

LEGAL SUPPORT FOR COUNCIL: EXPLORING THE ROLE OF THE MUNICIPAL SOLICITOR

Noella Martin, K.C.
Burchell Wickwire Bryson
NSFM Fall Conference
November 6, 2025



NOVA SCOTIA FEDERATION
OF MUNICIPALITIES

BURCHELL WICKWIRE BRYSON ^{LLP}
lawyers | avocats

There is increasing need for specialized legal advice to municipal units for three reasons:

1. There are just far more chances for a municipal unit to get into legal trouble - in particular, legislation regularly adds more obligations on municipal units.
2. The potential liability from legal actions and the cost of defending them is going through the roof.
3. For this audience, the expertise and time required of each of you is increasing.

To help you with those aspects, I hope to touch on three areas each elected official needs to be aware of:

1. Changes to the *Freedom of Information and Protection of Privacy Act*
2. Changes to the *Code of Conduct*
3. Knowing when to go *in camera*

1. Changes to the *Freedom of Information and Protection of Privacy Act*

- The Province amended privacy legislation in the Fall Session of legislature
- Previously, Part XX of the *MGA* (Sections 461 to 502) set out the “FOIPOP” requirements
- The new legislation replaces Part XX of the *MGA* (Sections 461 to 502) effective April 1, 2027

Changes to the *FOIPOP* Act

- Some of the substantive changes include
 - Fines are increasing
 - For an individual, the fine can be up to \$10,000
 - For a corporation, it can be up to \$50,000

Changes to the *FOIPOP* Act

- Municipalities gain the right to refuse disclosure of information that could be expected to harm conduct between the Municipality and the entities listed if the information was provided in confidence to the Municipality. Those entities include:
 - the government of Canada;
 - the government of a province of Canada;
 - a municipality;
 - the Conseil scolaire acadien provincial;
 - an Indigenous governing body;
 - the government of a foreign state; and
 - an international organization of states.

Changes to the *FOIPOP Act*

- Municipalities have the right to refuse to disclose information such as draft resolutions, policies or bylaws.

Changes to the *FOIPOP* Act

What is my advice to municipalities?

The same as it's always been!

Be careful that any kind of document - including an email or a text - might have to be produced in response to a FOIPOP application.

2. Changes to the *Code of Conduct for Elected Officials*

- In early October 2025, the Province amended the *Code of Conduct* so that any complaints can only be made by elected officials against elected officials.

Changes to the Code of Conduct

- The biggest change is probably that only a council member can file a complaint. The amendment states:

Complaints

7(1) A complaint may only be made by a council member in the municipality in which the subject of the complaint is a council member.

(2) A council member may not submit a complaint on behalf of any other person or entity.

Changes to the Code of Conduct

- Other changes to the *Code of Conduct*

Requirements for investigator

6(1) An investigator must have experience conducting investigations and applying the principles of natural justice and procedural fairness.

(2) If an investigator receives multiple complaints about the same subject matter, the investigator must consolidate the complaints and investigate them together, unless doing so would compromise the principles of natural justice or procedural fairness.

Changes to the *Code of Conduct*

6(3) A municipality must publish an investigator's contact information on its publicly accessible website.

(4) A municipality must ensure that no conflict of interest exists between the investigator and the parties involved in a complaint.

Changes to the Code of Conduct

- Dealing with a broader range of complaints over the past year or so has provided insight:
 - Elected officials benefit significantly from training on:
 - Their role
 - Their interaction with municipal staff
 - The conduct of council meetings

Changes to the *Code of Conduct*

- Members of the public need to understand those things too.

3. Knowing when to go *in camera* and what it means.

- Section 22 of the *MGA* states:

Open meetings and exceptions

22 (1) Except as otherwise provided in this Section, council meetings and meetings of committees appointed by council are open to the public.

Going *in camera*

(2) The council or any committee appointed by the council may meet in closed session to discuss matters relating to

- (a) acquisition, sale, lease and security of municipal property;
- (b) setting a minimum price to be accepted by the municipality at a tax sale;
- (c) personnel matters;
- (d) labour relations;
- (da) alleged breaches of the municipality's code of conduct;
- (db) code of conduct complaints proceeding to the investigation stage;
- (e) contract negotiations;
- (f) litigation or potential litigation;
- (g) legal advice eligible for solicitor-client privilege;
- (h) public security.

Going *in camera*

(3) No decision shall be made at a private council meeting except a decision concerning procedural matters or to give direction to staff of, or solicitors for, the municipality.

(4) Where the council meets in closed session, a record must be made that is open to the public setting out only

- (a) the fact that council met in closed session;
- (b) the type of matter that was discussed, as set out in subsection (2);
- (c) where the matter discussed relates to alleged breaches of the municipality's code of conduct,
 - (i) the section of the code of conduct the complaint was lodged under, and
 - (ii) the recommendations of any report made under subsection 23C(2); and
- (d) the date of the meeting.

Going *in camera*

(5) Subsections (3) and (4) apply to committee meetings or parts of them that are not public.

(6) Any councillor or employee of a municipality who discloses any report submitted to, or details of matters discussed at, a private meeting of the council or committee, as a result of which the municipality has lost financially or the councillor or employee of a municipality has gained financially, is liable in damages to the municipality for the amount of the loss or gain.

(7) Subsection (6) does not apply to information disclosed pursuant to subsection (4) or subsection 473(2). 1998, c. 18, s. 22; 2000, c. 9, s. 34; 2003, c. 9, s. 50; 2021, c. 13, s. 1; 2024, c. 3, s. 73.

Going *in camera*

- What does *'in camera'* actually mean?
 - Discussions are confidential and remain confidential forever.

QUESTIONS?

Contact me: Noella Martin, K.C.
Burchell Wickwire Bryson
d: 902.482.7013
nmartin@bwblp.ca