

**“As We Forgive Those Who
Trespass Against Us”:**

**A Framework for Public
Behaviour in Local Government**

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**AMCTO – 2019 AGM
& Conference
(June 11, 2019)**



Lord's Prayer

Mouvement laïque québécois v. Saguenay (City), 2015 SCC16

Freitage v. Penetanguishene (Town), (Ont. C.A.), September 23, 1999

WARNING!!!



INTENDED FOR MATURE AUDIENCES ONLY

This program contains profanity – maybe a few “F* Bombs” – and adult local government themes.

Obviously, viewer discretion is advised.

PLEASE NOTE:

Based on our lawyers' lengthy (and costly) legal advice, **do NOT** try any of these “best practice” suggestions in the absence of a **Municipal Expert.**

“Practice self-awareness, self-evaluation and self-improvement. **If we are aware that our manners** – language, behaviour and actions – **are measured against our values and principles**, we are able to more easily embody the philosophy, **leadership is a matter of how to be, not how to do.**”

Frances Hesselbein,
Leadership Guru,
CEO, Girl Scouts of
America

AMCTO Code of Ethics & Values

Adopted in 2015, the Code outlines key tenets for ethical conduct and behavior for municipal managers and leaders. AMCTO members have made a commitment to uphold these tenets and values in order to grow the profession in a way that enshrines the trust of the public, elected officials and their colleagues.

The code is broken down into 3 sets of values and 12 ethical tenets:

Service to the Community

- Promote community well-being
- Engage the community in decision-making
- Deliver public services effectively and efficiently
- Protect the legacy of future generations
- Protect confidential information

Supporting Elected Officials

- Deliver objective advice to elected officials
- Serve elected councils in a dutiful manner
- Maintain political neutrality
- Protect the concept of a merit-based public service

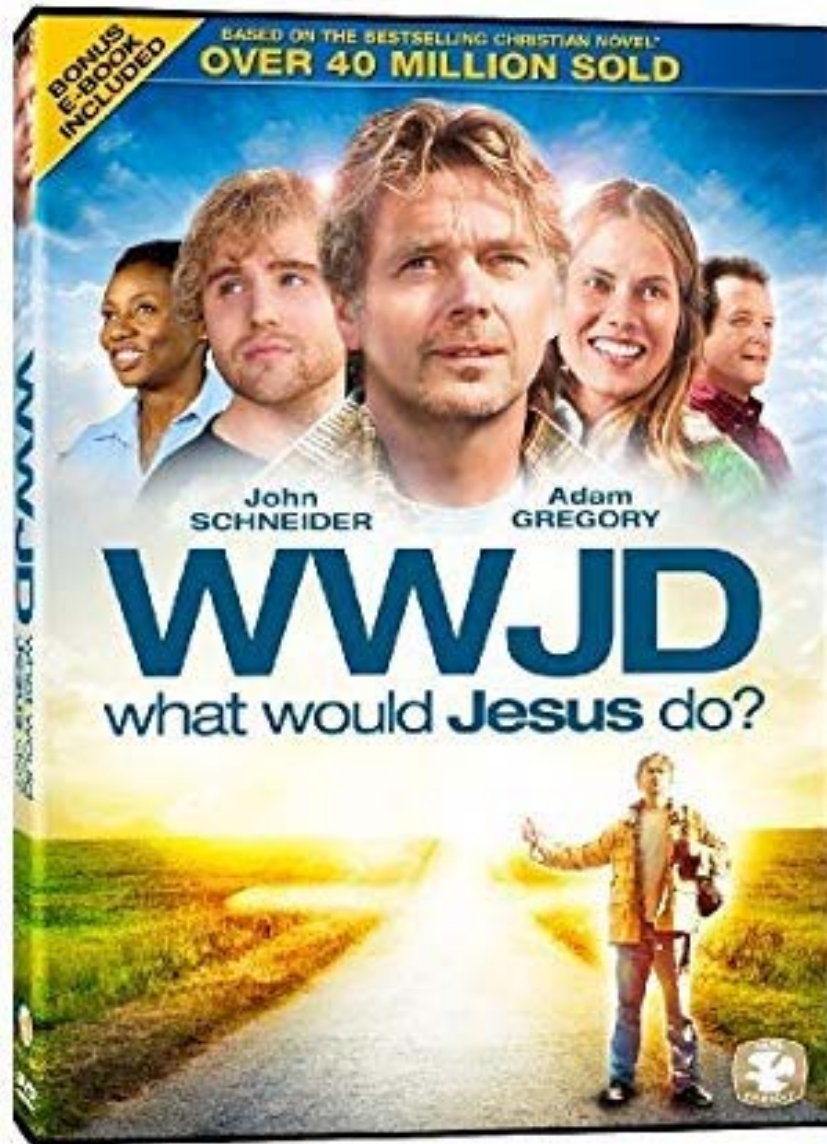
Servicing the Municipal Profession

- Maintain professionalism, integrity and trust
- Demonstrate commitment to professional development
- Develop future municipal professionals

To support members, professional growth and ethical advancement, AMCTO is committed to on-going education, training and dialogue.



No. 1: “Never renovate your house when it’s on fire!”



No. 2: “Follow ‘the reasonable person’ standard!”

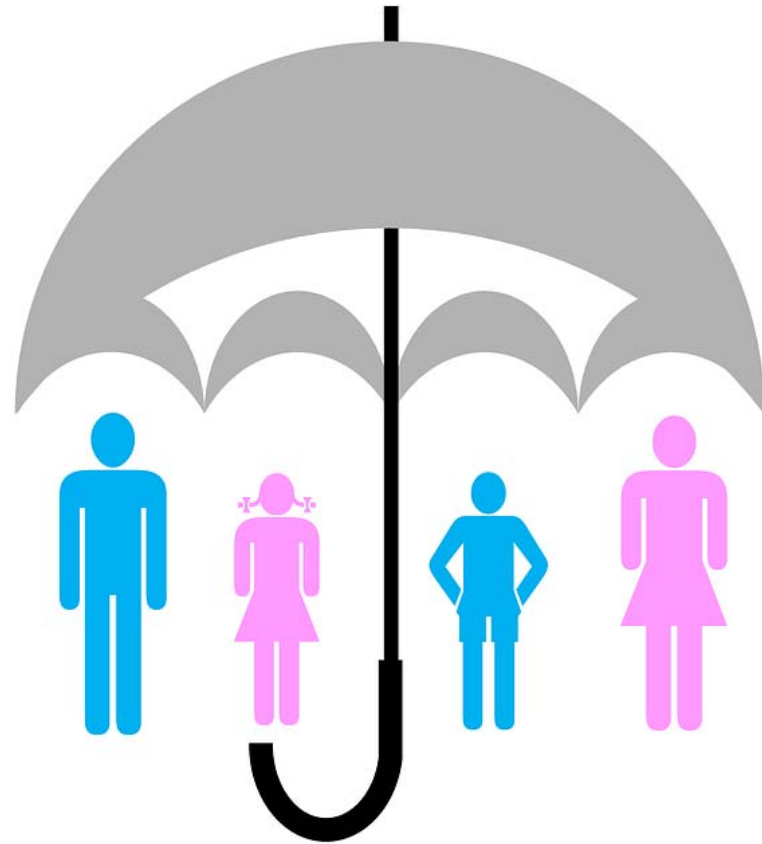
At Common Law, the ubiquitous “reasonable person” is a legal fiction also known as:

- A right-thinking member of society
- An officious bystander
- A reasonable parent/landlord
- A fair-minded and informed observer

Originally dubbed the “man on the Clapham omnibus”, the “reasonable person” is a hypothetical person in the community who uses average care, skill and judgment in conduct who serves as a comparative standard for determining liability.



No.3: “Document, document, document!”



No. 4: Policies, Procedures, Processes, Protocols and Past Practices....Protect!

Rainy River (Town) v. Olsen
Ontario Court of Appeal
(July 20, 2017)



Gammie v. Town of South Bruce Peninsula
Ontario Superior Court of Justice
(October 29, 2014)



Bracken v. Regional Municipality of Niagara Corporation
Ontario Superior Court of Justice
(November 12, 2015)



Bracken v. Town of Fort Erie
Ontario Court of Appeal
(August 25, 2017)



Bracken v. Niagara Parks Police
Ontario Court of Appeal
(March 19, 2018)



Toronto Ombudsman Report

“Banned Indefinitely: Safety or Punishment”

An Investigation into a
Parks, Forestry and Recreation
Decision to Ban an Individual
(March 5, 2010)



Not this Red Rock(s)



Not this Red Rock (West)



Yes, this Red Rock

“Counter Encounter”

Investigation into a Complaint
about the Township of Red Rock
(May 2017)
Ontario Ombudsman



Human Resources Policy

Subject	RZone Policy
Authority/Approval	Management Policy/Human Rights; OHSA – Bill 168
Effective Date:	Approved:
Latest Revision Date:	
Policy Number	

Rzone Policy - Respect & Responsibility

The Rzone has been adapted with permission from the Town of Oakville



Public Conduct Policy And Corporate Trespass to Property – Procedures

City of Ottawa
(December 2018)

Protesters Arrested by Plainclothes Officers as Oshawa Votes to Oust Auditor General at Violent Council Meeting



“Press Pause”

Investigation into a Meeting of
Council for the Regional Municipality
of Niagara On December 7, 2017
(July 2018)
Ontario Ombudsman

The Basics

- Niagara Region had a what they knew was a controversial report (an IC report with a finding of a Member breach of the Code of Conduct)
- In closed session, “regional councillors and staff hastily reacted to the discovery of a digital recorder and laptop in council chambers. By the time the public was permitted back in for continuation of the open session, regional officials had confiscated the property of a citizen blogger and a journalist, ejected both from the meeting, and the journalist from the building”.

Press Pause

“Although the events of December 7, 2017 were unanticipated, they are not unprecedented in municipal administration. The region could have avoided its improvident responses to discovery of the digital recorder and laptop by having appropriate policies and procedures in place, by implementing best practices stemming from similar situations, and by exercising sound judgment.”

Paul Dubé

Bans/Ejections/Trespass Orders are not a first line of defense

Recap of not uncommon in-meeting issues leading to ejections/bans:

- Citizen bloggers tweeting
- Citizens filming public committee/council meetings
- Citizens protesting inappropriately during a meeting
- Citizens protesting on a sidewalk outside of a meeting

Stating the Obvious – First principles

- Committee and Council meetings are public
- Local government deals with issues that affect people's daily lives and sometimes even their back yards
- The public has Charter-protected rights to assemble, to protest and to free speech even when members of the public behave inconveniently and:
 - Have passionate beliefs
 - Are angry
 - Are disruptive
 - Are ill
 - ETC.

Welcoming the Inconvenient Public

- Best-practice policies recognize both that the public has the right to be heard and to disagree, and that the business of Council must be done.
 - Set reasonable rules of behavior and decorum and write them down
 - Make sure they are clearly understood
 - Make sure staff and elected officials are trained early and often
- The underlying principle should be that ejection and trespass orders are a last resort and for as short a duration as is reasonable

“Then a security guard came out to tell me to move
“right off City property onto the sidewalk.”

I pointed out to him that the sidewalk is **also** City
property, and that got a smile.

When I asked him if I was banned **permanently**
from City Hall, he said “No, just for today. See you
tomorrow.””

Craig Macaulay

Blog post, May 26, 2011

Pro Tips

- The public is more likely to respect the decorum and expectations of the chamber if they feel welcome
 - Signage (location, rules)
 - Greeters
 - Sign up sheets
 - Unlocked public spaces
 - Clear delineation of space (especially in smaller rooms)
 - Reasonable public meeting notices and agendas

Decorum in Chamber

- Expectations should be captured in Procedure By-law
 - e.g. no cheers or jeers, respectful listening, rights of Chair to eject for specific behaviours with a warning;
 - Do you prohibit recording of meeting or regulate that such must not interfere with meeting?
- Train the Chair(s) in how to apply the rules
 - Including when to recess the meeting, how to keep order and what to do when the meeting breaks down
- Plan for controversial meetings, don't just let them happen

The Public takes their cues from Members

- When a Member brings the protest
 - Rely on Rules of Procedure, training
 - Consistency helps public conformity
- When the Chair brings the conflict to the room
 - Get to know your proceduralists, influencers on Council
 - Deft use of points of order, requests for recess can calm things down

Everyday challenges



If you work at a city hall, expect to run into a protest at some point



But it's okay to prohibit hard signs and flags in the Chamber for security reasons. The public can (and will) use other ways to get their point across.

Everyday Challenges

- Some people will be angry
 - “Anger is an understandable and, to some degree, an acceptable emotion among frustrated complainants as long as it is not expressed through aggression or violence” (New South Wales “Managing unreasonable complainant conduct practice manual”)
- Some people will be off-topic
 - Let them have their time
- Some people will be critical and some of these criticisms can be imprudent, inaccurate, personal

“When it comes to the political arena, “there has to be a very high tolerance level ... whenever you ban someone from a public forum, you’re going to engage such core constitutional arguments as freedom of speech,” said CCLA program director Abby Dushman.

Decorum is important, Dushman said, but restricting an individual’s access “has to be done under very strict guidelines and circumstances.” She added it should also be made clear what is required to get a trespass order overturned or rescinded.

Municipal governments should “embrace” criticism, said Dushman. “That’s part of democracy, and it shows you have an engaged citizenry.””

Windsor Star
September 5, 2012

When is it okay to eject/ban?

- Only if all your policies and procedures have been followed and documented to the letter
- Violence and aggression should not be tolerated
- Ensure the actions are reasonable, understandable, time and place limited

“When you are in local government, you are on the ground, and you are looking into the eyes and hearts of the people you are there to serve. It teaches you to listen; it teaches you to be expansive in the people with whom you talk to, and I think that that engagement gives you political judgment.”

Valerie Jarrett

Former assistant to President Obama for
Public Engagement and Intergovernmental Affairs



Questions