

CHAPTER 3

Resolving Conduct Issues Informally

When and Why to Consider an Informal Approach

Conduct issues can often be managed through prevention and good governance measures.

Unfortunately, there are times where the issues are particularly significant or entrenched, and instead escalate or become more pervasive. In these cases, local governments may wish to consider taking additional steps to address the conduct issue.

Two approaches are available, and they are not mutually exclusive. Informal approaches are aimed at resolving conduct issues, through productive discussion toward mutually satisfactory solutions. Enforcement processes are aimed at determining whether there was a conduct contravention, and deciding on sanctions if a contravention is found.

Informal resolution can lead to better outcomes than enforcement processes because informal resolution tends to be:

- More effective in finding solutions that are satisfactory to all parties;
- Quicker, leaving less time for the problematic conduct to remain unchecked and less time for relationships to erode further;
- Less divisive since parties are brought together to work towards solutions that work for all, helping to rebuild trust and repair relationships (whereas in enforcement processes, parties oppose each other to prove or disprove a contravention); and
- Less legalistic, cumbersome and complex, which can also mean they are considerably less costly.

“I have yet to see an enforcement process where the elected official accepted the findings, so we need to make every effort to manage things before it gets to that.”

(A B.C. CAO, mid-sized municipality)

Given these advantages, many local governments are finding that in most circumstances it is well worth pursuing informal approaches to the fullest extent possible to see if they can resolve the conduct issues. In general, they are only considering enforcement processes if those informal resolution efforts are not successful.

However, despite its potential for positive outcomes, informal resolution is not appropriate for all circumstances.

Local governments will want to consider specific circumstances carefully before deciding on a course of action (and seek appropriate legal advice before proceeding). Consider the following examples.

When conduct issues impact employees:

Local governments are responsible for the safety of their employees at work. If a complaint relates to matters covered by legislated provisions to address workplace bullying and harassment, the complaint must be dealt with in accordance with the *Workers Compensation Act* and Occupational Health and Safety policies established by WorkSafeBC.

There may also be other laws, local government policies, or employment arrangements that will govern how to respond when an employee indicates they have been subjected to unsafe working conditions or inappropriate behaviour.

When conduct represents actual or threatened significant or imminent harm to persons, property or the local government:

In these situations, local governments will need to consider how best to preserve safety and security within their community. In addition to legal advice, local governments may need to consult with law enforcement.

“It’s important to remember that trust is built around understanding and respect, not necessarily agreement.”

(From the Institute for Local Government document Attributes of Exceptional Councils)

How to Pursue an Informal Approach

Informal resolution focuses on involved parties working out their differences to come to a mutually acceptable resolution that restores responsible conduct. Fairness is key, and local governments will want to consider fairness elements appropriate to the circumstances, which may be different than what is appropriate for enforcement (e.g., there may not be a need to provide parties an opportunity to be represented in informal discussions). Fairness supports informal discussions since people will be more willing to work towards solutions if they are being treated fairly. In addition, it is important to ensure that informal resolution does not jeopardize subsequent enforcement processes should they be needed. Providing an appropriate standard of fairness in informal discussions will help to meet that objective.

LEADING PRACTICE TIPS

Consider fairness training or coaching for all Council or Board members to raise awareness of the need for fair process in everything they do. This can lead to fewer conduct issues in the first place, and support informal resolution discussions if issues do arise, potentially avoiding the need for all parties to default to legal positions in the early stages of those discussions.

Who is involved in these conversations, and how the process unfolds, will depend on the situation and in part, who is willing and able to work through the issues.

The following are some common approaches; local governments should consider their own unique circumstances in deciding what methods to try.

When You Demonstrated Poor Conduct

All elected officials are accountable for their conduct and the vast majority are responsible, but lapses do occur: someone snipes in the heat of the moment that their colleague is too young, or too old, or too new to this country to have views on a topic; someone hits send on a social media post when they're still angry; someone picks on a staff member because they don't like a report's recommendations; someone takes a colleague's comment out of context in a way it was never intended. Sometimes, that someone is you.

Many elected officials find themselves in these situations; what distinguishes them is how they deal with them. Owning your part in a misunderstanding or admitting you've made a mistake or acted inappropriately is not a sign of weakness; it is a sign of strength and it is a quality common to exceptional leaders. It's also a way to build trust and respect and to repair relationships – valuable activities in one's quest to serve the community and get things done.

When faced with these situations, consider sitting down with the individual impacted by your conduct. It's a good opportunity to clear the air, to make an apology if that's in order, and to get to know each other's perspectives and experiences. It also allows you both to work through the issue and decide what else is needed to avoid further incidents and to move on.

Depending on how wide the impact, consider whether to have this conversation with the full Council or Board, and/or whether a public apology is appropriate.

“In more than six years as the Ombudsman for British Columbia, I have witnessed, again and again, how one action can make a difference in a small but meaningful way. I have observed that a sincerely offered apology will often satisfy a person who has a complaint... An apology can restore self-respect and dignity. An apology acknowledges that a mistake has been made and that the offending party will not repeat the action in question. It can help re-establish trust and assurance that the offending action was not the person's fault.”

(From the BC Ombudsperson special report The Power of an Apology: Removing the Legal Barriers)

LEADING PRACTICE TIPS

If you're immersed in a conduct issue, try finding a personal sounding board – a confidante with whom you can test how your behaviour stacks up and who can give ideas about how you can resolve the issue. An elected official from another local government can be particularly helpful because they can understand what you're going through and may even have faced something similar, but can offer an impartial perspective because they are not directly involved in your situation.

When You Are on the Receiving End of Poor Conduct

An elected official impacted by the conduct of a colleague might consider meeting with them if they are willing. This can help to defuse the situation, understand other points of view, discover common ground and jointly problem solve ways to work better together. It is important to avoid accusations, so it may be prudent to prepare for the conversation by considering how best to share perspectives and find mutual interests, and by thinking about what might be needed to set things right.

Involvement of Another Person in Individual Discussions

Sometimes the two elected officials aren't able to resolve the issues themselves and having a facilitator can help. Choosing the right person depends on the situation. Typical choices include:

- The mayor or chair or their deputy;
- An official who provides advice or support in relation to conduct; or
- An independent third party with experience in dispute resolution.

The choice will depend on the nature and significance of the conduct issue, who has the needed skills, and whether all parties see the facilitator as neutral.

Many local governments avoid involving the CAO or other staff in a Council or Board conflict in this way so that staff are not seen as “taking sides,” which may cause considerable damage to elected official and staff relations.

If initial facilitated discussions aren't successful, the local government may wish to consider additional efforts to reach resolution, including negotiation and/or mediation.

Where an Individual's Conduct Impacts All Members

Sometimes the conduct at issue is not directed towards an individual, but to all or part of the Council or Board. For this, the mayor or chair, or their deputy, could initiate a discussion with the elected official whose conduct is at issue. These discussions are similar to those noted above, and could be aimed at gaining a mutual understanding of the various perspectives, identifying solutions to avoid further incident, and perhaps exploring new ways to work more effectively together. Depending on the nature and significance of the conduct, consider a facilitator for these discussions (e.g., an independent third party).

TIPS FOR THESE DISCUSSIONS

Regardless of who initiates or is involved in the conversation, there are a number of elements that can help make the discussions successful, such as:

- › Ensure all discussions treat people fairly; be respectful, honest and accountable; be clear about what brought you to the discussion and what you would like to achieve; and give people an opportunity to respond;
- › Have the conversation in private, and keep the discussion confidential;
- › Try to start from a place of neutrality, aiming to gain an understanding of individual perspectives, intentions and impacts, and reflect on and challenge your own inherent stereotypes, assumptions and perspectives;
- › Try not to judge; separate the problem from the person, actively listen, ask questions, seek clarification, and build on your understanding;
- › Remain open to views about what you or others could have done differently;
- › Seek common ground/mutual interests and use these as a basis for joint problem-solving to find solutions that everyone can accept; and
- › Recognize that resolution may take some time and potentially a series of discussions; don't try and do this all at once as people need time to think through issues and discover solutions, and they may need time to work through complex emotions that the discussions reveal.

“Individuals sometimes ignore rules, and toxic personalities sometimes create challenges... difficult personalities on the Council create a challenging and uncomfortable environment for the Council itself... In the end, the Council must manage its own behavior and seek compliance from its own members.”

(From the Public Management article Preparing Councils for their Work by Julia Novak and John Nalbandian, August 2009, pg. 27)

Where the Conduct Issues are Systemic or Widespread

Some types of conduct lend themselves to discussions with the full Council or Board and informal resolution would begin there (e.g., certain elected officials are repeatedly interrupted, bullied or belittled by others; conduct is markedly different in closed meetings than in open ones; grandstanding becomes an issue when the public is particularly engaged and vocal at the Council or Board meeting).

In other cases, informal resolution that begins with individual discussions noted above reveals underlying causes that need to be discussed by the full Council or Board, and informal resolution would then move to these more broadly-based discussions.

This presents an opportunity for the Council or Board to engage in continuous improvement with broader discussions about how to work more effectively together.

This could involve processes discussed in Chapter 1, Fostering Responsible Conduct and Chapter 2, Maintaining Good Governance, and it is well-suited to discussion as part of a Council or Board's next check-in.

Full Council/Board discussion is appropriate whenever the conduct or its root causes indicate underlying systemic challenges, because those challenges need to be addressed in order to satisfactorily resolve the conduct issue and to avoid future incidents. Councils and Boards that find a way to identify systemic issues (e.g., preconceptions about things like gender identity, economic status, ability, race or age; lack of a common set of facts on matters discussed; gaps in a shared understanding of conduct expectations), speak about them openly and safely, and jointly develop solutions (e.g., leadership development, enhanced policy alignment) may find that conduct issues can be resolved, unproductive conflict and friction reduced, and more effective trusting working relationships established.

Professional Advice from Staff

While ultimately it is up to elected officials to restore responsible conduct of their members, senior staff can provide key support to that process. For example, they are well-positioned to:

- Provide advice about approaches to resolve conduct issues, including resolution at an individual level and potential structural, system or policy realignment;
- Provide process and technical support to individual elected officials on informal resolution and/or enforcement processes;
- Provide advice on how to ensure informal resolution processes are fair to all participants and where expert fairness advice may be needed; and
- Provide advice about when to involve a facilitator in discussions and the skills that will be important to the success of that role, and/or what other external support or advice could be considered (e.g., legal advice; involvement of law enforcement).

FOOD FOR THOUGHT

- › Is there anything in this situation that should prevent it from being considered for an informal resolution process?
- › Who is best positioned to initiate a conversation or to facilitate one if needed?
- › What support could the local government offer to elected officials who have conduct questions or concerns, or who want to better understand the process to try and deal with issues informally?
- › What is being done to support relationship-building? What can be done to ensure all voices are heard? If these were enhanced, might it be easier for elected officials to sort out conduct issues informally? Are there lessons to be learned from this process that could apply more generally to elected officials' relationships, and/or to changes needed in the local government's policies and procedures?
- › At an individual level: What triggers a change in my conduct? How can I manage that? What subconscious assumptions might be influencing my conduct? What support do I need to make a change or to sort out a conduct issue with my colleagues?

[CLICK HERE](#) for links to resources referenced in this chapter.