

RESPONSIBLE CONDUCT OF LOCAL GOVERNMENT ELECTED OFFICIALS

Working Group on Responsible Conduct

Consultation Paper

March 2017



The Working Group on Responsible Conduct is a joint initiative by the Union of B.C. Municipalities; the Local Government Management Association; and the Ministry of Community, Sport and Cultural Development. The staff-level Working Group was created in Fall 2016 to undertake collaborative research and policy work on the issue of responsible conduct of local government elected officials.

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1. INTRODUCTION

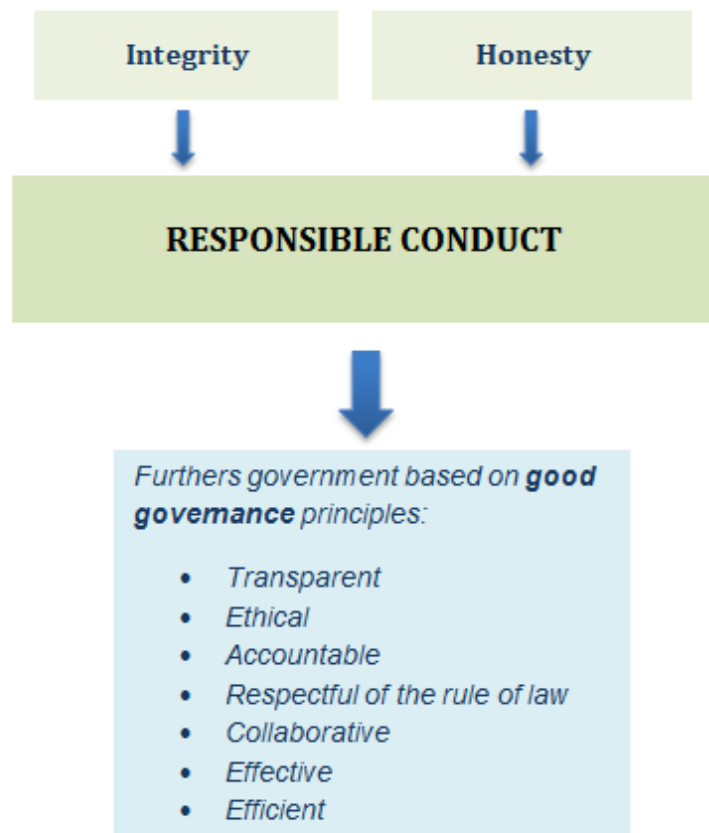
Responsible conduct broadly refers to how local government elected officials conduct themselves with their colleagues, with staff, and with the public.

Responsible conduct is grounded in conducting oneself with honesty and integrity and in a way that furthers a local government's ability to provide good governance.

What does responsible conduct mean?

Local government elected officials have authority to make decisions that affect the daily lives of citizens, families, businesses and others and help shape the long-term vision for their community as a whole. *Responsible conduct* broadly refers to how local government elected officials conduct themselves with their elected official colleagues, with staff, and with the public – three key groups that play a significant role in helping elected officials carry out their responsibilities as decision-makers in their communities. *Responsible conduct* is grounded in conducting oneself with honesty and integrity and in a way that furthers a local government's ability to provide good governance to their community (e.g. governing in a way that is transparent, ethical, accountable, respectful of the rule of law, collaborative, effective and efficient).

If a local government faces issues related to responsible conduct among its elected decision-makers, it can affect the local government's ability to provide good local governance. These issues can include disputes among local government elected officials on municipal council and regional district boards, inappropriate behaviour towards staff, questionable behaviour at council/board meetings or in interactions with the public, conflict of interest violations, and alleged breaches of other procedures/rules such as open meetings and duty to respect confidentiality.



What is the Working Group on Responsible Conduct?

Generally, local government elected officials effectively carry out their responsibilities as decision-makers and work well with each other, with local government staff and with the public to carry out governance functions. However, several high-profile incidents involving the conduct of local government elected officials have led to growing debate and interest across Canada (including B.C.) about the issue of responsible conduct of local government elected officials.

At the 2016 Union of B.C. Municipalities Convention, a resolution related to responsible conduct (specifically about municipal Integrity Commissioners) was referred for further exploration. As a result, staff of the Union of B.C. Municipalities (UBCM), the Local Government Management Association (LGMA), and the Ministry of Community, Sport and Cultural Development (the Ministry) formed a Working Group on Responsible Conduct (WGRC) that has been undertaking collaborative research and policy work to explore issues related to responsible conduct more broadly. The aim of the WGRC's work is to gain a more complete understanding of the background to this issue, and of the benefits and challenges of various approaches to furthering responsible conduct as they support the collective goal of an effective local government system.

What is the purpose of this consultation paper?

The main purpose of this paper is to provide an overview of the tools that are used in B.C. and other Canadian jurisdictions to support and further responsible conduct of local government elected officials that help to ensure local governments can provide effective governance to their communities. The paper is based on research that has been undertaken by the WGRC and is intended to:

- provide an opportunity to consider B.C.'s responsible conduct framework in contrast with the best of what tools other provinces have in place or are exploring;
- flag emerging trends; and
- create a basis for discussion on how these trends may or may not be of value to B.C.'s local government system.

As such, this paper:

- provides a description and analysis of the issue;
- provides an overview of B.C.'s current responsible conduct framework and tools that support responsible conduct of local government elected officials in B.C.;
- provides an overview of some tools of interest that support responsible conduct of local government elected officials in other Canadian jurisdictions; and
- analyzes emerging trends from the research.

The Working Group on Responsible Conduct consists of staff from:

- ***the Union of B.C. Municipalities;***
- ***the Local Government Management Association; and***
- ***the Ministry of Community, Sport and Cultural Development.***

The main purpose of this paper is to provide an overview of tools used in B.C. and other Canadian jurisdictions to support and further responsible conduct and flag emerging trends from the research to create a basis for discussion on how these trends may/ may not be of value to B.C.'s local government system.

2. ISSUE SUMMARY

What is the issue?

There have been some concerns raised about whether there has been a diminishment of responsible conduct in B.C.'s local government system. This is an important concern because local government elected officials can be more effective in providing good governance to their communities if they engage in responsible conduct.¹

Generally, how elected officials conduct themselves with each other, with local government staff, and with the public can impact a local government body's ability to provide good local governance. Good governance includes:

- providing for the stewardship of a community's public assets;
- providing services, laws, and other matters for community benefit; and
- acting in a way that is accountable, transparent, ethical, respectful of the rule of law, collaborative, effective and efficient.

In addition, good governance principles ensure that participation and perspectives from the public and stakeholders are taken into account when making decisions.

What factors provide a foundation for responsible conduct in B.C.?

Both written rules (such as rules established in legislation) and unwritten rules or conventions provide a foundation for responsible conduct of local government elected officials in B.C.

WRITTEN RULES

One important factor that provides a foundation for the responsible conduct of local government elected officials and good governance in communities is the set of written rules that are established in legislation, bylaws, and created by the courts. For example, the *Community Charter* establishes the responsibilities of councillors and mayors. In addition, local government legislation sets out rules for local government elected officials such as conflict of interest disclosure process, attendance at meetings, and the duty to respect confidentiality of certain records and information. Local government policies and bylaws, such as procedure bylaws, also constitute written rules that set out further requirements and standards to ensure a local government operates effectively and efficiently.

UNWRITTEN RULES

The set of unwritten rules, or norms, that typically provide a foundation for how local government elected officials conduct themselves with their colleagues, with local government staff, and with the public are also important in helping local government bodies provide good governance in their communities. These norms may sometimes be seen as the shared understanding of how things should be done that fills the space between the written rules and guides day-to-day behaviour. These norms include:

- conduct of local government elected officials is grounded in respect and honesty;
- the public (or collective) interest is more important than personal interests;

Continued on next page...

There have been some concerns raised about whether there has been a diminishment of responsible conduct in B.C.'s local government system.

This is important because elected officials can be more effective in providing good governance if they engage in responsible conduct.

¹One of the purposes of a local government set out in the *Community Charter* and *Local Government Act* is to provide for the good government of its community.

WRITTEN RULES

Local government elected officials must also follow rules established in other legislation and legal frameworks, such as: the *Freedom of Information and Protection of Privacy Act* (which has the objective of making public bodies accountable to the public and protecting personal privacy); WorkSafe B.C. rules (which aim to ensure a healthy and safe work environment for local government staff); and the *Criminal Code* (which penalizes extreme behaviours, such as breach of trust). Further, court rulings may create, interpret, expand and apply legal rules (e.g. conflict of interest) thereby setting additional parameters and providing guidance for decision-making.

UNWRITTEN RULES

- local government elected officials take into account the implications of options and various perspectives when making decisions for communities;
- council discourse, public discussions and other aspects of democratic processes are carried out civilly and respectfully; and
- the differing roles and responsibilities of local government elected officials and local government staff are clearly understood by all participants.

The institutional culture of a local government can also have impacts on responsible conduct and the ability of local government bodies to provide effective local governance. For example, a local government that has a strong ethical foundation as part of its culture would be more likely to facilitate elected officials engaging in responsible conduct.

What pressures are impacting these factors?

A variety of pressures appear to be impacting these factors, especially the unwritten rules and conventions. These pressures can result in unclear and shifting rules and a weaker foundation upon which to support and further responsible conduct and good governance in communities.

Key pressures include:

- ***Pervasiveness of technology and social media:*** While technology and social media have resulted in some positive outcomes (e.g. increased access to information for the public and elected officials), they can also put pressure on local government elected officials to react quickly to issues that have a social media platform and potentially turn the focus away from other significant issues. “24/7” attention can be wearing. In addition, the norms for social media communication vary considerably from the norms for communication in other social spaces (e.g. conversations that take place in the workplace or during meetings). Statements that may not be based on verified facts and discourse that appears to be inappropriate or offensive can “go viral” at great speed. Elected officials may find themselves defending their actions against anonymous critics or actually becoming actively engaged in this often uncontrolled discourse. This type of social media use can put pressure on local government elected officials and may result in challenges in retaining council and board members (as elected officials ask themselves whether that type of public scrutiny is “worth it”).

Key pressures that appear to be impacting unwritten rules and conventions that provide a foundation for responsible conduct are:

- *Pervasiveness of technology and social media;*
- *Challenges of ensuring responsible conduct and providing good governance in a ‘post-truth’ environment;*
- *Loss of knowledge and continuity on local government bodies and staff; and*
- *Lack of shared understanding/ agreement of what the unwritten rules or conventions should be for elected officials.*

- **‘Post-truth’ era:** Another pressure is the challenge of ensuring responsible conduct and providing good governance in a time that has been increasingly described as a ‘post-truth’ era “in which objective facts are less influential in shaping public opinion than appeals to emotion and personal belief”.² This approach may lead to greater public interest and attention; however, a significant impact of operating in a ‘post-truth’ environment is that it can be more difficult for groups of people to find common ground and to agree on the facts that are necessary to make effective decisions for communities.
- **Loss of knowledge and continuity:** Individuals who are new to local government, whether they are elected officials or staff members, are vital to democracy and can positively impact a community by bringing new ideas and approaches to solving issues. However, there can also be challenges associated with rapid or continuous turn-over on local government bodies and staff, which can include a loss of knowledge and continuity and fewer individuals who can provide expert guidance to local government colleagues in navigating challenging situations.
- **Lack of shared understanding:** As technology and other social changes take place (e.g. demographic changes), there may be a shift in the conventional rules or norms that have typically provided a foundation for responsible conduct and good governance. This can result in a loss or lack of shared understanding in what the unwritten rules are, or should be (e.g. what behaviour is expected of local government elected officials); this may lead to challenges in finding common ground upon which to build a foundation for developing and maintaining relationships among elected officials, with staff, and with the public.

²Oxford Dictionaries defines “post-truth” as “[r]elating to or denoting circumstances in which objective facts are less influential in shaping public opinion than appeals to emotion and personal belief” (“Post-truth”, Oxford Living Dictionaries, <https://en.oxforddictionaries.com/definition/post-truth>).

Why does the issue matter?

An environment that is characterized by unclear and shifting rules can result in issues related to responsible conduct, such as:

- disrespectful use of social media;
- disruptive meetings;
- procedural bylaw violations; and
- disrespectful behaviour towards fellow local government elected officials, staff, and members of the public.

This type of conduct can negatively impact a local government by resulting in strained relationships, decreased credibility and the inability of a local government to function effectively and fulfill its legislative requirements. These impacts may also further undermine sustaining a shared commitment to responsible conduct, which affects a local government's ability to govern according to good governance principles. It may also affect the ability to attract new candidates or retain those currently elected to local government office.

When issues related to responsible conduct negatively impact a local government, communities may also face additional challenges, including lower voter turnout due to voter apathy, businesses that may choose to settle in more stable communities, and the inability of a local government to hire and retain good staff. It is important to note that different types of behaviour can have different impacts on communities. For example, an issue that seems small can escalate into a larger issue that results in the chronic disruption of meetings and decision-making. These chronic disruptions can, in turn, lead to more pressure for written rules to be established, which may result in greater certainty but also in a less flexible basis for relations among local government elected officials, with staff and with the public.

An environment characterized by unclear and shifting rules can result in issues related to responsible conduct (such as disrespectful use of social media and disruptive meetings) and these issues can negatively impact a local government.

It is important for local governments to have a shared commitment to responsible conduct to ensure the local government's ability to govern according to good governance principles.

3. B.C.'S CURRENT RESPONSIBLE CONDUCT FRAMEWORK

Understanding B.C.'s responsible conduct framework

In light of the pressures and challenges that are impacting the conventions and unwritten rules that have typically guided the conduct of local government elected officials, it is important to understand B.C.'s current foundation for responsible conduct and the tools available in B.C. and other Canadian jurisdictions to address related issues. It is also helpful to identify trends in approaches to responsible conduct to ensure local government bodies can effectively provide good local governance.

a) What are the components of B.C.'s responsible conduct framework?

B.C.'s local government framework consists of a variety of components that provide a foundation for responsible conduct, including access to advice, education and training for local government elected officials and staff; and the legislative framework. The legislative framework includes local government legislation (e.g. *Community Charter; Local Government Act*), other pieces of legislation to which local governments and elected officials must adhere (e.g. *Workers Compensation Act; Freedom of Information and Protection of Privacy Act*), and statutory Offices.

As a whole, these components of B.C.'s responsible conduct system are meant to provide support and guidance for local government elected officials and ensure that elected officials can govern effectively and according to good governance principles.

Components of B.C.'s local government framework include:

- *access to advice, education and training for elected officials and staff; and*
- *rules and requirements set out in the legislative framework.*

The courts also play an important decision-making role.

Access to education, advice and training: B.C. has a tradition of close collaboration among the “partner” organizations that support the local government system (e.g. UBCM; LGMA; the Ministry) when it comes to advice, education and training for elected officials and staff, including topics related to responsible conduct. Education opportunities ranging from written guides to interactive workshops are provided by these organizations, sometimes separately but often collectively. Such collaboration among these organizations and others led to the establishment of the Local Government Leadership Academy (LGLA), a ground-breaking approach to education for local government and First Nation elected officials and senior staff.

Many of the sessions at LGLA forums and other important training opportunities, such as LGMA courses, are presented by peers, or by specialized consultants who work extensively, sometimes exclusively, with local governments (i.e. providing general education; being called on to provide customized sessions for a particular council or board; or being retained to advise on specific challenges facing a council or board). Representatives from Offices such as the Ombudsperson or the Auditor General for Local Government participate in education and training opportunities (such as LGLA sessions), but not in a directive role.

Legislation: Both local government legislation (such as the *Community Charter* and *Local Government Act*) and other pieces of legislation set out obligations of a local government itself and some of the roles and responsibilities of local government elected officials. In addition, the responsible conduct framework includes some legislated Offices that have targeted oversight functions related to local governments; however, generally, issues related to responsible conduct fall outside the mandates of these Offices.

Local government legislation:

The *Community Charter* and *Local Government Act* set out the purposes of municipalities and regional districts and include some specific obligations of the local government itself. For example, the purposes of a local government include providing for the good government of its community. In addition, local governments are required to establish procedure bylaws, which set out the general procedures and standards to be followed by councils and boards when conducting local government business.

These statutes also include requirements for elected officials to attend and participate in meetings; respect the confidentiality of records and information held in confidence by the local government; and refrain from interfering with, hindering, or obstructing local government staff in performing their duties. Elected officials are also required to abide by ethical standards (e.g. conflict of interest rules), which are designed to ensure that elected officials adhere to their duty to the public and do not use their position to pursue personal financial interests.

Other legislation:

As employers, local governments are required by the *Workers Compensation Act* to ensure the health and safety of their employees. As part of ensuring a safe workplace, local governments must also establish workplace harassment policies. As such, local governments have harassment policies that are aimed at preventing inappropriate behaviour in the workplace and prohibit different forms of harassment defined in the *Criminal Code*, *B.C. Human Rights Code*, and the *Workers Compensation Act*.

Statutory Offices:

Office of the Inspector of Municipalities (Inspector): The Inspector's work focuses primarily on the financial performance of local governments and statutory requirements, such as approval of some bylaws. Through Ministry staff, the Inspector also delivers advice, education and capacity-building tools often in collaboration with the Office's local government partners. Although the *Local Government Act* provides the Inspector with some powers to enquire into the conduct of local government business (with Cabinet approval), those extraordinary powers have rarely been used (i.e. being reserved for matters that would affect the fundamental viability of a local government or have serious consequences for the local government system).

Office of the Auditor General for Local Government (OAGLG): The purpose of the OAGLG is to conduct independent performance audits of the operations of local governments (e.g. a performance audit could investigate questions about whether a service is effective in achieving its intended results). The Office's performance audits provide objective information and advice to assist local governments in their stewardship of public assets and the achievement of value for money in their operations. The OAGLG's mandate is limited to operations of a local government (e.g. providing a service), and does not include reviewing policy decisions or objectives of a local government, or considering complaints respecting the actions of individual elected officials.

Office of the Information and Privacy Commissioner (OIPC): Local governments are subject to the *Freedom of Information and Protection of Privacy Act (FOIPPA)*, which governs how public authorities (including the provincial government, health authorities and other governmental bodies) provide access to information and protect personal information under their control. The OIPC provides independent oversight of B.C.’s information access and privacy laws as set out in FOIPPA.

Office of the Ombudsperson: Under the *Ombudsperson Act*, individuals can make complaints to the Ombudsperson regarding unfair treatment by a wide range of public authorities, including local governments (e.g. unreasonable delay, unfair policies, and arbitrary decisions). The Ombudsperson deals with complaints respecting the actions of the corporate body (e.g. the municipality) rather than those of individual elected officials.

It is also important to note that the courts play a significant role in B.C.’s responsible conduct framework, as judges would be responsible for making final decisions about matters such as a dispute between two elected officials resulting in a defamation lawsuit; a prosecution against an elected official for divulging personal information contrary to FOIPPA; a judicial review of a local government’s decision based on a failure to comply with closed meeting rules; or an application by 10 electors for a disqualification declaration against an elected official for allegedly failing to disclose receipt of a gift.

b) What tools are available in B.C. to support responsible conduct and address related issues?

B.C.’s responsible conduct framework also includes a range of tools that can be used to prevent or address non-responsible conduct (see Table 1 on the next page). As previously noted, different types of conduct have different impacts on a local government. As such, the nature of the tool that is used to address a specific issue will depend on the specific circumstances. There is a range of tools, from those focused on education and expert advice to setting standards, that can be chosen to address circumstances before pursuing tools that address more serious situations.

The tools available in B.C. range from voluntary tools to more directive tools (e.g. from voluntarily establishing a code of conduct to penalties for contravening legislated ethical standards rules). Some of the tools are aimed at the collective decision-making body (e.g. the council or board) while others are for individual elected officials. They also tend to align with B.C.’s tradition of local government autonomy and focus on local government elected officials being directly accountable to their citizens, rather than through direct provincial government supervision.

Responsible Conduct Tools in B.C.

- Education and advice
- Orientations and planning processes
- Professional assistance and conflict resolution
- Policies that set standards for conduct of elected officials
- Policies that set standards for relationships between elected officials and staff
- Oath of office and procedure bylaws
- Censure
- Disqualification penalties
- Penalties for breaching statutes
- *Criminal Code* offences

Table 1: Tools to support responsible conduct and address related issues in B.C.

Education and advice

Use of Tool

Education:

- The education programs and advice provided by LGLA and LGMA are resources that can be voluntarily accessed by local government elected officials and local government staff to build knowledge about their roles and responsibilities and to obtain advice for navigating various situations.

Examples:

- A. LGLA offers a Certificate Program for local government elected officials, holds annual forums (including post-election training for new and returning officials) and emphasizes skill-building seminars, including seminars targeted to responsible conduct (e.g. “Roles, Responsibilities and Teamwork”; elected-elected/elected staff relations).
 - B. LGMA’s TeamWorks program provides local governments with access to resources and advice in several fields (e.g. council/staff relations, change management, human resources) and access to coaching/informal advice.
- The Office of the Ombudsperson has developed a guide on best practices for open meetings.
 - Workshops on managing access to information under FOIPPA are available to elected officials (workshops are delivered by a third party in partnership with the OIPC).

Advice:

- Consultants can be hired to provide proactive tools, decision-making frameworks or orientations for a new council or board.
- Elected officials may seek legal advice about conflict of interest issues and topics.
- The Ministry provides advice regarding legislative intent to local government elected officials and staff, and points to possible resources when issues emerge respecting roles and relationships and understanding ethical standards rules. General advice is also provided on the rules related to a range of topics, such as elections (e.g. webinar for candidates).

Legislative Authority

- Voluntary
- Framework not established in legislation

Table 1: Tools to support responsible conduct and address related issues in B.C.

Orientations and planning processes	
<p style="text-align: center;"><u>Use of Tool</u></p> <ul style="list-style-type: none"> • Can be used to clarify the roles and responsibilities of local government elected officials and staff and to facilitate building effective relationships among elected officials and staff. 	<p style="text-align: center;"><u>Legislative Authority</u></p> <ul style="list-style-type: none"> • Voluntary • Framework not established in legislation
Professional assistance and conflict resolution	
<p style="text-align: center;"><u>Use of Tool</u></p> <ul style="list-style-type: none"> • Local governments may choose to seek informal advice or hire a consultant to work with the council/board to facilitate solutions to various issues that may arise related to responsible conduct (e.g. targeted workshop on appropriate behaviour, relationship-building and clarifying roles and responsibilities). • Where there has been a triggering event (e.g. loss of council quorum), the Ministry (Inspector) may suggest expectations of behaviour and sources of professional assistance. 	<p style="text-align: center;"><u>Legislative Authority</u></p> <ul style="list-style-type: none"> • Voluntary • Framework not established in legislation
Policies that set standards for conduct of elected officials	
<p style="text-align: center;"><u>Use of Tool</u></p> <ul style="list-style-type: none"> • Several B.C. local governments have adopted codes of conduct for elected officials.³ Developing a code of conduct can be used to establish a shared set of expectations for how elected officials should conduct themselves while carrying out their duties. • Some local governments (e.g. Vancouver, Whistler) provide for an independent third party to consider alleged code of conduct breaches, which may include recommendations for resolving the situation. • The involvement of local government elected officials in the development and implementation of the code of conduct, regular reviews of the code and processes for enforcing the code can be key parts of effectively utilizing this tool. 	<p style="text-align: center;"><u>Legislative Authority</u></p> <ul style="list-style-type: none"> • Voluntary • Framework not established in legislation
Policies that set standards for relationships between elected officials and staff	
<p style="text-align: center;"><u>Use of Tool</u></p> <ul style="list-style-type: none"> • Local government bodies may establish policies that are additional to those required under the <i>Worker's Compensation Act</i> to clarify the roles and responsibilities of elected officials and staff and to establish further guidelines for these relationships. <p>Example: Resort Municipality of Whistler includes guidelines for elected official/staff relationships in their "Council Governance Manual" (which also includes the code of conduct for elected officials).</p>	<p style="text-align: center;"><u>Legislative Authority</u></p> <ul style="list-style-type: none"> • Voluntary • Framework not established in legislation

³Examples of B.C. local governments that have adopted codes of conduct include Comox Valley Regional District, Vancouver, West Kelowna and Whistler.

Table 1: Tools to support responsible conduct and address related issues in B.C.

Oath of office and procedure bylaws	
<u>Use of Tool</u>	<u>Legislative Authority</u>
<ul style="list-style-type: none"> The <i>Community Charter</i> requires local government elected officials to make an oath or solemn affirmation of office upon being elected and also requires local governments to establish procedure bylaws. These tools may be used to reinforce standards and set expectations of conduct (e.g. a local government can customize its oath of office to include value-based language in relation to conduct; procedure bylaw can address expectations of behavior at meetings). 	<ul style="list-style-type: none"> Legislative requirement
Censure	
<u>Use of Tool</u>	<u>Legislative Authority</u>
<ul style="list-style-type: none"> Censure is a common law concept that may be used by a local government body that wishes to distance itself from a particular elected official due to that official's unacceptable conduct (e.g. bullying; rude comments; disrespectful behaviour). It is important for a local government body to establish a clear policy that includes satisfactory procedural fairness measures, such as an individual's right to respond to allegations, to ensure the motion does not fail on a procedural basis. 	<ul style="list-style-type: none"> Voluntary Common law tool, but framework not established in legislation
Disqualification penalties	
<u>Use of Tool</u>	<u>Legislative Authority</u>
<ul style="list-style-type: none"> The <i>Community Charter</i> establishes serious penalties for breaching some rules related to responsible conduct and good governance. For example, a local government elected official who breaches the following rules can be declared disqualified (through a court process) from holding office: <ul style="list-style-type: none"> ◇ contravening conflict of interest rules and other ethical standards; ◇ failing to make the oath of office within the specified time; ◇ having an unexcused absence from meetings for a specified period; or ◇ authorizing the use of money contrary to local government legislation. Disqualification is considered a serious penalty and instances of disqualification are rare. 	<ul style="list-style-type: none"> Framework established in legislation

Table 1: Tools to support responsible conduct and address related issues in B.C.

Penalties for breaching statutes	
<p style="text-align: center;"><u>Use of Tool</u></p> <ul style="list-style-type: none"> • Breaching rules established in legislation may result in an offence prosecution. For example, breaching a local government statute may be prosecuted under the <i>Offence Act</i> with penalties being a fine, imprisonment, or both. • Contravening rules set out in FOIPPA can result in an offence prosecution under that Act. • As a corporate entity, a local government may be subject to administrative penalties and offence prosecutions under the <i>Workers Compensation Act</i>. 	<p style="text-align: center;"><u>Legislative Authority</u></p> <ul style="list-style-type: none"> • Framework established in legislation
Criminal Code offences	
<p style="text-align: center;"><u>Use of Tool</u></p> <ul style="list-style-type: none"> • There are specific offences under the federal Criminal Code that deal with criminal behaviour beyond the scope of local government legislation. For example, it is an offence: <ul style="list-style-type: none"> ◊ for a public officer to commit a fraud or breach of trust in connection with the duties of his/her office; and ◊ for a municipal official to accept any form of consideration in order to vote in (or abstain from voting in) a certain manner, to influence the adoption of a resolution or motion, or to perform or fail to perform an official act. • If found guilty, penalties can include fines and imprisonment for up to 5 years. 	<p style="text-align: center;"><u>Legislative Authority</u></p> <ul style="list-style-type: none"> • Framework established in legislation

4. TOOLS TO SUPPORT RESPONSIBLE CONDUCT IN OTHER CANADIAN JURISDICTIONS

a) What are some tools used by other Canadian jurisdictions to support responsible conduct and address related issues?

The responsible conduct frameworks in other Canadian jurisdictions have similar components to B.C.'s framework, such as some form of ethical standards (e.g. legislated conflict of interest rules) and rules around protecting personal information. Other provinces and territories may, however, operate in a different context and with different traditions (for example, Québec's framework emphasizes more direct provincial involvement than would be traditional in B.C.). This section is based on research undertaken by the WGRC and provides an overview of some tools of interest that are used to further responsible conduct across Canada that may be different than those components already part of B.C.'s framework.⁴ Please see Appendix A for a table that provides an overview of these tools in comparison to tools available in B.C.

Additional Responsible Conduct Tools in Other Canadian Jurisdictions

- Peer-based advice and mediation programs
- Mandatory education
- Legislated code of conduct
- Mandatory policies that set standards for relationships between elected officials and staff
- Integrity Commissioner
- Spectrum of penalties

See next page for Table 2, which provides an overview of some tools of interest in other Canadian jurisdictions that can be used to support responsible conduct and address related issues.

⁴The research undertaken by the WGRC captures some tools of interest available at a particular point in time and may not reflect proposed legislative amendments or other tools adopted after early March 2017.

Table 2: Tools to support responsible conduct and address related issues across Canada

Peer-based advice and mediation programs	
<p style="text-align: center;"><u>Use of Tool</u></p> <ul style="list-style-type: none"> Formal peer-based programs have been established in New Brunswick and Alberta. These programs can be accessed by local government officials and staff who are in need of advice or mentorship that draws on shared experiences of peers who have/had similar roles or who have experienced similar issues and conflicts. The programs may be focused on individual elected officials or a whole decision-making body. <p>Examples:</p> <p>A. New Brunswick’s Conflict Resolution Committee consists of members of the Union of Municipalities of New Brunswick and the Association of Municipal Administrators of New Brunswick and provides a “first step” in assisting municipalities that are experiencing challenging relationships. Municipalities that request mediation are assigned a team that leads the municipality through the mediation process by assisting the municipality in identifying challenges so the parties can reach agreement on how these challenges may be solved.⁵</p> <p>B. Alberta’s Peer Network for Municipal Dispute Resolution is a network of peer mentors whom council members can contact to obtain free, confidential advice and conflict resolution and assistance on local issues. Mentors, available to council members and senior administrators in Alberta, can share their experience and wisdom with municipal leaders requesting advice.⁶</p>	<p style="text-align: center;"><u>Legislative Authority</u></p> <ul style="list-style-type: none"> Voluntary Framework not established in legislation
Mandatory education	
<p style="text-align: center;"><u>Use of Tool</u></p> <ul style="list-style-type: none"> Local government legislation in Québec <u>requires</u> elected officials to participate in a professional development program on municipal ethics and good conduct if they have not previously participated. Legislation in Alberta <u>requires</u> municipalities to offer an orientation training program for newly elected officials (as of July 2017). Québec: A councillor who has not already done so must participate in a professional development program on municipal ethics and good conduct within 6 months of the start of his/her term. The council member must report their participation to the municipality within 30 days after participating in the program. Non-participation could become an aggravating factor if sanctions are being considered by the Commission municipale du Québec for violating the municipality’s “code of ethics and conduct”. 	<p style="text-align: center;"><u>Legislative Authority</u></p> <ul style="list-style-type: none"> Legislative requirement

⁵“Conflict Resolution Committee,” The Association of Municipal Administrators of New Brunswick, <http://www.amanb-aamnb.ca/Conflict-Resolution>

⁶“Look to your peers for help,” The Peer Network for Municipal Dispute Resolution, <http://www.peernetwork.ca/index.php/look-to-your-peers>

Table 2: Tools to support responsible conduct and address related issues across Canada

Mandatory education <i>continued</i>	
<ul style="list-style-type: none"> • Alberta: As of July 2017, municipalities must offer orientation training to be held within 90 days after each councillor takes the oath of office. Legislation sets out the range of topics that must be addressed (e.g. role of municipalities in Alberta; roles and responsibilities of elected officials and administrative staff; public participation; municipality's code of conduct). No specific requirement or consequence for elected officials for failing to participate in or complete the orientation program, but municipalities could address this issue in code of conduct bylaws. 	
Legislated code of conduct	
<u>Use of Tool</u>	<u>Legislative Authority</u>
<ul style="list-style-type: none"> • Used to set shared expectations for standards of conduct. • Establishing codes of conduct (also known as a “code of ethics”) is mandatory in Alberta,⁷ Saskatchewan, Manitoba, Québec, and Prince Edward Island.⁸ • In Ontario, legislation currently enables municipalities to establish a code of conduct if they wish to do so,⁹ with the exception of the City of Toronto, which is required to establish a code of conduct. Legislation in the Northwest Territories also enables local governments to establish codes of conduct. 	<ul style="list-style-type: none"> • Framework established in legislation • Legislative requirement in several jurisdictions
Mandatory policies that set standards for relationships between elected officials and staff	
<u>Use of Tool</u>	<u>Legislative Authority</u>
<ul style="list-style-type: none"> • Legislative amendments proposed in Ontario (November 2016) would require local governments to adopt policies respecting the relationship between council members and officers and employees of the municipality.¹⁰ • Other jurisdictions explicitly require codes of conduct to include standards and/or values in their dealings with municipal employees (e.g. Saskatchewan, Manitoba, Québec). 	<ul style="list-style-type: none"> • Legislative requirement

⁷Legislative requirements will be effective in Alberta once regulations are developed (anticipated to be Fall 2017).

⁸Legislation that requires councils to establish a code of conduct was passed in December 2016. These amendments are not yet in force.

⁹Legislative amendments that would require local government elected officials to adopt a code of conduct were proposed in November 2016. See Legislative Assembly of Ontario, Bill 68: An Act to amend various Acts in relation to municipalities, http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=4374&detailPage=bills_detail_the_bill

¹⁰See Legislative Assembly of Ontario, Bill 68: An Act to amend various Acts in relation to municipalities, http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=4374&detailPage=bills_detail_the_bill

Table 2: Tools to support responsible conduct and address related issues across Canada

Integrity Commissioner

Use of Tool

- Only Ontario legislatively enables a municipality to appoint an Integrity Commissioner (and the City of Toronto must appoint an Integrity Commissioner); in Québec, an independent body at the provincial level carries out similar functions.
- An Integrity Commissioner typically has one or more of the following functions:
 - ◊ enforcing a local government’s code of conduct by investigating alleged breaches of the code and recommending sanctions to council, if appropriate;
 - ◊ advising individual local government elected officials on how to meet standards of conduct; and
 - ◊ educating local government elected officials on issues of ethics, integrity, and personal conduct.

Note: Council typically decides whether to impose any sanctions recommended by an Integrity Commissioner. In Québec, the provincial body determines and imposes legislated sanctions.

- Legislative amendments proposed in Ontario (November 2016) would establish that if a municipality does not have an Integrity Commissioner, or if its Integrity Commissioner does not perform all of the statutory functions, the municipality must make arrangements for those responsibilities to be provided by an Integrity Commissioner of another municipality.¹¹
- Some cities have voluntarily appointed an Integrity Commissioner: The City of Calgary has appointed two positions — an Integrity Commissioner and an Ethics Advisor; the City of Regina anticipates appointing an Integrity Commissioner; the City of Winnipeg recently appointed an Integrity Commissioner. The roles/responsibilities of an Integrity Commissioner are not established in legislation in these provinces.

Legislative Authority

- Typically tied to legislative frameworks that require or enable local governments to establish a code of conduct
- Framework may be established in legislation
- May be a legislative requirement

Spectrum of penalties

Use of Tool

- Some jurisdictions have implemented, or are considering, penalties other than disqualification for elected officials who have breached a code of conduct or contravened conflict of interest rules.
- *Code of conduct:*
 - ◊ Penalties for contravening a code of conduct in Ontario include reprimand and suspension of remuneration for up to 90 days. If the Integrity Commissioner reports that an elected official has contravened the code, council may choose to impose a penalty.
 - ◊ In Manitoba and the Northwest Territories, legislation establishes that a local government elected official may be censured for contravening the code of conduct.
 - ◊ In Québec, the minister plays a role in deciding whether an alleged breach of the code of conduct should proceed to inquiry; inquiries can then lead to imposition of sanctions (if appropriate), which include a reprimand, restitution, and suspension for up to 90 days.

Legislative Authority

- Framework established in legislation

¹¹See Legislative Assembly of Ontario, Bill 68: An Act to amend various Acts in relation to municipalities, http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=4374&detailPage=bills_detail_the_bill

Table 2: Tools to support responsible conduct and address related issues across Canada

Spectrum of penalties *continued*

- **Conflict of interest rules:**
 - ◇ In November 2016, Ontario introduced amendments to its *Municipal Conflict of Interest Act* (MCIA) that, if passed, would replace the narrow scope of penalties for contraventions of the MCIA with a broader range of penalties.¹² Proposed penalties include reprimand and suspension of remuneration for up to 90 days.
 - ◇ There is interest in Manitoba about the concept of a range of penalties for conflict of interest violations as recommended by the Manitoba Law Reform Commission. Recommended penalties include a suspension of the elected officials (up to 90 days), a \$5,000 fine, an order of restitution, and removal from office (ultimate sanction for the most serious offences).

- **Other:**
 - ◇ In Québec, a council member may be declared “provisionally incapable to perform any duty of office” if that council member is facing charges for an offence that is punishable by 2 years or more.

¹²Other new proposed provisions under MCIA relate to the requirement for written disclosure of interest, dealing with influence, and a requirement for municipalities to create a registry that tracks all registered conflicts of interest. Proposed legislative amendments also add principles to the duties of elected officials in relation to conflict of interest rules (e.g. council members are expected to perform their duties with *integrity* and *impartiality*). See Legislative Assembly of Ontario, Bill 68: An Act to amend various Acts in relation to municipalities, http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=4374&detailPage=bills_detail_the_bill

b) What trends have emerged from the research on responsible conduct tools?

The following diagram highlights the trends that emerge from reviewing the tools implemented by other Canadian jurisdictions. A discussion of each trend follows the diagram.



Multi-pronged Approach:

- It appears that a multi-pronged approach that provides a spectrum of tools to address various circumstances and different behaviours can be an important part of a robust framework that supports responsible conduct, and, in turn, supports local governments in providing good governance to communities. Voluntary tools, including education and peer-based programs, as well as tools that are established in legislative frameworks, are all part of the approaches taken by different jurisdictions – there is no one tool that “solves” everything. The mix of tools differ from jurisdiction to jurisdiction, as do the degrees of formality, the extent to which they are mandated, who is involved in delivering them, how they are implemented and what are the consequences of non-compliance.

Emphasis on Education:

- Developing educational resources (such as programs, handbooks, and webinars) is common in jurisdictions across Canada to provide guidance and support to both local government elected officials and staff. Education is generally seen as an important part of encouraging responsible conduct. The topics of education initiatives vary, as do the form and who provides the education. As discussed, some jurisdictions have taken this approach one step further: in Québec, local government elected officials are required to participate in a professional development program, and in Alberta, municipalities are required to offer orientation training to elected officials (as of July 2017). These approaches aim to ensure individuals have a strong foundational knowledge of their roles, responsibilities, and ethical conduct from the start of their career as an elected official. However, mandating education brings into sharp focus important “who”, “what”, “how” and “when” design questions of education programs, as well as questions of consequences if individuals do not participate in the required programs, and measuring the effectiveness of education programs.

Sharing Expertise:

- Peer-based programs are also a trend, with some jurisdictions expressing this as formal peer mediation programs. In that way, local government elected officials can obtain advice and guidance from experts on a variety of topics. Considerations for developing a formal peer mediation program include recruitment of volunteers to be mentors, providing adequate training for mentors and ensuring that mentors have varied experiences to account for the wide variety of challenges that local governments may face and on which elected officials may seek advice.

Setting and Enforcing Conduct Standards:

- *Setting conduct standards:* Setting standards for conduct is a trend towards explicitly encouraging or requiring certain standards of conduct, rather than leaving assumptions about what is/is not acceptable behaviour to unwritten rules. For example, several jurisdictions require elected officials to develop a code of conduct, which provides a shared understanding of expectations and standards against which an individual’s conduct can be held accountable. Legislative frameworks often set out additional tools to administer and enforce the code of conduct and processes and sanctions if a local government elected official is found to have breached the code. Codes of conduct are generally viewed as one component of a larger responsible conduct framework, not just a stand-alone tool.
- *Enforcing conduct standards:* An important consideration for setting standards is developing processes for their enforcement. There seems to be greater interest in enforcement that has some elements of independence from the local government itself. Jurisdictions that enable or require codes of conduct take a variety of approaches, including enabling local governments to appoint an Integrity Commissioner (and potentially providing for Integrity Commissioners to be “shared” by multiple communities), implementing a centralized model centered on a provincial-level body (in Québec), and authorizing the Ombudsperson to investigate alleged breaches of the code of conduct. It is important to note, however, that the Integrity Commissioner model in Ontario still requires councils to make the final decisions (i.e. the council decides on and imposes sanctions if the Integrity Commissioner finds the code has been contravened).

Spectrum of penalties:

- Given the variety of behaviours which may be seen as a problem, there also seems to be interest in finding greater flexibility when considering the consequences for this behaviour. Therefore, another trend is exploration of a spectrum of penalties that may be applied to local government elected officials who breach rules related to responsible conduct. These approaches provide for a range of penalties for consideration beyond disqualification, which is such a serious penalty that there may sometimes be reluctance to impose it. Suspension of remuneration, censure motions, and issuing a reprimand are examples of alternative penalties that may be imposed in other provinces. At the same time, these penalties remain focused on public “calling out” of the behaviour (i.e. remedial actions such as required training are not typically part of the consequences).

5. NEXT STEPS

UBCM and LGMA will be consulting with their respective members in Spring 2017 using this paper as a basis for gathering views on the issue summary, tools used to support responsible conduct in B.C. and in other Canadian jurisdictions, and emerging trends. Consultation with local government elected officials and local government staff will consist of both in-person presentations (e.g. at area association meetings for local government elected officials and at Chapter events and LGMA’s Annual Conference for local government staff) and a survey tool. Feedback from the consultation will then be provided to the Working Group members once the consultation process is completed.

UBCM Executive has made a commitment to draft recommendations on the issue of responsible conduct and bring these before delegates at the 2017 UBCM Convention.

APPENDIX A: OVERVIEW OF TOOLS TO SUPPORT AND FURTHER RESPONSIBLE CONDUCT

The following table provides an overview of key tools used to support and further responsible conduct in other Canadian jurisdictions and notes any equivalent tools available in B.C.

Tool	Jurisdictions	Key Features	B.C. comparison
Peer-based advice and mediation programs	Alberta New Brunswick	<ul style="list-style-type: none"> Local government elected officials and staff can seek advice and mentorship from experienced peers to help work through issues/conflicts Low-cost, informal, typically requires involvement of partner organizations Framework not established in legislation 	<ul style="list-style-type: none"> May choose to hire consultant to help facilitate solutions to challenging situations Informal networks established among elected officials Not established in legislative framework
Mandatory education	Alberta Québec	<ul style="list-style-type: none"> Local government legislation in Québec <u>requires</u> elected officials to participate in a professional development program on municipal ethics and good conduct if they have not previously participated. Legislation in Alberta <u>requires</u> municipalities to offer orientation training for newly elected officials (as of July 2017). Programs may cover various topics (e.g. role of local governments; elected official responsibilities; municipal ethics) Legislative requirement 	<ul style="list-style-type: none"> Voluntary access to education and training resources Framework not established in legislation
Code of conduct	Alberta Saskatchewan Manitoba Ontario Québec Prince Edward Island Northwest Territories	<ul style="list-style-type: none"> Sets out shared standards and expectations to guide conduct of elected officials Suggested key components of developing a code of conduct include:¹³ <ul style="list-style-type: none"> Should be one component of a larger 'ethics' regime; Elected officials should be involved in developing the code; Effective process for dealing with complaints is important and enforcement should consider administrative fairness procedures and effective, appropriate sanctions; and Independent third party should enforce the code (e.g. Integrity Commissioner; contractor with appropriate experience; municipal solicitor). Framework established in legislation Legislative requirement in several jurisdictions (Ontario has proposed amendments to require code of conduct) 	<ul style="list-style-type: none"> Voluntary Used by a number of local governments Framework not established in legislation

¹³Clyde K. Wells, Q.C.; "Report to St. John's City Council on Recommended Adjustments to the City's Ethical Conduct Legislation", September 28, 2015.

APPENDIX A: OVERVIEW OF TOOLS TO SUPPORT AND FURTHER RESPONSIBLE CONDUCT

Tool	Jurisdictions	Key Features	B.C. comparison
Mandatory policies that set standards for relationships between elected officials and staff	Ontario (proposed) <i>Required in code of conduct:</i> Saskatchewan Manitoba Québec	<ul style="list-style-type: none"> Ontario recently proposed legislative amendments to require local governments to adopt policies respecting the relationship between council members and officers and employees of the municipality Other jurisdictions explicitly require codes of conduct to include standards and/or values to which elected officials must comply in their dealings with municipal employees Legislative requirement 	<ul style="list-style-type: none"> Voluntary Framework not established in legislation
Integrity Commissioner	Ontario Québec (provincial-level) City of Calgary City of Regina City of Winnipeg	<ul style="list-style-type: none"> Main role is to administer and enforce codes of conduct May also provide advice about meeting code of conduct requirements and education on issues related to ethics, integrity, and personal conduct There are variations in the approach to Integrity Commissioners or other bodies that carry out similar functions. For example: <ul style="list-style-type: none"> Ontario: legislation enables municipalities to appoint an Integrity Commissioner (City of Toronto is <u>required</u> to appoint Integrity Commissioner) Québec: legislation requires Commission municipale du Québec (provincial body) to investigate alleged code of conduct breaches Cities of Calgary, Regina, Winnipeg: Have voluntarily appointed an Integrity Commissioner (or anticipate appointing an Integrity Commissioner) Framework for Integrity Commissioner (or body that has similar functions) may or may not be established in legislation 	<ul style="list-style-type: none"> Some local governments (e.g. Vancouver, Whistler) provide for an independent third party to consider alleged code of conduct breaches, which may include recommendations for resolving the situation Framework not established in legislation
Spectrum of penalties (other than disqualification)	Manitoba Ontario Québec Northwest Territories	<ul style="list-style-type: none"> Some jurisdictions establish penalties (other than disqualification), or have proposed/are interested in establishing penalties, in their legislation for breaching a code of conduct or conflict of interest rules. Examples of penalties include: <ul style="list-style-type: none"> Reprimand Suspension of pay for up to 90 days Censure motion (for contravening code of conduct) Framework established in legislation 	<ul style="list-style-type: none"> Disqualification penalties for breaching ethical standards rules Framework for disqualification penalties established in legislation

APPENDIX B: MEMBERS OF THE WORKING GROUP ON RESPONSIBLE CONDUCT

The Working Group on Responsible Conduct consists of the following staff/expert members from the Union of B.C. Municipalities (UBCM); the Local Government Management Association (LGMA); and the Ministry of Community, Sport and Cultural Development (the Ministry).

UBCM	LGMA	Ministry
<ul style="list-style-type: none">• Gary Maclsaac• Brenda Gibson• Paul Taylor	<ul style="list-style-type: none">• Nancy Taylor• Elizabeth Brennan• Allison Habkirk	<ul style="list-style-type: none">• Gary Paget• Nicola Marotz• Michelle Dann• Lesley Scowcroft