

**INTERNAL INVESTIGATIONS:
CODE OF CONDUCT AND WORKPLACE COMPLAINTS**

NOVEMBER 8, 2024

Reece Harding, Carolyn MacEachern & Julia Tikhonova

INTERNAL INVESTIGATIONS: CODE OF CONDUCT AND WORKPLACE COMPLAINTS

I. INTRODUCTION

In recent years there has been increased attention on investigations for various forms of misconduct within local governments. This paper will focus on two types of investigations: investigations of bullying and harassment in the workplace, and investigations of misconduct of elected officials under municipal codes of conduct.

While local governments may at times conflate the two, workplace bullying and harassment policies and codes of conduct involve entirely separate investigation procedures that flow from distinct statutory authorities, underlying purposes, and permitted scopes. Furthermore, if not conducted properly, each have the potential to expose local governments to different kinds of liability. In this paper, we discuss the key similarities and differences between these investigation procedures, including their statutory authorities, key preliminary considerations, and step-by-step guidelines on how to process and investigate complaints in relation to workplace bullying and harassment and codes of conduct.

II. STATUTORY AUTHORITY

A. Bullying and Harassment Policies

Employers have statutory obligations under the *Workers Compensation Act* to ensure the health and safety of its employees, including by proactively taking all reasonable steps to prevent workplace bullying and harassment. Section 21(1)(a) of the Act provides:

21(1) Every employer must

- (a) ensure the health and safety of
 - (i) all workers working for that employer, and
 - (ii) any other workers present at a workplace at which that employer's work is being carried out ...

The obligations under section 21(1) include preventing and addressing workplace bullying and harassment. Flowing from this statutory authority, WorkSafe BC Policy P2-21-2 requires employers to develop and implement procedures to deal with incidents of workplace bullying and harassment, including procedures for reporting complaints and conducting investigations.

B. Codes of Conduct

Workplace bullying and harassment policies apply to elected officials only when an employee has a complaint against an elected official. They do not apply to conflicts between elected officials sitting on local government boards or councils. In fact, until fairly recently, there was no legislative mechanism to hold elected officials accountable for their communications and actions.

As of June, 2022, the Province has mandated that local governments give consideration to how elected officials are to maintain appropriate standards of conduct. Specifically, sections 113.1 and 113.2 of the *Community Charter* came into force, requiring local governments to consider adopting or updating a code of conduct for elected officials following a general local election. Codes of conduct must be consistent with the following principles prescribed by the *Principles for Codes of Conduct Regulation*, BC Reg 136/2022:

- Council members must carry out their duties with integrity;
- Council members are accountable for the decisions that they make, and the actions that they take, in the course of their duties;
- Council members must be respectful of others; and
- Council members must demonstrate leadership and collaboration.

Apart from the above requirement for a code to be consistent with the prescribed principles, there are no specific requirements for the content of a code of conduct. This means that individual local governments have the discretion to tailor a code of conduct to fit the needs of each community. The content of adopted codes of conduct varies, but generally includes provisions such as conflicts of interest, interactions with staff members and between elected officials, use of social media, gifts, and use of public resources. Codes of conduct also include procedures for enforcement, which include requirements for filing complaints and investigations of alleged breaches of the code of conduct.

III. PRELIMINARY CONSIDERATIONS

When a complaint is received, what are the next steps? Depending on the nature of a complaint, it may fall within the scope of both the workplace bullying and harassment policy and a code of conduct. To make this determination and to determine the appropriate next steps, it is important to understand the key differences in the scope, purposes, and procedures of bullying and harassment policies and codes of conduct.

To begin, local governments should carefully review the complaint and then review the preliminary considerations below.

A. Who are the Complainant and Respondent?

First, local governments should identify whether the complainant and the respondent are employees, elected officials, or third parties.

Relatedly, it will be important to review the scope of the application of the policy and the code. Bullying and harassment policies apply only to employees, in relation to the conduct by other employees and elected officials, or, at times, third parties. This means that complainants under a bullying and harassment policy will generally only be employees. On the other hand, codes of conduct apply only to the conduct of council or board members (and sometimes, committee members).

Policies and codes of conduct will also limit who is permitted to file a complaint: bullying and harassment policies will generally limit permitted complainants to employees, while codes of conduct may allow elected officials, staff, and even members of the public, to submit a complaint.

B. Which Policy will Apply?

This question is informed by the underlying purposes of bullying and harassment policies and codes of conduct, respectively.

The purpose of workplace bullying and harassment policies is to protect the right of employees to a safe workplace, including by imposing a duty on the employer to prevent and manage allegations of bullying and harassment. This duty is owed to employees but not to elected officials, given that the latter are democratically elected and are not workers for the purposes of WorkSafe but rather the employer.

The purpose of codes of conduct, on the other hand, is to hold democratically elected officials accountable to the public by regulating their conduct in accordance with statutorily prescribed principles. As such, in circumstances where both the complainant and the respondent are elected officials, the code of conduct, and not the bullying and harassment policy, will apply.

If a complainant is an employee and the respondent is an elected official, generally a bullying and harassment policy will be preferred to a code of conduct. This is because of employees' right to a safe and harassment free workplace, and employers' corresponding obligations to provide a safe workplace, which includes a work environment free of harassment and bullying, under the *Workers Compensation Act*. As part of this duty, employers have obligations under WorkSafe BC's regulations to investigate complaints of bullying and harassment in accordance with the bullying and harassment policy. If the procedure under the bullying and harassment policy is not followed, employers could face liability if the bullying and harassment was not properly investigated. By properly investigating complaints of bullying and harassment by employees under the policy, a local government will limit exposure to liability and damages.

IV. PROCESSING BULLYING AND HARASSMENT COMPLAINTS – A STEP-BY-STEP GUIDE

Below is a step-by-step guide for processing a complaint under a workplace bullying and harassment policy.

A. Preliminary Review of Complaint and Relevant Policy

The first step should always be a preliminary review of the complaint and the employer's bullying and harassment policy to assess the following:

- Whether the complaint falls within the scope of the policy; and
- Whether the complaint meets the requirements of the policy.

To meet these criteria, the employee must be covered by the policy, and the complaint itself must meet any requirements established in the policy for the process of submitting complaints.

Policies usually establish requirements as to how to submit a complaint, including whether a complaint may be made verbally or in writing, whether a specific complaint form is required, and to whom the complaint must be submitted. Policies usually also require that the complaint is filed a specified period of time after the alleged conduct.

It is important to note that even where a complaint does not meet the technical requirements of the policy (ie., it is filed out of time, is not in writing, or is not on the prescribed form, etc.), the employer will still need to consider whether it needs to move forward with an investigation given its obligations to provide a safe and harassment free workplace.

B. Initial Review of Complaint

If the above criteria have been met, the next step is to review the substance of the allegation(s) in the complaint. The purpose of this step is to determine whether the subject matter in the complaint is something that, if true, constitutes bullying and harassment, as defined under the policy. For example, WorkSafeBC Policy P2-21-2 defines "bullying and harassment" as follows:

"bullying and harassment

(a) includes any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated, but

(b) excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment."

Each employer's policy may expand or revise the above definition based on factors that are relevant to the organization. Some policies even specify examples of conduct that is deemed not to be bullying and harassment, such as a supervisor raising a valid concern with an employee's behaviour. It is important in each case to carefully review the wording of all prohibited conduct under the policy.

If the allegations in a complaint do not fall within the policy's definition of "bullying and harassment", the employer may assess whether the complaint may be resolved through an alternative avenue, outside of the policy.

C. Scope of Applicable Policy

If the employer has determined that the conduct complained of constitutes bullying and harassment, the next step is to carefully review whether the bullying and harassment falls within the scope of the policy. The policy's scope will determine the persons and locations that the policy does and does not apply to. In reviewing the complaint under the scope of the policy, employers should be satisfied that the policy applies to the alleged conduct.

For example, bullying and harassment policies typically apply to the behaviours in the workplace, as well as locations attended by employees while in the course of workplace business, including conferences, work-related events, and other employer-sponsored social gatherings. Some policies may also apply to conduct that occurs away from the workplace between employees, such as conduct on personal social media, if such conduct has a negative impact on an employee in the workplace.

If an employer determines that a complaint does not fall within the scope of the policy, the policy may specify a procedure for notifying the complainant and summarily dismissing the complaint.

D. Required Procedures

The next step is to determine how to proceed with the complaint. First, employers should proactively review the required procedures in their bullying and harassment policy.

Many bullying and harassment policies contain an option or requirement to make reasonable efforts to informally resolve the complaint, such as by mediation or conflict resolution process between the complainant and respondent. The appropriateness of this measure will depend on the nature of the allegations as well as the willingness of the parties to participate.

Local governments should note that it will not be appropriate for certain complaints to be resolved informally. For example, if the complaint involves serious allegations of harassment, or if the complainant or respondent does not consent to participating in an informal process, an employer should not proceed with the informal resolution option. Additionally, in certain circumstances, including where the allegations concern an elected official or a senior manager, it may be necessary for a neutral third party investigator to make findings of fact and

recommendations in the form of a written report. It will be beneficial in such cases to have a formal report that the employer can rely on when determining possible outcomes, including discipline or dismissal.

Before deciding to proceed with the informal resolution process, the employer should review the policy to determine whether the policy gives the employer the discretion as to who can facilitate the informal resolution process. If it does, employers should consider, in light of the nature of the complaint, whether to retain an external conflict resolution professional or if they have an internal employee, such as a HR professional, that is equipped with the appropriate skills to undertake conflict resolution.

E. Interim Measures

Before commencing the investigation, an employer must evaluate whether interim measures ought to be taken to ensure the safety of the employees involved during the investigation and to limit the potential for retaliation against the complainant. Measures may include taking steps to separate the parties, including by removing someone from the workplace, changing a reporting relationship, changing the physical work location of one or more of the individuals involved, or prohibiting the complainant or respondent from communicating with each other.

What is appropriate will depend on the circumstances of each complaint. That being said, an employer should generally try to avoid removing the complainant from the workplace or changing their physical workplace where possible in order to avoid an allegation of retaliation against the complainant.

F. Determining an Appropriate Investigator

If informal resolution is either unsuccessful or inappropriate, the employer must proceed with a formal investigation of the complaint.

Policies will often give an employer the flexibility to determine whether the investigation must be done internally or by a third party consultant or legal counsel. Employers must take care to select the appropriate individual to conduct the investigation in a fair and impartial manner. In deciding whether to hire an external investigator, employers should consider the following:

- Whether the nature of the allegation is serious and/or complex;
- Who will receive a copy of the investigation report;
- Whether to retain an investigator who is also a lawyer; and
- The role of the investigator.

A workplace investigator must not only be neutral and impartial, but must also appear to be impartial. Internal investigators need to have the necessary training to conduct bullying and harassment investigations and should not have had prior involvement with the complaint or a relationship with either the complainant or the respondent.

As a general guideline, if the allegations in the complaint are serious, complicated, controversial, involve many conflicting witnesses, and/or may have potentially significant outcomes such as discipline or dismissal, an external investigator will likely be more appropriate. On the other hand, if the complaint relates to minor infractions that can be easily resolved internally, an internal investigator, such as human resources personnel, may be sufficient.

In deciding on an investigator, the employer will also want to consider the competing concerns of confidentiality and transparency in relation to the investigation report. If an employer retains an investigator who is also a lawyer, the employer can claim solicitor-client privilege over the investigation report if they wish to do so (as further discussed in the section below). This option will be preferable if confidentiality is a significant concern and the employer does not intend to share the report with the respondent. On the other hand, in circumstances where transparency is a more significant factor and the employer intends to disclose the investigation report or a detailed summary of the report to both the complainant and respondent, it may not be necessary to retain legal counsel for the purpose of conducting the investigation.

Before selecting an investigator, an employer may wish to seek legal advice regarding whether an internal or external investigator is most appropriate, in light of the allegations.

G. Solicitor-Client Privilege

Solicitor-client privilege applies to communications that:

- Are between solicitor and client;
- Entail the seeking or giving of legal advice; and
- Are intended by the parties to be confidential.

Where a lawyer is selected as an external investigator, employers often assume that privilege may be claimed over the investigation report and any other investigation documents. However, the involvement of legal counsel in a workplace investigation does not mean that privilege will automatically apply to all workplace investigation records. The application of privilege is context-dependent, with the purpose of the investigation and the role of the lawyer being critical considerations.

As a general guideline, if a lawyer is retained solely for the purpose of conducting an investigation and finding facts, then privilege will likely not extend to the investigation records. On the other hand, if a lawyer is retained for the purpose of conducting the investigation *and* subsequently providing legal advice on the investigation, then generally, anything that is necessary for the lawyer to provide legal advice is protected by privilege. This means that information that is not necessary for the purpose of providing the legal advice is not privileged. For example, if information in an investigation report does not reveal privileged information, then solicitor-client privilege will not apply, even if the information is within the investigation report (Order F23-29, 2023 BCIPC 33, at para 18).

Employers should determine the purpose of an investigation at the outset of an investigation. Once determined, the purpose and scope of the investigation should be clearly documented in the investigator's terms of reference, as discussed below.

H. Develop Terms of Reference for the Investigation

Where the employer has decided to retain an external investigator, formal terms of reference for the investigation should be developed. If the investigator is also a lawyer, the terms of reference with the investigator should clearly specify the following:

- Role of the Investigator:
 - Will the investigator simply investigate the allegations and make a determination of whether bullying and harassment occurred, or will the investigator also provide advice and recommendations about potential discipline?; and
 - Will the investigator provide findings of fact only, or also an opinion on whether the policy was breached?;
- Purpose of the investigation: Whether the investigator is hired for the purpose of providing legal advice;
- Scope of the investigation:
 - Any procedural requirements; and
 - What will occur if additional allegations outside of the scope arise during the course of the investigation?;
- Reporting:
 - Who will be the employer contact if information is needed or unexpected issues arise;

- Will the investigator be providing a summary or full report; and
- Who the findings will be reported to?

I. Timing and Contents of Investigation Notices to Parties

Employers need to ensure that any workplace investigation is objective and fair, particularly when the employer will be relying on the results of the investigation to establish just cause to dismiss an employee.

In addition to ensuring that the investigation is led by an appropriate investigator, two important components of a fair investigation include: (1) giving the respondent notice of the complaint in a timely manner; and (2) giving the respondent a full opportunity to respond to the allegations made against them. Generally, the notice should include the following content:

- The name of the complainant;
- The fact that the respondent has been named in the complaint;
- The name of the investigator (if retained); and
- Confirmation that the respondent will be given details of the complaint and a full opportunity to respond.

Both the complainant and respondent should be advised of their right to a support person, the requirement of confidentiality, and that no retaliation will be tolerated. We generally recommend that the notice of investigation be sent to both parties at the same time in order to ensure that the respondent finds out about the investigation by the employer and not through the gossip mill.

A local government may face liability if the investigation is not conducted fairly, including if a respondent is not provided with adequate notice or a fair opportunity to respond to the allegations, particularly where the employee is disciplined or dismissed following the investigation.

V. PROCESSING A CODE OF CONDUCT COMPLAINT – A STEP-BY-STEP GUIDE

Below is a step-by-step guide for processing a complaint under a code of conduct bylaw. Throughout, we will discuss some key similarities and distinctions between investigations of bullying and harassment complaints and complaints under the code of conduct.

A. Preliminary assessment of complaint

As with complaints under an employer's bullying and harassment policy, the first step after receiving a complaint under a code of conduct bylaw is to complete a preliminary review of the complaint and the code of conduct to assess the following:

- Who is covered by the code of conduct; and
- Whether the complaint falls within the scope of the code of conduct.

As with bullying and harassment policies, the first step for local governments after receiving a complaint is to review the complaint in light of the scope of the code's application. Many codes of conduct apply not only to council or board members, but also to committee members. Codes will also specify who is permitted to file a complaint. While some codes of conduct allow any member of the public to file a complaint, many others limit this ability to staff, council or board members and local government employees.

In contrast with bullying and harassment policies, which usually apply only to conduct that occurs in the workplace or work-related events, the scope of a code of conduct typically applies more broadly to the actions of council and board members. The scope of a code often extends to certain aspects of elected officials' personal lives, including their use of their personal social media accounts. Given that elected officials' conduct is viewed in the context of their roles and responsibilities as elected representatives of their communities, this broader scope intends to ensure that public confidence in municipal governance is not undermined.

In addition to the above, while there is a high degree of variability in codes of conduct, some codes have a "preliminary assessment" requirement. Under this provision, upon receipt of a complaint, the designated individual of a local government (usually the CAO or Corporate Officer) must conduct a preliminary assessment of the complaint, or forward the complaint to a solicitor or other designated individual to complete the preliminary assessment. A preliminary assessment involves a consideration of the substance of the complaint to determine whether the complaint may be summarily dismissed. Circumstances warranting summary dismissal of a complaint include the following:

- The complaint does not relate to a breach of the code of conduct;
- The complaint is frivolous, vexatious or not made in good faith;
- The complaint is outside the jurisdiction of the code of conduct and would be more appropriately addressed through another process;
- The complainant declined, without good cause, to make reasonable efforts to informally resolve the complaint; or

- There are no possible grounds on which to conclude that the respondent breached the code of conduct.

If a code of conduct contains a “preliminary assessment” provision and any of the above factors apply, codes of conduct will establish requirements for notifying the parties of a summary dismissal and closing the complaint. In these circumstances, a formal investigation will not be required.

Codes of conduct will also specify how a complaint must be submitted, including the required content and timing of the complaint. Some codes of conduct will give local governments the discretion to accept a complaint that does not comply with the submission requirements so long as there has been substantial compliance or if the circumstances otherwise warrant acceptance.

B. Required procedures and procedural fairness

The next step is to determine how to proceed with the complaint by carefully reviewing the required procedures established under the code of conduct and any accompanying policies.

Parties to a code of conduct investigation are owed a duty of procedural fairness. As such, local governments should be mindful of the fundamental requirement of procedural fairness throughout the investigation process and before making the decision to censure or sanction an elected official in relation to their conduct. Numerous court decisions, including *Barnett v. Cariboo Regional District* and *Michetti v. Pouce Coupe (Village)*, have shown that a decision to sanction or censure of an elected official may be overturned on a judicial review if it is found that the elected official had not been afforded appropriate procedural fairness by the council or board.

As a general guideline, the requirement of procedural fairness in the context of code of conduct investigations includes, but is not limited to, fulfilling the following:

- Informing the respondent of the complaint in a timely manner;
- Providing the respondent an opportunity to seek independent legal advice regarding the allegations in the complaint;
- Providing the respondent an opportunity to respond to the allegations; and
- Prior to a council or board making any decision regarding the findings and recommendations set out in the investigation report, providing the respondent with an opportunity to comment on the investigator’s decision and any recommended sanctions or measures.

C. Charter of Rights considerations

Administrative decision makers have an obligation to consider *Charter* values where their exercise of discretion has the effect of limiting *Charter* rights. As such, following an investigation under a code of conduct, where a Council or Board is considering imposing a censure or sanctions for conduct of an elected official under a code of conduct that involves the communication of thought, belief, opinion and expression by the elected official (including political expression), the potential imposition of disciplinary consequences should in most circumstances take into account *Charter* values.

The preliminary question in a *Charter* values analysis is whether the discretionary administrative decision at issue engages the *Charter* by limiting its protections. If it does, the decision-maker is required to exercise their discretion in a manner that proportionately balances the *Charter* protections to ensure that they are limited no more than is necessary in light of the applicable statutory objectives. The Supreme Court of Canada held in *Loyola High School v. Quebec (Attorney General)* that a proportionate balance is one that “gives effect, as fully as possible, to the Charter protections in light of the statutory mandate”. In other words, the *Charter* protection must be affected as little as reasonably possible in light of the applicable statutory objectives.

The required proportionality analysis is a highly contextual exercise. The administrative decision-maker is not necessarily required to choose the option that limits the *Charter* protection the least; however, the decision-maker must consider whether there are reasonable alternatives that would reduce the impact on the *Charter* protection while still furthering the statutory objective. The proper question to ask is whether the decision-maker has furthered his or her statutory mandate in a manner that is proportionate to the limitation on the *Charter* right.

In light of the above, if a local government receives a code of conduct complaint that involves the communication of thought, belief, opinion and expression by an elected official, the local government should consider the application of *Charter* values, and should consider seeking legal advice on the required proportionality analysis.

D. Informal Resolution

After a complaint has made it through intake procedures, many codes of conduct will contain an option or requirement to make all reasonable efforts to informally resolve the complaint, such as by mediation or another conflict resolution process between the complainant and respondent. Codes of conduct may specify the approaches that may be considered in deciding whether a complaint may be resolved informally, including culturally appropriate or restorative means. As is the case with bullying and harassment policies, the appropriateness of informal resolution in any given case will depend on the nature of the allegations as well as the willingness of the parties to participate.

As with workplace bullying and harassment policies, it may not be appropriate for certain complaints to be resolved informally. For example, if the complaint involves serious allegations, or if the complainant or respondent do not consent to participating in an informal process, a local government should not proceed with informal resolution. Additionally, given the unique consideration of transparency in the context of elected officials' conduct, local governments may decide in certain circumstances that a written report with recommended sanctions will be more appropriate.

E. Interim Measures

As with bullying and harassment policy investigations, a local government must evaluate whether interim measures ought to be taken to ensure the safety of the complainant involved during a code of conduct investigation and to limit the potential for retaliation against the complainant. Local governments should consider the application of procedural fairness requirements when making any interim measures.

F. Determining an appropriate investigator

If informal resolution is either unsuccessful or inappropriate, codes of conduct will require local governments to proceed with a formal investigation of the complaint. Depending on the nature and complexity of the complaint, either an internal investigator or an independent third party investigator will be appointed to investigate the complaints and provide findings of fact. Alternatively, some codes of conduct appoint an ethics or integrity commissioner, who are independent third party appointees tasked with administering a code of conduct. If appointed under a code of conduct, a commissioner is tasked with the intake, investigation, and disposition of complaints.

G. Solicitor-Client Privilege

If a local government retains a lawyer to investigate a code of conduct complaint, similar considerations apply as in the context of workplace investigations. Namely, if a lawyer is retained solely for the purpose of conducting an investigation and finding facts, then privilege will likely not extend to the investigation records; however, if a lawyer is retained for the purpose of conducting the investigation *and* subsequently providing legal advice on the investigation, then any documents and communications that are necessary for the lawyer to provide legal advice will generally be protected by solicitor-client privilege.

One notable difference between workplace investigation policies and codes of conduct is that some codes of conduct will permit or require council or a board to release an investigation report (or a summary thereof) to the public after council has made a decision on the appropriate sanction. Local governments should carefully review their code of conduct for a public release provision.

H. Develop Terms of Reference for the Investigation

Where the employer has decided to hire an external investigator, formal terms of reference for the investigation should be developed with the investigator. The same considerations apply as for a workplace investigation: in each case, the terms of reference with the investigator should clearly specify the role of the investigator, as well as the purpose and scope of the investigation.

I. Formal Investigation and Sanctions

Formal investigations must proceed in accordance with the procedures in the code of conduct and any underlying policies, keeping in mind the integral underlying requirement of procedural fairness throughout the process.

Upon the completion of an investigation where a breach has been found, an investigator will recommend certain censures and/or sanctions. Codes of conduct will often establish a list of specific sanctions that a council or board can impose. Some examples of sanctions under a code of conduct include:

- Issuance of a letter of reprimand or warning;
- Recommendation that the elected official issue an apology for the conduct (which apology may or may not be published);
- A requirement that the respondent attend specific training or counselling;
- Suspension or removal from committee appointments;
- Limitations on access to certain municipal facilities;
- Prohibition from representing the local government at certain events or conferences;
- Reduction of the remuneration to which the respondent would otherwise have been entitled in accordance with the local government's remuneration bylaw; or
- Suspension or removal from the acting mayor/chair rotation.

Local governments should review the wording of the sanctions provision in their code of conduct to determine whether the list of permitted sanctions is exhaustive. Furthermore, codes of conduct may also specify a list of factors that a council must consider in determining whether to impose a sanction, including the degree and nature of the conduct; whether the contravention was a single or repeated act, and whether the respondent took steps to mitigate or remedy the contravention.

VI. PROPOSED MODELS FOR CODES OF CONDUCT

As mentioned earlier in this paper, there is presently no legal requirement for local governments in BC to have municipal codes of conduct in place. The legislative framework governing codes of conduct gives local governments a high degree of flexibility: each local government can decide whether to adopt a code, as well as how to cater the content of their code to their particular needs. With that said, the current framework has its weaknesses. First, the discretionary nature of the provisions permits local governments to choose not to adopt a code. Second, the flexibility granted to local governments invariably results in a high degree of inconsistency among the content of codes of conduct among different local governments. Without any standardized requirements for the content of the codes, some codes are more comprehensive and effective than others. Third, without legislative underpinning there are several areas of code administration that remain uncertain.

In light of these concerns, a recent publication by the Union of BC Municipalities (“UBCM”) and the Local Government Management Association of British Columbia (“LGMA”)¹ examines and compares three different proposed models for code of conduct administration and enforcement in British Columbia. The proposed models include:

- Local determination: Under this model, which aligns most closely to the current framework in BC, the enabling legislation permits, but does not require, local governments to establish a code of conduct. Local governments have the discretion to determine (1) whether to create a code of conduct; and (2) the content of the code of conduct.
- Provincial requirements for centralized administration and enforcement: Under this model, a provincial office is established by legislation to centrally administer and enforce codes of conduct. Codes of conduct would be made mandatory and would include standardized content to allow for centralized administration and enforcement. This means that all local governments would be required by provincial legislation to establish a code and incorporate the content that is prescribed by legislation. A province-wide office would be established to receive and process complaints submitted to local governments, and to appoint investigators to investigate alleged contraventions of each code.
- Provincial requirements for local administration and enforcement: This model, which reflects a middle ground between the first two models, relies on the Province to introduce mandatory legislation to address certain matters related to codes of conduct. Under this model, legislation would be established to require all local governments to implement codes of conduct, prescribe specific elements to be included in all codes, and require each council and board to

¹ Union of BC Municipalities and Local Government Management Association of British Columbia, “*Potential for Change: Responsible Conduct Framework for Local Government Elected Officials*”. Link: https://www.ubcm.ca/sites/default/files/2024-09/Potential%20for%20Change-Sept2024_0.pdf

appoint an independent third party to process and investigate complaints under the code.

In our view and based on our experiences assisting clients with codes of conduct, the third model proposed by UBCM and LGMA would significantly alleviate many of the shortcomings of the current legislative framework by introducing greater consistency and administrative certainty in the enforcement of codes across the province, while still allowing local governments the independence to administer their own codes. As noted in the LGMA and UBCM publication, this model is similar to the approaches taken in other provinces around Canada, including Manitoba and Ontario, in which there is more provincial oversight over codes of conduct. Of course, the costs associated with administering codes is still a significant challenge.

VII. CONCLUSION

While some aspects of workplace bullying and harassment policies and code of conduct investigation procedures may overlap, there are several critical distinctions that are rooted in the distinct statutory authorities, purposes, scopes, and procedures of each. It is important for local governments to understand these key differences, in order to properly and fairly investigate complaints in accordance with the appropriate procedures.

NOTES