



Government  
— of —  
Saskatchewan

Ministry of Government Relations  
Policy and Program Services  
1540 – 1855 Victoria Avenue  
Regina, Canada S4P 3T2

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July 20, 2017

Ray Orb, President  
Saskatchewan Association of Rural Municipalities  
200 – 2221 Cornwall Street  
REGINA SK S4P 2L1

Gordon Barnhart President  
Saskatchewan Urban Municipalities Association  
200 – 2222 13<sup>th</sup> Avenue  
REGINA SK S4P 3M7

Wendy Gowda, President  
Rural Municipal Administrators' Association  
Box 100  
LEROY SK S0K 2P0

Jason Chorneyko, President  
Urban Municipal Administrators' Association  
Box 220  
WYNYARD SK S0A 4T0



Dear Messrs. Orb, Barnhart, Gowda and Chorneyko:

Thank you for your letter of June 29, 2017, outlining the common position of your respective associations regarding whistleblower protection for municipal employees.

The ministry is prepared to develop proposals for legislative amendments to strengthen protection for municipal employees for government's consideration when the municipal Acts are next opened and approved for amendment. Your letter referred only to amending *The Municipalities Act*; however, the ministry would develop consistent proposals for the three municipal Acts for consultation with all municipal associations.

The ministry will forward your letter to the Provincial Ombudsman/Public Interest Disclosure Commissioner for comment regarding your request that her office be the first point of contact on municipal whistleblower issues. This may also require legislative amendments and have other resourcing implications.

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The timing of government's legislative cycles means it will likely be sometime before amendments, if approved, come into force.

In the interim, your associations might want to further explore or educate your members about the measures and options currently in place that could help to protect municipal employees in whistleblower situations. Some of these are outlined in the Options Paper previously provided by the ministry, and others were identified to us at the meetings between municipal associations and the Ministry of Government Relations (GR) in spring/fall 2016. I will touch on a few of these below with the intent of assisting the associations to identify options available currently. The municipal associations might want to consider exploring in more detail or getting more information regarding these measures for their members and how they are working in Saskatchewan and other jurisdictions.

1. Existing protections under *The Saskatchewan Employment Act (SEA)* – GR's legal counsel has advised that section 2-42 of the SEA already provides protection to municipal employees. There is no need for explicit links in municipal legislation for these to protect municipal employees. The SEA stands on its own authority.
  - The SEA provides protection to employees who report any activity that is likely to result in an offence under a provincial or federal Act. This would include offences for members of council who fail to discharge the duties of office imposed by the municipal Acts, including failing to declare/disclose a conflict of interest or meet public disclosure requirements. It would also include a member of council obstructing, impeding or interfering with an employee of the municipality exercising any powers, obligations or duties under the Act or a bylaw.
  - A municipal employee can report to a supervisor at the municipality, the police or to the Ministry of Labour. The SEA has a well established and staffed investigation process.
  - The SEA then prohibits an employer (i.e. the municipality or municipal council) from taking any discriminatory action against an employee who makes a report. A discriminatory action is defined in clause 2-1(d) of the SEA to include any action or threat of action that would adversely affect an employee with respect to their terms of employment. This includes termination, suspension, demotion, transfer, changing hours, wages, intimidation or any discipline.
  - Sections 2-95, 2-96 and 2-97 of the SEA make it an offence for an employer to take discriminatory action against an employee and if the employer is convicted, the employer can be fined up to \$10,000. The courts can also award that the employee be reinstated.

The municipal associations might want to review the SEA in more detail and apprise themselves and their members of these provisions. You might also want to contact the Ministry of Labour about getting more information and education out to their members about the existing protections under *The Saskatchewan Employment Act*.

2. Existing protections under *The Ombudsman Act, 2012* – The recent amendments to *The Ombudsman Act, 2012* to include municipal matters within the power of the Provincial Ombudsman to investigate, also extend protection from prosecution for statements made or information provided to the Ombudsman by those making complaints to or complying with an Ombudsman investigation, including municipal employees. Further, Ombudsman investigations are conducted in private and information received relating to a complaint is protected from disclosure.
3. Existing protections under the *Criminal Code (Canada)* – Section 425.1 of the federal Criminal Code makes it a criminal offence for employers, anyone acting on behalf of an employer, or a person in a position of authority over an employee, to make employment-related threats, such as job loss or demotion, disciplinary action, or otherwise adversely affect the employee's employment for providing information about offences against federal or provincial legislation. Employees are protected if they approach a law enforcement authority (vs the media or another entity). The code provides for a maximum term of imprisonment of five years.
4. Locally established procedures and protections – Municipalities have the general authority to create a policy or include in a bylaw provisions pertaining to disclosure and whistleblower protection by virtue of natural person powers for corporate matters and bylaw making authority for the peace, order and good government of the municipality. A number of municipalities across Canada have used this authority to incorporate whistleblower protection into their employee codes of conduct, similar to business corporations. In addition, at least one Saskatchewan municipality, the City of Regina, has incorporated provisions into their Code of Ethics bylaw prohibiting reprisal or obstruction against persons initiating a complaint or inquiry regarding a potential contravention by a member of council. Links to these policies, procedures, bylaws and codes of conduct/ethics are easily accessed on the internet for consideration.

5. Existing protections in collective agreements and employee contracts – GR heard in its meetings with the associations that certain protections from reprisal for whistleblowing may exist in collective agreements with employees and/or contractual agreements between individual municipal employees and the municipality or that these could be incorporated into these agreements. GR has no further details on these sorts of provisions or arrangements, but the associations could find out more in this regard.
6. Third party review and investigative entities – Finally, some municipalities in other provinces, educational institutions and other types of authorities (airport authorities) contract private firms to deliver whistleblower services, such as anonymous reporting and confidential investigation. As well, some municipalities, including some in Saskatchewan, such as the City of Regina and Rural Municipality of Sherwood, have incorporated municipal integrity commissioner provisions into their Codes of Ethics to confidentially review, investigate and report on complaints about contraventions. There is nothing in legislation preventing these options from being utilized jointly or collectively by smaller municipalities together if there is a concern about cost or even on an ad hoc or fee for service basis. The associations themselves might consider this service on behalf of their members and as a revenue generator.

Thank you again for your letter regarding this issue. We will keep you apprised of the ministry's work in this area as it unfolds.

Sincerely,



John Edwards  
Executive Director, Policy and Program Services

cc: Tammy Kirkland, Deputy Minister of Government Relations and  
Deputy Minister of First Nations, Métis and Northern Affairs  
Keith Comstock, Assistant Deputy Minister, Municipal Relations Division,  
Government Relations  
Matt Heley, CEO, New North, Saskatchewan Association of Northern Communities  
Mary McFadyen, Ombudsman Saskatchewan and Public Interest  
Disclosure Commissioner





June 29, 2017

Jason Rumancik  
Ministry of Government Relations  
1540 – 1855 Victoria Ave  
Regina, SK S4P 3T2

Dear Mr. Rumancik:

In follow-up to the meeting held by the Ministry of Government Relations on the Municipal Whistleblower Protection Options Paper, the Saskatchewan Association of Rural Municipalities (SARM), Saskatchewan Urban Municipalities Association (SUMA), Rural Municipal Administrators Association (RMAA) and Urban Municipal Administrators Association of Saskatchewan (UMAAS) met on May 2<sup>nd</sup> to develop a common position on enhancing whistleblower protection for municipal employees.

More responsibility has been placed on municipal employees to report conflicts of interest since related changes were made to *The Municipalities Act*. There is concern that the existing whistleblower provision in *The Saskatchewan Employment Act* will not do enough to uphold the rights of municipal employees. As such, SARM, SUMA, RMAA, and UMAAS all agree that more must be done by the Province to better protect municipal employees from persecution for whistleblowing.

After careful deliberation of the options originally provided and others put forward since by members of the four associations, we would ask that the Province update *The Municipalities Act* (MA) to include a council requirement to have in place a policy that outlines how an employee is protected in instances where whistleblowing is thought to occur; this would be similar to the new requirements for council to implement a Code of Ethics. Additionally, we would ask that the Ministry develop a templated whistleblower policy for municipalities to utilize in consultation with our associations.

We also request that the Ombudsman, which has the expertise and is currently being funded to take on municipal issues, be the first point of contact on municipal whistleblower issues. And, finally, we ask that the Province explore whether its necessary to include in the MA links to other legislation that protect employees from persecution for whistleblowing such as *The Saskatchewan Employment Act*.

Mr. Rumancik

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June 29, 2017

Pg. 2

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We thank you for considering our feedback on this important issue. Please do not hesitate to contact any of us to discuss our requests further.

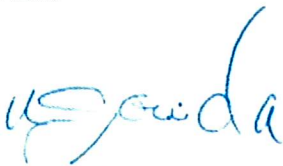
Sincerely,

Handwritten signature of Ray Orb in blue ink.

Ray Orb  
President  
SARM

Handwritten signature of Gordon Barnhardt in blue ink.

Gordon Barnhardt  
President  
SUMA

Handwritten signature of Wendy Gowda in blue ink.

Wendy Gowda  
President  
RMAA

Handwritten signature of Jason Chorneyko in blue ink.

Jason Chorneyko  
President  
UMAAS

CC: John Edwards, Executive Director, Ministry of Government Relations