chapter C-27.1).

12. After the tabling of the draft by-law, the clerk or the secretary-treasurer must, in accordance with the Act governing the municipality, give a

public notice containing a summary of the draft by-law and setting forth the date, time and place of the sitting at which the by-law is to be adopted.

The notice must be published not later than seven days before the sitting.

In addition to being posted, the notice given by the secretary-treasurer of a regional county municipality must be published in a newspaper circulating in its territory, on or before the same deadline.

§4. — *Obligation to revise code of ethics and conduct*

13. Every municipality must, before 1 March following a general election, adopt a revised code of ethics and conduct to replace the one in force, with or without amendments.

§5. — *Miscellaneous provisions*

14. If a municipality has failed to fulfill its obligation to have a code of ethics and conduct or to adopt a revised code of ethics and conduct within the time specified in section 13, the clerk or the secretary-treasurer informs the Minister of Municipal Affairs, Regions and Land Occupancy in writing as soon as possible.

The Minister may, without further formality, make any regulation that is required to remedy the failure; the regulation is deemed to be a by-law adopted by the council of the municipality.

Despite any provision to the contrary, a regulation made by the Minister comes into force on the date a notice to that effect is published by the Minister in the *Gazette officielle du Québec*.

15. Any member of a council of a municipality who has not already participated in a professional development program on municipal ethics and good conduct must participate in such a professional development program within six months after the beginning of his or her term.

The professional development program must, among other aims, encourage participants to reflect on municipal ethics and adhere to the values set out in the code of ethics and conduct, and help them acquire the competencies they need to understand and observe the rules set out in the code.

Failure to participate in such a professional development program is an aggravating factor for the purposes of section 26.

Within 30 days after participating in such a professional development program, a council member must report his or her participation to the clerk or the secretary-treasurer of the municipality, who in turn reports it to the council.

DIVISION III

CODE OF ETHICS AND CONDUCT OF MUNICIPAL EMPLOYEES

16. Every municipality must have a code of ethics and conduct setting out the main ethical values of the municipality and the rules that must guide the conduct of its employees.

17. The code of ethics and conduct must reproduce section 19, with the necessary modifications.

18. Any decision relating to the adoption of the code of ethics and conduct is made by by-law. The adoption of the by-law must be preceded by the tabling of a draft by-law, an employee consultation on the draft by-law and the publication of a public notice as required by section 12.

19. A violation by an employee of a rule of the code of ethics and conduct referred to in section 16 may, on a decision of the municipality and subject to any contract of employment, entail any sanction warranted by the nature and seriousness of the violation.

CHAPTER III

MECHANICS AND ENFORCEMENT

DIVISION I

PRELIMINARY EXAMINATION

20. Any person who has reasonable grounds for believing that a member of a council of a municipality has violated a rule of the applicable code of ethics and conduct may raise the matter with the Minister not later than within three years after the end of the member's term.

The person must do so by means of a request which, to be complete, must be made in writing and under oath, contain reasons and include any supporting documents.

The Minister has 15 working days to carry out a preliminary examination of the request, once it is complete. If the preliminary examination is still underway after that time has expired, the Minister so informs the person who made the request.

21. The Minister may dismiss a request if the Minister is of the opinion that it is frivolous, vexatious or clearly unfounded or if the person who made it refuses or fails to provide the Minister with information or documents the Minister requires.

If the Minister dismisses the request, the Minister so informs the person who made it and the council member concerned in writing.

22. If the Minister does not dismiss the request, the Minister refers it to the Commission municipale du Québec for an inquiry.

The Minister so informs the person who made the request and the council member concerned in writing.

DIVISION II

INQUIRIES

23. The vice-president of the Commission municipale du Québec assigned to matters relating to municipal ethics and conduct and another member designated by the president of the Commission hold an inquiry into the request.

If the vice-president is unable to act, the president designates another member of the Commission to replace the vice-president.

At least one of the two members holding the inquiry must be an advocate or a notary.

24. The inquiry is held *in camera* and the council member whose conduct is under examination is given the opportunity to make representations and produce documents.

25. The values set out in the code of ethics and conduct and the aims stated in the second paragraph of section 5 must guide the Commission in its understanding of the applicable rules of conduct.

26. If the Commission concludes that the council member's conduct constitutes a violation of a rule of the code of ethics and conduct, the Commission imposes one or more of the sanctions set out in section 31 or decides not to impose a sanction. In making its decision, the Commission takes into consideration the seriousness of the violation and the circumstances in which it occurred, including whether or not the council member obtained a written advisory opinion, containing reasons, from an ethics and conduct adviser or took any other reasonable measure to comply with the code.

27. The Commission must, within 90 days after the day on which the request was referred to it under section 22, send its decision to the council member concerned, the person who made the request, the municipality and the Minister or, if the inquiry is still underway, inform the council member, the person who made the request and the Minister of the progress of the inquiry and the date on which it will send its decision.

28. The clerk or the secretary-treasurer of the municipality must submit the decision to the council at the first regular sitting held after its receipt.

29. The members of the Commission may not be compelled to give testimony relating to information obtained in the exercise of their functions or to produce a document containing such information.

30. Except on a question of jurisdiction, no remedy under article 33 of the Code of Civil Procedure (R.S.Q., chapter C-25) or extraordinary recourse within the meaning of the Code may be exercised nor any injunction granted against the Commission or its members acting in their official capacity under this Act.

A judge of the Court of Appeal may, on a motion, annul by a summary proceeding any decision made or order or injunction issued contrary to the first paragraph.

DIVISION III

SANCTIONS

31. A violation by a member of a council of a municipality of a rule of a code of ethics and conduct adopted under section 3 may entail the imposition of the following sanctions:

- (1) a reprimand;
- (2) the delivery to the municipality, within 30 days after the decision of the Commission municipale du Québec,
 - (a) of any, or of the value of any, gift or hospitality or benefit received; or
 - (b) of any profit made in violation of a rule set out in the code;
- (3) the reimbursement of the remuneration, allowances or other sums received as member of a council, committee or commission of the municipality or member of a body while the violation of a rule of the code continued; or
- (4) the suspension of the council member for a period of up to 90 days and not exceeding the expiry of his or her term.

When suspended, a council member may not sit on any council, committee or commission of the municipality or on any other body in his or her capacity as council member, nor may the council member receive any remuneration, allowance or other sum from the municipality or such a body.

32. If the Commission's decision imposes the delivery of a thing or the reimbursement of an amount of money, the municipality may have it homologated by the Superior Court or the Court of Québec, according to the amount involved or the value of the thing concerned.

Once homologated, the decision is enforceable as a judgment of that Court in civil proceedings.

DIVISION IV

MISCELLANEOUS PROVISIONS

33. The Commission may promote municipal ethics and good conduct practices, for instance by publishing documents intended for the municipalities. Such documents are drafted under the supervision of the vice-president assigned to matters relating to municipal ethics and conduct.

34. A former council member is deemed to be a council member for the purposes of this chapter.

35. The Minister draws up a list of ethics and conduct advisers whose services may be retained by a municipality or a council member to provide an advisory opinion on any matter relating to the code of ethics and conduct.

Any advocate or notary who practises municipal law and requests to be on the list is entered on the list.

The list is posted on the website of the Ministère des Affaires municipales, des Régions et de l'Occupation du territoire.

36. An inquiry by the Commission on a request referred to it under section 22 and, if applicable, the imposition of a sanction under section 31 do not prevent the bringing of an action against the council member concerned for a declaration of disqualification on the basis of the same facts.

CHAPTER IV

AMENDING PROVISIONS

37. Section 3 of the Act respecting the Commission municipale (R.S.Q., chapter C-35) is amended by adding the following paragraph at the end:

“One of the vice-presidents designated by the Government shall be assigned to matters relating to municipal ethics and good conduct.”

38. Section 100.1 of the Act is amended by adding the following sentence at the end of the first paragraph: “The report shall give an account of the Commission’s activities under the Municipal Ethics and Good Conduct Act (2010, chapter 27) and of the nature and conclusions of any inquiries held under that Act.”

39. Section 313 of the Act respecting elections and referendums in municipalities (R.S.Q., chapter E-2.2) is amended by replacing “to perform

his duties of office according to law” in the first paragraph by “provided in Schedule II”.

40. Section 317 of the Act is amended by inserting the following paragraph after the fourth paragraph:

“Where the member fails to attend the first sitting after the expiry of the period specified in the first paragraph by reason of a suspension imposed by the Commission municipale du Québec for a violation of a rule of the code of ethics and conduct of the municipality, that period is deemed not to have expired and is extended until the last day of the suspension.”

41. Section 860 of the Act is amended by replacing “the Schedule” by “Schedule I”.

42. The schedule to the Act is amended by adding “I” after “SCHEDULE”.

43. The Act is amended by adding the following schedule at the end:

“SCHEDULE II

“(Section 313)

“OATH OF ELECTED PERSON

“I, (*name of elected person*), declare under oath that I will fulfill the duties of the office of (*mayor or councillor*) with honesty and justice, in accordance with the law and with the Code of Ethics and Conduct of the Elected Municipal Officers of (*name of municipality*), and undertake to observe the rules of that Code applicable to me after my term has ended.”

44. Section 17.8 of the Act respecting the Ministère des Affaires municipales, des Régions et de l’Occupation du territoire (R.S.Q., chapter M-22.1) is amended by adding the following paragraph at the end:

“The report must also include the number of requests made to the Minister under section 20 of the Municipal Ethics and Good Conduct Act (2010, chapter 27), the number for which the preliminary examination was not completed by the Minister within the time specified in the third paragraph of that section and the number that were dismissed by the Minister under section 21 of that Act.”

CHAPTER V

TRANSITIONAL AND FINAL PROVISIONS

45. The council of a municipality that does not have

(1) a code of ethics and conduct of elected municipal officers that meets the requirements of this Act must adopt one not later than 2 December 2011;

(2) a code of ethics and conduct of municipal employees that meets the requirements of this Act must adopt one not later than 2 December 2012.

46. The first extract from the disclosure statements register referred to in the fourth paragraph of section 6 must be tabled before the council of the municipality at the last regular sitting of the year following the year of coming into force of the code of ethics and conduct of elected municipal officers.

47. Despite section 15, any member of a council of a municipality whose term is underway on 2 December 2010 or starts before 2 December 2011 must participate in a professional development program referred to in that section before 2 June 2012.

48. For the purposes of section 313 of the Act respecting elections and referendums in municipalities (R.S.Q., chapter E-2.2), as amended by section 39, if a code of ethics and conduct of elected municipal officers is not in force at the time an elected person is to be sworn in, the oath provided in Schedule II to that Act, enacted by section 43, is replaced by the following oath:

“I, (*name of council member*), declare under oath that I will fulfill the duties of the office of (*mayor or councillor*) with honesty and justice, in accordance with the law.”

49. Any member of a council of a municipality whose term is underway on the date the code of ethics and conduct of elected municipal officers comes into force must, within 30 days after that date, take the following oath:

“I, (*name of council member*), declare under oath that I will fulfill the duties of the office of (*warden, mayor or councillor*) in accordance with the Code of Ethics and Conduct of the Elected Municipal Officers of (*name of municipality*), and undertake to observe the rules of that code applicable to me after my term has ended.”

50. The Minister of Municipal Affairs, Regions and Land Occupancy must, not later than 2 December 2011, 2 December 2012 and 2 December 2013, report to the Government on the carrying out of this Act.

As well, the Minister must, not later than 2 December 2014 and subsequently every four years, report to the Government on the carrying out of this Act and the advisability of amending it.

A report under the first or second paragraph is tabled in the National Assembly within the next 30 days or, if the Assembly is not sitting, within 30 days of resumption. The report is examined by the competent committee of the National Assembly.

51. The Minister of Municipal Affairs, Regions and Land Occupancy is responsible for the administration of this Act.

52. This Act comes into force on 2 December 2010, except section 35, which comes into force on 2 June 2011.