

DATE OF MEETING February 22, 2021

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SUBJECT COUNCIL RESOLUTION TO ASSOCIATION OF VANCOUVER ISLAND AND COASTAL COMMUNITIES REGARDING RESTORATIVE JUSTICE PROGRAMS

OVERVIEW

Purpose of Report:

To provide Council with background information on the use of Restorative Justice as a means of resolving bylaw contraventions.

BACKGROUND

At the 2021-FEB-08 Governance and Priorities Committee Meeting (GPC), Council members considered a number of resolutions that could be sent to the Association of Vancouver Island and Coastal Communities (AVICC) for debate at the upcoming annual general meeting.

Members of the GPC requested further information from Staff on the use of Restorative Justice by local governments as a means of resolving bylaw contraventions for citizens who cannot afford to pay a fine.

DISCUSSION

What is Restorative Justice?

Restorative Justice is an out-of-court process that focuses on why crime occurs, how it affects others, and what actions are necessary to help repair the harm done. The program strives to provide facilitated opportunities for communication and participation between affected persons (offenders, victims, and the community) to agree on appropriate reparations.

How Does Restorative Justice Work?

Offenders accepted into the program initially go through an intake interview process. Restorative Justice staff can follow up in two ways:

1. Community Justice Forums – all relevant parties convene to discuss the offence, guided by a facilitator who will ask each person about the offence and how they have been impacted. The group then agrees on what the accused person can do to repair harm that has been done. These outcomes will be drawn up in an 'Alternative Measures Agreement'.
2. Diversion – program staff may work with the offender to create a wellness plan in circumstances where a community justice forum is inappropriate, such as when there is a likelihood of re-victimization of affected persons.

Alternative measures and wellness plans are intended to satisfy the interests of the responsible and affected parties, with a goal of preventing re-offending by addressing root causes of the offence. Examples of outcomes may include letters of apology, payment of restitution, community service hours, or counselling.

Referrals to Restorative Justice

Restorative Justice Programs are administered locally by the Nanaimo Region of the John Howard Society (NRJHS) through a Memorandum of Understanding (MOU) with the British Columbia Prosecution Service. Restorative Justice may be seen as part of the Criminal Justice System, as it is recognized as an Extra Judicial Measure as set out in the Criminal Code and *Youth Criminal Justice Act*.

NRJHS currently accepts referrals to the Restorative Justice Program from the RCMP, Crown Counsel, and the School District. Offenders must admit guilt, demonstrate remorse, and consent to voluntary participation to be eligible for the program.

Once an accused person is diverted to Restorative Justice, formal charges are stayed (dropped). The formal justice process will not be re-initiated if the offender subsequently does not cooperate or follow through with an alternative measure agreement or wellness plan, but would likely be ineligible for diversion to the program again in the future.

Current Methods for Local Government to Address Contravention of Bylaws

The *Community Charter* provides powers for local government to address contravention of bylaws. Options may include:

- Voluntary compliance strategies (mediation, warnings, alternate dispute resolution, public education)
- Prosecutions under the *Offence Act*
- Municipal Ticketing
- Bylaw Offence Notice
- Direct Enforcement
- Civil Proceedings

Additionally, local government has authority to suspend permits and licences where approval conditions are not followed, or discontinue services when service rules have not been followed. Many of these enforcement options provide for consent agreements or other creative solutions in lieu of fines.

Under the *Local Government Bylaw Notice Enforcement Act*, local governments can establish an adjudication system that is an alternative to the Provincial Court for resolving minor bylaw contraventions (where the penalty is a fine of \$500 or less). This enables the creation of a simple, more cost-effective administration system than prosecuting cases in Provincial Court. The City of Nanaimo uses this system, and is a host municipality for adjudication for other local governments in the region.

Bylaw Offence Notice Compliance Agreements

Adjudicators do not have the ability to adjust penalty amounts, but the *Bylaw Notice Enforcement Regulations* provide an additional option for 'Compliance Agreements' to be included in the Bylaw Offence Notice system. Nanaimo does not currently use compliance agreements.

In this process, an offender acknowledges responsibility for an offence, and the fine is reduced (to a maximum of 50%) with the agreement to enter into a compliance agreement in which they will fulfill certain conditions in exchange for the reduced penalty. These agreements would typically include an undertaking not to continue or repeat the offence, and are binding for a period of one year. If the offender does not fulfill the requirements of the agreement, it will be rescinded and the full amount will be due and payable as if the offence was not disputed.

An example of how this process might be utilized is in property maintenance matters. A property owner has an accumulation of garbage and debris that is unsightly to the neighborhood. A bylaw notice or multiple notices may be served, each with a \$150 penalty. The penalty would be reduced to \$75 if the property owner entered into a compliance agreement to keep the property clean for a year.

Are Compliance Agreements an Effective Alternative?

Compliance Agreements are used in some local governments. North Vancouver has advised that the process is seldom utilized more than once or twice a year because the resources required to arrive at an agreement and monitoring compliance for the next year are unwieldy and impractical. Further, these types of enforcement actions are often accompanied by other direct action measures (i.e., using contractors to clean a property at the owner's expense) that limit the practicality of this approach.

Additional Sentencing Powers in Relation to *Offence Act* Prosecutions

The *Community Charter* provides additional sentencing powers to the Provincial Court with respect to a prosecution commenced by an information in Form 2 under the *Offence Act*. This is an enforcement option used in circumstances where there is a continuation or repetition of an offence. A Judge may issue an Order that will be of a duration up to one year, which may prohibit a person from doing any act or engaging in any activity or to take any action considered appropriate to remedy the harm caused by the commission of an offence.

This is an effective but formal and expensive process to deal with recurring offences.

Court Consent Orders

Local governments can negotiate resolutions on more complex bylaw issues through Consent Orders that can be filed in Provincial or Supreme Court to agree to an outcome without the time and expense of a formal trial.

Would Provincial Approval be Required to Divert Bylaw Offences to Restorative Justice?

The City solicitor advises that approvals would be required from both the Federal and Provincial Governments to divert bylaw offences to a Restorative Justice Program. This process would likely be lengthy in nature.

Would Restorative Justice be a Useful Alternative for Bylaw Contraventions?

Advantages

The benefits of Restorative Justice are widely recognized. It is a cost-effective alternative to the formal justice system that promotes problem-solving strategies, meaningful dialogue, and opportunities to make things right to everyone's satisfaction.

Disadvantages

Local governments have existing, cost-effective alternatives to the formal justice system through adjudication and a number of compliance agreement options. Restorative Justice processes require considerable resources both on the part of the service provider and requesting agency for intake processes, community justice forums, drafting of agreements, and supervision of alternate measure plans. This may be a cost-effective alternative for criminal matters, but would be a prohibitively time-consuming process to divert minor bylaw contraventions. The City already funds the administration of a less formal Adjudication System, and there would likely be additional costs to entering into an MOU to utilize the Restorative Justice Program.

The estimated cost of restorative justice services for files with a single community placement and supervision process would cost the City between \$1,000-\$1,400. For a full restorative justice forum and follow-up, the process would cost the City between \$1,500-\$2,500 per file.

The City already funds an Adjudication System which is less formal and expensive than prosecuting bylaw offences in Court. Provincial legislation currently provides a continuum of enforcement options to address contraventions of bylaws which include the use of consent order agreements.

The use of Restorative Justice programs may require Provincial and possibly Federal approval.

Equity of Fixed Monetary Penalties

The use of fixed monetary penalties will always raise concerns of equity and disproportionate impact on the City's vulnerable residents, as they are determined by the nature of an offence rather than an offender's ability to pay.

In most circumstances, local governments provide notice of potential enforcement action to give people the opportunity to comply or otherwise have fair opportunity to be heard. This typically involves a progressive process where expectations for compliance are explained in person and through notice letters. Reasonable time is provided to comply with notices, with allowances for individual circumstances.

Voluntary compliance is achieved in most matters, and enforcement measures are undertaken when directions are ignored or contraventions are continued or repeated. As noted, there is a continuum of enforcement options that are utilized proportionately to the seriousness of the harm that is caused by the violation. Bylaw officers have considerable discretion in resolving minor issues, and tickets are regularly canceled in circumstances where contraventions have been corrected and the offender demonstrates a willingness to comply with bylaws.

Driver's licences and vehicle insurance policies cannot be renewed if there are any unpaid Provincial fines. There are no such adverse consequences in non-payment of a bylaw offence notice, unless the municipality initiates prosecution in Court. Unpaid bylaw tickets are sent for collection.

Restorative Justice programs are effective because they may provide creative opportunities to repair the harm done by offences, but should not be contemplated simply to provide alternatives because there is an inability to pay a fine. Existing authorities provide numerous alternatives to ticketing.

CONCLUSION

Restorative Justice is a frequently used tool as an alternative to the criminal justice system to address Provincial or Federal criminal law. It is not used by local government.

Currently, local governments have a range of options to address bylaw contraventions that provide flexibility for enforcement officers.

SUMMARY POINTS

- At the 2021-FEB-01 GPC meeting, Staff were directed to provide background information on Restorative Justice and a recommendation for Council to forward a resolution to the annual AVICC Conference.
- Restorative Justice is an out-of-court process that focuses on the causes of crime and identifies resolutions that help to repair harm that is done.
- Restorative Justice is widely used in the Criminal Justice System, and may require Provincial and/or Federal authorization to be used by local government.
- Local governments have a continuum of enforcement options available to address bylaw contraventions, including a number of consent order alternatives.

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