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ABUSIVE MEMBERS OF THE PUBLIC: WHAT ARE YOUR RIGHTS AND RESPONSIBILITIES?

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Sukhbir Manhas and Jack Wells

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I. INTRODUCTION

Dealing with difficult or even abusive members of the public has long been seen as "just part of the job" for those working in local government. But what happens when that behaviour crosses the line? This paper explores what obligations a local government has to protect its employees when interactions become harmful – and what authority it has to respond. We will look at the range of tools available to local governments to manage abusive conduct, including expulsion and suspension from council meetings and remedies arising from the *Trespass Act*. Finally, we will turn to the law of defamation in B.C., examining when a claim against an abusive individual might be appropriate, the risks it entails, and what the process looks like in practice.

II. WORKPLACE SAFETY OBLIGATIONS

When addressing abusive behaviour from members of the public, an important question to begin with is, what are the local government's duties to its employees?

Local governments are employers and as such attract statutory obligations under the *Workers Compensation Act*. Section 21(1) of the *Act* provides:

> **General duties of employers**
>
> 21(1) Every employer must
>
> (a) ensure the health and safety of
>
> (i) all workers working for that employer, and
>
> (ii) any other workers present at a workplace at which that employer's work is being carried out, and
>
> (b) comply with the OHS provisions, the regulations and any applicable orders.

An employer is also obligated to ensure that employees are aware of any health and safety risks at the workplace and to remedy any workplace conditions that may give rise to health and safety concerns.

The obligations under section 21(1) include preventing and addressing workplace bullying and harassment. Flowing from this statutory authority, WorkSafeBC Policy P2-21-2 (the "Policy") requires every employer to develop and implement procedures to address incidents of bullying and harassment in the workplace. The Policy defines "bullying and harassment" as including:

> "… any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated…."

Important, the Policy uses the word "person" deliberately – it extends beyond co-workers and supervisors to include non-employees, such as members of the public, clients, or anyone a worker may encounter while performing their duties.

The Policy also clarifies what it means for someone to "reasonably" know that conduct would humiliate or intimidate another, drawing from the definition in *Black's Law Dictionary* of "reasonable person":

> "… a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others' interests. The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions…."

Clearly, WorkSafeBC's regulations and policies make it clear that local governments have a proactive obligation to protect employees from aggressive behaviour by members of the public. This means not only having preventative policies and reporting procedures in place, but also responding effectively when incidents occur. Local governments should review their existing respectful workplace policies with a view to whether generic references are sufficient or whether they should be revised to make it clear to staff that the policy statement on not tolerating bullying/harassment also applies to the conduct of members of the public. Reporting procedures should also make it clear that staff are expected to report any such incidents.

If WorkSafeBC expects employers to prevent bullying and harassment of workers by members of the public, a key question arises: Do the *Workers Compensation Act*, its regulations, or WorkSafeBC policies actually give employers authority to take action against members of the public who engage in bullying or harassing conduct towards local government employees? And if so, how can a local government exercise control over someone who is not an employee? This issue was considered in *Bracken v. Fort Erie (Town)*.

In *Fort Erie*, the Ontario Court of Appeal rejected the Town's argument that it could rely on its obligations under the *Occupational Health and Safety Act* ("*OHSA*") and its general authority under the *Municipal Act* to ban a resident, Mr. Bracken, from all Town property for a year. The Town had argued that its duty to "take every precaution reasonable in the circumstances for the protection of a worker" gave it the authority to prohibit Mr. Bracken's access. The Court disagreed, finding that the *OHSA* did not confer any power to control the actions of someone who was not a worker. The same conclusion would likely apply in this province. While employers have obligations to provide safe workplaces, which obligations can extend to dealing with the conduct of persons who are not workers who are bullying, harassing, violent or carry the threat of violence towards employees, the *Workers Compensation Act*, regulations and WorkSafeBC policies do not provide a free-standing authority to take action in respect of non-workers.

That said, local governments still have a duty to take reasonable steps to protect their employees, and they can use other legal tools and municipal powers to do so.

III. CONTROLLING INAPPROPRIATE DECORUM AT MEETINGS

A. Expulsion from Council Meetings

Section 133 of the *Community Charter* provides express statutory authority to address inappropriate decorum during municipal council meetings:

> **Expulsion from meetings**
>
> 133(1) If the person presiding at a council meeting considers that another person at the meeting is acting improperly, the person presiding may order that the person is expelled from the meeting.
>
> (2) If a person who is expelled does not leave the meeting, a peace officer may enforce the order under subsection (1) as if it were a court order.

The power to expel also applies to meetings of other prescribed municipal bodies under section 93 of the *Community Charter*, including council committee meetings. The power to expel rests exclusively with the person presiding at the meeting.

The central uncertainty in section 133 lies in the phrase "acting improperly." The statute provides no definition, leaving the matter to the presiding member's "consideration." Courts are likely to grant significant deference to that discretion, provided it is exercised *reasonably*. Generally speaking, the decision should not be based on the presiding member's personal sensitivities, but should be made based on an objective view of the conduct at issue.

When considering whether to expel another person from a municipal council meeting, the presiding person should be measured in their response to improper conduct. The presiding member should immediately address any improper conduct when it first occurs by identifying the improper conduct and advising the person engaged in it that, if it continues, they will be expelled from the meeting. If the improper conduct continues, the presiding person should advise the person engaged in it that, if they persist in it notwithstanding having now been warned twice, they will be expelled from the meeting. If the improper conduct continues, the presiding member should expel the person from the meeting.

Once a person has been expelled from the meeting, the presiding member should stand down the proceedings until the expelled person leaves. If the person refuses to leave the meeting, the presiding member should have staff contact the local police for their assistance in removing the expelled person from the meeting. Only after the expelled person has left the meeting, either on their own accord or with the assistance of the police, should the presiding member recommence the proceedings.

It is important to remember that section 133 applies only to a single meeting. It provides no authority to bar individuals from future meetings, even if their conduct has been persistently disruptive.

B. Suspensions and Bans from Municipal Proceedings

While the *Community Charter* contains no express power to suspend or ban individuals from attending multiple meetings, such authority may arise from section 114(4) of the *Community Charter*, the incidental powers provision:

> **Council as governing body**
>
> 114(4) A council has all necessary power to do anything incidental or conducive to the exercise or performance of any power, duty or function conferred on a council or municipality by this or any other enactment.

Under this provision, a municipal council's actions must be reasonably connected to the proper exercise of one of its powers. A suspension or ban from municipal proceedings must therefore be "incidental" or "conducive" to another duty of the municipality, and any such measure must be reasonable and proportionate to the conduct at issue.

Although section 114(4) has not been directly tested in this context, two court decisions shed light on the boundaries of municipal authority to restrict disruptive individuals.

In *Port Coquitlam (City) v. Osberg*, our Supreme Court supported the right of a municipality to impose a ban on a member of the public's attendance over multiple municipal council and committee meetings. Ms. Osberg had disrupted council and committee meetings by outbursts over several years resulting in an initial injunction not to attend at or interfere with council meetings until such time as the mayor ceased to be mayor of the City. After Ms. Osberg was found in contempt of court on several occasions, and after further abusive interruptions by her at committee meetings, the Court broadened the injunction to prohibit Ms. Osberg from entering the municipal hall except to attend at the main reception desk. The Court stated that the City, for the benefit not only of the mayor and other civic officials, but also for the benefit of the public to whom they were responsible, had the right to protect civic government from the conduct engaged in by Ms. Osberg over a six-year period.

The issue of broader bans arose more recently in *Kaps v. Surrey (City)*, where the City of Surrey passed a resolution banning seven individuals from attending council and committee meetings. The resolution was introduced and passed on the same day, without prior notice to the affected individuals. Less than a month later, the City brought legal proceedings in the British Columbia Supreme Court claiming an injunction to enforce the resolution. However, following an election, the newly elected council unanimously rescinded the resolution, effectively rendering the legal proceedings moot. The City then discontinued the proceedings, but the parties continued to dispute court costs.

Although the Court did not rule on the validity of the ban itself, its comments are instructive. The Court observed that the legal proceedings were not "utterly without legal foundation," citing section 274 of the *Community Charter*, which provides statutory authority for a municipality to bring a proceeding in the British Columbia Supreme Court to enforce the contravention of a council resolution. The Court also referenced the *Osberg* case, noting that injunctions restraining individuals from attending municipal facilities have been granted before (albeit, rarely).

Nevertheless, the Court characterized the City's position as "undoubtedly weak." The legal proceedings were described as "premature," because there was no evidence of any misconduct by the banned individuals between the adoption of the resolution and the filing of the proceedings. In the Court's view, the City was "perhaps wise to withdraw the litigation." While the Court stopped short of ruling on whether the ban itself was valid, its observations leave open the possibility that a municipality might, in some circumstances, have the authority to restrict an individual's access to its facilities. Any such action would require a strong factual foundation and clear procedural fairness – elements the City had not demonstrated in this case.

When a situation escalates to the point where a suspension or ban of a member of the public is being considered. It is important that the decision be made collectively by the municipal council rather than by municipal staff. Once a decision has been reached, the municipality should promptly notify the individual in writing. The written notice should clearly describe the behaviour that led to the suspension or ban, specify the length and scope of the restriction, and indicate whether the individual may still participate electronically in meetings.

The notice should also explain the individual's right to request reconsideration by the municipal council and outline how they can make that request, including a requirement that they set out the bases on which they are seeking reconsideration. If a reconsideration is requested, the matter should be placed on the agenda for the next municipal council meeting at which it can reasonably be accommodated, and the individual should be given the opportunity to address the municipal council, ideally through electronic participation.

Because these decisions often attract public and media attention, municipalities may also wish to issue a brief statement summarizing the decision and explaining the reasons behind it. Finally, special care should be taken when the individual has a statutory right to be heard at a municipal proceeding. The courts will strive to protect the person's right to be heard, and will likely only uphold their expulsion, and consequent deprivation of the right to be heard, in very clear cases.

IV. TRESPASS

The *Trespass Act* sets out a procedure for giving notice to persons orally or in writing that they are not permitted to enter premises or that they may not engage in prohibited activity. If the person enters the premises or engages in the prohibited activity after having received notice, they commit an offence.

Employing the *Trespass Act* process is not advisable in the case of disruptions of municipal council or committee meetings, but may be useful in the case of aggressive or harassing conduct elsewhere in or about municipal facilities, or for improper protests.

In *R. v. Breeden*, our Court of Appeal upheld the use of trespass notices against a disgruntled former firefighter who had brought protest signs into municipal hall, a fire station reception area, and a provincial courthouse. In each of the three incidents, the Mr. Breeden was advised verbally to leave the premises with his sign by, respectively, the municipality's chief administrative officer, a fire captain, and a deputy sheriff. Written notice was not given and no issue appears to have been taken with the authority of any of the persons who dealt with Mr. Breeden to give verbal notice under the *Trespass Act*.

The question of who has authority to issue a trespass notice was raised in *Bracken v. Niagara (Regional Municipality)*. The municipality sought to ban Mr. Bracken from regional headquarters for one year, largely to prevent confrontational behaviour, including filming a council member without permission. The Court found the ban primarily aimed at preventing attendance at council meetings, and ultimately overturned it as an infringement on Mr. Bracken's freedom of expression. However, the Court noted that whether the chief administrative officer had authority under the *Municipal Act* to issue the trespass notice for council meeting attendance remained unresolved.

By contrast, in the *Breeden* case, no authority issues were raised because the protests occurred outside the municipal council chambers. Had Mr. Breeden attempted to bring signs into the council chambers, there might well have been an issue respecting authority to issue a subsequent trespass notice to not attend council chambers if the notice (verbal or written) had been given by appointed staff. With respect to the rest of municipal hall or other facilities, the authority to make decisions whether to issue a trespass notice is likely an administrative matter that does not require express delegation of authority from the municipal council.

The broader legal basis for trespass notices was also considered in the *Fort Erie* case. There, the Court observed that Ontario's *Trespass to Property Act* is commonly used by governments to exclude individuals from public property but does not create substantive property rights. Fort Erie did not have a policy regulating trespass notices, which increased the risk of arbitrary action. Nonetheless, the Court held the Town could rely on its common law powers as the occupier of property to issue the notice.

V. DEFAMATION

Unfortunately, it is almost certain that, at some point in your career as a local government officer of employee, one or more members of the public will personally take aim at you. In doing so, those members of the public will likely have little regard for your feelings, your reputation, and it may very well seem that these members of the public have embarked on a personal attack on your character and reputation. The law of defamation is a nuanced and often challenging area – it can be time-consuming, arduous, and in some cases may even

escalate tensions rather than resolve them. Nonetheless, it remains a legitimate and sometimes overlooked option for local government staff when certain conditions are met. The remainder of this paper will examine the law of defamation, its fundamental principles, how a local government employee might respond to being defamed, and the implications of recent legislation affecting speech related to the "public interest."

A. Basic Principles

When someone publishes without lawful justification a defamatory statement, the person defamed has a right of action. The defamed person can seek an injunction stopping the continued publication of the defamatory statement and damages. To prove their case, the individual alleging that they were defamed must prove that:

- The words, either spoken or written, were defamatory, in the sense that they would tend to lower their reputation in the eyes of a reasonable person;
- The defamatory words referred to them; and
- The defamatory words were published to at least one person other than the individual alleging that they were defamed.

Determining whether words "tend to lower a person's reputation in the eyes of a reasonable person" requires careful analysis. This criterion is generally satisfied in one of three ways:

- The literal or natural meaning of the words is defamatory;
- The words are not defamatory on their face but become so when considered in light of extrinsic facts known to certain readers; or
- The words convey a defamatory inference or impression, even if their literal meaning is innocuous.

When assessing whether a "reasonable person" would think less of the plaintiff because of the statement, the context and character of the speaker may also be relevant. For example, if the words were published during a heated political debate and were clearly intended as rhetorical or exaggerated criticism, and the audience understood them in that light, the courts are less likely to find that the words would lower the plaintiff's reputation in the eyes of a reasonable person.

Even if the basic elements of a *prima facie* defamation claim are established, a defendant may raise one or more legal defences that, if proven, will defeat the claim. While a detailed analysis of these defences is beyond the scope of this paper, local government staff should be aware of several key ones:

- Justification (Truth)

If the defendant can demonstrate that the defamatory statement is substantially true, the claim will fail. The law does not protect a person's reputation from accurate but unflattering statements.

- Fair Comment

  This defence applies when the statement in question is an opinion, rather than a factual assertion. For the defence to succeed, the following five elements must be established:

  - The comment concerns a matter of public interest;
  - The comment is based on facts that are true or otherwise proven;
  - Although the comment may include inferences of fact, it must be recognizable as comment rather than an assertion of fact;
  - The comment satisfies the objective test of whether any person could honestly express that opinion on the proved facts; and
  - Even if these elements are met, the defence can still be defeated if the plaintiff proves that the defendant was motivated by express malice.

- Qualified Privilege

  This defence applies when the person making the statement has an interest or duty, legal social, moral, or personal, to publish the information, and the recipient has a corresponding interest in receiving it. The concept of qualified privilege has long been applied to speech uttered during the course of a municipal council meeting.

B. Your Response to Being Defamed

When faced with what feels like a personal attack on your character or reputation, your first step is to assess whether you have, in fact, been defamed. The key question is whether your reputation has been lowered in the eyes of a reasonable person.

To begin, consider the broader context of the remarks. If the comments are clearly politically motivated (as opposed to personally motivated), their impact on your reputation is likely to be limited. You should also take into account who made the statements. Often, personal attacks come from individuals who occupy the margins of local debate or people known for making exaggerated or unfounded claims about public officials. If the person attacking your character lacks credibility within the community, then the impact of the attacks on your character or reputation will again be minimized.

When you have determined that you have been defamed by a member of the public, consider the implications of responding at all. In many circumstances, responding to the defamatory publication will simply have the effect of prolonging the publication of the defamatory material. You should consider whether the better response to having been defamed is to do nothing, and allow the issue to extinguish itself, or to respond vigorously, and add fuel to the issue.

If you have determined that it is necessary to respond to having been defamed, you should, at first instance, demand an apology and retraction of the defamatory words from the members of the public that published them. Your demand should be copied to local news media and other outlets for the purpose of making known to the public that you believe the published words to be defamatory and that you take offence to them. In this manner, while you may not receive the apology and retraction that you demand, you will have gone a long way to minimize the impact of the defamatory words on your character and reputation.

In demanding the apology and retraction, we recommend that you not threaten legal proceedings if the apology and retraction is not received. Including a threat of legal proceedings if the apology and retraction is not received will likely only be perceived by the members of the public who published the defamatory words as being oppressive, and will provide them with further ammunition on which to prolong the matter and potentially gain broader public support. Of course, if the apology and retraction is not received, you can resort to legal proceedings, even if you have not threatened in your demand that you will do so.

Where the foregoing has failed, and you believe that you must take further steps to protect your character and reputation, you should consult legal counsel and, if recommended, commence a defamation action against the members of the public who published the defamatory words about you.

C. *Protection of Public Participation Act*

In 2019, the *Protection of Public Participation Act* ("*PPPA*") came into force, creating a mechanism that is now commonly used in practice to dismiss defamation claims involving "political speech," or more generally, speech that relates to a "matter of public interest." Under the *PPPA*, a defendant can apply to have a defamation lawsuit dismissed as a "strategic lawsuit against public participation" (SLAPP). To succeed, the defendant must show that their expression – even if harsh or personally offensive – relates broadly to a matter of public interest.

Once this threshold is met, the lawsuit will be dismissed unless the plaintiff can demonstrate that there are grounds to believe no valid defences apply and that the public interest in protecting their reputation outweighs the public interest in protecting the defendant's expression.

This creates a high bar for anyone in the public sector seeking to pursue a defamation claim. Because criticism of government officials almost always "relates" to a matter of public interest. If the defendant recognizes this and applies to dismiss the claim under the *PPPA*, it is the

plaintiff who must convince the court that the defendant's statements are not defensible and that the reputational harm is substantial.

The case of *Miceli v. Swinton* illustrates a circumstance in which a municipal official successfully resisted a SLAPP dismissal. In this case, the Chief Administrative Officer of a Town sued a mayoral candidate who made a series of online posts accusing them of corruption and criminal behaviour linked to alleged misconduct in a previous job. Although the Court accepted that the statements were related to a matter of public interest, the Chief Administrative Officer was able to demonstrate that:

- There were grounds to believe no valid defences applied, since the allegations were presented as factual and were unsupported by evidence; and
- The public interest favoured protecting his reputation, given the seriousness of the false claims and their impact in a small community.

The Court noted that the posts were "personal and vindictive" rather than legitimate political commentary, and so the public interest in protecting the expression was at the lower end of the scale. The Court also noted that, as a small-town chief administrative officer, Mr. Miceli faced more tangible harm. It was deemed likely that the posts came to the attention to a meaningful proportion of residents. There was evidence that he was recognized and harassed in public due to the defamatory posts. Finally, the defendant's status as a mayoral candidate broadened the number of people who would find his statements of interest, and also added (false) legitimacy to the statements made.

For most municipal employees (and elected officials), defamation claims against members of the public will remain an uphill battle. The *PPPA* gives broad protection to speech that even loosely relates to public matters, and courts are cautious not to chill public debate about government. However, a successful claim is possible where the statements go beyond fair comment and involve serious, demonstrably false and personal allegations, and the impact on reputation is significant. While pursuing such claims can be a long and challenging process, the law of defamation may still offer meaningful recourse against abusive or malicious public commentary against you.

VI. CONCLUSION

While dealing with difficult members of the public has traditionally been viewed as part of local government work, there are clear limits to acceptable behaviour. Local governments have the authority to manage abusive conduct through measures such as meeting expulsions, suspensions, and legal remedies under the *Trespass Act*. In cases of defamatory conduct, pursuing legal action may be appropriate but requires careful consideration of the risks. By understanding and applying these tools, local governments can create safer, more respectful environments for staff, enabling council members, committees, and employees to carry out

their responsibilities effectively, while simultaneously upholding their broader duty to serve the public.

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