

Advisory

Date: Monday, November 24, 2025

To : Association francophone des municipalités du Nouveau-Brunswick
Union of New Brunswick Municipalities
Association of Municipal Administrators of New Brunswick
Northwest RSC, Restigouche RSC, Chaleur RSC, Acadian Peninsula RSC,
Greater Miramichi RSC, Kent RSC, Southeast RSC, Kings RSC, Fundy RSC,
Southwest New Brunswick Service Commission, Capital RSC, Western
Valley RSC

From : Giselle Goguen, Chair
Local Governance Commission

Subject: Closed Meetings: Code of Conduct and Conflict of Interest

It has come to our attention that many local government councils are discussing and rendering decisions on code of conduct and conflict of interest complaints in closed meetings. The Commission has also viewed media reports about local governments classifying elected officials (mayors and councillors) as employees for the purposes of going into closed meetings to discuss and / or vote on alleged code of conduct by-law violations and alleged conflicts of interest provision violations. **This is not permitted under section 68 of the *Local Governance Act*.**

Mayors and councillors are not employees of local governments. Specifically, the *Local Governance Act* provides:

“84.1(1) A member of council is not eligible for appointment as an officer of the local government or for employment with the local government, including an appointment or employment for no remuneration, at any time while the person holds office as a member of council.”

Subsections 68(1) and 68(2) of the *Local Governance Act* set out the list of matters that may be discussed and decided in a closed meeting of council. **The list does not include code of conduct by-law or conflict of interest provision violation allegations.**

“68(1)A council meeting or a committee of council meeting may be closed to the public for the duration of the discussion if it is necessary to discuss

- (a) information of which the confidentiality is protected by law,
- (b) personal information as defined in the *Right to Information and Protection of Privacy Act*,
- (c) information that could cause financial loss or gain to a person or the local government or could jeopardize negotiations leading to an agreement or contract,
- (d) the proposed or pending acquisition or disposition of land,
- (e) information that could violate the confidentiality of information obtained from the Government of Canada or from the government of a province or territory,
- (f) information concerning legal opinions or advice provided to the local government by its solicitor or privileged communications between solicitor and client in a matter of local government business,
- (g) litigation or potential litigation affecting the local government or any corporation referred to in subsection 8(1), the local government's agencies, boards or commissions including a matter before an administrative tribunal,
- (h) the access to or security of buildings and other structures occupied or used by the local government or access to or security of systems of the local government, including computer or communication systems,
- (i) information gathered by the police, including the Royal Canadian Mounted Police, in the course of investigating any illegal activity or suspected illegal activity, or the source of that information,
- (j) labour and employment matters, including the negotiation of collective agreements.

68(2) If a meeting is closed to the public under subsection (1), **no decision shall be made at the meeting except for decisions related to the following matters:**
(a) procedural matters;
(b) directions to an officer or employee of the local government;
(c) directions to a solicitor for the local government.” [Emphasis Added]

As noted above, we are aware that some local governments are discussing and / or deciding these issues in closed meetings because they appear to view them as human resource matters under subsection 68(1)(j), which covers “labour and employment matters, including collective agreement negotiations.”

As mayors and councillors are not employees of local governments, it is a violation of the *Local Governance Act* for local governments to be discussing and / or deciding these matters in closed meetings. This practice also denies public accountability and transparency not only to complainants, but also to the broader public served by elected officials.

A recent (2024) Labour and Employment Board decision here in New Brunswick that established that council members are not employees of the local governments they represent for the purposes of the *Employment Standards Act*: *Septon v Hanwell (Municipality)*, 2024 CanLII 47665 (NB LEB) (<https://canlii.ca/t/k4vvb>).

In addition, the Commission has also taken the time to address the issue of council members not being employees in their decision: *A. MacGregor v. the Council of the Rural Community of Strait Shores* (<https://www.lgcnb-cglnb.ca/wp-content/uploads/2025/04/Decision-Code-of-Conduct-MacGregor-and-Council-of-Strait-Shores.pdf>).

Given the above, local governments should review their mandatory code of conduct by-laws to ensure they are not requiring that alleged code of conduct by-law violations and conflict of interest provision violations be discussed and/ or decided in closed meetings. As mayors and councillors are not employees, council cannot invoke subsection 68(1)(j), or any other provision in subsection 68(1), of the *Local Governance Act* to justify deciding alleged code of conduct by-law violations and alleged conflict of

interest provision violations in closed meetings. These are not human resource or employment matters.

Important Exception:

Subsection 5(2) of the *Code of Conduct Regulation – Local Governance Act*, which sets out the required contents of local government code of conduct by-laws, provides that some matters related to alleged code of conduct and conflict of interest violations, **specifically, investigation reports**, may be discussed in closed meetings. Subsection 5(2) provides that:

"5(2) If the report deals with any of the matters referred to in subsection 68(1) of the Act, the public may be excluded from the meeting for the duration of the review under paragraph (1)(a)." [Emphasis Added]

As such, if, for example, a report contains advice from the local government's solicitor, **that information only** could be discussed in a closed meeting pursuant to subsections 68(1) (f) of the *Local Governance Act*: "(f) information concerning legal opinions or advice provided to the local government by its solicitor or privileged communications between solicitor and client in a matter of local government business". However, **the entirety of council's discussion of the matter must not be conducted in a closed meeting, and any decisions on these matters must be made in open meetings.**

Regional Service Commissions:

The same principles and requirements outlined above apply equally to board members of Regional Service Commissions (RSCs), who are also elected officials. Where an RSC opts to enact a code of conduct by-law, it must comply with the *Code of Conduct Regulation – Regional Service Delivery Act*. That Regulation also sets out at subsection 5(2) what board members may discuss in closed meetings related to alleged code of conduct and conflict of interest violations:

“5(2) If the report deals with any of the matters referred to in subsection 68(1) of the *Local Governance Act*, the public shall be excluded from the meeting for the duration of the review under paragraph (1)(a).”

If you have questions around what may specifically be discussed in closed meetings or about the *Code of Conduct Regulation – Local Governance Act*, please direct them to the Local Government Branch of the Department of Environment and Local Government.

Sincerely,



Giselle Goguen B.A., LL.B

Chair and Commissioner of Local Governance Affairs