

IN-CAMERA COUNCIL MEETING

MARCH 11, 2025

DECISION RELEASE

Release of City of Vancouver Code of Conduct By-law No.12886 Review and Recommendations

THAT Council authorize public release of the report prepared by Reece Harding of Young Anderson Barristers & Solicitors dated February 3, 2025, and entitled *City of Vancouver Code of Conduct By-law No.12886 Review and Recommendations* (the "Review Report") with minor redactions in the form set out in Appendix "A", as attached.

* * * * *



Privileged & Confidential

**City of Vancouver Code of Conduct By-law No. 12886
Review and Recommendations**

Submitted by Reece Harding (the “Reviewer”)

February 3, 2025

Table of Contents

<u>Report Content</u>	<u>Page</u>
Executive Summary	1
1. Overview and Introductory Comments	4
2. What we heard in our Review	6
a. From Council members	6
b. From the Integrity Commissioner and Her Team	8
c. From City Staff	9
d. From External Legal Counsel	11
e. From the British Columbia Ombudsperson	11
3. Findings and Conclusions	12
a. Assess Whether the Scope of the IC’s Jurisdiction is Sufficiently Clear	12
b. Overlap with Other Legislation and Potentially Excessively Broad Scope	13
c. Effectiveness of the Code	14
d. Best Practices	16
i. “Potential for Change” UBCM Report	17
ii. Other Canadian Jurisdiction	17
Manitoba	18
Ontario	19
New Brunswick	21
iii. Conclusion on Best Practices	22
e. Potential for an Appellate Function	22
f. Recommendations	23
Recommendation #1 – Independence of Integrity Commissioner	23
Recommendation #2 – Provincial Guidance	25
Recommendation #3 – Enhanced Purpose Statement, Scope Reduction & Enhanced Screening	26
Recommendation #4 – Splitting Investigative and Advisory Roles	28
Recommendation #5 – Public Release of Investigation Reports	30
Recommendation #6 – Reduce the Public Complaints Scope	31
Recommendation #7 – Clarity on Confidentiality	32
Recommendation #8 – Political Staff & Parallel Investigations	34

Recommendation #9 – Remove Advisory Board Members from Investigative Process	35
Recommendation #10 – Detailed Code Amendments	37
4. Acknowledgements and Closing	41
Appendix	43
Terms of Reference	43

Executive Summary

In the course of our review of the Code of Conduct By-law No. 12886 (the “Code”) we conducted some twenty-four interviews with Council members, the Integrity Commissioner, City staff, and others knowledgeable in the area of elected official conduct. We also bring many years of our own experiences with codes of conduct including as the City of Surrey’s former ethics commissioner.

During data gathering several themes clearly developed. We will focus on five in this executive summary:

- First, there was general consensus among all of the people to whom we spoke that local government elected officials should be held accountable for their behaviour. In this sense, there was clear support for the Code as a tool to ensure accountability but varying views on how accountability could be best achieved.
- Second, and despite the broad consensus that a Code was necessary, many of those with whom we spoke perceived that the Code was easily “weaponized” or “politicized”. To whatever extent this perception was accurate, it is concerning. As City staff made clear to us, the Code needs to work effectively for Council and if even a minority of Council view the Code negatively, this perception will limit its effectiveness. We would also comment that the Code needs to work for the Integrity Commissioner and her team.
- Third, many raised concerns that Code complaints and investigations were too costly. This concern with cost included money, time, and energy. There was also a feeling that Code investigations were dominating, and that the laudable advice and education functions performed by the Integrity Commissioner were taking a backseat.
- Fourth, we heard from many that the Code was not providing the Integrity Commissioner with sufficient independence. It was felt by many that the Integrity Commissioner needed better structural protections from being removed from Office in circumstances where, for example, one of her decisions was unpopular or controversial.
- Fifth, there was a near unanimous feeling that the City needs provincial guidance in the form of new and enhanced legislation to support both the Code and the Office of Integrity Commissioner.

Of course, there were other themes that informed the attached report, but it is these five that drive our conclusions and ten recommendations.

As for the existing Code, it is well-written and structured. It also expresses the jurisdiction and expectations of the Integrity Commissioner well and appears to be effective in its performance.

Privileged & Confidential

2

In short, without the benefit of provincial legislation, the City has created a good Code, but it can be improved.

That said, based on the information we have gathered in the context of this review, as well as our own views and experience, we have ten recommendations for the City and its Council. We recommend that the City:

1. amend the Code to enhance the structural independence of the Integrity Commissioner to the greatest extent possible;
2. take steps to engage with the Province seeking amendments to the *Vancouver Charter* that will: (1) grant express jurisdiction to enact a Code of Conduct and specify required content; and (2) create and empower a truly independent Integrity Commissioner;
3. amend the Code to: (1) include an enhanced purpose statement; (2) narrow the substantive prohibitions in the Code; and (3) enhance the complaint screening function of the Integrity Commissioner;
4. amend section 5.7 of the Code to provide the Integrity Commissioner with additional authority to construct a roster of investigators to perform the investigative role of the Integrity Commissioner, when needed;
5. amend section 6.31(c) of the Code to: (1) remove the requirement that the Integrity Commissioner make public the investigation report where no breach is found; (2) provide anonymous summaries be published in place of the investigation reports where no breach is found; (3) provide summaries of the investigation reports to the public complainants; and (4) amend the Code to restrict any public complainant who violates the confidentiality expectations from filing future complaints for a period of time;
6. amend sections 6.1 and 6.3 of the Code to: (1) allow only residents of the City of Vancouver to file complaints; and (2) consider whether a refundable fee should be required before a complaint is accepted for filing;
7. amend sections 6.38 to 6.40 of the Code to add to, enhance and clarify the expectations of confidentiality in the administration of the Code;
8. amend the Code to (1) create a rule making Council members responsible for the actions of staff they are directing, including political staff, if those actions would breach the Code; and (2) that the City clarify that the Integrity Commissioner does not have any direct jurisdiction over the investigation of political staff, complaints against whom must be adjudicated by the City;

Privileged & Confidential

3

9. consider removing Advisory Board Members from the Code complaint and investigation process; and
10. direct staff to review the enclosed table of more detailed amendments and consider whether they could be incorporated into the Code.

In our view, these ten recommendations all support what we heard in this review and, primarily, the five themes above. We will leave the consideration of these recommendations to the City, and Council, but suggest that, if implemented, they will make the Code better to support all of Council; limit “weaponizing” of the Code; reduce the potential for increased costs; support the independence of the Office of the Integrity Commissioner; and enhance the chances of provincial legislative change to support ethical conduct of local government elected officials.

1. Overview and Introductory Comments

On October 8, 2024, we were retained as legal counsel to the City of Vancouver (“City”) to perform an independent and impartial review of the Code of Conduct By-law No. 12886 (“Code”) and to provide legal advice regarding the Code. The terms of reference note three reasons for this review:

3. The City seeks an independent review of the code for the following reasons:
 - a. The Integrity Commissioner’s 2023 Annual Report referenced that the scope of the Integrity Commissioner’s role is “...not always clear”;
 - b. An independent review provides the benefit of external objectivity and expertise; and
 - c. To ensure that the scope of the Integrity Commissioner’s role in providing oversight of the conduct of Council and Advisory Board members is clear and that the text and operation of the Code is effective.

The scope of the Code review, which is described in the terms of reference as the “Matters of Review,” is as follows:

6. The City has retained the Reviewer to:
 - a. Assess whether the scope of the integrity Commissioner’s role, as provided for under the Code, is sufficiently clear:
 - i. Ensuring the scope of the Integrity Commissioner’s role is appropriate and does not overlap with other legislation or the jurisdiction of other oversight bodies (ex. Ombudsperson, etc.);
 - ii. Determining whether there is overly broad scope, and overlapping jurisdictions, that may have resulted in an excessive number of complaints and abuse of the complaint process;
 - b. Assess whether the text and operation of the Code is effective in meeting the Code’s purpose of setting out:
 - i. the rules Council members and advisory board members must follow in fulfilling their duties and responsibilities as elected or appointed officials; and
 - ii. the powers and procedures of the Integrity Commissioner in exercising oversight over Council members and advisory board members;
 - c. Assess whether the scope of the Code is appropriate and in accordance with best practices;

- d. Assess whether the processes and procedures provided for under the Code in respect of the complaint process are appropriate and in accordance with best practices, and whether an appeal process may need to be included; and
- e. Provide recommendation, where applicable, to address any weaknesses or concerns identified in the review of items (a) to (d) above.

(Collectively, the “Matters on Review”).

At sections 8 through 10 of the terms of reference, we are directed to give all Council members and the City’s Integrity Commissioner an opportunity to participate in this review and to speak with anyone, including City staff, for other relevant information. City staff are directed to cooperate in this review and to provide documents, if requested, with the exception of anything that is subject to solicitor-client privilege.

In the course of this review, we conducted twenty-four interviews, which took place either in-person, via Zoom, email or telephone. This included interviews with ten Council members¹; multiple City employees and appointees; the Integrity Commissioner and her team; representatives of the Ombudsperson’s Office; a Code complainant; several external legal counsel conversant with the Code; and several external integrity commissioners from jurisdictions outside of British Columbia.

Sections 11 and 20 of the terms of reference confirm that all submissions supplied to us, as well as our working notes, are to be treated as confidential and privileged except for the purposes of inclusion in this report. Where we choose to include such information in this report, it is to be anonymized. As such, no names, or other obviously identifiable information, will be used in this report.

At the conclusion of this review, we are to deliver a privileged report to Mayor and Council through the City Manager. We will present this report and any accompanying legal advice to Mayor and Council at a future in-camera meeting, after which Council may resolve to release this report, or a revised report to protect confidential and privileged information, to the public.²

¹ We did not interview Councillor Christine Boyle as she was elected as a Member of the Legislative Assembly on October 19, 2024 and resigned her council seat before we could interview her. We also note that, while this report was being produced, but after her interview, Councillor Adriane Carr resigned from Council. We have incorporated Councillor Carr’s views into our discussion.

² See sections 13 to 17 of the terms of reference.

Last, this report was to be prepared in a timely manner. As per sections 18 and 19 of the terms of reference, and the direction given by the City Manager, this report is to be submitted in final form to Mayor and Council no later than February 5, 2025.

A full copy of the terms of reference is attached to this report.

With the above in mind, we also want to make several additional comments to provide context to the remainder of this report.

First, our office has personal experience in administering a code of conduct. From 2020-2022, the writer was British Columbia's first local government ethics commissioner for the City of Surrey. Having personally performed these duties, we understand how difficult a role this is to fulfill.

Second, our role in this review is not to audit the performance of the City's current Integrity Commissioner. Nothing in this report should be interpreted as a criticism of the current Integrity Commissioner or her team. With this in mind, this is intended to be a forward-looking report to improve the Code on the themes we have discovered during this review.

Last, it must be recognized that the City has created this Code in a near legislative void. British Columbia remains one of the only, if not the only, jurisdiction in all of Canada to not have substantive provincial legislation around Council codes of conduct. As we will discuss later in this report, we see this lack of provincial legislative guidance as one of the central challenges to improve the City's Code moving forward.

2. What we heard in our Review

(a) From Council members

Among the ten Council members we interviewed, most were supportive of the Code generally. Many emphasized the importance of accountability, transparency and integrity, and all acknowledged the need to hold themselves to a high standard as elected officials. Most Council members were pleased with how the Integrity Commissioner's Office had been administered in terms of its educational and advisory role, and many were very complimentary of the Integrity Commissioner herself. There were a minority of Council members who did not support the Code, feeling that it was a bureaucratic tool that was, in their view, taking up time and resources that could be better spent elsewhere. For these Council members, no doubt, this opinion was born out of their experiences as participants in Code complaints.

We asked Council members to think critically about the Code, and to tell us which parts of the process they liked, which they disliked, and what they would improve. Of course, each Council

Privileged & Confidential

7

member we interviewed brought their own experiences and beliefs to the table, making each interview different. Some themes did emerge, however.

First, many Council members were concerned with what was uniformly described as the “weaponization of complaints”. This phrase was generally used to describe the use of a complaint for political purposes, to intentionally cause stress, or to drain financial and other resources. In the course of our interviews, we often attempted to drill down on this concern by positing a distinction between, on the one hand, a complaint that was “about politics” – for example, a complaint focused on a political statement made by a councillor – and, on the other hand, a complaint about something non-political, but submitted by a political rival or for a political reason. In our view, complaints of the first category should not properly be the subject of a code of conduct process. The political views of councillors should be loudly proclaimed. They, and the manner in which they are expressed, should not be muzzled by an administrative apparatus.

The second category set out above, however, is something that is extremely difficult, or even perhaps impossible, to prevent. Indeed, it is our view that so long as complaints before the adjudicator deal with *bona fide* ethical matters, then they should be allowed to proceed. Just because a complaint is filed by a political rival does not mean it is a weaponized complaint.

Second, many Council members emphasized that they would like to see an expansion of the educational and advisory roles of the Integrity Commissioner. Some Council members, along with expressing to us this view, stated that they would like to either narrow or remove the investigative jurisdiction of the Integrity Commissioner. They were of the view that the Integrity Commissioner’s Office focused too much on the investigative role, which took away from the proactive and constructive work that the Commissioner would be able to do as an educational and advisory resource. Of note, the writer heard the same concerns expressed by Council members during our term as Ethics Commissioner in Surrey.

To us, this view is understandable. It is a somewhat unusual feature of the Integrity Commissioner’s Office that a Council member might be under investigation by the Integrity Commissioner for an allegation of a serious ethical breach, and at the same time be expected to call her for advice proactively, or to attend a training session with her. It is possible to reconcile these roles with each other. Indeed, it is not difficult to see why the person who investigates complaints, thereby becoming very familiar with the Code, is also best placed to give advice on the Code. However, the feeling of conflict caused by an (often adversarial) process of investigation will almost necessarily make it more difficult for the advisory and educational functions to be as robust as they should be.

Third, a minority of Council members expressed that they felt that members of the public should not be entitled to file complaints. This concern appears to have been animated by the “weaponization” concern expressed above. Many Councillors were of the view that public complaints were nearly always filed for reasons that were “political” in nature.

Fourth, a minority of Council members lost confidence in the Office generally, through their experience in the complaint process.

Fifth, and finally, we observe that the Council members we interviewed had very few specific comments on individual provisions of the Code, both substantive and procedural. While many Council members referred to their own experiences dealing with complaints as a respondent, for the most part we were not referred either to individual prohibitions in the Code that, in the view of the interviewee, ought not to be the subject of Code complaints, or to procedural provisions said not to be working properly.

(b) From the Integrity Commissioner and Her Team

We met or spoke with the Integrity Commissioner and her team on several occasions. The Integrity Commissioner helpfully provided us with copies of her 2022-2024 annual reports, as well as her decisions, guidelines and bulletins. Again, our purpose in speaking with the Integrity Commissioner and reviewing her work was not to audit that work, but to find opportunities to better the Code looking forward based on Council members’ feedback; the Commissioner’s experience; and ours as the City of Surrey’s Ethics Commissioner from 2020-2022. Although we discussed many items and issues (some of which we will expand on in other parts of this review) we identified five substantive themes from our review and dialogue with the Integrity Commissioner that informs our recommendations below. These are:

- the potential to split the investigative and advisory roles of the Integrity Commissioner;
- independence of the Integrity Commissioner’s Office;
- limiting the public release of Investigative reports;
- clarification on political staff within the Code; and
- the need for Provincial legislation.

To be clear, these items above are themes only and do not necessarily represent the Integrity Commissioner’s views on changes that should be made to the Code. Those views are readily accessible in her 2022-2024 annual reports.

(c) From City Staff

Early in our review, we spoke to members of City staff familiar with the current Code as well as its former iterations. By way of introduction to this section, staff told us that they view the Code as an important and independent mechanism for the review of serious complaints about ethical conduct. It performs multiple functions, including the maintenance of a respectful workplace and productive work environment. The value of effective processes to address those matters, staff told us, was distinct from the purpose or value for members of the public who pursue complaints against Council members or advisory board members.

Staff also told us, in essence, that the Code must work for Council. That is to say that staff were somewhat concerned that complaints, either from members of the public or others, lead not only to an increased administrative burden on Council and the City, but to a loss of confidence in the value of the Code process altogether. Staff wanted to ensue that the overall impact of the regime on elected officials, who are often already overburdened with responsibilities, did not outweigh its laudable goals. In our view, this is an extremely important perspective and it has informed our approach in this review.

By way of history, staff informed us that the current Code replaced a code of conduct policy that applied to elected officials, advisory board members and staff. That earlier process, they said, worked well with staff, but when it came to elected officials, it gave rise to complications. Without going into too much detail, two examples of such complications were the involvement of the Mayor's office in the administration of complaints, as well as the need for the complainant and respondent to agree on an investigator.

Council therefore requested that staff "start from scratch" and create a new code of conduct by looking to other jurisdictions. Mainly, Council was concerned with creating a streamlined process that was clear – process concerns animated the need for a new code.

The current Code creates a system administered by an Integrity Commissioner, whose duties are set out at section 5.7. Without reproducing her jurisdiction in total, we see her role as essentially threefold. First, she is to provide advice to members³ regarding ethical conduct. Second, she is to create and administer educational materials for members. Third, she is to deal with complaints, both formally through investigation as well as informally.⁴ There is, as several people mentioned to us, some tension created by virtue of the fact that it is the same person

³ This includes not only the eleven elected council members but all appointed individuals from the advisory boards. The inclusion of advisory board members increases the overall application of the Code by approximately 330 people.

⁴ As noted in the Integrity Commissioner's *Annual Report, 2023*, she also provides a budget, produces an annual report, and performs community outreach.

Privileged & Confidential

10

who is responsible for proactively educating and advising members on ethical conduct, as well as investigating members for breaches of the Code. We will deal with that issue in more detail below.

The system administered by the Integrity Commissioner creates categories of behaviour that are prohibited. The prohibitions created by the Code in some cases build on matters that are already covered by the *Vancouver Charter* – such as conflicts of interest (s. 4.1), gifting (ss. 4.13-4.19), and use of influence (ss. 4.7-4.10) – but in other cases go beyond the statutory backdrop. Some examples of rules that go beyond the *Vancouver Charter* include restrictions on the public communications of a Council member (ss. 3.1-3.4) and rules dealing with use of municipal assets and services (ss. 4.2-4.6). There is also a general provision (s. 2) entitled “standards and values” which requires members to uphold certain standards and values, which are: competence, fairness, integrity, leadership, respect, responsibility, and transparency.

Finally, we note that the Code contains procedural provisions that indicate how complaints are to be administered, and how an investigation is to take place if a complaint makes it through the initial screening process.

In our experience, having reviewed codes of conduct from across BC and the rest of Canada, the City’s current Code is a very good piece of work, especially given the lack of provincial direction in BC. In BC, there is no enabling legislation specifically granting local governments the jurisdiction to enact and enforce codes of conduct on members. Rather, the authority is, for most local governments, found at section 114(4) of the *Community Charter*, which allows a council to “do anything incidental or conducive to the exercise or performance of any power, duty or function conferred on a council or municipality”. In the case of the City, the *Vancouver Charter* provides at section 199 that “The Council, in addition to the powers specifically allotted to it, shall have the power to do all such things as are incidental or conducive to the exercise of the allotted powers”.⁵

With that said, the current Code can always be improved and that will remain the focus of this report. In our experience, the best way to identify improvements in a Code is by the actual use and administration of it. Each time a complaint is processed, lessons are learned. Codes should be living documents; councils ought to use the lessons learned both in support of changes to the wording of the Code to streamline processes and to make larger policy adjustments. With

⁵ While there are regulations under both the *Community Charter* and *Vancouver Charter* dealing with ‘guiding principles’ to be considered when deciding whether to create a code of conduct, as well as legislation requiring the consideration of the adoption of a code of conduct, there is still no specific grant of authority to local governments to create codes or appoint commissioners. These can be found at sections 113.1 and 113.2 of the *Community Charter*, sections 145.93 and 149.94 of the *Vancouver Charter* and at *BC Regulation 138/2022*.

several years of work by the Integrity Commissioner this is an ideal time to consider improvements to the Code.

(d) From External Legal Counsel

We also spoke to multiple lawyers familiar with the Code in their roles as legal counsel to participants in its process. In these interviews, we did not inquire into the specifics of particular complaints. Rather, recognizing that we have more experience in advising on the administration of codes of conduct than advising individuals who are engaged in code processes, we hoped to gain a better understanding of potential structural concerns faced by participants. We also asked for thoughts on the concept of codes of conduct generally as a policy choice for local governments.

The lawyers we spoke with told us that they saw the kinds of conduct captured by codes generally, including Vancouver's Code, as too broad. They were concerned that the processes by which persons, particularly members of the public, could engage formal investigative machinery were too simple to access and could therefore be abused for political purposes or simply to cause problems for an elected official.

In particular, we were informed that codes of conduct often strayed too far into matters that were properly dealt with as "occupational health and safety", straying away from matters that constitute "black letter" ethical conduct. While the processes were deemed to generally be fair, it was expressed to us that the money, complication, and time that was created by code of conduct complaints had the potential to undermine what could be a very valuable system of self-regulation.

Finally, the ballot box was emphasized as being the proper recourse for members of the public dissatisfied with their elected officials.

(e) From the British Columbia Ombudsperson

In the course of our review, we met with representatives of the BC Ombudsperson's Office. In this meeting two themes developed.

First, in comparing the jurisdiction of the City's Integrity Commissioner with that of the Ombudsperson, there were very few areas of duplicative jurisdiction. In this sense, most of the complaints received by the Ombudsperson would generally differ from those received by the City's Integrity Commissioner. In the areas where there may be duplicative jurisdiction, the Ombudsperson representatives indicated that, such duplication has not been an issue to date. Furthermore, it is preferable to have more than one jurisdiction that could potentially be

engaged rather than have no remedy for a particular problem. In short, it was felt that the City's Integrity Commissioner was not impinging on the jurisdiction of the Ombudsperson.

Second, there was very clear messaging from the Ombudsperson that the Province needs to adopt legislation to protect the independence of the Integrity Commissioner from political interference. The Ombudsperson also suggested that more robust legislation could be considered to support the jurisdiction, process and remedies of Integrity Commissioners. The Ombudsperson's views on this issue are set out in correspondence to the Minister of Municipal Affairs⁶:

I urge your ministry to take further steps to develop a consistent, province-wide and legally binding approach to complaints and investigations into the conduct of council members. As you know, some local governments have established Ethics or Integrity Commissioners by bylaw. However, given the mechanism through which they are established, such locally established municipal integrity regimes remain vulnerable to political interference by the very body whose activities the Commissioners are intended to superintend.

...

As these examples from Surrey and Vancouver make clear, there is a pressing need for the province establish a legal framework governing the activities of local government Integrity/Ethics Commissioners. The important work of these offices must be allowed to occur without the risk that their activities may be suspended or otherwise impeded by council. Instead, they must be able to carry their work out independent of political interference. That can only occur through provincial legislation.

3. Findings, Conclusions and Recommendations

In this section of the report, we answer several of the more specific "Matters for Review" as set out in our terms of reference and provide our recommendations.

(a) Assess Whether the Scope of the Integrity Commissioner's Jurisdiction is Sufficiently Clear

In our view, the Integrity Commissioner's jurisdiction is clear. She deals with complaints regarding the ethical conduct of elected officials, as defined by the Code, in addition to the other duties and responsibilities set out in section 5.7 of the Code. Other than minor points that are already identified in the Integrity Commissioner's 2023 annual report, we do not

⁶ August 26, 2024 letter from Jay Chalke, Ombudsperson to Hon. Anne Kang, Minister of Municipal Affairs.

recommend any amendments that are for clarification only. Rather, after speaking with many people both internal and external to the City, we think that the City must make a number of policy decisions as to what the Integrity Commissioner's jurisdiction should encompass. That is to say, we feel that the City must determine, with the benefit of the lessons learned from multiple years of administration of the Code, whether the current model accomplishes its goals.

In short, does the Code still work for Council?

To that end, we pose the following questions as regards jurisdiction:

- Should the Code track only those ethical matters that are already captured by the *Vancouver Charter*?
- Should the Code place more of an emphasis on the advisory and educational roles played by the Commissioner? If so, how should it do that?
- Should the Code refer more matters away from the jurisdiction of the Commissioner and toward the jurisdiction of other bodies that may be able to handle complaints (Ombudsperson, etc.)?
- Should the Code restrict the public from filing complaints?

These questions are addressed directly elsewhere in the report, and in particular when we make our recommendations, but for the purposes of satisfying our terms of reference, we confirm that in our opinion the scope of the Integrity Commissioner's jurisdiction is sufficiently clear.

(b) Overlap with Other Legislation and Potentially Excessively Broad Scope

In our view, there will almost always be some overlap with other legislation in codes of conduct. This is because, in part, the *Vancouver Charter* and *Community Charter* already deal with some of the same categories of conduct that might otherwise be dealt with in a code of conduct.⁷ To some extent, this is unavoidable, because one of the purposes of a code of conduct is to provide a more accessible procedure, internal to a local government, for addressing ethical matters that otherwise might only be addressed through costly and difficult court processes. There is some merit to duplication in this sense, both from an access to justice perspective and because a local government may wish to internally 'audit' the ethical behaviour of their councillors without engaging the courts.

Those framework comments aside, we think the Code actually exceeds many others in BC in attempting to avoid duplication. This is largely because section 6.13 is quite robust in the way it limits the jurisdiction of the Integrity Commissioner:

⁷ For example, conflicts of interest, use of influence, and gifting.

6.13 If a complaint is submitted that, on its face, is not made with respect to a breach of this By-law, or if a complaint would be more appropriately addressed through another process, including if the complaint is:

- a) an allegation of a criminal nature consistent with the Criminal Code;
- b) with respect to non-compliance with the *Freedom of Information and Protection of Privacy Act*;
- c) with respect to conduct that may subject a member to disqualification pursuant to sections 140(4), 143(4) and 145.3 to 145.911 of the *Vancouver Charter*;
- d) with respect to non-compliance with a more specific Council policy or bylaw with a separate complaint procedure;
- e) or with respect to a matter that is subject to another outstanding process, such as a court proceeding or a Human Rights complaint,

the Integrity Commissioner must reject the complaint, or part of the complaint, and must notify the complainant in writing that the complaint is not within the jurisdiction of this By-law, or that the complaint would be more appropriately addressed through another process, as the case may be, and set out any additional reasons or referrals the Integrity Commissioner considers appropriate.

We think that section 6.13 provides a more than sufficient limit on the jurisdiction of the Integrity Commissioner to adjudicate complaints. We note in particular that section 6.13(c) is quite broad in its attempt to avoid duplication of rules created by the *Vancouver Charter*.

As well, based on our review of the Code, our interviews, and our knowledge of codes of conduct throughout British Columbia and Canada, we do not believe that the Integrity Commissioner's jurisdiction is overly broad. The substantive portions of the Code are in line with what we see in other jurisdictions across Canada.

We will, however, discuss below how some amendments to narrow this jurisdiction could enhance the purposes of the Code and to streamline the Code's administration.

(c) Effectiveness of the Code

Based on our review of the available data regarding the operation of the Code, and our experience advising on the administration of other codes of conduct around BC, we are of the view that both the text and operation of the Code are sufficiently effective in meeting the

Privileged & Confidential

15

Code's purposes as regards both the rules and duties for members and the powers and procedures of the Integrity Commissioner.

We refer in particular to the Integrity Commissioner's annual reports for 2023 and 2024. Of the 12 complaints received in 2022-2023, ten were dismissed, one was closed, and one was determined to be a breach of the Code. Of the ten dismissed complaints, three were outside of jurisdiction, one was a duplicate, three were closed after preliminary assessment, two were improperly directed at staff, and one was dismissed after an investigation. The 2024 annual report tells a similar story: out of 31 complaints received, 22 were dismissed, seven were closed, and two are in progress. Of the dismissed complaints, 41% were outside of the Code, 4% were not formal complaints, 10% had insufficient grounds, 7% were duplicates, 24% were dismissed after preliminary assessment, and 10% were dismissed after an investigation. In 2023-2024, 4% constituted a breach of the Code.

In our view, and accounting for our experience in the City of Surrey and elsewhere in BC, the figures above indicate that the Code is functioning effectively. While we believe elements of the Code can be improved and made to operate more effectively, as will be discussed further below, the ratio of complaints to dismissals – and the phases at which those dismissals are happening – shows us that the Integrity Commissioner is properly empowered to screen out complaints that do not fit with the process. Further, the number of complaints received in total is consistent with Codes of similar scope in similar cities. In the City of Surrey in 2020-2021, for example, the Ethics Commissioner's Office received 33 complaints, closing 31. Six of those complaints were formally investigated, while 25 were dismissed summarily or for jurisdictional reasons.⁸

On the theme of effectiveness, we must say a few words about the remedies that are possible under the Code, as the potential consequences for those regulated are essential to any discussion on the effectiveness of a regulatory measure. The Code currently contains the following remedies:

- a letter of reprimand from Council addressed to the member;
- a request from Council that the member issue a letter of apology;
- the publication of a letter of reprimand and a request for apology by the Integrity Commissioner, and the member's written response;
- a recommendation that the member attend specific training or counselling;
- suspension or removal of the appointment of a Council Member as the Deputy Mayor;

⁸ City of Surrey Ethics Commissioner Annual Report 2021, Online: <https://www.surrey.ca/city-government/mayor-council/surrey-ethics-commissioner-office>.

Privileged & Confidential

16

- suspension or removal of the Council Member from some or all Council committees and bodies to which the Council Member was appointed by Council;
- termination of the Advisory Board Member's appointment from the advisory committee, task force, commission, board, or other Council-established body to which the Advisory Board Member was appointed by Council; and
- public censure of a member.

Generally, these remedies are not in the nature of penalties or sanctions. Rather, they tend to be recommendations or public notifications regarding the member's breach of the Code. This does not, in our opinion, necessarily detract from the effectiveness of the Code. The reputational consequences that can stem from a negative finding by the Integrity Commissioner, particularly for a Council member, are in our view sufficiently serious to act as a deterrent in many cases.

We must note that several other BC codes of conduct contain provisions that deal with remuneration reduction. These provisions generally state that where an investigator finds a breach, then there is a fixed remuneration reduction that takes place unless certain conditions are met (i.e., the breach was minor or inadvertent).⁹ These provisions are clearly effective deterrents and, in our view, create real "teeth" for codes of conduct. We generally support their inclusion in Codes.

At this time, however, we mention these provisions for information only, and we leave it completely to the discretion of Council to consider whether it would like to explore remuneration reductions further in the Code. Briefly, our reasoning for not including this in our recommendations section is that there does not seem yet to be agreement between all Council members as to what kind of behaviour the Code ought to capture. While reductions in remuneration (and sometimes even fines, where there is statutory authority) are relatively standard throughout codes of conduct in Canada, we think that the spectre of financial consequences might in this case work to be counter-productive to Council's goals around de-weaponization and de-politicization of the process. We think, however, that after a period of administration, this is an item that could be brought back for further consideration.¹⁰

(d) Best Practices

What are best practices? Codes of conduct are constantly evolving, and so the following on best practices represents the opinions of the writer. Given that the City exists within a framework that lacks substantial provincial direction to local governments on codes of conduct, it is

⁹ See s. 30 of City of Courtenay Council Code of Conduct Bylaw No. 3150 and s. 4.1.11 of the District of Squamish Bylaw No. 2991, 2019.

¹⁰ See recommendation #4 in the Integrity Commissioner's *Annual Report, 2023*.

necessary to look to external aids to determine what constitutes a best practice. While we will deal with our recommendations for changes to the Code elsewhere in this report, we are generally of the view that Vancouver's Code, when reviewed in the context of the other existing codes of conduct in British Columbia, as well as the frameworks in different provinces, is in line with what other local governments have done. There is nothing remarkably different in Vancouver's Code as compared to the many others we have reviewed. Therefore, our best practices section focuses more on the legal framework in which Vancouver's Code is situated.

(i) "Potential for Change" UBCM Report

In September, 2024 the UBCM and LGMA released a discussion paper entitled "Potential For Change: Responsible Conduct Framework for Local Government Elected Officials". That paper is worth reviewing in determining what constitutes a best practice with respect to codes of conduct. We note that the paper refers to three different models: (1) Local Determination, where individual local governments create and implement ethical standards on their own; (2) Provincial Requirements for Centralized Administration and Enforcement, which involves an "uploading" of the responsibility for elected official conduct to a newly created provincial office; and (3) Provincial Requirements for Local Administration and Enforcement, where certain standards and practices are mandated by the Province. The discussion paper sets out in more detail the potential benefits and unintended consequences of adoption of each of these three models.

As we will discuss further below, the third model is most commonly implemented across Canada. We favour this third model, largely because it tends to allow for variation at a local level while creating, in our view, the machinery that will allow codes of conduct to be successful. This model can, and often does, have room for provincial oversight.

(ii) Other Canadian Jurisdictions

While no jurisdiction is perfect, we would be remiss if we did not review the frameworks established by several other provincial governments. British Columbia, in our view, is well behind these other provinces in its lack of provincial guidance to local government as regards codes of conduct. We will, for the purposes of this review, look at three models from other provinces, all of which are slightly different, but share some key features that will inform our discussion on best practices.

Manitoba

In Manitoba, the *Municipal Act* contains requirements that councils adopt a code of conduct, and creates machinery by which those codes are to be administered. By regulation¹¹, the province has prescribed various matters that must be included in a code of conduct:

- **Respect**
 - treating others with courtesy, dignity and fairness;
 - appreciating difference and welcoming learning from others;
 - supporting and encouraging others to participate in council activities;
 - fostering an environment free of harassment, including sexual harassment and bullying.
- **Professionalism**
 - following council decision-making and communications processes;
 - behaving in a manner that upholds public confidence in local government;
 - respecting the impartiality of municipal employees;
 - making reasonable efforts to resolve complaints in an expeditious, informal, collaborative and restorative manner;
 - avoiding the use of irrelevant or false considerations when carrying out duties.
- **Accountability**
 - using municipal resources appropriately;
 - taking responsibility for decisions and actions.

The regulation also requires that Council establish a fair and impartial process, and stipulates how a council is to deal with an investigation report when one is received. In particular, a Council is to close the meeting and review the report, and then re-open the meeting and vote as to whether the member breached the code and, if so, whether there should be a sanction. Sanctions can include:

- censuring the member;
- reprimanding the member;
- requiring the member to issue a letter of apology within 30 days after being directed to do so;
- requiring the member to attend training as directed by the council;
- suspending or removing the member's presiding duties under subsection 83(2) of the Act, if applicable;
- suspending or removing the member as the deputy head of the council, if applicable;

¹¹ Council Members' Codes of Conduct Regulation, M.R. 98/2020.

Privileged & Confidential

19

- suspending or removing the member as chair of a committee, if applicable;
- suspending or removing the member from any or all council committees or bodies on which the member serves;
- suspending the member from carrying out a power, duty or function as a member for a period not exceeding 90 days;
- reducing or suspending the member's compensation for the duration of any suspension;
- imposing a fine of not more than \$1,000, to be paid within 30 days after being imposed.

Unlike other provinces, which primarily rely on judicial review as a safeguard, Manitoba has set up an appeal process where a member who is sanctioned may appeal a sanction (to an independent, provincially-established body) on the basis that their conduct did not breach the Code.

Ontario

The current Ontario regulatory regime for local governments is sourced from a 2017/2018 overhaul where the province introduced mandatory codes of conduct and compulsory appointment or engagement of integrity commissioners.¹² Section 223.2(1) of Ontario's *Municipal Act* now provides:

223.2(1) A municipality shall establish codes of conduct for members of the council and of its local boards.

The *Act* allows the province to make regulations prescribing one or more subject matters a municipality is required to include in a code of conduct. This power was exercised in 2018 with *Ontario Regulation 55/18*. The province required municipalities to include the following prescribed subject matters:

- gifts, benefits and hospitality
- respectful conduct policies;
- confidentiality; and
- use of property.

Municipalities must only include the prescribed subject matters; there are no specific language or substance requirements.

Integrity commissioners, which are required under the *Act*, must function in an independent manner and report directly to municipal council (s. 223.3(1)). The functions of integrity commissioners include:

¹² See the *Modernizing Ontario's Municipal Legislation Act*: <https://www.ontario.ca/laws/statute/s17010>.

Privileged & Confidential

20

- applying the code of conduct, including conducting investigations and inquiries into complaints;
- conducting inquiries concerning alleged contraventions of the *Municipal Conflict of Interest Act*;
- providing advice to members respecting their obligations under the code of conduct, procedures, rules or policies governing the ethical behaviour of members; and
- providing education information.

Municipalities are permitted to adopt their own complaint or inquiry procedures, which set out how to file complaints and guide the integrity commissioner's inquiries.

As noted, the only requirements for a municipality's code of conduct are the four prescribed subject matters stipulated in *Regulation 55/18*. However, municipalities are encouraged to incorporate additional provisions such as:

- decorum at meetings;
- social media use;
- communication on behalf of council;
- conflicts of interest outside scope of the *Conflict of Interest Act*;
- workplace harassment;
- penalties;
- remedial measures;
- protection from reprisal;
- co-operation with the integrity commissioner; and
- expansion beyond council.

Ontario municipalities are empowered by the *Municipal Act* to impose either a reprimand or a suspension of remuneration if they receive a report from their integrity commissioner that finds a breach of the code of conduct.¹³

We note that school boards in Ontario are subject to more stringent requirements which are prescribed by regulation.¹⁴ As opposed to municipalities, which have leeway in terms of drafting, school boards must now include the precise wording of specific provisions in their codes.

¹³ *Municipal Act* s. 223.4(5).

¹⁴ See O. Reg 312/24: *Members of School Boards – Code of Conduct* (<https://www.ontario.ca/laws/regulation/r24312>); O. Reg 306/24: *Integrity Commissioners and Process for Alleged Breaches of the Code of Conduct* (<https://www.ontario.ca/laws/regulation/r24306>).

Finally, we wish to highlight the way in which the *Municipal Act* formalizes the advice-giving function of the integrity commissioner, stipulating that advice must be requested and given in writing.¹⁵ The formalization of this process has led many Ontario municipalities to adopt provisions such as the following, from the City of Toronto's Code of Conduct:

18.0 Any written advice given by the Integrity commissioner to a member binds the Integrity Commissioner in any subsequent consideration of the conduct of the member in the same matter as long as all the relevant facts known to the member were disclosed to the Integrity Commissioner.

Allowing advice of the integrity commissioner to be used as, in essence, a defence to a complaint encourages members of council to be proactive in utilizing that function.

New Brunswick

As with the Ontario model, New Brunswick's *Code of Conduct Regulation, NB 2024-48* delineates some matters that must be included in a Code, including:

- values to which members of council shall adhere;
- a requirement to familiarize oneself with the conflict-of-interest rules;
- behaviour toward members of council, the public, and officers/employees of the local government;
- use of property, resources, and services of a local government;
- public communications by a council member; and
- compliance with federal, provincial, and local laws in the performance of their duties.

The New Brunswick model does not require an integrity commissioner, but rather "a fair and impartial process for the investigation of complaints by the local government or a third party".¹⁶

We note that the regulation provides express authority for certain corrective actions, which include but are not limited to:

- reprimanding the member;
- requiring that the member issue a letter of apology;
- requiring that the member attend training or counselling as directed by council;
- suspending the member from exercising the powers or performing the duties conferred under section 48 of the Act;

¹⁵ See ss. 223.3(2.1) and (2.2).

¹⁶ NB Regulation s. 4(e).

Privileged & Confidential

22

- reducing or suspending the member’s compensation for the duration of any suspension imposed; and
- reducing or suspending the member’s privileges, including travel or the use of resources, services or property of the local government.

The New Brunswick model also incorporates robust independent oversight of local government decision-making under codes of conduct through the Local Governance Commission.¹⁷ While we will not review the role of the Local Governance Commission in detail, we are of the view that provincial oversight of the decisions of local governments is useful, largely because it is difficult to divorce politics from decisions made by a council.

(iii) Conclusion on Best Practices

As we can see from a review of the above models, they share key features. Importantly, all include some level of provincial oversight in the process, by way of mandatory or optional content, procedural provisions, and even independent review functions. We think that, having reviewed these three models and many others, the Code is generally in line with best practices nationally, **to the greatest extent that it can be without provincial oversight**. While we do believe that this Code is in line with national best practices, we also believe that it can be improved. Many of our recommended improvements, however, come from our own experience, along with practical suggestions based on what we heard in the course of our interviews including the need for provincial legislation.

(e) Potential for an Appellate Function

Our terms of reference require us to determine whether an internal appeal process may need to be included. For the reasons that follow, we do not believe, under the current legislative framework, that the City should create an appellate body. Primarily, this is because the City Council is the only decision-maker that may actually determine whether to censure or sanction a member on the basis of a report submitted by the Integrity Commissioner. As such, only two “appeal” structures are possible from a jurisdictional perspective: (1) a body that sits between the Integrity Commissioner and the Council, tasked with reviewing the Integrity Commissioner’s findings before Council makes a decision as to remedy¹⁸; or (2) a body that reviews Council’s decisions and then makes recommendations and comments that may lead to a Council reconsideration.

¹⁷ Established by the *Local Governance Commission Act*, 2023 c. 18.

¹⁸ For example, this sort of “appeal” could take the form of a peer review of an investigation report before it is presented to Council.

Both structures outlined above, in our view, would simply add another layer of bureaucracy, requiring further time, expense and complication for all parties involved, without greatly enhancing the decision-making quality of either the Council or the Integrity Commissioner. In our view, the Integrity Commissioner is well-placed to provide neutral and independent reports to Council, upon which Council can act accordingly. An appellate body that is, presumably, created by Council, would be an unnecessary expense.

While we do not believe that an internal appeal function would add substantial value to the effectiveness of the City's administration of the Code, we can see value in the establishment of an external review office. By its very nature, the decision by a council to censure one of its members for an ethical breach is a political one, easily animated by considerations that, for a normal administrative decision-maker, might be seen as extraneous.¹⁹ While these considerations may be part of the institutional design of local government, external review by a provincial agency, such as the Ombudsperson's office or a newly created office, could enhance public confidence in Code decisions, as well as fairness for the elected official who has been sanctioned.²⁰ Such a review might be limited to the sanction imposed by Council. Other Canadian jurisdictions have implemented such processes.²¹

Further, courts already provide an oversight role through judicial review. While the time and expense associated with commencement of court proceedings is substantial, it would be a valid policy choice to choose not to establish an internal appeal body, simply leaving that traditional supervisory role with the courts.

(f) Recommendations

Our terms of reference require us to provide recommendations to address weaknesses or concerns identified in our review. We have set out these recommendations for the City's consideration below. We note that many of these recommendations are policy suggestions. It will be for Council to determine if such amendments are worthwhile.

Recommendation #1 - Independence of Integrity Commissioner

We recommend that the City amend the Code to enhance the structural independence of the Integrity Commissioner to the greatest extent possible.

¹⁹ See *Chiarelli v. Ottawa (City of)*, 2021 ONSC 8256, particularly paragraphs 147 to 152, where the Ontario Divisional Court discusses Council's dual role as both political actors and adjudicators.

²⁰ See for example, the Local Governance Commission in New Brunswick, discussed above.

²¹ Manitoba (M.R. 98/2020, ss. 7-8) and Quebec (Civil Code chapter E-15.1.0.1, *Municipal Ethics and Good Conduct Act*), for example, have both created limited appellate processes.

The Integrity Commissioner is intended to be an independent oversight body tasked with ensuring that the conduct of Council members and advisory board members is ethical. One might conceive of the office as akin to the BC Ombudsperson, who plays an oversight role in respect of government (and administrative decision-makers exercising delegated powers) more generally. One might easily envision how the Ombudsperson might draw the ire of government, given that the role itself is intended to be critical of the very body that appoints it. The same, of course, is true of the Integrity Commissioner.

What differs between the Integrity Commissioner and the Ombudsperson, aside from their jurisdiction, is that the Ombudsperson has structural independence. Courts have said that for a decision-maker to be independent, the decision-maker must be protected from arbitrary termination without cause, reduction in compensation, and interference in matters that bear on the exercise of their judicial function.²² The Ombudsperson has all of the hallmarks of an independent decision-maker, including legislated remuneration, term of office, and a requirement that they be unanimously recommended to the Legislative Assembly by a special committee of the Legislative Assembly.²³ Further, and importantly, the Ombudsperson has substantial power to obtain information.²⁴

By way of analogy, some similar rules exist in the Code. In particular, the Code creates: (1) a set term of two years (s. 5.2); (2) a provision that Council will not terminate an Integrity Commissioner except for cause (s. 5.4); and (3) a rule that the appointment, suspension, or termination of the Integrity Commissioner may only be done on a 2/3 vote of all Council members. In our view, these provisions are laudable in their intention, which is to give security of tenure to the Integrity Commissioner so that she may perform her work which, by design, will be politically unpopular at times, without fear of political interference.

We are of the view that Council should enhance these protections to the extent possible by including three new provisions. First, an amendment could be made requiring written reasons be provided for dismissal of an Integrity Commissioner. Second, an amendment could be made to the substantive portion of the Code requiring each member to respect the independence of the Integrity Commissioner. Third, we recommend an amendment that requires every person in an investigation to cooperate with the Integrity Commissioner. This could be affected either through an amendment to the obstruction provisions of the Code or by a standalone provision. In respect of members, failure to cooperate could be a breach of the Code, while public complainants could be barred from making complaints in future.

²² See *Valente v. The Queen*, [1985] 2 SCR 673; *Sekela v. Morrison*, 2001 BCCA 572.

²³ Ss. 2, 3, and 4 of the *Ombudsperson Act*.

²⁴ *Ombudsperson Act* s. 15.

Absent provincial legislation, it is not possible for the City to create a fully independent Office of the Integrity Commissioner. Until there is provincial legislation in place, however, we very strongly believe that these offices can only be successful if given as much independence as can possibly be created through bylaw amendment.

Recommendation #2 - Provincial Guidance

We recommend that the City take steps to engage with the Province seeking amendments to the Vancouver Charter that will: (1) grant express jurisdiction to enact a Code of Conduct and specify the required content; and (2) create and empower a truly independent Integrity Commissioner.

First, we believe it is beyond time for the Province to give local governments express authority to enact codes of conduct. What that express authority looks like could be determined with reference to the many other Canadian jurisdictions that have such legislation. However, at a minimum, we think this legislation should empower local governments to create a code of conduct. As with other jurisdictions, there should either be mandatory or optional content that is to be included in such a code. Breaking away from what other jurisdictions have done, we are of the view that the empowering legislation should make clear that codes of conduct are to be used for serious ethical matters, rather than interpersonal disputes, rudeness, or political speech. Finally, such legislation should clearly lay out the remedies that are permissible upon a finding of breach.

Second, any provincial legislation must grant local governments the authority to establish an office of the integrity commissioner. This need not be, but could be, a mandatory office. There are various models that can be explored, including hybrid ones that allow either for *ad hoc* investigators or regional integrity commissioners, and there is merit to these for smaller communities.

In creating the authority for an office of the ethics commissioner, legislation must also make that office structurally independent from Council. In this regard, we must note again that Vancouver is the second jurisdiction in British Columbia to establish an Integrity Commissioner, after Surrey. It is also the second jurisdiction in BC to consider, during its commissioner's term, a motion to suspend the office. While the reasons for those motions may be different, that both of the first two integrity commissioners' offices in British Columbia have experienced this same issue cannot be ignored.²⁵

²⁵ See Kiran Singh, "After just 2½ years, the future of Surrey's groundbreaking ethics office is uncertain" *CBC News* (14 October, 2022) Online: <<https://www.cbc.ca/news/canada/british-columbia/future-bc-ethics-commissioner-surrey-1.6609217>>; and

We are of the strong opinion, therefore, that structural independence is required if these offices are to succeed. We have already discussed some of this above in our section on Code amendments that might foster independence. We will not repeat ourselves fully as regards these issues, but note that at a minimum legislation should include: (1) limits on hiring, suspension, and termination of the integrity commissioner; (2) powers for the integrity commissioner to require co-operation in an investigation;²⁶ and (3) a term limit.

These are, in our view, the minimum standards required for a successful office, and are by no means comprehensive. However, we think that creating a solid statutory foundation would not only bolster the relationship between Council and the Commissioner, but create public confidence in decision-making.

Leaving aside our commentary above, there are additional legislative provisions that would represent best practices, such as: (1) rules dealing with confidentiality and obstruction; (2) directions as to the public distribution of reports, or lack thereof; (3) provisions allowing councils to consider in closed meetings in certain circumstances; (4) election moratorium provisions meant to prevent persons from submitting complaints near an election for political purposes; (5) remedies including remuneration reductions and fines; (6) procedural fairness expectations; (7) provisions formalizing the advice-giving functions of the commissioner; and (8) appeal or external review provisions.

Recommendation #3 – Enhanced Purpose Statement, Scope Reduction & Enhanced Screening

We recommend that the City amend the Code to: (1) include an enhanced purpose statement; (2) narrow the substantive prohibitions in the Code; and (3) enhance the complaint screening function of the Integrity Commissioner.

First, we recommend including a revised purpose statement in the Code that will guide the Integrity Commissioner in interpreting the Code. This amendment could be in the form of interpretive aid provisions, meant to focus the Integrity Commissioner's interpretation of the substantive provisions of the Code on matters that are sufficiently serious. A purpose statement like the one we are suggesting could be framed in the negative, indicating that the provisions of the Code are not to be interpreted in a manner that would either stifle the normal

Sarah Grochowski, "'Seeking to avoid scrutiny?' Vancouver council suspension of integrity commissioner's work puzzles observers", *Vancouver Sun* (1 August, 2024) Online: <<https://vancouversun.com/news/vancouver-council-suspension-integrity-commissioner>>.

²⁶ See, for example, s. 232.4(2) of the *Municipal Act*, which allows Ontario integrity commissioners elect to exercise powers under the *Public Inquiries Act*, where necessary.

Privileged & Confidential

27

functioning of Council, capture political speech, or deal with matters that are of a minor and interpersonal nature.

Second, while we do feel that the prohibitions set out in the Code do deal with “ethical” conduct generally, we recommend that they be narrowed so that only what we term “core ethical conduct” be captured by the Code. While reasonable people might disagree as to what constitutes “core ethical conduct”, we would recommend that specific language be adopted that clearly excludes complaints that are about conduct that is political in nature from the ambit of the Code. In our view, it is not the proper object of a code of conduct to govern the political statements of an elected official which ought to be seen by the public so that it might make an informed choice at the ballot box. In any event, such statements are protected by the *Canadian Charter of Rights and Freedoms*.

We also note that, in our experience, complaints regarding “respectful conduct” are difficult to adjudicate for those tasked with administering Codes of Conduct. While the enforcement of rules of decorum, along with standards dealing with civility, can properly be the subject of code provisions, too often, in our own experience, we have seen code of conduct complaints levied against elected officials who have been less than polite, or even simply disagreeable. Codes are not meant to create an adjudicative process for the resolution of disputes of an interpersonal nature, unless, in our view, those interpersonal disputes are of an extremely serious nature, such that they lead to a breakdown in the governance structure. Members of the public, staff, and elected officials ought not to have official recourse to the Code for perceived slights, microaggressions, or even impoliteness, whether such behaviour occurs publicly or privately. Where this occurs between Council colleagues, these matters should be worked out between colleagues in a constructive manner. We would therefore recommend that the provisions dealing with respectful conduct (Part 2 and s. 3.4(c)) be narrowed to include provisions that they are only to be engaged in circumstances that are sufficiently serious.

Third, dovetailing from our recommendations regarding the substantive prohibitions in the Code, we also recommend that the screening functions available to the Integrity Commissioner be enhanced, so that not only is the Commissioner given discretion to dismiss more complaints at the preliminary assessment stage, but she is directed to exercise her discretion to do so in specified circumstances. As an example of one such screening mechanism, we recommend adding language that would create a seriousness threshold for all complaints, directing the Commissioner to (1) give proper consideration to the seriousness of conduct alleged in each complaint; and (2) to consider whether it would be a good use of City resources to investigate the alleged conduct. Such a provision must also include a direction to dismiss complaints in which the conduct alleged is not serious enough to reasonably rise to the level of constituting a

breach of the Code or, in the Integrity Commissioner's sole discretion, would require a disproportionate expenditure of City resources.²⁷

As it currently stands, there is no such authority in the Code, and the Integrity Commissioner must instead determine whether, if proven, an allegation *may* be a breach of the Code. Enhanced preliminary screening jurisdiction would allow the Integrity Commissioner to weed out complaints in making the determination as to whether a complaint ought to proceed beyond the preliminary assessment stage.

Recommendation #4 - Splitting Investigative and Advisory Roles

We recommend that the City amend section 5.7 of the Code to provide the Integrity Commissioner with additional authority to construct a roster of investigators to perform the investigative role of the Integrity Commissioner, when needed.

One of the key duties of the Integrity Commissioner, found at section 5.7(a) of the Code, is to provide Council members and advisory board members "advice on questions of compliance with the Code as requested by the member". Section 5.7(d) also empowers the Integrity Commissioner to deliver educational programs to all members. These are very important functions of the Office and, if working well, are of great assistance to members. For example, this would permit a Council member to proactively reach out to the Integrity Commissioner to seek guidance on a conflict of interest inquiry before attending at the council meeting where the matter may arise. The benefit of this on-going and early advice should not be underestimated – good governance is advanced by this part of the Code.

During our interviews with Council members, many expressed a real appreciation for the opportunity to seek advice and education from the Integrity Commissioner. Most Council members found this function very helpful. The Integrity Commissioner agreed with this and confirmed that, when used by members, this advice function was very successful. However, we also heard from several Council members, and the Integrity Commissioner herself, that this advice function can be strained, or altogether avoided, if a Council member is under investigation by the Integrity Commissioner. This was particularly true if the investigation became difficult or adversarial which, in our experience, can and does happen. We will note that we had some of these same challenges in our role as Ethics Commissioner with the City of Surrey.

²⁷ Given the contextual nature of this proposed provision, it is difficult to prescribe the particular types of conduct to which this provision could apply. However, as a general example, a complaint could be dismissed under this provision if it relates to conduct such as a one-off interpersonal comment which is not based on human rights grounds, and which has already been resolved between the parties by way of a sincere apology.

This conflict in duties arises as a result of sections 5.7(e) through (j) of the Code. These provisions permit the Integrity Commissioner to receive complaints, investigate them, report to Council if a member has breached the Code and make recommendations on remedies and legal fee reimbursement. In many ways, the responsibilities at sections 5.7(e) to (j) of the Code may run at cross-purposes with the advice and education functions at sections 5.7(a) and (d). As such, the question should be asked as to whether one person can provide all of these functions and maintain a positive working relationship with members. Put another way – would a Council member be comfortable approaching the Integrity Commissioner for advice when the day, or week before, they were interviewed in a formal investigation for an alleged Code breach? In some circumstances, this dual role played by the Integrity Commissioner can be skillfully managed, but in other circumstances it may create a complete breakdown of trust between those individuals, for obvious and understandable reasons and to no fault of either party. This can then limit some members from seeking advice from the Integrity Commissioner, limiting the overall effectiveness of the Code itself, in particular, for Council members.

With this challenge in mind, we recommend that the City consider splitting, to a limited extent, the advisory and education roles away from the investigative roles. This could be done in a number of ways, with a view to insulating the Integrity Commissioner and Council from the conflicts that may arise from these dual roles. For example, the Integrity Commissioner could have available to her a number of different external investigators (i.e., a roster) and the discretion to retain these investigators for the purposes of a formal investigation when needed. In this regard, the Integrity Commissioner could still receive complaints, process them through preliminary assessment and even consider informal resolution. However, if a formal investigation were to be undertaken, then the Integrity Commissioner would have the discretion to delegate this function to another person. Once completed, the investigation would still proceed to Council in the normal fashion, but the Integrity Commissioner would not be the author of the investigation or any recommended remedies to be considered by Council if a breach were to be found. Another benefit to this model would be the timelier processing of formal investigation by spreading the work load to multiple investigators.

Additionally, we recommend that the City consider further formalizing the advice-giving function of the Integrity Commissioner. One way in which this can be achieved is by including a provision in the Code stipulating that any written advice given by the Integrity Commissioner to a member shall bind the Integrity Commissioner in any subsequent consideration of the conduct of the member in the same matter. As discussed earlier in this report, many Ontario municipalities have a provision to this effect in their codes of conduct. The intent of this provision is to allow the advice of the Integrity Commissioner to be used as a defence to a complaint regarding the same matter.

We do note that there is one clear down-side to the change we are recommending. It would seem to us that the Integrity Commissioner is best situated to perform formal investigations, due to increased familiarity with the workings of the Code, City bylaws and policies and City structure. There would clearly be some loss of collective knowledge if the Integrity Commissioner were to be removed from, at least, some formal investigations. However, if this assists in retaining a healthy relationship between members and the Integrity Commissioner at large, as well as making the advice and education function more accessible, then a splitting of these duties would be a net benefit for the City. We do note that there are other Codes in BC that operate with this sort of model. For example, the Hospital Employees' Union Code of Conduct for the Provincial Executive permits the construction of an investigator roster in the manner discussed above.²⁸

Recommendation #5 - Public Release of Investigation Reports

We recommend that the City: (1) amend section 6.31(c) of the Code to remove the requirement that the Integrity Commissioner make public the investigation report where no breach is found; (2) provide anonymous summaries be published in place of the investigative reports where no breach is found; (3) provide summaries of the investigative reports to the public complainants; and (4) amend the Code to restrict any public complainant who violates the confidentiality expectations from filing future complaints for a period of time.

At section 6.31 of the Code, directions are given to the Integrity Commissioner on how to distribute copies of her investigation reports when she does not find a violation of the Code. As the Code currently stands, the Integrity Commissioner must make these reports available to the public forty-eight hours after the delivery of the investigation report to the complainant, respondent and Council. Such a rule very clearly serves the purposes of transparency as noted in section 2(g) of the Code. However, releasing Code investigations into the public realm must be balanced against the privacy and negative publicity for those mentioned in such reports and the inevitable social media discourse that will follow. This places complainants, witnesses, City staff and Council members into the spotlight. It is clear, particularly for Council members, that reputational damage may occur from this publicity despite no breach being found.

Over the course of time, it has become clear to us that a better balance must be struck in these circumstances between the right of the public to know the result of an investigation that has been paid for by their tax dollars, and the reputational damage to Council members that more often than not follows when investigation reports, even those 'clearing' them of wrongdoing, are placed into the public realm. Our suggested compromise would still disclose to the public

²⁸ See <https://www.heu.org/heu-ethics-commissioner-office>.

that a complaint was received, processed and rejected, but gives all participants in the investigation the benefit of protecting their names and the details of the investigation.

We do note one other potential flaw in this approach. Section 6.31(b) of the Code requires the Integrity Commissioner to deliver a copy of her report to the complainant. If the complainant is a member of the public, there is nothing the City can do to restrict this individual from distributing the investigation report widely, to the media or others. Council members, advisory board members, and staff, of course, are bound by confidentiality requirements.

In this regard, we suggest two solutions. First, instead of providing the entire investigation report to a public complainant, a summary of the report could be provided. Second, a new section of the Code could be added that provides the Integrity Commissioner discretion to reject future complaints filed by a member of the public who has breached the confidentiality provisions of the Code in the past. We have set out other recommendations to the confidentiality provisions of the Code (at sections 6.38-6.40) that are discussed separately in this report.

Recommendation #6 - Reduce the Public Complaints Scope

We recommend that the City: (1) amend sections 6.1 and 6.3 of the Code to allow only residents of the City of Vancouver to file complaints; and (2) consider whether a refundable fee should be required before a complaint is accepted for filing.

Currently, section 6.3 of the Code allows any person to file a complaint with the Integrity Commissioner. In our view, this is overly broad and likely creates some level of administrative and financial burden on the City that is out of proportion with the public accountability function that is fostered by such a wide grant of standing. Further, we heard in particular from Council members that they believed many complaints that came from members of the public were not well-founded, reflected a lack of understanding of the Code, and likely were focused on political ends rather than *bona fide* concerns with ethical conduct. Because of this, some Council members advised us that they favoured removing the right of the public to complain entirely.

We think these concerns have merit, but we favour a narrower amendment than the one proposed to us. We are of the view that codes of conduct provide an important public accountability function, and removing the right of the public to complain altogether runs counter to this function. Indeed, one might make the argument that members of the public are more likely to be concerned with *bona fide* ethical conduct than other councillors, who may also be motivated to file complaints for political reasons. In our opinion, allowing persons who are residents in the City of Vancouver to make complaints balances the public accountability function of the Code with some Council members' concerns about public complaints. While

there are different definitions of “resident” that could be adopted, we favour something similar to the one in the City of New Westminster Code of Conduct Bylaw No. 8408, 2023:

Resident means any person who:

- (a) resides in the City;
- (b) would be eligible to vote in a municipal election in the City;
- (c) holds a valid and subsisting business licence issued by the City; or
- (d) is a Volunteer.

The City might also consider instituting a small fee to file complaints (\$50-100, for example), which might encourage would-be resident complainants to bring only real concerns forward in complaints to the Integrity Commissioner. We appreciate that imposing a fee structure raises other larger policy discussions but this is certainly a legitimate administrative option for consideration. While we understand that a fee is a barrier to public engagement with the Code, and we therefore would not recommend a large amount, we think that the addition of such a barrier may force persons wishing to file a complaint to spend more time and effort thinking about whether the matter they wish to bring to the attention of the Integrity Commissioner is within her jurisdiction. As noted above, the Integrity Commissioner dismisses a substantial number of complaints for lack of jurisdiction. At least a portion of these must be from members of the public. There is an administrative burden in time and cost that is created by the filing of out of jurisdiction complaints, and a fee may go some distance to offset that.²⁹

Recommendation #7 - Clarity on Confidentiality

We recommend that the City amend sections 6.38 to 6.40 of the Code to add to, enhance and clarify the expectations of confidentiality in the administration of the Code.

Sections 6.38 to 6.40 of the Code address the confidentiality of a Code investigation. Based on our reading of these provisions and the application of similar provisions under other codes of conduct, there is room for improvement and clarification. These provisions are as follows:

6.38 The Integrity Commissioner must make all reasonable efforts to investigate complaints in confidence.

6.39 The Integrity Commissioner and every person acting under the Integrity Commissioner’s instructions must preserve confidentiality with respect to all matters

²⁹ The Integrity Commissioner could be authorized to order the refund of this fee if a complaint leads to a finding of a Code breach.

that come into the Integrity Commissioner's knowledge in the course of any investigation or complaint except as required by law.

6.40 An investigation report must only disclose such matters as in the Integrity Commissioner's opinion are necessary for the purpose of the investigation report.

Section 6.38 appears textually to place confidentiality expectations on the Integrity Commissioner, but not on complainants, respondents or witnesses in an investigation. This section also, in our view, leaves a false impression with the reader that the Integrity Commissioner will be protecting confidentiality perhaps more than is possible. In the course of an investigation, which may ultimately lead to a public report, this is often not possible.

We also note that section 6.28 of the Code requires that the investigative process comply with procedural fairness and the rules of natural justice. This will, in most investigations, require the disclosure of the complaint, the complainant's name, records, statements and even materials gathered from witnesses to the process. This section also does not recognize the reality that the current Code calls for the public release of investigative reports whether a breach is found or not.

We recognize that section 6.40 directs the Integrity Commissioner to only disclose matters necessary for the investigation report, but such content could include information, names, records and statements that a participant to the Code investigation would have considered confidential. In this regard, we suggest that these confidentiality provisions be re-drafted to both broaden the scope to all participants in Code administration and counter-balancing statements to clearly indicate that protection of confidences cannot always be maintained. In our view, all participants should clearly understand that when they participate in a Code process, confidentiality may not ultimately be maintained.

We also suggest adding a new section to the Code that creates remedies for those who breach these confidentiality expectations. In this regard, we suggest that the Integrity Commissioner be granted an independent investigative authority to explore confidentiality breaches without the need for a complaint. Along with that new authority, we recommend new remedies, relating specifically to breaches of confidentiality, that are customized to the different participants in the investigation. For example, Council members could be subject to the remedies in section 6.37 of the Code; advisory board members could be subject to the termination of their appointment; staff to disciplinary action, as appropriate, and members of the public to a time-limited prohibition for filing complaints.³⁰ We suggest that adding such a provision will provide a disincentive to all participants in a code investigation to breach confidentiality.

³⁰ We note that these remedies could also be added as potential consequences for filing frivolous complaints.

Privileged & Confidential

34

As for section 6.39 of the Code, we recommend amending this section to provide clarity as to who is subject to the provision. In our view, it should be made clear that all participants must keep matters confidential (witnesses, complainants and respondents).

Last, we note that there are other parts of the Code that may require clarification on confidentiality expectations. For example, when the Integrity Commissioner provides advice to a member, is this confidential? We note that the Integrity Commissioner has published a helpful policy in this regard that provides the Office's views on confidentiality when advice is sought and given, as well as in informal and formal resolutions processes. However, we would recommend that some of the content in this policy be included in the Code itself.³¹

Recommendation #8 - Political Staff & Parallel Investigations

We recommend that: (1) the City amend the Code to create a rule making Council members responsible for the actions of staff they are directing, including political staff, if those actions would breach the Code; and (2) that the City clarify that the Integrity Commissioner does not have any direct jurisdiction over the investigation of political staff, complaints against whom must be adjudicated by the City.

In the City of Vancouver, there are members of staff who, while they are employees of the City, report directly to political officials. This is distinct from most other local governments in BC, and in our view is largely due to the size and complexity of the City itself. While other local governments in BC are large, the demands on elected officials in the City are generally greater than those on elected officials in other places. We are aware, in particular, that the Mayor has staff who are characterized as political staff. This is true of this Council, and has been historically true as well.

In the course of our interviews, multiple persons told us that the role of political staff vis a vis the Code needed to be clarified. As it stands now, political staff are not subject to the Code, which applies only to Council members and advisory board members. Rather, political staff are subject to the City's staff code of conduct. A complaint against them would be adjudicated under that code by the City's Human Resources Department. Presumably, the decision would then fall to the elected official to whom the political staff member reported as to how to discipline that staff member. However, recognizing that political staff do not perform functions akin to regular City staff members, some interviewees expressed to us the view that political staff should be subject to the Code.

“s.14 Freedom of Information and Protection of Privacy Act”

³¹ See CoV.IC.Policy.002 – Confidentiality and Anonymity, September 19, 2022.

“s.14 Freedom of Information and Protection of Privacy Act”

We recommend that this process be clarified to confirm that the Integrity Commissioner does not have any direct jurisdiction over political staff, and that her findings may not be used by the City’s HR department in relation to complaints over the conduct of those staff. We see such complaints as best handled through a separate workplace process that is tailored specifically to the political staff member at issue as an employee.

However, we do acknowledge that by their very nature, political staff members carry out the wishes of the Council members to whom they report. They may, under certain circumstances, be instructed to do things that would, if done by the Council member directly, breach the Code. A Council member should not, in our view, be able to escape culpability for such actions simply because political staff are not subject to the Code. We would therefore recommend that the Code be amended to clearly make Council members responsible for the actions of those staff members (political or otherwise), if that staff member can be shown to have been acting as an agent for the Council member in doing something that would have breached the Code.

Recommendation #9 – Remove Advisory Board members from Investigative Process

We recommend that the City consider removing Advisory Board members from the Code of Conduct complaint and investigation process.

Section 1.5 of the Code confirms that the Code applies to advisory board members in general. However, we note that several of the provisions in Parts 3 and 4 of the Code only apply to Council members, and not advisory board members. For example, the confidential information provisions at section 3.5 apply to advisory board members but the conflict-of-interest provisions at section 4.1 do not. This differing application is generally explained by the fact that advisory board members are appointed to their roles by Council and are not elected.

An advisory board member means a person sitting on an advisory committee, task force, commission, board or other Council-established body. As noted above, only a portion of the

Privileged & Confidential

36

substantive provisions in the Code applies to these persons. However, the provisions dealing with complaint and resolution processes and education sessions with the Integrity Commissioner apply with full force.³²

We consulted with City staff, who informed us that there are approximately twenty-five advisory boards. The City divides these advisory boards, also referred to as “civic agencies,” into four types: A, B, C and D. An example of a “Type A” advisory body would be the Renters Advisory Committee; “Type B” would be the Gastown Historic Area Planning Committee; “Type C” would be the Board of Variance; and “Type D” would be the Chinatown Advisory Committee. There are approximately 295 individuals and an additional 35 alternate members appointed to these bodies. As such, these approximately 330 appointed individuals are under the ambit of the Code.

The inclusion of advisory board members in the Code greatly expands the potential application of the Code. This appears to have been a purposeful decision made at the time of the Code’s adoption, as evidenced by both the purpose and application sections of the Code.³³ From what we have discovered in this review, there have been a very limited number of complaints against advisory board members to date. Of course, this could change in future – complex complaints could be made against any one of the 330 advisory board members at any time.

Given that we heard from many persons in this review that the cost and complexity of administering the Code is a concern, we recommend that there be a reconsideration of whether advisory board members should be subject to the Code. In our view, the procedural fairness protections under the Code that apply to Council members need not apply to the same extent to advisory board members. To be clear, because advisory board members are not elected and are appointed by Council, we think they could be removed by Council without the Code’s complaint and formal investigation processes, which require substantial procedural fairness. As such, if an advisory board member were misbehaving, rather than relying upon the Code to sanction or remove that individual, the City and Council could do so in a truncated process.³⁴ This process would be faster and less expensive than the current process under the Code. It would, of course, remove the Integrity Commissioner’s involvement and place responsibility to appoint and remove solely with Council.

Importantly, removing advisory board members from the Code does not necessarily mean that the City would also remove all ethical standards that would apply to advisory board members. Those ethical expectations can still be set at appointment and could be found in a City policy

³² See section 4.21 of the Code.

³³ See sections 1.4 and 1.5 of the Code.

³⁴ See *Martin v. Vancouver (City)*, 2008 BCCA 197, in which the Court of Appeal found that members of the Board of Variance were entitled to no procedural fairness in their removal from office without cause by Council.

that would be specifically agreed to by the advisory board member at the time of appointment. Those ethical expectations could even mirror those in the Code. And last, if the City continues to favour the educational training provided to advisory board members by the Integrity Commissioner, it could specifically leave that requirement in the Code.³⁵

In short, we recommend that Council reconsider whether the Code and complaint and investigation processes should apply to advisory board members. We see the opportunity for significant long-term cost and time savings by making this change. We do not recommend the removal of section 4.21 and the educational sessions offered by the Integrity Commissioner’s Office. The effect of these potential amendments would solely focus the Code on the education of advisory board members, leaving sanction, appointment and removal to City Council on the advice of staff.

Recommendation #10 - Detailed Code Amendments

We recommend that the City direct staff review the below table of more detailed amendments and consider whether they could be incorporated into the Code of Conduct.

In this section we have placed into one table all of the suggested Code amendments we have compiled during our review. Some are minor and not worth detailed analysis yet are worth recording for consideration as they may improve the Code, even slightly. As such, this table records all of our suggested amendments along with brief reasoning. It may be that some of these amendments could be located in different places in the Code, but we have referred to the current provision of the Code that we feel best captures our recommendation at this time.

Section of Code of Conduct	Suggested Amendment	Reasoning
1.4	Add new purpose language to ensure only serious breaches are investigated by the Integrity Commissioner (IC) and to further protect political speech	Intention is to limit the scope of the Code to serious investigation and to protect political speech as per <i>Charter of Rights and Freedoms</i>
1.5	Insert a deeming provision that any actions of political staff at the direction of Council members that violate the Code are deemed to be that of the Council member who directed the action	To create clarity and certainty in the Code that a Council member cannot escape Code obligations by directing staff otherwise

³⁵ See section 4.21

1.5	Consider removing advisory board members (ABMs) from the Code for complaint and investigation purposes. Leave the educational requirement at section 4.21	The current Code provides unnecessary levels of procedural protections for ABMs. Instead, place their ethical duties in their appointment documents; focus on education and permit Council to sanction or remove in normal course. Potential significant cost and time savings
2	Add new section 2.1 to ensure that a Code complaint cannot be brought solely on the basis of an alleged violation of the standards and values	Complaints based solely on a breach of a standard or value are amorphous to investigate and difficult to adjudicate. The IC should not be left to adjudicate such complaints
5.2	Extend IC appointment term to three years from two years	From experience, two years is too short as most of first year is taken up by learning the duties. The City will save resources by extending the appointment. Provides additional independence to the IC
5.4	Extend the application of this provision to include suspension of the IC and not just termination and insert criteria for Council to consider	Council must have the ability to remove their IC. However, given the lack of provincial legislation the Code should be amplified to provide the IC with a greater degree of independence
5.7	Add a new duty and responsibility to permit the IC to create a roster of investigators for formal investigations	To assist the IC focus on advisory and educational duties and to ensure timely processing of formal investigations
5.7	Give the Integrity Commissioner clear authority to adopt policies and procedures	The Integrity Commissioner is already adopting policies, but clear authority for this necessary practice should be added to the Code

5.8	Expand this section to include Council's commitments to the IC such as "Council recognizes the independence and autonomy of the IC and will not interfere or obstruct the performance of the IC in her duties"	To enhance the independence of the IC's Office and reduce scope of political interference
6.3	Reconsider if any "person" should be able to file a complaint under the Code. Could limit this to a City "resident"	Any person is very broad and can create unexpected expense. Also, can be used to weaponize the Code. If this Code is for Vancouver Council, then limit to Vancouver residents
6.3	Consider if a fee should be applied to filing a complaint	To deter non-serious or political complaints. The fee could be refundable at the IC's discretion.
6.9	Consider the removal of the words "or reasonably ought to have known"	Creates uncertainty in the processing of complaints and expense for IC to investigate. 180 days is ample time to file a complaint
6.18	Add content to ensure Code timeframes stop when a complaint is sent to informal resolution	Given the prescriptive deadlines in the Code for adjudication and reporting it should be made clear that attempts at informal resolution stops the clock
6.25 and 6.26	Remove the word "serve" and replace with "provide"	The use of the word serve could be seen as legal service and may create an expectation of formal service
6.25	Amend to give the IC discretion to seek the written response from the respondent	In some situations, a written response will not be needed. The mandatory nature of the provision slows down the investigation and may result in procedural delays
6.30	Amend to create a remedy for members of the public who violate this provision.	The Code cannot bind a member of the public to the expectations around

	Currently, there is no manner in which to ensure a public complainant must adhere to this. Add new content to permit the IC to dismiss or reject a complaint from a public complainant who had violated confidentiality rules	confidentiality. Providing this additional authority gives the IC some ability to create a remedy if a public complainant breaches confidence
6.31	Remove the obligation to release the investigation reports to the public where no breach is found	Creates a balance between public accountability, privacy and reputational damage
6.33	Amend to make it the City's obligation to ensure FIPPA compliance and not the IC	As an investigation report, once delivered, is a City record it should be the City's legal obligation to ensure FIPPA compliance. Also removes an argument that the IC and any file may be subject to FIPPA. Best to remove IC from this process
6.37	Consider the option of a remuneration reduction remedy	While we have clarified above that we do not believe remuneration reductions should be added to the Code at this time, we flag this amendment for future study. From a best practices perspective, financial penalties are finding their way into many Codes. The City should consider adding this remedy to be used for serious ethical breaches
6.38 to 6.40	Reconsider all of these provisions and redraft to extend their scope. Should also include obligations to ensure confidentiality for advice and informal resolutions are maintained	Currently, members of the public, staff and elected officials are subject to very few reprisals for ignoring confidentiality. This can result in significant embarrassment, reputational harm, and potential privacy breaches

6.39	Redraft to ensure clarity of what “acting under the Integrity Commissioner’s instructions” means	Clarify the extent of the expectation. Does this apply to participants in a Code investigation or the IC’s team?
6.41	Redraft to broaden the scope of the section to include “threaten or suggest a reprisal”	Obstruction is a high legal bar and this provision should protect the IC for less serious behavior
*New section	Any written advice given by the IC to a member binds the IC in any subsequent consideration of the conduct of the member in the same matter as long as all the relevant facts known to the member were disclosed to the IC	This new provision, which exists in many codes of conduct in Ontario, will ensure that if a member seeks and obtains advice from the IC and subsequently has a complaint relating to the same matter filed against them, the complaint will automatically get resolved.
*New section	State that informal resolution will be the preferred approach by the IC, where appropriate and possible	To encourage resolution by informal means; ensures that, where possible, formal investigation remains the last resort
*New section	Consider requiring the complainant to take steps to informally resolve the complaint directly with the other Council member, where appropriate and possible, before filing a complaint	Complaint intake form could include a section asking the complainant to detail the steps they took to try to informally resolve the complaint. Ensures that the complaint process is used for serious complaints only

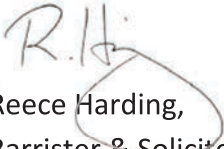
4. Acknowledgments and Closing

Although the writer was retained personally as the Reviewer and to author this report, this work and report could not have been completed without the assistance and input of the writer’s colleague, Nick Falzon. Our paralegal, Stephanie Jarvis and colleague, Julia Tikhonova, must also be noted for their organizational assistance in the production of this report. Last, we want to thank all City personnel, Integrity Commissioner Lisa Southern, and Council members for their assistance. Everyone, without exception, has been courteous and helpful in this review process.

Privileged & Confidential

42

As per section 14 of our terms of reference, we respectfully submit this report to Mayor and Council as delivered to the City Manager this 3rd day of February, 2025.

A handwritten signature in black ink, appearing to read "R.H.", with a large, sweeping flourish underneath that loops back to the left.

Reece Harding,
Barrister & Solicitor

**TERMS OF REFERENCE FOR INDEPENDENT REVIEW OF CODE OF
CONDUCT BY-LAW**

BETWEEN

CITY OF VANCOUVER

(the “City”)

AND

REECE HARDING

(the “Reviewer”)

Purpose

1. On July 24, 2024, Council directed staff to retain an independent third party to conduct a review of the Code of Conduct By-law (the “Code”).
2. The purpose of this Terms of Reference document (the “Terms of Reference”) is to set out the scope, process and schedule of the Reviewer’s review of the Code.
3. The City seeks an independent review of the Code for the following reasons:
 - a. The Integrity Commissioner’s 2023 Annual Report referenced that the scope of the Integrity Commissioner’s role is “...not always clear”;
 - b. An independent review provides the benefit of external objectivity and expertise; and
 - c. To ensure that the scope of the Integrity Commissioner’s role in providing oversight of the conduct of Council and Advisory Board members is clear and that the text and operation of the Code is effective.

4. The City has retained the Reviewer to review the Code in accordance with these Terms of Reference.
5. The City has retained the Reviewer, in the capacity as legal counsel to the City, to conduct the review and provide legal advice regarding the Code.

Scope

6. The City has retained the Reviewer to:
 - a. Assess whether the scope of the Integrity Commissioner's role, as provided for under the Code, is sufficiently clear:
 - i. Ensuring the scope of the Integrity Commissioner's role is appropriate and does not overlap with other legislation or the jurisdiction of other oversight bodies (ex. Ombudsperson, etc.);
 - ii. Determining whether there is overly broad scope, and overlapping jurisdictions, that may have resulted in an excessive number of complaints and abuse of the complaint process;
 - b. Assess whether the text and operation of the Code is effective in meeting the Code's purposes of setting out:
 - i. the rules Council members and advisory board members must follow in fulfilling their duties and responsibilities as elected or appointed officials; and
 - ii. the powers and procedures of the Integrity Commissioner in exercising oversight over Council members and advisory board members;
 - c. Assess whether the scope of the Code is appropriate and in accordance with best practices;
 - d. Assess whether the processes and procedures provided for under the Code in respect of the complaint process are appropriate and in accordance

with best practices, and whether an appeal process may need to be included; and

- e. Provide recommendations, where applicable, to address any weaknesses or concerns identified in the review of items (a) to (d) above.

(Collectively, the “Matters on Review”)

Review Process

7. The review shall be conducted in an independent and impartial manner.
8. In gathering information during the conduct of the review, the Reviewer will make reasonable efforts to provide an opportunity for the following persons to provide information as to their experiences and views as to the operation of the Code, through either written submissions or interviews:
 - a. Members of Council; and
 - b. The City of Vancouver’s Integrity Commissioner.
9. The Reviewer may also seek to speak with any other persons that the Reviewer determines may have relevant information as to the operation of the Code, including City staff. City staff shall cooperate with requests from the Reviewer in respect of the review.
10. The Reviewer shall have access to any documents and information in the possession or control of the City that are relevant to the review, other than those documents or information which are subject to solicitor client privilege.

Confidentiality

11. All written submissions supplied to the Reviewer by individuals, along with all information collected and notes taken by the Reviewer during interviews and during the Review, will be supplied, disclosed and received in confidence by the Reviewer and treated by the Reviewer as confidential, subject to the Reviewer

disclosing information in the Report to be submitted under paragraph 13 of the Terms of Reference, in which case the Reviewer will only reference information obtained from written submissions submitted by individuals or interviews of individuals on an anonymous basis.

12. The information collected and notes taken by the Reviewer during interviews will be treated as:

- a. Personal information supplied or disclosed in confidence; and
- b. The collection of information for the purpose of providing legal advice to the City,

such that they are not subject to disclosure under the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165.

Delivery of Report

13. At the conclusion of the review, the Reviewer shall prepare a privileged and confidential report (the "Report") addressing the Matters on Review.

14. The Report will be prepared for Mayor and Council and delivered by the Reviewer to the City Manager.

15. Upon receipt of the Report, the City Manager shall, as soon as reasonably practicable, call an in camera meeting at which time the Report will be presented to Mayor and Council.

16. The Reviewer shall attend the in camera meeting to present the Report, provide legal advice and respond to any questions regarding the Report.

17. Council may resolve to release the findings of the Report to the public, which may necessitate the preparation of a revised report which discloses the Reviewer's findings but which does not disclose confidential information or privileged information, unless the privilege is subsequently waived by Council.

Schedule

18. The Reviewer shall conduct the review in a timely manner and shall deliver the Report to the City Manager within 60 days of the date of the Terms of Reference.
19. Notwithstanding section 18, if the Reviewer cannot reasonably complete the review and deliver the Report within 60 days, the Reviewer may submit a request for an extension to the City Manager which request shall include the current status of the review and the basis for the requested extension (the "Extension Request"). Upon receipt of the Extension Request, the City Manager may grant an extension to a specified date.

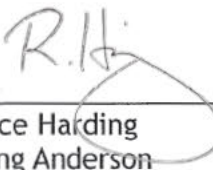
Solicitor-Client Privilege

20. Except as otherwise set out in these Terms of Reference, the Reviewer's notes, documents and information obtained to assist in the review, any Report and any advice and recommendations provided by the Reviewer to the City will under all circumstances and for all purposes be protected by solicitor-client privilege.

DATED this 8th day of October, 2024 in the Province of British Columbia.



Frances J. Connell, K.C.
City of Vancouver, Director of Legal Services



Reece Harding
Young Anderson