

Drawing the Line: Protecting Municipal Staff and Council from Harassment

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A true tale. Ken (not his real name) was a resident in a rural municipality (it could have just as easily been an urban municipality). Ken attended a series of in-person and online seminars. He subscribed to podcasts. He learned there, from some very confident people, and for what seemed to him a reasonable fee, that he was not subject to any laws (especially the ones he did not like), whether those laws were federal, provincial, or municipal. After all, he was (so he was told) a 'freeman' or a 'sentient man,' or some other catchy title. He was also taught how to string together odd grammar, Latin phrases, and US legal terms in nonsense fashion and that these words would convince everyone of his immunity. This was such an appealing package that Ken actually believed it to be true (to get a real education on this view of the world, look up the Alberta court decision in *Meads v. Meads*).



Ken built a house on his land. He did not take out a building permit. Why should he? When the municipality began proceedings to enforce its building by-law, Ken was less than amused. He became extremely disrespectful to the CAO and municipal staff. He refused to speak to female employees of the municipality. Things escalated further. He threatened the CAO and staff with the use of firearms and other weapons. To help convince the municipal staff that they were wrong and he was right, he began to send anonymous packages to the municipal office; no one thought that they were gifts.

Ken was banned from attending all municipal buildings. He was not permitted to contact staff. All communications from Ken had to be through the CAO (phone or email). The RCMP was notified of his behaviour and took great interest. All future municipal interactions

between Ken and the municipality were in the presence of the RCMP.

Ken's story is not unique. The details and the severity of the harassment vary. Anecdotally, it seems to be becoming more common. The real story is: what can be done by a municipality to protect its staff and council from people like Ken?

Keep Control over Meetings and Hearings

The procedures by-law should set the rules for how a resident can appear before a council committee, a regular meeting of council, or a public hearing as a participant or as a delegation. Require prior registration. Time limits can be set for presentations. Council can limit the number of speakers or take those with something new to add. Council can require that background materials on the issue be presented to administration for distribution to council a certain number of days before the meeting. Start the public participation by stating the rules: general courtesy, order of speakers, whether council asks all questions, time limits, and limits on presenters. Council and committee meetings and public hearings operate for the governance of the municipality; they should never degenerate to a free-for-all.

Section 152(2) of *The Municipal Act* allows the chair of a meeting of council or committee to expel a person from the meeting due to improper conduct. Before expelling anyone from a meeting, the chair should firmly demand that the person conduct themselves properly and warn them that further improper behaviour will get them expelled from the meeting. Document the warnings in the meeting minutes.

Council members should know the rules (*Robert's Rules* or otherwise) adopted by the procedures by-law. If the meeting chair lets things get out of control, a motion to end the discussion, a motion to table the issue, or even a motion to adjourn the meeting might be needed.

Warning Letters and Restricted Access

Where individuals behave disrespectfully or threaten municipal staff or council, immediate action should be taken. Administration (or legal counsel) should issue a warning letter. The letter should detail the time, location, and facts surrounding the incident. The letter should be sent to the individual by email, regular and registered mail to ensure delivery.

Suppose the warning letter is ignored and harassment or threats persist. In that case, administration (with input from council where necessary) should consider restricting access to the municipal office or even all municipal buildings. Alternative arrangements can be provided to allow them to exercise their rights of freedom of opinion and expression granted under the *Charter of Rights and Freedoms* and be heard by their elected officials. Examples include making written submissions to council or attending a meeting remotely.

Be reasonable. There is a legitimate right to be heard and to protest. Something that makes

people uncomfortable (such as a picketer, even a loud one, on a public sidewalk or parking lot) is not necessarily the same as harassment or threatening behaviour.

The Trespass Act

If an individual fails to leave premises after being told that they are not permitted to enter, they will be in violation of *The Trespass Act*. Law enforcement can be contacted to remove and, where appropriate, arrest the individual.

Peace Bonds

The *Criminal Code* of Canada provides that anyone may apply for a peace bond to be issued against a person where there is a reasonable fear that person will cause harm to another or that they may damage property. A peace bond is a court order which requires the subject to keep the peace and show good behaviour, amongst any other conditions added by the court.

Civil Remedies

A defamation claim can be brought against an individual who has made defamatory statements against another individual, either in writing (that includes online statements) or verbally, which is damaging to their good reputation. Only an individual (not a municipality) can sue in defamation. It can be a lengthy and costly process. Defamation can often be cured with an apology. There are several legitimate defences to a defamation claim, such as fair comment. Where the claim is successful, the court can order payment of monetary damages. Even then, a judgment is only as good as the ability to collect on it. As of now, there is no ability to sue for harassment *per se*.

An Ounce of Prevention

What can municipalities do to help to avoid and mitigate against aggression and harassment before it starts?

Use proper channels: The CAO and staff should be the primary contact between the public and the municipality (for a good reference, see the CAO Handbook for Alberta Municipal Chief Administrative Officers found at <https://open.alberta.ca/publications/9781460139189>). They have a responsibility to meet with the general public, including meeting with residents who may or may not approve of a recent decision of council. The CAO should listen to concerns and provide the relevant information, but not take a position other than to carry out the directions of council. The CAO should brief council so that other alternatives can be explored. This can include arranging for the person to appear at council as a delegation, where permitted by the municipality's procedure by-law.

Be transparent: It is common for municipalities to post council and committee agendas and minutes online, along with by-laws and other important documents. *The Municipal Act* allows

in camera meetings in only very limited circumstances; follow those rules. *The Freedom of Information and Protection of Privacy Act* (FIPPA) requires most municipal records (including emails) to be made public. Why put someone through making a FIPPA application when they have a legitimate information request?

Get to know one another: On February 28, 1983, over 106 million North Americans tuned in to view the final episode of the television series M*A*S*H. That does not happen anymore. We are living increasingly separate lives. We consume separate views of the world. We often do not know our neighbours. Healthy communities offer opportunities for people to do things together. It can be a litter clean-up, an annual festival, pitching in at the hockey rink, or a picnic. People who work together in a common pursuit are more likely to get along respectfully, even where opinions differ.

Limiting and effectively responding to harassment and threatening behaviour starts with good governance. Even the best of efforts will not prevent it entirely. Create a plan to deal with such behaviour as it may arise, and stick to it.

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