



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 109

Municipal Ethics and Good Conduct Act

Introduction

Introduced by
Mr. Laurent Lessard
Minister of Municipal Affairs, Regions and
Land Occupancy

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EXPLANATORY NOTES

This bill 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 conflicts of interest, 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 bill prescribes the formalities to be observed as part of the process of 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 bill, 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 bill 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 bill 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 may recommend the imposition of a sanction from among those provided for in the bill. It will be up to the municipal council to decide whether or not to impose the recommended sanction, which may not, however, be modified in any way.

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 BILL:

- 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).

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 affirm the main ethical values they embrace, 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*

4. The code of ethics and conduct must set out the main ethical values of the municipality, such as

(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; and

(4) the respect to be shown to the other council members, to the employees of the municipality and to the citizens of the municipality.

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

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, a 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) conflicts of interest and 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);

(2) favouritism, embezzlement, breach of trust or other misconduct; and

(3) the inappropriate use of the resources of the municipality or body.

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

(1) 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;

(2) 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;

(3) in addition to what is provided in subparagraph 2, accepting any gift, hospitality or other benefit unless it is within the normal bounds of propriety, a normal expression of courtesy or protocol or within the normal standards of hospitality and is of reasonable value in the circumstances;

(4) using or communicating, or attempting to use or communicate, 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

(5) 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.

Subparagraph 3 of the first paragraph does not apply to gifts, hospitality or other benefits of a purely private nature received by a council member.

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, within 120 days after 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.

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

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 and the publication of a public notice as required by section 12.

19. A violation by an employee 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 one or more disciplinary measures, including dismissal, as 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 the applicable code of ethics and conduct may raise the matter with the Minister.

The person must do so by means of a sworn written request setting out those grounds, and enclose any supporting documents.

21. The Minister may dismiss the request if the Minister is of the opinion that it is frivolous, vexatious or clearly unfounded or that an intervention would not be in the public interest in light of the circumstances or if the person who made the request 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. Two members of the Commission municipale du Québec designated by the president, one of whom is an advocate or a notary, hold an inquiry into the request.

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 the code of ethics and conduct, the Commission recommends to the council of the municipality concerned that it impose one or more of the sanctions set out in section 31, or recommends that no sanction be imposed. In formulating its recommendation, the Commission takes into consideration the seriousness of the violation and the circumstances in which it occurred, including whether or not the council member took all reasonable measures 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 inquiry report to the council member concerned, the person who made the request, the municipality and the Minister, or if the inquiry is still underway, inform them of its progress and of the date on which the report will be sent.

28. The clerk or the secretary-treasurer of the municipality must submit the inquiry report to the council at the first regular sitting held after the expiry of 25 days following receipt of the report.

If the report recommends the imposition of a sanction, the council must consider the report.

Any decision to impose a sanction recommended by the Commission is made by a resolution adopted by two-thirds of the votes cast. The sanction recommended by the Commission may not be modified.

If no resolution is adopted at the sitting at which the report is considered, the council is deemed to have refused to impose the sanction. The clerk or the secretary-treasurer of the municipality records that fact in the minutes of the sitting.

The clerk or the secretary-treasurer must inform the Minister and the Commission, in writing, of the council's decision.

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 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 municipal council,

(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, a committee or commission of the municipality or member of a body while the violation of the code continued; or

(4) the suspension of the council member for a period of up to 180 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. 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

33. 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.”

34. 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 (*insert the year and chapter number of this Act*) and of the nature and conclusions of any inquiries held under that Act.”

35. 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”.

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

“Where the member fails to attend sittings of the council by reason of a suspension imposed for a violation of the code of ethics and conduct of the municipality, the period specified in the first paragraph is replaced by the period for which the member is suspended if it is longer.”

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

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

39. 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.”

CHAPTER V

TRANSITIONAL AND FINAL PROVISIONS

40. 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 *(insert the date that occurs 12 months after the date of assent to this Act)*; and

(2) a code of ethics and conduct of municipal employees that meets the requirements of this Act must adopt one not later than *(insert the date that occurs 24 months after the date of assent to this Act)*.

41. Despite section 15, any member of a council of a municipality whose term is underway on *(insert the date of assent to this Act)* or starts before *(insert the date that occurs six months after the date of assent to this Act)* must participate in a professional development program referred to in that section before *(insert the date that occurs 12 months after the date of assent to this Act)*.

42. 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 35, 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 39, 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.”

43. 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 (*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.”

44. Not later than (*insert the date that occurs six years after the date of assent to this Act*) and subsequently every six years, the Minister of Municipal Affairs, Regions and Land Occupancy must report to the Government on the carrying out of this Act and on the advisability of amending it.

The report 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.

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

46. This Act comes into force on (*insert the date of assent to this Act*).

