



18th Legislative Assembly of the Northwest Territories

Standing Committee on Rules and Procedures

Interim Report on the Review of
Members' Conduct Guidelines

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STANDING COMMITTEE ON RULES AND PROCEDURES

INTERIM REPORT ON THE REVIEW OF MEMBERS' CONDUCT GUIDELINES

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STANDING COMMITTEE ON RULES AND PROCEDURES

INTERIM REPORT ON THE REVIEW OF MEMBERS' CONDUCT GUIDELINES

INTRODUCTION

It is a priority of the 18th Legislative Assembly to promote and ensure, to the greatest extent possible, a high standard of personal and public conduct for current and future Members. An important step was taken via Motion 6-18(1), entitled Adoption of Members' Conduct Guidelines. Introduced by the Member for Hay River North, the motion represents this Assembly's first referral of work to a Standing Committee:

WHEREAS the Members of the 18th Legislative Assembly are mindful that it is an honour and a privilege to serve the people of the Northwest Territories as legislators;

AND WHEREAS the trust and confidence the people have placed in conferring this office upon us demands the highest standard of conduct, integrity and honour;

AND WHEREAS Members are resolved to do our utmost to hear the voices of all our people; preserve our traditions and bridge them with new ways to build our future; provide legislation, policies and services for the good of the people as individuals, families and communities; promote the equality of all our people; distribute resources fairly and justly; and respect and honour our land and all its inhabitants;

AND WHEREAS Members recognize that we owe to this legislature respect as well as dedication to ensuring the integrity of our government and to earning the confidence of the people;

AND WHEREAS Members recognize that we owe to our constituents our best efforts at effective representation as well as accountability, honesty, fairness and courtesy;

AND WHEREAS Members recognize that we owe to the public a responsibility to work for the well-being of all residents of the Northwest Territories;

AND WHEREAS Members recognize that we owe to our colleagues fairness and respect for differences, and the duty to work together with goodwill for the common good;

AND WHEREAS Members are resolved not to act, nor condone others to act, in ways which are dishonest or which exploit, slander or discriminate against others;

AND WHEREAS Members acknowledge a vision and a responsibility to improve the lives of our people and to act in creative ways to overcome the hardships which destroy life and hope and the human frailties which fall upon us;

AND WHEREAS Members are resolved to respect and abide by the laws of Canada and the Northwest Territories and will not act in ways which will violate these laws;

AND WHEREAS paragraph 75(a) of the *Legislative Assembly and Executive Council Act* provides that each Member shall perform his or her duties of office and arrange his or her private affairs in such a manner as to maintain public confidence and trust in the integrity, objectivity and impartiality of the Member;

AND WHEREAS past Assemblies have seen fit to adopt principles to guide Members' conduct;

NOW THEREFORE I MOVE, seconded by the honourable Member for Nahendeh, that this 18th Legislative Assembly formally adopts the Members' Conduct Guidelines as appended and which forms part of this resolution;

AND FURTHER, that each Member of the Legislative Assembly shall sign a copy of the Members' Conduct Guidelines before the Clerk of the Legislative Assembly, who shall make all signed copies available to the public through the Legislative Library and by posting signed copies on the Assembly website;

AND FURTHERMORE, that this Assembly refer the Members' Conduct Guidelines to the Standing Committee on Rules and Procedures for a comprehensive and public review, including a thorough examination of conduct guidelines from other jurisdictions, both parliamentary and non-parliamentary organizations, all relevant legislation, and the Rules of the Legislative Assembly of the Northwest Territories, and that the Standing Committee report back to this Assembly during the fall sitting of 2016.

The Committee notes that while the referral motion directs a review of Members' Conduct Guidelines, it recognizes that legislation and rules of the Assembly also govern Members' behaviour. Taken together, they set the overall standard of conduct Members are expected or bound to uphold. This report describes that matrix, and provides some comparisons to systems elsewhere.

The purpose of this interim report is to outline useful information to support public discussion, consultation, and further research that will lead to recommendations for consideration by the Legislative Assembly.

The Standing Committee's work began with an examination of laws that govern who can run for office, and what is done in the event a sitting Member breaches the law.

LAWS APPLICABLE IN THE NORTHWEST TERRITORIES

Charter of Rights and Freedoms

Canada's *Charter of Rights and Freedoms* provides that every citizen has the right to vote in elections for members to the House of Commons or legislative assembly and to "be qualified for membership therein." However, the right to run for office may be limited in ways justifiable in a free and democratic society. Court decisions to date show that such restrictions, when challenged, will be carefully scrutinized to determine if they are absolutely necessary to ensuring confidence in the election process.

Within those parameters, provinces and territories may set criteria for candidates running for election.

Eligibility for Office in the Northwest Territories Legislative Assembly

Provisions of the *Elections and Plebiscites Act* and the *Legislative Assembly and Executive Council Act* define who is an eligible candidate for election and who may serve in the Legislative Assembly.

Generally, a person is eligible to be a candidate if he/she is a Canadian citizen, is at least 18 years old, and has been a resident of the Northwest Territories for at least 12 months.

Current legislation disqualifies candidates or Members convicted and imprisoned as a result of a criminal offence; the disqualification ends with the term of imprisonment. The legislation is silent on offences that do not result in jail sentences. Such matters fall to the Legislative Assembly's rules, code of conduct, and use of parliamentary privilege to discipline or expel its Members.

Elections and Plebiscites Act

Legal precedents set elsewhere in Canada have sometimes led to changes to NWT legislation. For example, in 1995 the *Elections Act* was amended to allow persons imprisoned in a correctional facility to vote, if serving a sentence of less than two years. The law was also changed to ensure that prisoners remained ineligible to run for office (also a provision of the *Canada Elections Act*). This led to questions about what would happen in the event of an offence by a sitting Member. Such circumstances were subsequently addressed in the *Legislative Assembly and Executive Council Act*, discussed below.

The *Elections and Plebiscites Act* also includes a five-year prohibition of anyone convicted of a major election offence from being elected or sitting as a Member, voting, or holding office appointed by the Commissioner or Legislative Assembly. These offences include such conduct as voting more than once, intentional miscounts, knowingly making false statements about a candidate's character, attempting to intimidate or compel a person not to run for election, and others.

Legislative Assembly and Executive Council Act

The *Legislative Assembly and Executive Council Act* sets out requirements for Members' and Ministers' conduct, including conflict of interest provisions and a Member's general obligation to "arrange his or her private affairs in such a manner as to maintain public confidence."

Since its inception, the *Act* has been amended respecting offences that would prevent a Member from continuing to serve.

In 1995, following changes to the *Elections Act* and the adoption of a zero-tolerance motion the year before, the *Legislative Assembly and Executive Council Act* was amended to disallow a Member from serving if convicted of an indictable, Criminal Code offence involving violence or sexual exploitation of a child. Expulsion was not automatic if a Member was convicted of a less serious summary offence. In such cases, the Legislative Assembly would determine if expulsion or discipline was necessary. However, the *Act* did not specify particular criminal offences, left important issues open to interpretation, and ignored other potentially serious offences that might tarnish the public confidence, trust, and integrity of a Member. This provision was therefore repealed in 2006 and replaced with the requirements that exist today.

Currently, any Member who would no longer be eligible to be a candidate for election is not permitted to continue in office, and his or her seat is deemed vacant. In the event of a conviction or imprisonment of a Member, a suspension from office allows for legal appeals to be resolved before full disqualification takes place.

OTHER RELEVANT LEGISLATION

Canada Elections Act

Under this Act, a person who is imprisoned in a correctional institution is not eligible to be a candidate. In addition, any person convicted of an offence that is an illegal or corrupt (election) practice under the *Act* is not entitled to be elected to or sit in the House of Commons for five or seven years, respectively.

Legislative Assembly and Executive Council Act (Nunavut)

Nunavut's legislation sets out the circumstances which will lead to a Member's loss of his or her seat. Under Nunavut's *Legislative Assembly and Executive Council Act*, a Member cannot serve if they are convicted of an offence under the Criminal Code prosecuted by indictment (typically, a serious offence). The law also sets out a discretionary provision to consider whether it is in the public interest and in the interest of the Assembly to expel a Member convicted of a lesser (summary) offence. Nunavut's regime has not been challenged in court, and is similar to the Northwest Territories' restrictions in place from 1995 to 2006.

House of Assembly Act (Nova Scotia)

The laws of several provinces prevent a person imprisoned on conviction of an indictable offence from sitting as a Member or running for the office. This limitation generally expires when the term of imprisonment ends, as it does in the Northwest Territories.

In Nova Scotia, it is possible in certain circumstances for the prohibition from candidacy or holding office to be longer than the actual sentence imposed. This could occur if a person was convicted of a serious offence punishable by imprisonment of more than five years, but sentenced to a shorter term. In such a case, the person is ineligible to be nominated as a candidate for a period of five years from the date of conviction.

MEMBERS' CONDUCT GUIDELINES

The Legislative Assembly of the NWT first established a self-imposed code of behaviour during the 12th Assembly. Each subsequent Assembly, except the 15th, formally adopted a similar code of conduct.

The Code of Conduct was amended by the 18th Assembly to put greater emphasis on effective representation. An excerpt from the Conflict of Interest provisions of the *Legislative Assembly and Executive Council Act* was added to help ensure Members arrange their private matters so as to maintain the trust

and confidence of the public. A commitment to respect and abide by the laws of the land was also incorporated into the revised Code.

For the first time, Members of the 18th Assembly formally signed copies of the Conduct Guidelines before the Clerk. These signed copies are publicly available and posted on the Assembly's website. This demonstrates Members' collective commitment to the spirit and intent of the Conduct Guidelines (see Appendix A).

Oath of Office

Sworn oaths of office are another mechanism obligating Members to a standard of conduct. The Legislative Assembly's oaths of office for Members and Ministers are set out in Schedule B of the *Legislative Assembly and Executive Council Act*. For example:

I, (Member's name), do solemnly and sincerely promise and swear that I will duly and faithfully and to the best of my skill and knowledge execute the powers and trust reposed in me as a Member of the Northwest Territories Legislative Assembly. So help me God.

Members' and Ministers' oaths are sworn before the Commissioner with due ceremony and gravity, generally with close family present, in a televised proceeding in the Chamber.

There may be an opportunity to increase Members' focus and public attention to matters of conduct by linking the oath to additional duties, standards and statutory requirements set out elsewhere. Newfoundland and Labrador's Oath of Office is a good example, with specific links to the province's *Elections Act* and the Assembly's Code of Conduct:

I, (Member's name) do swear (or affirm) that:

- a) I am fully qualified to hold the office of Member for the District of _____ to which I have been elected;
- b) I have not knowingly contravened the *Elections Act, 1991* respecting any matter in relation to my election;
- c) I will faithfully, to the best of my ability, perform the duties and responsibilities of my office and will not allow any direct or indirect monetary or other personal or private interest to influence my conduct or affect my duties in public matters;

- d) I hereby affirm, subscribe to and agree to follow the Code of Conduct of Members adopted by the House of Assembly, (in the case where the oath is taken, add "So help me God").

Observations from Other Parliamentary Jurisdictions

Codes of conduct are well-established in a number of parliamentary jurisdictions. Elected leaders around the world have noted that their codes of conduct are extremely useful in dealing with constituents and local organizations by providing a formal standard to judge the actions of their elected politicians. According to some experts, Members are more cautious of their behaviour because they are subject to stricter scrutiny inside and outside the House.

As a result, codes of conduct can be used to build trust in government institutions. Or, their absence can undermine it.

The overall purpose of codes of conduct for parliamentarians varies from country to country. They usually aim to promote ethical behaviour and prevent unethical behaviour, provide a set of ethical standards, increase public trust in and respect for the institution, as well as to establish rights and responsibilities for parliamentarians.

A commonly held view is that codes of conduct are better adopted through the Rules of the House or by formal motion rather than by statute. There is a strong argument that adoption by standing order or resolution enables the House to retain jurisdiction over its own affairs, rather than delegating them to the courts.

As well, there seems to be benefit in having a code that is relatively simple and easy to understand, readily accessible, and aspirational in nature. A Code of Conduct can include both aspirational provisions (what Members ought to do) and prescriptive provisions (what Members must do or not do). Many jurisdictions, including the Northwest Territories, have opted to incorporate prescriptive provisions in statute, including fiduciary matters such as conflict of interest, gifts and favours, asset declaration, nepotism, and outside activities. Many of these items are addressed directly in the Conflict of Interest provisions of the *Legislative Assembly and Executive Council Act*.

The effectiveness of a Code of Conduct for elected leaders depends on a range of factors, including effective consultation and discussion prior to the enactment of the code, the existence of an active constituent base, free media, a functioning integrity system, effective protection for whistleblowers, an oversight mechanism, clear and appropriate sanctions, and parliamentarians' commitment to the structure and process.

Regulation and Enforcement

An effective conduct regime includes systems for enforcement and sanctions to deter potential offenders, as well as to ensure the integrity of the House in the event of breaches. Three main models have emerged:

- Internal regulation by the parliament;
- External regulation by a judicial body; and,
- Creation of an independent commissioner who reports to a parliamentary committee.

Self-regulation by parliament typically entails the creation of a special ethics committee to deal with the reporting, investigation, and sanctioning of Members alleged to have violated the rules. However, this model has met with considerable criticism, as it turns legislators into investigators, judges, and juries. In addition, if the intention is to ensure or restore public trust in politicians, a model that relies on politicians investigating themselves is unlikely to retain public confidence or credibility.

The second model involves the creation of a judicial or quasi-judicial body to oversee and enforce regulations on behalf of Members. The difficulty with this model is that breaches of the rules can become subject to criminal proceedings and therefore may interfere with rules relating to parliamentary privilege or immunity. In addition, Members may feel little sense of ownership in an external regime. If the intention is to build collective acceptance of its provisions, there may be more direct ways to build the regime into parliamentary culture.

The third model combines elements of the first two. This model involves the creation of an independent regulator appointed by and reporting to the legislature. The regulator is then responsible for investigating alleged breaches and advising Members on the application of the rules, but the imposition of penalties or sanctions is decided by a committee of the House. This model closely aligns with our own enforcement provisions in the Conflict of Interest section of the *Legislative Assembly and Executive Council Act*. One option may be to expand our Conflict of Interest Commissioner's responsibilities to include oversight of the Code of Conduct. This is the arrangement in Newfoundland and Labrador under the Commissioner of Legislative Standards.

It is important to note that our existing territorial regime does very little to address regulation and enforcement of the aspirational provisions contained in our current Code of Conduct. Apart from the Code's 'catch-all' clause (taken from the *Legislative Assembly and Executive Council Act*) that Members "will perform the duties of office with integrity, objectivity and impartiality" and will arrange their "private matters so as to maintain the trust and confidence of the public," the Code is largely non-binding and perceived as not having real 'teeth' or meaningful enforceability. This is due in part from the difficulty of enforcing some

behaviour promoted in the Code, in part from the lack of a publicly-described procedure for registering complaints and taking appropriate action. There is no Assembly committee tasked with handling complaints, and no ethics commissioner. Our current system relies primarily on complaints to the Conflict of Interest Commissioner, whose authority is limited to provisions set out in *Legislative Assembly and Executive Council Act*. This authority is weighted toward financial matters, contracts, and private interests.

The *Act* also establishes the Board of Management, chaired by the Speaker, to administer Members' allowances, and set regulations and policies for all services to Members. The Board ensures that its policies and regulations are followed, and exercises its authority to enforce them. The Board is also the final arbiter of workplace harassment cases involving breaches of the Legislative Assembly's policy and potential discipline of a Member. The workplace harassment policy is described in the Members' Handbook, included in employee orientation, and administered by the Clerk.

Municipal Councils

Municipal councils are not an equivalent level of government, but their standards of conduct are nevertheless an indicator of public expectations. Many municipal councils in Canada have adopted codes of conduct, some of them quite stringent. Ontario provides several similar examples in Barrie, Kitchener, the County of Brant, and others. These codes are both aspirational and prescriptive, with direct references to the *Criminal Code of Canada* and several Ontario laws governing members' conduct.

The County of Brant's code of conduct, for example, features typical conflict-of-interest provisions as well as general standards of conduct and responsibilities, including:

- Members are responsible for making honest statements. No member shall make a statement when they know that statement is false;
- Members shall exercise care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- Members shall competently exercise his or her office by educating themselves either formally or informally, in matters pertaining to their official duties;
- Members of Council must uphold the law and conduct themselves with the highest degree of ethical behaviour and integrity;
- Members shall not attempt directly or indirectly, to influence the decision-making process, as it relates to the award of contracts.

As is typical of other municipal codes of conduct in Ontario, Brant County's includes detailed procedures for complaints and investigations by an Integrity

Commissioner. The Commissioner is empowered to recommend a reprimand, or suspension of a councillor's pay for up to 90 days.

However, the compliance section of Brant County's code also refers to expulsion: "[Members of Council] may become disqualified and lose their seat if convicted of an offence under the *Criminal Code of Canada* or for failing to declare a conflict of interest under the *Municipal Conflict of Interest Act*."

Non-government Organizations (NGOs)

Most conduct guidelines for non-parliamentary organizations are vague, unenforceable, and do not deal with personal matters. Generally, such codes focus on workplace conduct and business integrity and do not venture very far into personal conduct.

References to alcohol and substance abuse or violence outside the workplace are virtually nonexistent or purely aspirational in nature. Likewise, confidentiality policies and 'general integrity' clauses (re: good stewardship of public resources) do exist elsewhere but are no more strongly and specifically-worded than what we already have.

However, personal conduct is a live issue for many NGOs working to improve governance and ensure the confidence of donors and funders.

Some organizations' codes of conduct reflect high standards and are linked to enforcement mechanisms. For example, the Canadian Broadcasting Corporation (CBC) requires its employees to act "at all times with integrity and in a manner that will bear the closest public scrutiny, an obligation that may not be fully satisfied by simply acting within the law." More specifically, CBC's code deals with conflict of interest, use of public funds and resources, discrimination and harassment, and so on.

Compliance is a condition of employment, and failure to comply "may result in disciplinary action...up to and including immediate dismissal." CBC employees are "obligated to immediately" report possible breaches of the Code of Conduct; channels for doing so are clearly set out. Events at CBC in recent years illustrate that to be effective, even a rigorous code of conduct must be actively supported by management and a healthy workplace culture.

Sanctions and Penalties

The Commonwealth Parliamentary Association (CPA), with more than 50 member legislatures, identifies benchmarks of good governance and best practices. It recommends that codes of conduct should "specify graduated sanctions and penalties for breaches of the Code according to the seriousness of the effects of breaches on the functioning, reputation and legitimacy of the

parliament.” The CPA’s Recommended Benchmarks for Codes of Conduct applying to Members of Parliament also advises that codes should “specify that a Member convicted of a breach of the criminal law, may in addition be subject to a sanction or penalty if found to have breached the Code.”

There is no mention of sanctions or penalties in the Legislative Assembly’s Code of Conduct. However, the Conflict of Interest provisions of the *Legislative Assembly and Executive Council Act* specify punishments when a Member is found guilty of contravening a section of those provisions. The potential punishments include:

- (i) a reprimand;
- (ii) a fine not exceeding \$25,000;
- (iii) an order requiring the Member to make restitution;
- (iv) an order requiring the Member to pay compensation to any person for a loss sustained;
- (v) a suspension for a period not exceeding 30 sitting days;
- (vi) a declaration that the seat of the Member is vacant; and,
- (vii) an order that the Member pay costs in an amount to be determined.

It is vitally important to note that the Legislative Assembly’s authority to regulate its internal affairs and discipline its own Members for misconduct is unchallenged. These rights and powers, which fall under the banner of Parliamentary Privilege, are the peculiar rights enjoyed by each House collectively, and by Members individually, without which they could not carry out their duties and functions. These rights and privileges exceed those possessed by other bodies or individuals and are, to a certain extent, exempt from the general law. It is also vitally important to understand that this does not place the Assembly or its Members ‘above the law.’ Court rulings have assisted in setting precedents to define the boundaries of Parliamentary Privilege and general law.

Examples of sanctions that can be imposed by the House and that go beyond the other sanctions already identified in statute include:

- verbal warnings;
- formal reprimands;
- censure / severe rebukes / admonition;

- naming and order to withdraw;
- suspension from membership for a specified period;
- revocation of appointments;
- imprisonment;
- expulsion / loss of seat.

The arsenal of penalties and sanctions is thus well-stocked. Analysis of codes of conduct elsewhere reveals varied approaches on whether it is advisable to formally identify clear sanctions for specific breaches, or whether it is better to address them case-by-case. The most important consideration is that any sanction should be reasonable and appropriate to the misconduct. Avenues for appeal or review should also be provided in instances where a Member is found guilty of misconduct.

Fostering a Culture of Ethical Conduct

There is a trend toward enforceable standards of conduct in both governmental and non-governmental organizations. Tougher rules do serve a preventive purpose, and while enforcement may ultimately be a deterrent, it is necessarily reactive to events. Prevention of such events must be part of our goal.

Promoting a culture of integrity within public life and the parliamentary context is fundamental to any effective ethics regime. Educational and training efforts can contribute to the effectiveness of an ethics regime by clarifying what constitutes misconduct and identifying ways of eliminating it. Ethical behaviours can be fostered when ethical standards are clearly known and people become attentive to identifying and discovering wrongdoing. People are often hesitant to commit an unethical act if they believe everyone else around them knows it is wrong, or if they are likely to get caught. These positive behaviours are more common in environments that emphasize ethical behaviour.

NEXT STEPS

Members of the Standing Committee on Rules and Procedures wish to engage the general public in a dialogue on the development and refinement of laws, Members' conduct guidelines, and enforcement mechanisms in support of high ethical standards befitting the Northwest Territories Legislative Assembly.

Following this report, the Committee will issue a discussion paper posing a series of questions on key issues to stimulate public consideration and feedback. The

Committee plans to conduct public hearings outside the capital in November and December, 2016. The meetings will be well-publicized; the Committee invites everyone interested to attend, discuss the issues, and provide their advice. Written submissions are also welcome. The Committee's final report and recommendations will be tabled at the earliest opportunity in 2017.

APPENDIX A

Legislative Assembly of the Northwest Territories Members' Conduct Guidelines

As a Member elected to the Legislative Assembly of the Northwest Territories, I acknowledge that I have accepted a responsibility to serve the people of the Northwest Territories. I seek wisdom, strength, courage, honesty, and caring from the people of the North, both from those who have built our past and from those who are shaping our future.



As a legislator elected to govern the Northwest Territories, I will serve to do my utmost to:

- Hear the voices of all our people;
- Preserve our traditions and bridge them with new ways to build our future;
- Provide legislation, policies, and services for the good of the people as individuals, families, and communities;
- Promote the equality of all our people;
- Distribute resources fairly and justly; and
- Respect and honour our land and all its inhabitants.

As a legislator, I will do my best to fulfill my duties to the legislature, the public, my constituents, and my colleagues with integrity and honour.



To the legislature, I owe respect as well as dedication to my role in ensuring the integrity of our government and in earning, through my actions, the confidence of the people.

To the public, I owe a responsibility to work for the well-being of all residents of the Northwest Territories.

To my constituents, I owe my best efforts at effective representation as well as accountability, honesty, fairness, and courtesy.

To my colleagues, I owe fairness and respect for our differences and the duty to work together with goodwill for the common good.

I acknowledge human vulnerabilities and will strive to bring honour to my role as a representative of our people.



I will perform the duties of my office with integrity, objectivity and impartiality and I will arrange my private matters so as to maintain the trust and confidence of the public.

I will respect and abide by the laws of Canada and the Northwest Territories and I will not act in ways which violate these laws.

I will not act, nor condone others to act in ways which are dishonest, or which exploit, slander, or discriminate against others.

As a legislator, I acknowledge a vision and a responsibility to improve the life of our people and I will strive to act in creative ways to overcome the hardships which destroy life and hope, and the human frailties which fall upon us.

So long as I am a Member of the Legislative Assembly, I will be true to these obligations, and will work to preserve the greatness of our land and our people.