



COUNCIL REPORT

Report Date: October 20, 2023
Contact: Jason Twa
Contact No.: 604.871.6548
RTS No.: 16022
VanRIMS No.: 08-2000-20
Meeting Date: October 31, 2023
[Submit comments to Council](#)

TO: Vancouver City Council
FROM: Director of Legal Services
SUBJECT: Decision Re: Integrity Commissioner Investigation Report

Recommendations

- A. THAT prior to consideration of this matter, Council resolve by a 2/3 vote not to hear speakers on this matter.
- B. THAT Council resolve to review the Investigation Report issued by the Integrity Commissioner on October 3, 2023 (the "Investigation Report") attached as Appendix "A" to this report.
- C. THAT Council endorse the recommendation on sanctions made by the Integrity Commissioner in the Investigation Report or, alternatively, impose those sanctions which Council determines appropriate.

Purpose and Executive Summary

This report brings forward the recommendation of the Integrity Commissioner made in the Investigation Report and recommends that Council review the Investigation Report and make a final determination on whether to accept the recommendation by the Integrity Commissioner or reject the recommendation and impose a sanction as determined by Council.

Council Authority/Previous Decisions

This is the first investigation report to be considered by Council in which the Integrity Commissioner found a Councillor in breach of the *Code of Conduct By-law* (the "By-law").

City Manager's Comments

The City Manager concurs with the foregoing recommendations.

Context and Background

On October 3, 2023, the Integrity Commissioner issued the Investigation Report.

On October 3, 2023, the Integrity Commissioner delivered a copy of the Investigation Report to the respondent.

On October 5, 2023, the Integrity Commissioner delivered a copy of the Investigation Report to the complainant and Council.

Staff are bringing forward the recommendations of the Integrity Commissioner for Council's determination.

Discussion

Section 6.32 of the By-law provides that where the Integrity Commissioner determines that a member violated the By-law, the Integrity Commissioner is required to make recommendations as to the appropriate sanctions for the breach.

Section 6.34 of the By-law requires Council to decide on the appropriate measures, if any, that are warranted by the breach of the By-law and to take appropriate actions in the circumstances within 30 days of delivery of the Report to Council.

Section 6.35 of the By-law requires Council to give the respondent the opportunity to comment on the Investigation Report, and the recommendation made therein, prior to Council making a final determination on whether to impose a sanction.

In respect of a Councillor, the sanctions that may be imposed for violating the By-law include:

- a) a letter of reprimand from Council addressed to the member;
- b) a request from Council that the member issue a letter of apology;
- c) the publication of a letter of reprimand and a request for apology by the Integrity Commissioner, and the member's written response;
- d) a recommendation that the member attend specific training or counselling;
- e) suspension or removal of the appointment of a Council Member as the Deputy Mayor;
- f) suspension or removal of the Council Member from some or all Council committees and bodies to which the Council Member was appointed by Council; and
- h) public censure of a member.

In the Investigation Report, the Integrity Commissioner determined that the Respondent breached section 3.4(c) of the By-law. Despite a finding of breach, the Integrity Commissioner recommended that no sanction be imposed as the respondent had already implemented the

remedial actions sought by the complainant and these remedial actions were the remedies the Integrity Commissioner would have made in this case in any event.

Council may accept the recommendation of the Integrity Commissioner, but is not required to do so. Council may reject the recommendation and impose any of the sanctions set out above.

Financial Implications

There are no financial implications associated with this report’s recommendations.

Legal Implications

This process is authorized by the By-law.

Law recommends that speakers not be heard on this matter as it involves Council engaging in a quasi-judicial function of affirming the recommendation of the Integrity Commissioner as to sanctions or, alternatively, imposing those sanctions which Council considers appropriate.

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APPENDIX A
Investigation Report Submitted by the Integrity
Commissioner on October 3, 2023



REPORT TO
CITY OF VANCOUVER COUNCIL, COMPLAINANT AND RESPONDENT

In this matter of

AN INTEGRITY COMMISSIONER INVESTIGATION
ALLEGATIONS, FINDINGS & DECISION

Submitted by Lisa Southern,
Integrity Commissioner
City of Vancouver

October 3, 2023

Background

On August 25, 2023, Mayor Ken Sim (the “Complainant”) brought forward a *Code of Conduct By-Law No. 12886* (“Code of Conduct”) complaint against Councillor Christine Boyle (“Cllr. Boyle” or the “Respondent”) to the Integrity Commissioner under Part 3 – Communications and Confidentiality, section 3.4(c) regarding comments she published both through email and on the social media platform ‘X’ (formerly, Twitter) that he said denigrated a newly hired member of Mayor Sim’s office, Harrison Fleming (the “Complaint”).

This report is issued in accordance with section 6.32 of the Code of Conduct. In this report, I summarize my process and the evidence, make findings of fact with respect to the allegations set out in the Complaint, and conclude there was a breach of section 3.4(c) of the Code of Conduct.

Process

After receiving the Complaint, I conducted a preliminary assessment of the Complaint and determined the allegations set out in it, if true, may constitute a violation of the Code of Conduct. Accordingly, on August 30, 2023, Cllr. Boyle was advised of the Complaint and was provided an opportunity to respond to the allegations against her.

Cllr. Boyle provided a written response on September 8, 2023. Mayor Sim was provided with a copy of Cllr. Boyle’s response and was invited to provide further submissions regarding the Complaint or Cllr. Boyle’s response to it, but he elected not to do so.

I examined the Complaint in the context of the Code of Conduct and the law.

Summary of Complainant Submission

In the Complaint, Mayor Sim, via his Chief of Staff, wrote that on August 23, 2023, Cllr. Boyle:

Endorsed a tweet and wrote an email targeting a newly hired member (Harrison Fleming) of the Mayor’s Office accusing him directly of past bullying and implying that he has advanced and is complicit in anti-LGBTQ+ government policies, despite the staff member identifying as a gay man. Additionally, Councillor Boyle retweeted that he is personally under investigation by the RCMP in connection to a corruption scandal in Ontario.

The content of the email states:

Today, we found out some astonishing news: Ken Sim has hired an operative from some of Canada’s worst and most right-wing governments to work in his office.

His new spin doctor, Harrison Fleming, comes to Vancouver from Doug Ford – who won power opposing pro LGBTQ policies in education, and who is presently under investigation by the RCMP in an \$8 billion corruption scandal.

But before he worked for Doug Ford, Mr. Fleming was one of Jason Kenney’s top Internet bullies, harassing opponents of the government as Kenney worked to deny climate change and to enable and empower anti-maskers and COVID deniers.

It is a life spent in the service of some of the worst and most right-wing political leaders in Canada. And despite the fresh and reasonable face Ken Sim presented to voters in the election, our ABC Mayor has brought this to Vancouver.

ABC Vancouver might have tricked Vancouver's voters last year, but now we see the truth: instead of a reasonable centrist, some of Canada's most right-wing operatives are now working to take our city in the wrong direction...

The tweet reposted by Cllr. Boyle states:

Ken Sim's newest hire left a government that doesn't believe climate change is real to work for a government that is in the middle of an \$8 billion corruption scandal and is being investigated by the RCMP.

Now, he's at Vancouver City Hall.

Mayor Sim wrote that at the time of the Complaint, Cllr. Boyle's tweet had 29,500 views and he did not know how many people received the email.

Mayor Sim said that by engaging in such communications, Cllr. Boyle violated section 3.4(c) of the Code of Conduct, which states:

3.4 Without limiting the ability of a Council Member to hold a position on an issue and respectfully express their opinions, a Council Member must:

...

c) ensure that all communications by, and on behalf of a member, including communications made via social media, are respectful and do not discriminate, harass, or defame any person, recognizing that free and open debate is guaranteed under the Charter of Rights and Freedoms

As a resolution to the Complaint, Mayor Sim sought a public apology to Mr. Fleming and a full retraction of the statements made, or endorsed, by Cllr. Boyle. Mayor Sim further sought for the retraction to be "pinned" on Cllr. Boyle's X profile.

Summary of Respondent Submissions

In Cllr. Boyle's written response to the Complaint, she said, among other commentary, that "*Upon reflection, I understand that some of my comments crossed a line, and I would like to convey my regret and apologies.*"

Cllr. Boyle elaborated that while there were areas in her statements that she considered to be "*fair comment,*" including referring to information that "*exists in the public realm*" about Mr. Fleming, there were areas where she recognized her comments were "*personal*" which she recognized was inappropriate. Cllr. Boyle reiterated that she cared "*deeply about maintaining a respectful workplace, where we can disagree respectfully about issues and refrain from creating a toxic political environment or turning those disagreements into personal attacks.*"

Cllr. Boyle wrote that she had apologized directly to Mr. Fleming, had offered to meet with him to further discuss her actions, had posted a public apology on X on September 8, 2023, and had pinned the tweet where she did so. The apology tweet reads:

As a public official, I have a duty to uphold a high standard of respect and decorum. In August, I failed to do so when discussing the hiring of the Mayor's newest team member, Harrison Fleming. On reflection, certain parts of my comments crossed a line. Where we disagree, we owe it to each other to disagree respectfully. I apologise to him and retract my statements.

Issue

The issue I must decide is whether Cllr. Boyle contravened section 3.4(c) of the Code of Conduct via her public communications about Mr. Fleming.

Assessment of Credibility

The material facts are not in dispute and there are no issues of credibility.

Analysis

This Office has been clear that political expression, including expressions captured by a municipal code of conduct, “*should be interpreted in a manner consistent with the Canadian Charter of Rights and Freedoms, including the right of freedom of expression*” (see *Re VanLeeuwen*, 2021 ONMIC 13). The Code of Conduct is also clear that it is not intended to limit the ability of a Councillor to hold a position on an issue and respectfully express their opinions. Further, it is trite law that elected officials are “*entitled to communicate*” on “*controversial and/or highly visible topics*” (see *Monforts v Brown*, 2021 ONMIC 10).

The narrow question is whether Cllr. Boyle’s commentary about Mr. Fleming went beyond the respectful expression of her opinion on the apparently controversial topic of Mayor Sim hiring Mr. Fleming in light of Mr. Fleming’s previous political work across Canada. In deciding that question, the requirements of section 3.4(c) of the Code of Conduct must be considered. While section 3.4(c) allows significant latitude in how Councillors communicate, it prohibits Councillors from engaging in communications that are disrespectful or that “*discriminate, harass, or defame any person.*”

While much of what Cllr. Boyle wrote (or reposted) falls within permissible speech, by writing that Mr. Fleming was “*one of Jason Kenney’s top Internet bullies, harassing opponents of the government,*” Cllr Boyle’s comments were disrespectful and arguably defamatory. In her written response to the Complaint, Cllr. Boyle recognized the problematic nature of *ad hominin* attacks. I find that making these comments (calling him a “*top internet bully*” and saying that he had “*harassed*” his opponents) are problematic as they were personally directed and stated as fact versus opinion, and as such, constitute disrespectful conduct that was contrary to section 3.4(c).

Accordingly, I find that Cllr. Boyle violated the Code of Conduct with respect to certain of her comments regarding an employee of the City of Vancouver.

Recommendations

I am required to make recommendations as to the appropriate sanction for the breach.

Councillor Boyle has already implemented the remedial actions sought by Mayor Sim in this case. She has apologized publicly, pinned that apology to her social media post, and offered to apologize to the employee in person if they wish.

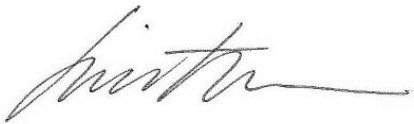
These are the remedies I would have made in this case. Given they have already been implemented by Cllr. Boyle, on her own initiative, I do not recommend any sanction.

I note that this decision will also be posted publicly in accordance with the Code of Conduct.

Conclusion

I find that Cllr. Boyle breached section 3.4(c) of the Code of Conduct via her public comments regarding Mr. Fleming. Given the actions she has taken to remedy her conduct, including publicly posting an apology on her social media, I recommend that no sanction be imposed.

All of which is respectfully submitted.



Lisa Southern*, Barrister & Solicitor
Integrity Commissioner for the City of Vancouver

Dated: October 3, 2023

*Law Corporation