Forging the Path to RESPONSIBLE CONDUCT In Your Local Government

WORKING GROUP ON RESPONSIBLE CONDUCT

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UBCM Union of BC Municipalities

LGMA

BRITISH COLUMBIA

THANK YOU TO ALL PROJECT PARTICIPANTS

The Working Group on Responsible Conduct is a joint initiative of the B.C. Ministry of Municipal Affairs, the Local Government Management Association of British Columbia, and the Union of British Columbia Municipalities.

We sincerely appreciate the valuable contributions of all those who assisted the Working Group on Responsible Conduct in developing this guide, *Forging the Path to Responsible Conduct in Your Local Government*.

The project greatly benefited from the support and involvement of these participants, including B.C. local government elected and staff officials, and the legal experts who advise them. These individuals, through their willingness to share their experiences, were absolutely central in showing us how leading local governments can manage conduct issues within the current B.C context. They are truly forging the path to responsible conduct in their communities. It is our hope that in passing on the wisdom built through those experiences, the guide will provide others with practical ideas to allow them to to do the same.

INTRODUCTION

About this Guide

How local government elected officials conduct themselves matters. Conduct is central to governance and when conduct issues emerge, especially if allowed to fester, good governance can be impaired and public trust eroded. Yet dealing with conduct issues can sometimes be overwhelming and governing in the face of them enormously challenging.

The guide presents practical ways to help prevent conduct issues and to deal with them if they do arise. The guide does not represent legal advice, nor is it a substitute for that advice.

Guide Development

This guide was developed by the Working Group on Responsible Conduct (WGRC), a joint initiative by the Union of British Columbia Municipalities, the Local Government Management Association of British Columbia (LGMA), and the B.C. Ministry of Municipal Affairs. The staff-level Working Group undertakes collaborative research and policy work on the issue of responsible conduct of local government elected officials.

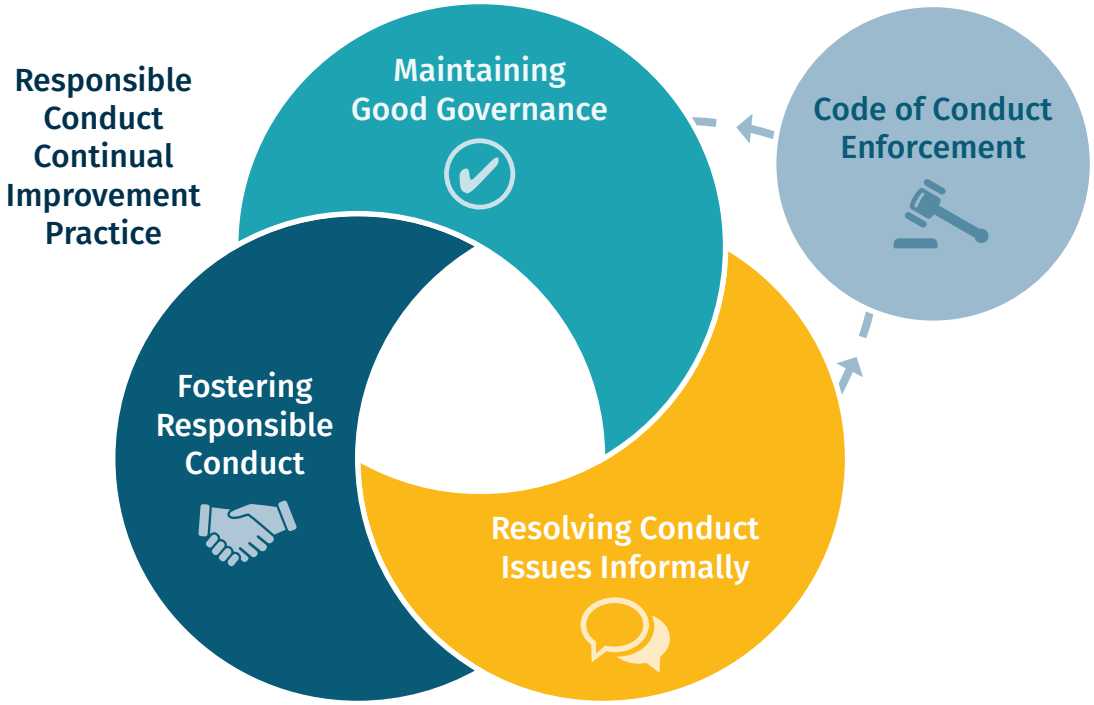
This guide builds on, and should be read in conjunction with, three previous WGRC publications: *Foundational Principles of Responsible Conduct for BC's Local Governments* along with *Getting Started on a Code of Conduct for Your Council/Board: Model Code of Conduct* and its *Companion Guide*.

The guide was informed by WGRC research, a review of a sample of B.C. local government codes of conduct that include enforcement provisions, and discussions with local government elected and staff officials and legal experts experienced in responsible conduct matters.

Our key take-away from those discussions was: **It's worth putting a lot of effort into prevention and informal resolution of conduct issues. There are enforcement processes if that doesn't work, but in practice, local governments are finding more success with informal methods.**

Watch for highlighted leading practice tips and quotes from trusted advisers that came to the WGRC during our research.

All resources noted in the chapters are linked in Chapter 6, Resources.



Guide Organization

The guide is organized around two central concepts:

- A continuous improvement practice to foster responsible conduct, maintain good governance, and resolve conduct issues informally; and
- Where it is needed, code of conduct enforcement.

The three continuous improvement topics do not represent a linear process, with a local government moving sequentially through each; instead, they are intertwined with activities in each undertaken iteratively, shaping an organizational culture of trust and respect, where participants work effectively together and councils and boards govern well.

There is a well-established body of practice in these areas, and the guide draws on this to provide examples, leading practice tips and links to further information and resources.

With these measures in place, conduct issues can be avoided, or managed early on, reducing the need for enforcement of a code of conduct. However, even within this context, there may occasionally be a need for a local government to enforce its code of conduct.

Articulating an enforcement process within a code of conduct is a relatively new practice in B.C. The guide draws on examples from leading local governments that have included enforcement in their codes to highlight both current practice and things a local government may wish to consider as it begins to design its own enforcement process.

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See Chapter 6, Resources for links to the publications and other resources referenced throughout this guide.

CHAPTER 1

Fostering Responsible Conduct

What Kind of Conduct is Problematic and Why?

Some expectations of good conduct will be clear to most, often because these are set out in law: things like a person not voting on something if they have a financial interest in it, keeping confidential information confidential, not discriminating against a person,[1] and not making slanderous statements.

Other behaviours – like respecting others at meetings or not criticizing colleagues, staff or members of the public on social media – may be less obvious to some; perhaps council or board members don't even agree on what conduct they expect of each other in these areas. For example, some may think that there is nothing wrong with dismissing or belittling another in a debate because they have different backgrounds, experiences, or cultural values than you, or because their politics or points of view on a matter are different than yours.

Some may think that shouting at the chair is an acceptable tactic to get their point across, or that intimidating staff when they won't give you what you want is a way to get things done. However, all of these kinds of conduct can be destructive.

Even subtle actions can become pervasive, escalate over time, erode relationships and impair the ability of the local government to fulfill its most basic responsibilities to make collective decisions in the interests of the community. Electors have entrusted elected officials, acting collectively as the local government's governing body, to govern in the public interest; any conduct that gets in the way of that is a problem.

1 The B.C. Human Rights Code prohibits certain activities and conduct that discriminate against a person or group or class of persons because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or that group or class of persons. See Chapter 6, Resources for a link to the legislation.

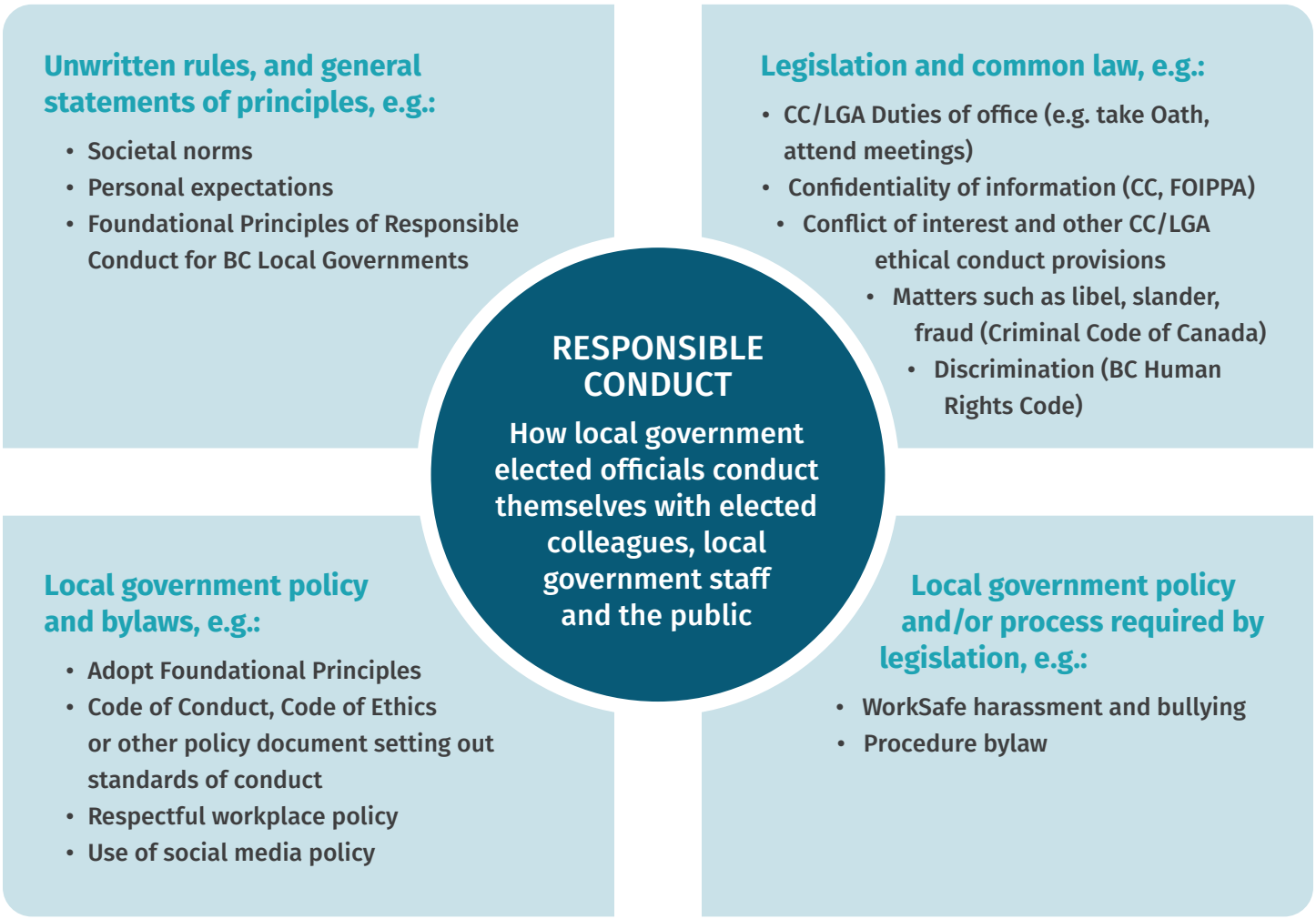
What is Responsible Conduct?

In the context of this guide, responsible conduct refers to how local government elected officials conduct themselves with their elected colleagues, with staff and with the public. It is grounded in conducting oneself according to principles such as integrity, accountability, respect, and leadership and collaboration, in a way that furthers a local government's ability to provide good governance to its community.

As illustrated in the graphic, conduct expectations can take the form of unwritten norms, written principles, or local, provincial or federal policy or law.

Much of this guide is focused on local government policy and bylaws, such as a local government code of conduct because:

- Preventing conduct issues is difficult when relying on unwritten rules or general statements of principle developed by others and not endorsed by the local government; and
- Considerable guidance is provided elsewhere for conduct that is governed by federal or provincial law; this guide touches on that aspect but directs the reader to external resources for more information.



How Can We Build Responsible Conduct in Our Local Government?

Adopt a Code of Conduct or Other Conduct Policy

Avoiding conduct issues when rules are unwritten is hard because people don't know what is acceptable. Building a shared understanding of expected conduct and setting that out in a code of conduct will make expectations clearer and is a good way to prevent issues.

Codes of conduct provide conduct standards that supplement conduct already required legislatively (e.g., conflict of interest rules, confidentiality requirements, prohibitions on discrimination) or through policy (e.g., council/board-staff relations) to ensure that the full range of expected conduct is clear. Existing legislation and/or local government policies will need to be considered as a local government develops its code to ensure the code is not inconsistent with existing conduct requirements.

Many codes also include details about how alleged contraventions will be dealt with. This can be a preventative measure because it adds clarity about how an individual elected official will be held accountable for their conduct.

Adoption of a code of conduct is strongly recommended – as is the inclusion of an enforcement process to address alleged contraventions, and a range of sanctions that may be imposed by the Council or Board if a contravention is determined. Ideally, initiate discussions towards adoption of the code before conduct issues emerge.

If you already have a code, use Chapter 4, Essentials of Code of Conduct Enforcement, to support development of an enforcement process. If you haven't yet adopted a code, start with two previous WGRC publications (*Model Code of Conduct* and its *Companion Guide*). Both are linked in Chapter 6, Resources.

Align Policies, Procedures and Practices

Procedure bylaws are an important tool in supporting conduct in meetings and Council and Board decision-making. *The Procedure Guide: For B.C.'s Local Governments* by the LGMA and B.C. Ministry of Municipal Affairs aims to help local governments proactively consider and change their procedure bylaw to help address challenging situations and to support responsible conduct.

Local governments have many other policy and procedural tools that can be used to support responsible conduct, including such things as (see links to samples in Chapter 6, Resources):

- Oath of office
- Social media policies
- Information-sharing practices
- Conduct expectations for members of the public
- Checklists and educational tools

LEADING PRACTICE TIPS

It's easiest to have discussions about creating a code of conduct before conduct issues emerge. If your Council or Board is struggling to have those discussions, try starting incrementally and adopting the WGRC's Foundational Principles of Responsible Conduct as a statement of the Council/Board's commitment to those principles.

LEADING PRACTICE TIPS

Try a visual or verbal reminder of expected conduct at meetings, like printing the WGRC's Foundational Principles of Responsible Conduct on a placemat for every Council or Board member's place at the table or stating the oath of office at the beginning of every meeting.

Elected Official Leadership, Knowledge-sharing, Skills Development and Support

Leadership development can play a significant role in maintaining responsible conduct and good governance.

For example, respectful dialogue at a Council or Board meeting is more likely when all members understand that decisions are made collectively and not by the mayor/chair, electoral area director, or any other individual elected official. Additionally, trust and respect can be improved through understanding one's role and how it fits with the roles of others, building cultural humility,[2] communicating in a way that respects people's inherent dignity, and developing an appreciation of the value of different perspectives.

Building a clear understanding about conduct rules and expectations early in a term – including those that are legislated (e.g., conflict of interest) and those that are established through codes of conduct – can be a key factor in elected officials meeting those expectations. In addition, compliance can be improved and conduct issues avoided if a local government provides its elected officials with trusted advice in response to their concerns about how they can comply with conduct rules.

Similarly, skill development in areas like effective communication, chairing a meeting, dispute resolution, and strategic thinking can support both good governance and responsible conduct. Leadership and skill development should be a priority for Councils and Boards as well as for both newly elected and veteran elected officials across B.C.

> For participants in the decision-making process, shared power and decision-making puts a premium on leadership skills that help one's fellow leaders find common ground.
>
> *(From the Institute for Local Government webpage article Decision Making in the Collective Interest)*

2 "Cultural humility is a process of self-reflection to understand personal and systemic biases and to develop and maintain respectful processes and relationships based on mutual trust. Cultural humility involves humbly acknowledging oneself as a learner when it comes to understanding another's experience." First Nations Health Authority. See Chapter 6, Resources for links and more information.

LEADING PRACTICE TIPS

Participate in the Local Government Leadership Academy's Annual Forum, which enables elected officials to learn formally from speakers, and informally through networking with colleagues from around the province. Relationships forged here can have ongoing benefit, as elected officials find they are not alone, and gain confidence to share ideas and seek advice from others who understand the challenges they may be facing.

Consider additional education, including:

- Scenario-based training where participants work through difficult situations or areas of conflict and practice skills to effectively deal with them;
- Training to increase understanding of the history and experiences of people who make up the community and avoid stereotypes and discrimination;
- Confidential coaching or mentoring for individual members of the Council or Board; or
- Pre-election candidate orientation, so individuals considering running for office know what they're getting into.

Consider developing a process to involve your Council or Board in determining their leadership and skills development priorities.

FOOD FOR THOUGHT

- How well are we prepared to deal with conduct issues if they begin to emerge?
- Do we have a code of conduct? If not, why not?
- Does our code include a process to address alleged contraventions? If not, why not?
- What issues are emerging that aren't dealt with under our code? Do we have policies to deal with them (e.g., social media policy)? Can we strengthen compliance by referring to these policies in our code?
- Have we allocated funding for elected officials' leadership development, skills building and support in our budget? Do elected officials know this is available? How do we know what support and skills building are important to members individually and collectively?
- Where can our elected officials go if they have questions about their conduct or to get advice about how they can comply with conduct rules? Does that advice include both legislated rules like conflict of interest and duty to respect confidentiality, as well as our code of conduct?

CLICK HERE for links to resources referenced in this chapter.

CHAPTER 2

Maintaining Good Governance

Working Together Before, During, After – and Despite – Conduct issues

A Council or Board is entrusted by electors to govern in the best interests of the community and it can only do this as a collective. Individual members cannot independently govern or make decisions affecting their community, but they can participate and contribute towards collective decision-making, and collaborative good governance responsibilities.

Given this, Boards and Councils need to find ways to work together; to effectively cooperate, collaborate, and make decisions, regardless of things like conduct issues, strained relationships or conflicting views.

> "We need to stop pretending that good governance is an accident; if you're not doing this proactively, you'll be doing it reactively."
>
> *(A B.C. local government consultant, facilitator and lawyer)*

Whose Job is it Anyway?

Everyone has a role to play in responsible conduct and good governance.

- **Every elected official** is accountable for their own conduct and must make sure they are always acting ethically and responsibly.
- **The mayor or chair** provides leadership and can lead by example, maintain order at meetings and propose policy changes, but they cannot, on their own, ensure the Council or Board operates as it should.
- **All Council or Board members** influence how the collective works, and in the interest of serving their community, all can take steps to work effectively together, including speaking up when problems arise.
- **Staff** provide professional advice to the Council or Board and carry out its decisions in an effective, efficient and non-partisan manner. The relationship between elected and staff officials is intertwined, so it is vital for both to understand and respect one another's roles. Developing effective lines of communication, and trustful, respectful relationships between elected and staff officials supports good governance, even under challenging circumstances. The CAO is your one employee and your ally to help elected officials be successful.

"Local officials are grappling with difficult policy challenges... A goal is to create a culture of tolerance for differing points of view that credits everyone with having the best interests of the community in mind."

(From the Institute for Local Government document Tips for Promoting Civility in Public Meetings)

Enhance Collaboration: Embrace Diverse Ideas and Conflicting Views

Councils and Boards that welcome healthy debate, diverse ideas and conflicting views make better decisions. Different lived experiences and fresh perspectives can provide valuable insights, uncover opportunities and bring out solutions that hadn't previously been considered but are better for the community.

Productive conflict[3] – that is, conflict that leads to productive results, such as better decisions – can be a significant positive influence on good governance. Productive conflict is an open exchange of conflicting or differing ideas in which parties feel equally heard, respected and unafraid to voice dissenting opinions as they work toward a mutually comfortable solution.

On the other hand, unproductive conflict – characterized by frequent, unresolved arguments – can leave individuals feeling angry and frustrated, bringing about conduct issues and making good governance more difficult.

LEADING PRACTICE TIPS

Provide a way for elected officials to build informal relationships beyond the Council or Board table (it can be as easy as sharing a meal together).

The next time a contentious issue is under discussion, try a "no rebuttal round table session" where every member has an opportunity to state their position on the issue and explain its impact from their perspective, and no member can rebut someone else's statement (when it is their turn, they must speak only to their personal perspectives).

(Details of this process, including its successes, are provided in the Enhancing Collaboration in British Columbia's Regional Districts report, found in Chapter 6, Resources.)

3 From *Unproductive Conflict vs. Productive Conflict*. See Chapter 6, Resources for link and details.

Individual strategies for productive conflict include:

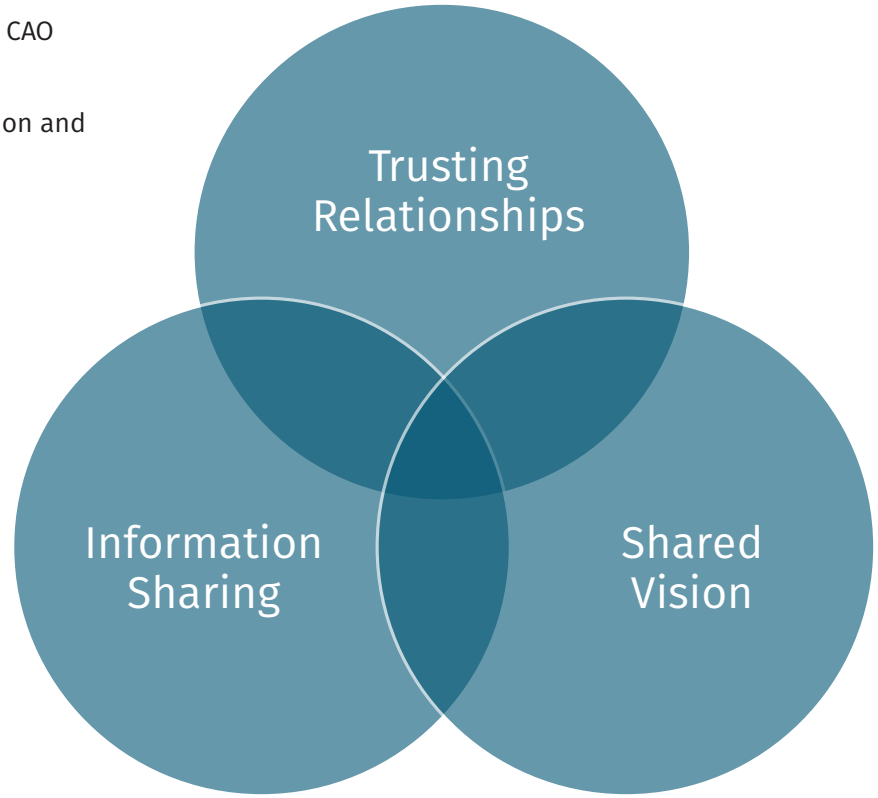
- Separating the person from the issue;
- Moving the discussion from positions to interests; and
- Seeking win-win scenarios, where solutions can meet key mutual interests.

Developing these skills can be a catalyst to move from unproductive conflict, with parties entrenched in their positions, to a place where conflicting views become a pathway to better solutions.

Focusing on trusting relationships, strong information sharing practices and a shared vision can equip a local government to ensure conflict remains productive and improve collaboration. For example:[4]

- Organizing information seminars on complex issues;
- Maintaining a strong chair/mayor and CAO leadership team; and
- Preventing the spread of misinformation and establishing a common set of facts.

> "Regional issues may be more obscure than in a municipality and it is important to give all directors, from municipalities and electoral areas, the support they need to appreciate their role in creating a regional vision."
>
> *(A B.C. regional district CAO)*



4 Examples from *Enhancing Collaboration in British Columbia's Regional Districts*. See Chapter 6, Resources for link and details.

Contain Conduct Issues: Use Policy/ Procedural Tools to Manage Meetings and Conduct, and Support Good Governance

Simply having policy and procedural tools in place are not enough; they will only be effective in managing conduct if they are used.

If the procedure bylaw supports responsible conduct or a code of conduct is in place, the mayor or chair can remind an elected official of their obligation to comply in real time when a conduct incident occurs at a meeting. Alternately, Councillors or Directors can raise a point of order in relation to the conduct.

If policy levers are not sufficient to support responsible conduct and good governance, any Council or Board member can propose an agenda item for a future meeting to discuss adoption or amendment of the needed policy.

Some examples that illustrate the range of policy levers that could be engaged are shown in the 'Align Policies, Procedures and Practices' section in the previous chapter.

> "You might not be able to change behaviour, but you can change the local government's practices and system framework around it."
>
> *(A B.C. local government legal advisor)*

LEADING PRACTICE TIPS

Using a procedure bylaw that specifically addresses conduct expectations, in combination with handbooks like *Robert's Rules of Order*, and *Local Government Act* and *Community Charter* provisions like the ability to expel someone acting improperly from a meeting, can be powerful tools to help contain conduct issues that arise during a meeting.

Developing a checklist for the Council or Board to evaluate its own effectiveness can be a good starting point for a check-in discussion. See Chapter 6, Resources for some sample checklists that can be customized.

Council/Board Check-ins: Find Ways to Work More Effectively Together

A Council or Board discussion – or check-in – about how to work together more effectively can provide a useful forum to identify and address areas of concern, including conduct, conflict, or collective 'blind-spots' that get in the way of effective discussion and decision-making. This can help to build trusting relationships as well as identify policy or procedural changes to overcome systemic barriers, and/or learning topics that could support both the collective and its individual participants to become more effective.

When negative conflict or conduct issues are present, these check-ins can help to clear the air, de-escalate unproductive conflict, improve communication, and help the Council or Board refocus on improving working relationships and removing barriers to its effectiveness.

These discussions can be challenging to start if a Council or Board is facing significant stress. Consider initiating them early in the term when tensions aren't high, and continue them on a regular basis after that.

Alternatively, some of the discussion can be woven into other processes, such as those in the graphic. Successes from these early discussions will reinforce the benefit of open dialogue aimed at improving relationships, and may help to create a willingness to participate in future dedicated check-ins.

Success of a dedicated check-in may depend on ensuring elected officials feel comfortable exploring their perspectives on barriers to their collective success without fear of reprisal, so that they can consider new approaches when current patterns of engaging with each other are not working.

In addition to considering external professional facilitation, Councils and Boards may wish to consider undertaking these sessions in the absence of the public, which can help to facilitate the open, honest discussion that will be needed to explore these issues.[5]

5 If you are discussing these matters in the absence of the public, make sure you don't also move towards making decisions, which you would need to do in an open meeting. See Chapter 6, Resources for useful resources from the Ministry of Municipal Affairs and the B.C. Ombudsperson.

LEADING PRACTICE TIPS

If you're getting stuck finding ways to work better together, especially if interpersonal dynamics are regularly getting in the way of making decisions, an external professional might be able to help. The combination of professional expertise and independence from the organization provides an opportunity for these professionals to bring new perspectives to the table and suggest approaches that may not have been considered before.

FOOD FOR THOUGHT

- Is our Council or Board governing well? If we were to get a grade on that, what would it be? What's getting in the way? Do we regularly have discussions about this? Have we made provision for regular check-ins and getting some outside help if we need it?
- What enhancements could be made to our policies or procedures to avoid conduct issues? Do we have specific issues that seem to be evolving that should be a priority (e.g., release of confidential information)? What can we put in place that would resolve these issues (e.g., does everyone understand their legal obligations, are there changes to our information-sharing practices that could help, and is this something the Council/Board should discuss in a check-in)?
- What kinds of things are causing tension at the Council/Board table (e.g., whether something discussed in a closed meeting should have been in an open meeting; whether or not a member is in a conflict of interest in a particular matter; lack of respect because of such things as different political views, backgrounds, experience, age, gender identity or sexual orientation)? Would training and leadership development help? Is additional information needed, either generally or on a case-by-case basis? Are there tips or tools that could be developed to support members? Is this something the Council/Board should discuss in a check-in?
- As an individual, self-awareness is key. Ask yourself: Am I part of the problem? Am I contributing to dysfunction or to good governance? Do I make assumptions about other Council or Board members without trying to understand their experiences or perspectives? What steps can I take to help the Board or Council work better together? What support do I need to do that? How can I help to ensure our conflict is productive?

> "If local governments did less in closed meetings, there would be fewer conduct issues."
>
> *(A B.C. local government legal advisor)*

CLICK HERE for links to resources referenced in this chapter.

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.

CHAPTER 4

Essentials of Code of Conduct Enforcement

When to Consider Enforcement

In most cases local governments find it is worth exerting considerable effort towards informal resolution, and considering enforcement only if those efforts prove unsuccessful. Conduct is often about relationships, and with the collective governance model of local governments, good working relations are critical to good governance. Informal resolution can help to maintain relationships. Enforcement processes – being lengthy, protracted affairs that sometimes pit colleagues against each other – can serve to erode relationships as well as public trust in the process and the local government.

For this reason, local governments generally find informal resolution more effective, and are more satisfied with its outcomes (see Chapter 3, 'Resolving Conduct Issues Informally' for details). If informal resolution is not attainable, local governments may wish to consider enforcement.

A local government can hold its elected officials accountable for their conduct through an enforcement process articulated within its code of conduct, so long as that process is fair. This chapter focuses on characteristics of these code of conduct enforcement processes, and what to consider in their development, but first, it points to enforcement approaches outside of a code of conduct that may be applicable.

Overview of Other Enforcement Approaches

Specific Statutory Processes

Various federal or provincial laws provide specific accountability or enforcement processes for certain conduct matters, for example:

- **Incidents and complaints regarding bullying and harassment of an employee and/or other conduct that affects 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.
- **Application to court for a declaration of disqualification and forfeiture of financial gain for contraventions of conflict of interest and other ethical conduct requirements:** The *Community Charter, Local Government Act* and related legislation provide rules for conflicts of interest, inside influence, outside influence, gifts, contracts and insider information. Contraventions result in disqualifications and may result in forfeiture of any financial gain that resulted. Electors or the local government may apply to the Supreme Court for a declaration of disqualification and for an order to forfeit financial gain.
- **Prosecution of an offence:** Some contraventions of legal requirements are offences which may, at the discretion of the provincial Crown Counsel, be prosecuted in court, and convictions may result in fines and/or imprisonment (e.g., unauthorized disclosure of personal information under the *Freedom of Information and Protection of Privacy Act*, and unauthorized disclosure of certain confidential information under the *Community Charter, Local Government Act* and related statutes).

LEADING PRACTICE TIPS

This list is not exhaustive. There are numerous other federal or provincial laws that provide enforcement processes (e.g., Court-based prosecutions under the Criminal Code of Canada for contravention of laws related to libel or slander; Human Rights Tribunal determination of discrimination complaints under the BC Human Rights Code). Local governments will want to familiarize themselves with all applicable legislation before initiating a local government enforcement process.

Local Government Process to Decide on a Specific Alleged Conduct Contravention and Impose Related Sanctions

The courts have found that a local government has an ability to control conduct of its members in some circumstances, and local governments have relied on this to impose sanctions for contraventions on a case-by-case basis.

These case-by-case processes are similar to enforcement processes articulated within a code of conduct: both can result in sanctions; both must be undertaken using a high standard of fairness; and both are complex from a legal perspective.

However, an important distinction between them relates to whether the process is established in advance (as it is for processes articulated within a code of conduct), or whether it is developed each time it is needed (as it is for case-by-case processes).

LEADING PRACTICE TIPS

Before getting into a situation where misconduct of a Council or Board member becomes an issue, develop a code of conduct to set standards of conduct, and include within the code the process that will be used to deal with alleged contraventions.

An enforcement process articulated within a code of conduct has several advantages over a case-by-case enforcement process, as illustrated in the graphic, and is strongly recommended.

ADVANTAGES OF CODE OF CONDUCT ENFORCEMENT

ENHANCED CERTAINTY AND TRANSPARENCY IN THE PROCESS

- Everyone understands the process by which officials will be held accountable for their conduct
- Improved public confidence

IMPROVED COMPLIANCE

- Those who are subject to a code may be more likely to comply if there are known consequences for contraventions

ADMINISTRATIVE EFFICIENCIES

- Once the process is developed, using it for a subsequent contravention allegations will eliminate the need to “reinvent the wheel” each time an allegation is made

ENHANCED FAIRNESS

- Consistent use of the same process helps to ensure everyone is treated fairly
- Can help to overcome perceptions of bias in decisions about the process itself

Obtaining Legal, Law Enforcement and Other Advice About Enforcement Processes

Conduct enforcement is a complex and evolving area of law; while this guide is intended to help support local government decision-making in relation to conduct matters, it does not provide legal advice, and it is not a substitute for that advice.

Code of conduct enforcement does not replace other enforcement approaches that may be available or required, such as those described above. As a local government begins to explore what enforcement processes are available for a particular conduct contravention, it may want to consider discussing the matter with their legal advisors and, in some circumstances, with law enforcement or other agencies (e.g., WorkSafe BC for matters in which the conduct affects an employee; Office of the Human Rights Commissioner for matters that may be discriminatory).

Code of conduct enforcement is a complex process and its outcomes can be significant, so it is important for local governments to give considerable thought to how to ensure its process is sound. Articulating an enforcement process within a code of conduct is also a relatively new practice in B.C. and largely untested in the courts, which represents some legal uncertainties. These factors give rise to a critical need to seek legal advice on details of the process as it is being designed and when it is implemented.

This guide should not be used as a template for designing a code enforcement process, because some elements (e.g., what is an appropriate standard of fairness; what would comply with open and closed meeting rules; how to ensure that informal processes do not jeopardize a subsequent enforcement process; what complaints can be dismissed; what sanctions may be imposed) can vary considerably depending on specific circumstances. The considerations and current practice set out in the guide are intended to support a local government's initial thinking about these processes and as a starting point for it to have an informed discussion with its legal advisors about how to design an enforcement process that will meet its unique circumstances and needs.

Code of Conduct Enforcement: Overarching Considerations

Ensuring a Fair Process

Code of conduct enforcement processes have two stages: determining if there has been a contravention (e.g., taking complaints; conducting investigations; making determinations), and if so, making decisions on what, if any, sanctions to impose (e.g., recommendations from investigation and/or a Council/Board decision on sanctions). Fair process in both of these stages is critical.

A local government is obligated to ensure its decision processes are fair, particularly where the decision affects the interests of a specific individual.

Given the significance of these processes to elected officials, local governments need to consider how they can meet a high standard of fairness, including finding ways to ensure throughout the process that:

- The person affected by a decision is able to participate in the process before the decision is made (e.g., is notified of allegations, findings and recommendations and provided all documents and information that will be relied on by decision-makers, is provided with an opportunity to respond and sufficient time to prepare, and is given an opportunity to be represented by legal counsel at the appropriate stage);
- The decision-makers are open-minded (i.e., they have neither a conflict of interest nor a predetermined bias); and
- The decision is based on relevant evidence and, where applicable, the justification for the decision is given to the person(s) affected by it.

LEADING PRACTICE TIPS

Build timelines into the various steps of your enforcement process. This will enhance fairness, and can avoid eroding relationships further as the process drags on.

Build an informal resolution component into your code of conduct enforcement process.

Consider carefully managing the extent to which staff are involved in enforcement processes. Given the nature of these processes, critical staff-elected official working relationships can be significantly affected.

Consider specifically referring to legislated confidentiality requirements in your code of conduct, so members know how they will be held accountable for contraventions of those provisions.

Ensuring the Investigator has Sufficient Independence, Expertise and Authority

It can be extremely challenging to ensure the person conducting an investigation is free from bias or the perception of bias when investigating a colleague (i.e., where a Council/Board or one of its committees is investigating the conduct of a Council/Board member) or when there is an employer/employee relationship (e.g., where a CAO is investigating the conduct of a Council or Board member).

In order to remove this perception of bias, improve fairness, and enhance public trust in the process, investigations are most often assigned to an independent third party.

Balancing Transparency and Confidentiality

Local government legislation provides rules around what must be dealt with in open meetings, and what may or must be dealt with in closed meetings. The *Freedom of Information and Protection of Privacy Act* provide rights of access to certain records, as well as a requirement to protect personal information. A local government will need to ensure compliance with these laws as it develops and implements its enforcement processes.

Within these legislated parameters, there may be some discretion for local governments to make choices about whether to conduct some parts of the enforcement process in open or not. Where there is sufficient discretion, local governments may wish to consider where confidentiality is needed to support a fair process, where transparency is needed to enhance public confidence in the process, and how to balance these two objectives in each step of the process and overall.

For example, to protect the privacy of the individuals involved and ensure investigations are free from bias, most local governments maintain confidentiality throughout the complaint and investigation processes (e.g., notifying only those involved and requiring them to maintain confidentiality). Once the investigation is complete, and if it finds there was a contravention, the balance can sometimes shift towards transparency by providing for consideration of, and decisions on, investigators' reports and sanctions in an open Council or Board meeting. This is typically because the legislation requires this (i.e., the subject matter does not meet the criteria for discussion in a closed meeting) and/or the local government considers the public interest is best served by making these decisions transparently.

Matters of Cost, Capacity, Efficiency and Effectiveness

Decisions around process will have an impact on financial and human resource capacity. For example, decisions about who can make a complaint (e.g., elected officials, staff or the public) can significantly affect the volume of complaints and investigations. This will affect resources that will need to be dedicated to the enforcement process, since investigations can be time consuming and require people with highly specialized skills.

These considerations can help to sharpen the focus on various design elements and implementation strategies, not just for enforcement but for all elements of building and restoring responsible conduct. In addition, they may encourage reconsideration of alternative measures (e.g., prevention activities or informal resolution of conduct issues) that may have been previously discarded because of their associated costs (yet may be much less costly – both financially and in relationship impacts – than code of conduct enforcement).

Code of Conduct Enforcement: Process Steps, Current Practice and Considerations

The inclusion of details of how alleged contraventions will be addressed is a recent trend in B.C. local government codes of conduct. Where processes are articulated, they tend to consist of a number of distinct steps, within which there are both some common elements and some variation.

The following tables are snapshots of these provisions taken from a small sample of current B.C. codes. Readers are cautioned that this does not represent the full extent of existing practice, but rather an overview intended to be generally representative of the range of enforcement approaches articulated currently in B.C. codes of conduct.

As noted earlier, including enforcement provisions in codes of conduct is an emerging area still largely untested in the courts.

The examples provided here are not provided as templates but rather as a starting point; each local government needs to consider its own circumstances and seek its own legal advice as it develops its processes and sanctions.

It is critical that local governments exercise a high standard of fairness in these processes. Some jurisdictions choose to articulate this extensively in their code in order to provide clarity and certainty, while others do not articulate this in their code, but instead provide fair process as a matter of practice, allowing some flexibility to adapt to specific circumstances. Do not assume that codes that lack explicit fair process provisions mean that the jurisdiction is not practicing fair process. The choice is not whether or not to provide a fair process, but rather how and where to define it.

INITIATION: What triggers the process?

How is the enforcement process initiated and who can make a complaint?	The process is typically initiated by a complaint, and complaints are allowed from any member of the Council or Board. In some cases, committee members and/or staff may also make a complaint, and in a few cases, complaints are accepted from "any person," which would include all of the above as well as members of the public.
How is the complaint made, and what must it contain?	Typically, the complaint must be in writing, and most require these to be signed and dated by the complainant. There are varying degrees of specificity in the detail to be provided, with some codes saying nothing about this, and others requiring more specifics (e.g., detailed description of the conduct, witnesses and supporting documents).
To whom is the complaint made?	Most are delivered to the mayor/chair and/or a staff official (e.g. CAO), with provision that if the mayor/chair is involved, delivery is to the acting mayor/chair. In a few cases, delivery is to mayor and Council/chair and Board, and in some cases, complaints go to an investigator if one has been appointed.

Considerations:

- **Fair process/cost and capacity:** Fairness would dictate that at a minimum, anyone subject to a code of conduct should be allowed to make a complaint. From a public trust perspective, consideration could be given to allowing complaints from anyone impacted by the conduct (e.g., members of the public who are impacted by the erosion of good governance resulting from the conduct). The volume, and perhaps the complexity, of complaints tends to increase as the number of potential complainants increases, which will have cost and capacity impacts.
- **Fair process:** Consider timelines for making a complaint. Existing practice examples: some codes don't explicitly provide a deadline, while others tie a deadline to the breach (e.g., as soon as possible after, or within six months).
- **Fair process:** Consider how much detail to require in a complaint. Part of a fair process is enabling the respondent to respond, which would be difficult without sufficient detail as to the allegation. To be clear about process, consider explicitly stating that the respondent is to be provided notice of the allegations and an opportunity to respond before a decision to proceed to an investigation is made, perhaps with some deadlines. Existing practice examples: some codes do not provide this explicitly, while others do and provide deadlines (e.g. must respond within 14 days of notification).
- **Confidentiality/transparency:** Consider measures to ensure confidentiality until an investigation of the allegations is complete.

INFORMAL RESOLUTION: What informal resolution processes are available?

When does informal resolution occur and how is it triggered?	Most codes explicitly provide for informal resolution. Some create an informal complaint process, and encourage complainants and respondents to try informal resolution before a formal complaint is made. Some other codes encourage an attempt at informal resolution after a formal complaint has been submitted and before the complaint review process; in these cases, the CAO and/or mayor/chair become involved in that informal resolution step.
What is the informal resolution process?	Some codes that provide for informal resolution are silent as to the process. However, most others call for the complainant to address the issue directly with the respondent to encourage compliance, and/or to request the assistance of the mayor/chair to attempt to resolve the issue. In one case, a senior staff official could be called on to assist the complainant in that process, and third-party mediation is an option if these steps aren't successful in reaching resolution.
What are the timelines and fair process provisions?	There is no deadline for informal resolution where it occurs prior to receiving a formal complaint, because the de facto deadline is when a formal complaint is made. Most codes that encourage informal resolution after a formal complaint is made set a 30-day deadline to attempt informal resolution prior to an investigator being appointed. Most do not have specific fair process or transparency/confidentiality provisions for this informal stage. However, in some cases, there are specific provisions for confidentiality, and where mediation is part of the process, legal or other representation for the complainant and respondent are offered for that part of the process.

Considerations:

- **Cost/capacity/efficiency/effectiveness**: Local governments may want to consider encouraging informal resolution because that can be less costly and lead to better outcomes than investigation and sanction processes (see Chapter 3, Resolving Conduct Issues Informally).
- **Confidentiality/transparency:** Consider measures to keep informal resolution processes confidential.

APPOINTMENT OF INVESTIGATOR: Who is appointed to investigate and how are appointments made?

Who is the investigator, who makes the appointment, and on what basis?	In the majority of cases, the investigator is an independent third party, typically appointed by either the mayor/chair, the person acting in their place, or jointly by the mayor/chair and CAO. Exceptions include when the code assigns investigator duties to a position (e.g., senior staff official), or when the investigator is defined as the Council/Board or an individual or body appointed by the Council/Board. In cases where a senior staff official is assigned in the code as investigator, the code also provides for that individual to appoint an independent third party to investigate instead of the senior staff official.
What duties does the investigator perform?	Typically, investigators undertake the complaint review process, investigation and reporting of findings. In at least one case, a senior staff official is responsible for the complaint review process, and the investigator is appointed only after the complaint review process is complete, if needed. In one case, the investigator is assigned a broader range of responsibilities.[6]
What are the timelines and fair process provisions?	Several jurisdictions require the investigator be appointed within 30 days of receipt of a formal complaint (unless the matter is resolved informally within that time frame). See "Who is the Investigator" above for fair process provisions.

Considerations:

- **Fair process/investigator independence, expertise and authority:** Choosing an investigator who is free from bias is critical. This would indicate a need to appoint an independent third party, and/or ensure other mechanisms are in place to protect investigator independence. Assigning an investigation to a senior staff position, such as a CAO, is not recommended for most investigations as it would be very difficult to achieve the needed level of independence, and because the investigation could harm the staff-Council/Board relationship, compromising both the ability of the Council/Board to provide good governance and the CAO's ability to effectively perform their duties. Providing for input from the complainant and respondent on the choice of investigator can help ensure all parties agree the investigator is unbiased and qualified; this effect can be enhanced by provisions that refer to the need for investigators to have professional skills/expertise.
- **Confidentiality/transparency:** The choice of who appoints the investigator (e.g., Council/Board, mayor/chair and/or CAO) may impact when complaint information becomes public, since Council/Board decisions may need to be made in an open meeting.

6 City of Surrey Bylaw 20018 creates an Ethics Commissioner position and assigns a number of roles to the position, including providing advice and delivering training. See link in Chapter 6, Resources.

COMPLAINT-REVIEW PROCESS: How are complaints initially dealt with and by whom?

What is the complaint review process and who carries it out?	If informal resolution is not reached, complaints undergo an initial assessment and are either dismissed or proceed to investigation. Almost always, the investigator is responsible for the initial assessment, although in at least one code of conduct, this role is assigned to a senior staff official.
On what basis can a complaint be dismissed?	Reasons that a complaint may be dismissed are usually provided, but there is some variation on the grounds for dismissal. Many refer to complaints that are frivolous, vexatious and/or not made in good faith. Several also mention complaints that are unfounded, based on insufficient grounds, unlikely to succeed and/or beyond the jurisdiction of the code or other conduct policy.
What is the process if a complaint is dismissed?	Many do not provide a specific process. Where one is provided, there is a requirement to inform the complainant and, in at least one code of conduct, the Council or Board.
What are the timelines and fair process provisions?	Codes don't typically set timelines for this step. Some codes provide that the respondent must be notified and given an opportunity to provide an initial response prior to the complaint review process; of these, a few provide deadlines for the initial response (e.g., within 14 days of notification).

Considerations:

- **Cost, capacity, efficiency, effectiveness:** Local governments will want to consider some form of complaint-review process, to ensure that investigations aren't required when not warranted by the nature of the complaint.
- **Fair process:** Both fair process and public trust can be enhanced by being clear about the types of complaints that can be dismissed, while providing some discretion for investigators to make decisions based on their professional judgement and specific circumstance. Local governments may also want to consider whether to provide some deterrents for vexatious complaints (see Other Enforcement-Related Provisions table).
- **Confidentiality/transparency:** For complaints that are dismissed, local governments will want to consider how to treat the involved parties fairly when making decisions about whether or not to provide notification about the complaint and the reasons it has been dismissed, and the extent of that notification. For complaints that proceed to investigation, fair process would require notification to both the complainant and respondent, and opportunities for the respondent to respond during the investigation (see the Investigation table below).

INVESTIGATION: How are complaints investigated?

What is the purpose of the investigation and how is it conducted?	Investigations tend to be described quite generally (e.g., independent, impartial investigation of complaint; determine the facts, review relevant documents, conduct interviews), which provides considerable room for investigators to use their professional judgement to adapt the investigative process to meet the circumstances. Specific provisions relate to fair process, described below.
What are the timelines?	Some codes do not provide timelines. Where they are provided, timelines can refer to when the investigation begins (e.g., within 10 days, or as quickly as possible), when updates are provided (e.g., updates within 90 days after investigator's appointment) and/or when the investigation finishes (e.g., within 30 days, with extensions possible).
What are the fair process provisions?	Codes typically provide for confidential investigations and require participants to respect that confidentiality. All codes have investigation fair process provisions, that are either general (e.g., investigate in a manner that is fair, timely, confidential and otherwise accords with the principles of due process and natural justice), or more specific (e.g., complainant and respondent are provided notice, and relevant documents, respondents must be given opportunity to respond, and participants may be represented (including legal counsel).

Considerations:

- **Fair process:** Whether or not specific provisions are included in the code, participants must be afforded fair process. Local governments will need to consider how they will provide key fairness elements, like:
  - How respondents will be able to effectively participate, including how and when they will be provided with relevant documents, how and when they can respond (ensuring they are given sufficient time to prepare that response); and when are respondents and potentially others given an opportunity to be represented and by whom; and
  - How to ensure the decision is based on relevant information (e.g., considerations around things like documentation of evidence, findings and decisions).

  In addition, local governments will want to consider how much of this to detail within their code. More detail helps to ensure processes are consistently applied and things don't get missed, but may make the process less flexible and more difficult to adapt to emerging circumstances.

- **Confidentiality/transparency:** Considerations typically relate to how to ensure allegations and evidence remain confidential during the investigation process.

REPORTING FINDINGS: How are investigation findings and recommendations reported and to whom?

What must be in the investigator's report?	Reports must provide investigation findings. In some cases, there is a specific requirement to include findings as to whether there has been a contravention, and/or recommendations on resolution of the complaint.
Can sanctions be recommended if there has been a contravention?	There are two approaches: specific authority for the recommendations of sanctions from among a list of potential sanctions in the code; OR no specific mention of the ability to recommend sanctions, even though the code lists potential sanctions.
Can additional recommendations be made in the report?	A number of codes specifically allow any recommendation an investigator deems appropriate and also specifically provide for a recommendation that the complaint be dismissed.
To whom is the report delivered?	There are two general approaches, with some slight variation: to the Council/Board, with some also provided to a staff official; OR to the mayor/chair (with provision for the acting mayor/chair if that person is involved) with most also being provided to a staff official.
What are the timelines and fair process provisions?	There are few timelines for reporting (see Investigation table above for details). In many cases, there are explicit provisions for reports to be provided to both the complainants and respondents. A few state that the report to the mayor/chair is confidential, and in one case, there is explicit provision that if there is insufficient evidence in an investigation, the investigator reports that finding but there is to be no permanent record of the complaint.

Considerations:

- **Fair process:** Consider how and when the complainant and respondent are informed of the findings of the investigation. Consider whether different approaches are needed if no contravention has been found as opposed to if the findings indicate a contravention.
- **Confidentiality/transparency:** Consider whether the investigator's report is provided confidentially or not. The choice of who receives the investigator's report may impact the extent to which the report is confidential, since if the report is delivered to the Council/Board, this may be in an open meeting. Where reports are not confidential, consider whether some information must be severed to comply with legislated privacy rules. Consider whether different approaches are needed if no contravention has been found as opposed to if the findings indicate a contravention.

FINAL RESOLUTION: What actions can be taken once findings have been reported and by whom?

If the investigator's report goes to mayor/chair, does it also go to Council or Board?	Some codes require the mayor/chair to provide the report, or a summary of it, to the Council/Board, others allow that person to decide whether it should go to the Council/Board, and the remainder do not give direction to the mayor/chair as to whether or not the report should be provided to the Council/Board.
What happens if the investigation finds a contravention?	Some codes state that the decision about whether there was a contravention rests with the Council/Board. Others are less explicit, stating only that the investigator's report must state whether there has been a contravention.
If there was a contravention, who imposes sanctions and what are the parameters around that?	**In no case can an investigator impose sanctions. That decision rests with the Council/Board.** Codes describe what sanctions may be imposed, and in many cases, a Council/Board can choose from among those provided. In some cases, the only sanctions that can be imposed are some or all of those recommended by the investigator. In at least one case, the Council/Board is directed to consider specified factors (e.g., nature or impact of the conduct).
What are the timelines and fair process provisions?	Some codes do not articulate fair process. Others do, including: notification to the respondent prior to Council/Board consideration, stating that the respondent is entitled to respond and given time to prepare response (e.g., two weeks), stating that the respondent is entitled to be represented, including by legal counsel (some have indemnification; see 'Other Enforcement-related Provisions' table below). Some codes provide for Council/Board consideration in open meetings, while others provide for closed meetings for this.

Considerations:

- **Fair process:** Whether or not specific provisions are included in the code, participants must be afforded fair process. Local governments will need to consider how they will provide key fairness elements and how much to detail this within their code. **Refer to the fair process discussion in the 'Investigation' table above, which is relevant for this step also.** In addition, consider how to ensure an unbiased decision on sanctions. Some local governments find that limiting Council/Board discretion (e.g. may only impose sanctions recommended by investigator, or must consider specific factors) can help to reduce the potential for bias and/or ensure the decision is based on relevant information.
- **Confidentiality/transparency:** Consider relevant meeting rules and the nature of the matter. If these matters are dealt with in open meetings, consider whether some personal information should be severed; if dealt with in closed meetings, consider when and how the respondent is informed of decisions, and when and to what extent information is made available to the public (as a void of information can ultimately be filled by misinformation). Consider also whether different approaches are needed if no contravention has been found as opposed to if the findings indicate a contravention.

OTHER ENFORCEMENT-RELATED PROVISIONS: A sample of other key enforcement provisions that may be included in a code.

What enforcement provisions are there for different groups that are subject to a code?	Many codes apply only to members of the Council/Board; some also include committee members and/or staff. Where these other groups are included, codes tend to modify enforcement provisions (e.g., who deals with complaints and how this is done; what sanctions may be imposed) for each group.
Do codes provide for reimbursement of legal costs for a person involved in an enforcement process?	Some codes make provisions for reimbursement of a respondent's legal costs under certain circumstances, and with certain limits (e.g., if the person did not act in a dishonest, grossly negligent or malicious way; for the first occurrence, but not subsequently unless agreed in advance; upon request; only reasonable costs are reimbursed, sometimes with specified dollar limits).
What are the responsibilities of persons subject to the code?	Most codes require that members refrain from discussing allegations at open meetings until after investigations and Council/Board decisions on them. Some codes require that members endeavour to resolve disputes in good faith, cooperate with informal resolution and/or not obstruct the Council/Board in investigations. Some also require that members not act or threaten reprisal/retaliation against involved persons (i.e., complainant, respondent, witness, staff). In at least one case, for complaints that are vexatious, malicious or in bad faith, complainants are subject to disciplinary action, including sanctions in the code.

Considerations:

- **When code applies to committee members and/or staff:** All processes must be fair, and all will need to consider the confidentiality/transparency balance, but how these are applied is often different for each group. There may also be different legal or contractual requirements that would guide enforcement processes that must be considered (particularly with respect to staff).
- **Reimbursement:** Fairness can be enhanced by providing clear policy in the code, rather than dealing with reimbursement of legal costs on a case-by-case basis. In considering the potential to offer reimbursement of legal costs and limitations around that, local governments may wish to consider whether their indemnification policy could inadvertently act as a deterrent to trying to work things out informally.
- **Responsibilities:** Local governments may wish to consider whether the fairness and/or effectiveness of their enforcement processes could be enhanced by provisions such as these.

Sanctions

As described in the 'Final Resolution' table above, if the findings of an investigation indicate that there has been a conduct contravention, a Council or Board may consider what, if any, sanctions to impose.

As with other elements of a code of conduct enforcement process, legal advice is recommended as sanctions are being designed and when they are imposed.

Current Practice for Sanctions

Codes of conduct that provide details of an enforcement process also typically set out a range of sanctions that the Council or Board could impose for contraventions.

Sanctions are stated specifically, generally, or as a combination of these. For example, some codes say that the Council/Board "may impose sanctions" and follow this with a few examples, while others provide a specific list of sanctions, sometimes followed with a general provision for "any other sanction considered appropriate" by the investigator in some cases and the Council/Board in others.

Some codes also provide overarching statements that sanctions may only be imposed if they do not prevent the member from fulfilling their legislated duties of elected office.

Specific sanctions included in a sampling of B.C. codes of conduct are:

- Request letter of apology
- Mandatory education, training, coaching or counselling
- Suspension/removal from some or all committees or other bodies
- Public censure
- Letter of reprimand or formal warning
- Publication of reprimand or request for apology and member's response
- Suspension or removal as deputy/acting mayor/chair
- Restrictions on representing the local government or attending events or conferences
- Limits on travel/expenses beyond those in corporate policies
- Limiting access to certain local government facilities
- Requirement to return local government property provided for convenience
- Restrictions on how documents are provided to the member
- Reduction in compensation (in accordance with remuneration bylaw)[7]
- Written pledge promising to comply

Readers are cautioned that this listing merely presents a compilation of sanctions currently included within B.C. local government codes of conduct. They should be considered in the context of evolving law and the legal uncertainty that is discussed above. Given this, legal advice is advised on sanctions as well as other elements of a code of conduct enforcement process.

7 This sanction is provided for in the District of North Cowichan's code of conduct, and it is specifically linked to its Council remuneraton bylaw. See Chapter 6, Resources for link.

Considerations When Imposing Sanctions

- **Fair process:** Fairness can be enhanced and the potential for bias reduced by providing direction to the Council or Board about what it must consider in making sanction decisions, or limiting Council/Board discretion to only imposing some or all of the sanctions recommended by the third-party investigator.
- **Effectiveness:** While sanctions can be imposed as a way of distancing the Council or Board from the member's conduct (e.g., public rebuke) or to penalize the member for the contravention (e.g., reduction in remuneration, imposing limits on travel or suspension of committee appointments), local governments may also wish to consider how sanctions may be used to support a return to responsible conduct and to prevent conduct issues in the future. For example, providing coaching, skills building or training can help to avoid conduct issues that stem from a misunderstanding about roles and responsibilities, from cultural assumptions or from frustration with not being able to get one's point across at a meeting. Additionally, restricting how documents are provided to the member can help to prevent a recurrence of a contravention of a duty of confidentiality.
- **Legal risk:** Sanctions are not specifically mentioned in B.C. local government legislation but local governments have been found by the courts to have the ability to manage conduct; this may include the ability to sanction in cases of the misconduct of a Council or Board member. The edges of that authority – in terms of what specific sanctions may be imposed – aren't yet clear, but some key questions to think about in imposing sanctions are set out in this graphic. Ensuring that each question can be answered with a "yes" may mean that the legal risk related to the proposed sanction is lower.

Could the sanction fall within the local government's legislated powers?

(e.g. CC/LGA fundamental and included powers; power to rescind appointments.)

If the sanction were imposed, would the elected official still be capable of fulfilling their duties of office?

(e.g., a suspension or disqualification from office would mean the elected official could not fulfill their duties of office; removal from rotation as acting mayor/chair or from a committee would not have that effect.)

Is the sanction consistent with other policies and procedures of the local government?

(e.g., do policies related to compensation allow for reduced remuneration if an elected official is found to have contravened the code of conduct?)

Were processes to determine the contravention and impose sanctions procedurally fair, with due regard to natural justice?

(e.g. notice, opportunity to be heard, open-minded decision-making, and consideration of relevant facts?)

How to Improve the Post-sanction Environment

Disqualification is not a sanction that can be imposed by a local government. Consequently, an elected official found to be in contravention of a code of conduct will continue to be a Council or Board member. By the time formal complaints are made, relationships among Council or Board members may be very strained, and the investigation and sanction process will likely further damage these relationships.

Finding effective ways to work together will become even more important, and local governments may wish to consider what specific support could be provided to the elected official found to be in contravention, and to the collective to facilitate them working effectively together again. In addition, consideration may be given to whether policy or procedure changes could support a return to responsible conduct. Local governments may also wish to consider whether to give the investigator an ability to make these types of restorative and support recommendations, which could help to move away from a singular focus on sanctions.

FOOD FOR THOUGHT

- Is informal resolution something that would be suitable for the conduct issue at hand? If so, have we attempted that? If not, why not?
- What enforcement processes and sanctions does our code of conduct include? Are they sufficient?
- Do we have a process in place to review our code of conduct and what it covers? What can we learn from what we have just gone through for any future situations?
- Does our code refer to legislated conduct rules? If so, is it clear about which enforcement processes refer to what code provisions? (e.g., court-based processes for conflict of interest, WorkSafe BC processes for bullying and harassment involving an employee, code of conduct enforcement for all others).
- Have we done everything we can to make sure investigations and decisions are free from bias and administratively fair, and that the entire enforcement process reduces the potential for the process to be used for purely political purposes?
- Are we providing the same standard of fairness to everyone?

"Justice Crawford sounded one important note of caution on the right of an elected council to take action regarding a council member's misconduct. The power to decide whether a council member's conduct falls below the expected standard of conduct must be exercised with great care and discretion:

> 'Far too easily, this could turn into an abuse of process for cheap political gain, and any council that sets out in this direction must be careful in what it is doing.'"

(From the Young Anderson paper Controlling Councillor Conduct)

CLICK HERE for links to resources referenced in this chapter.

CHAPTER 5

Conclusion

Forging the Path to Responsible Conduct

Local governments are finding that putting sustained effort towards fostering responsible conduct and resolving conduct issues informally is an effective way to avoid lengthy, divisive enforcement processes, and is also necessary to sustain and maintain good governance.

Key success factors include:

- Initiating discussions towards adoption of a code of conduct before conduct issues emerge;
- Adopting a code of conduct, including details of the enforcement process to be used to address alleged contraventions of the code and the range of sanctions that may be imposed by the Council or Board if a contravention is determined;
- Building supporting structures, including policy alignment, and supporting elected official leadership and skills development;
- Finding ways to work effectively together and to build trustful, respectful working relationships, through such means as regular Council or Board check-ins; and
- Not allowing conduct issues to fester, but rather taking steps to resolve them informally early on and identify and address their underlying causes (e.g., preconceptions, mistrust, misinformation) in order to avoid future conduct issues.

> "The time to adopt a code of conduct is not when you're in the middle of a crisis – it's when things are going well, and when it can be aspirational."
>
> (A B.C. regional district CAO)

When enforcement processes are needed, local governments are well served by having articulated their process within their code of conduct in advance. Key factors to consider include ensuring a high standard of fairness throughout the process (e.g., the person affected by the decision is able to participate in the process before the decision is made, the decision-maker is open-minded, and the decision is based on relevant information).

Subsequent to enforcement processes, local government have found a need to take a renewed interest in improving working relationships among the Council or Board that tend to have further eroded during the enforcement process. Efforts towards continuous improvement in fostering responsible conduct and maintaining good governance are helpful – in particular, rebuilding respectful and trustful relationships.

CHAPTER 6

Resources

Click the name of the resource in dark blue to link to the website.

Please note: the following links were up-to-date at time of publication. If the links do not work, most of these resources can be found by conducting a web search using the name and organization listed below.

Chapter 1: Fostering Responsible Conduct

Featured Resources

- Working Group on Responsible Conduct materials:
  - ***Foundational Principles of Responsible Conduct for BC Local Governments*** describes key principles to guide elected officials' conduct.
  - ***Getting Started on a Model Code of Conduct for Your Council/Board: Model Code of Conduct*** and its ***Companion Guide*** provide a model code that local governments can modify to meet their needs, and describes things to think about when developing a code; the Companion Guide provides links to numerous resources, including several B.C. local government codes of conduct.
  - The Ministry of Municipal Affairs and Local Government Management Association publication ***Procedure Bylaw Guide: For B.C.'s Local Governments*** explains legislative requirements, provides best practices, and sets out questions to consider in developing procedure bylaw amendments.
- Other local government resources:
  - Oath of office: **City of Kelowna**
  - Social media policies: **District of Saanich Code of Conduct, s.6**
  - Information-sharing practices: District of North Vancouver policy **Staff Handling of Individual Council Member Requests for Information** (see Corporate Administration tab)
  - Conduct expectations for the public: **District of North Cowichan Public Input and Meeting Conduct Policy** and **Respectful Places Bylaw**
  - Checklists and educational tools: **District of Sparwood Code of Conduct Quick Reference Guide to Accepting and Disclosing Gifts**

Click the name of the resource in dark blue to link to the website.

Other Resources

- **B.C. Human Rights Code**
- **Local Government Leadership Academy website**
- **Local Government Management Association resources webpage**
- Institute for Local Government (California) publications:
  - **Developing a Local Agency Ethics Code: A Process-oriented Guide**
  - **Ethics Code Menu/Worksheet**
- Province of B.C. video **Roles and Responsibilities of a Locally Elected Official**
- Province of B.C. video **Characteristics of Effective Locally Elected Officials**

Chapter 2: Maintaining Good Governance

Featured Resources

- ***Enhancing Collaboration in British Columbia's Regional Districts*** (2014, by Jennie Aitken of the University of Victoria in collaboration with the Ministry of Community, Sport & Cultural Development, Union of B.C. Municipalities and LGMA) is a research study with findings that show what can support collaboration, and it provides a number of recommendations in relation to this; a **checklist** summarizes these recommendations.
- **Local Government External Resource Database** provides areas of speciality and contact information for professionals who work with local governments on governance and other critical issues.
- The Province of B.C.'s short videos **What Contributes to Effective Local Government Decision-making** and **Roles and Responsibilities of a Locally Elected Official** focus on key elements related to effective governance.
- **Sample customizable self-evaluation checklists for Councils and Boards**.
- **B.C. Ombudsperson Complaint Handling Guide** and **First Nations Health Authority** provide information on treating people with dignity and respect and building cultural humility.

Other Resources

- Ministry of Municipal Affairs webpage **Local Government Open Meeting Rules**
- B.C. Ombudsperson special report ***Open Meetings: Best Practices Guide for Local Governments***
- Candice Martin presentation on Prezi.com **Unproductive Conflict vs. Productive Conflict**
- Institute for Local Government (California) publications:
  - **Leadership & Governance: Tips for Success**
  - **Tips for Promoting Civility in Public Meetings**
  - **Understanding the Role of the Chair**
  - **Working Together to Achieve Ones' Goals**
  - **Dealing with Bumps in the Road**

Click the name of the resource in dark blue to link to the website.

Chapter 3: Resolving Conduct Issues Informally

Featured Resources

- B.C. Ombudsperson report ***The Power of an Apology: Removing the Legal Barriers*** and **Quick Tips on Apologies**
- *Public Management* article **Preparing Councils for their Work**, Julia Novak and John Nalbandian (August 2009, pg. 27)
- **Local Government External Resource Database** provides areas of speciality and contact information for professionals who work with local governments on governance and other critical issues.
- Institute for Local Government (California) publication ***Dealing with Bumps in the Road*** provides strategies for dealing with elected official and staff relationship challenges, which may also be useful when taking informal steps to resolve conduct issues among elected officials informally.

Resources

- ***Getting to Yes: Negotiating an Agreement Without Giving In***; Roger Fisher and William Ury, with Bruce Patton, Editor
- Institute for Local Government (California) publication: ***Attributes of Exceptional Councils***

Chapter 4: Essentials of Code of Conduct Enforcement

Featured Resources

- ***Getting Started on a Model Code of Conduct for Your Council/Board: Model Code of Conduct*** and its ***Companion Guide*** – of particular interest to enforcement are links to several B.C. local government codes of conduct, many of which articulate enforcement provisions, located within the *Companion Guide*.
- **City of Surrey Bylaw 20018** creates an Ethics Commissioner position and assigns a number of roles to the position, including providing advice and delivering training.
- District of North Cowichan's code of conduct provides for a sanction to reduce remuneration, noted in its **Council remuneration bylaw**.

Other Resources

- B.C. Ombudsperson resources ***Fairness in Practice Guide***, along with ***Fairness by Design*** and **Quick Tips: Essentials of Procedural Fairness**
- Young Anderson report ***Controlling Councillor Conduct*** by Barry Williamson, 2013.
- B.C. Ministry of Municipal Affairs webpage **Ethical Standards for Locally Elected Officials**
- Union of British Columbia Municipalities fact sheet **Conflict of Interest**
- WorkSafe BC's **bullying and harassment resource toolkit** along with ***A Handbook on Addressing Workplace Bullying and Harassment***
- **B.C.'s Office of the Human Rights Commissioner** and **B.C. Human Rights Tribunal** websites provide links to information and resources about the Human Rights Code, prohibited discrimination and how to file a complaint with the Human Rights Tribunal.

WORKING GROUP ON RESPONSIBLE CONDUCT

The Working Group on Responsible Conduct is a joint initiative between the Union of BC Municipalities, the Local Government Management Association of British Columbia, and the B.C. Ministry of Municipal Affairs. The group was formed to undertake collaborative research and policy work around issues of responsible conduct of local government elected officials.

UBCM Union of BC Municipalities

LGMA

BRITISH COLUMBIA