

From: ["Mochrie, Paul" <Paul.Mochrie@vancouver.ca>](mailto:Paul.Mochrie@vancouver.ca)
To: ["Direct to Mayor and Council - DL"](#)
Date: 10/21/2022 5:02:53 PM
Subject: FW: Investigation Report

Good afternoon Mayor and Council,

On behalf of the Integrity Commissioner, I am forwarding the attached investigation report which is provided pursuant to section 6.32e of the Code of Conduct Bylaw. The report has been provided to the respondent and will be posted on the Integrity Commissioner's website in the coming days.

Best,
Paul

From: Integrity Commissioner <IntegrityCommissioner@vancouver.ca>
Sent: Friday, October 21, 2022 3:17 PM
To: Mochrie, Paul <Paul.Mochrie@vancouver.ca>
Subject: Investigation Report

Good Afternoon Mr. Mochrie,

Please see attached an Investigation Report from Integrity Commissioner Southern. This report is being sent to you for circulation to Council in accordance with section 6.32(e) of the Code of Conduct. We note that the Respondent, Kit Sauder (Co-chair of the City of Vancouver's Renters Advisory Committee), was provided with a copy of the report 48 hours ago, as was required by section 6.32(d). We also note that the Report will be made public via posting on the Integrity Commissioner website, likely on Monday, October 24, 2022. For ease of reference, the relevant provisions from section 6.32 are as follows:

6.32 If after reviewing all material information the Integrity Commissioner determines that a member did violate this By-law then:

?

d) the Integrity Commissioner must deliver, on a strictly confidential basis, a copy of the investigation report to the respondent; and

e) the Integrity Commissioner must deliver a copy of the investigation report to the complainant and Council forty eight (48) hours after delivery of the investigation report to the respondent; and

f) the Integrity Commissioner must make the investigation report available to public after deliver of the investigation report to the complainant and Council.

Please let us know if you have any questions at all.

Sincerely,

Deanna Brummitt
On behalf of Lisa Southern, Integrity Commissioner, City of Vancouver



OFFICE OF THE
INTEGRITY COMMISSIONER
FOR THE CITY OF VANCOUVER

CITY OF VANCOUVER
REPORT TO
CITY OF VANCOUVER COUNCIL, COMPLAINANT AND RESPONDENT

In this matter of

AN INTEGRITY COMMISSIONER INVESTIGATION
ALLEGATIONS, FINDINGS & DECISIONS

Submitted by Lisa Southern,
Integrity Commissioner
City of Vancouver (the “Commissioner”)

October 19, 2022

Background

On June 12, 2022, a member of the public (the “Complainant”) brought forward to the Integrity Commissioner a *Code of Conduct By-Law No. 12886* (the “Code of Conduct”) complaint against Kit Sauder, Co-Chair of the City of Vancouver’s Renters Advisory Committee (the “Respondent”) regarding posts the Respondent had made on the VanPoli Facebook Group page about Council Member Colleen Hardwick as well as his conduct in interacting with the Complainant directly on the VanPoli Facebook Group page or otherwise via Facebook (the “Complaint”).

On August 3, 2022, the Complainant provided screen shots showing tweets issued by the Respondent from his personal Twitter account which she said constituted evidence of a “smearing campaign” and “cast aspersions” towards a Council Member (the “Tweets”).

We examined the Complaint and the Tweets in the context of the Code of Conduct and the law.

This report is issued in accordance with section 6.32 of the Code of Conduct. In this report, we provide a summary of process and a summary of the evidence, make findings of fact with respect to the allegations raised in the Complaint, and conclude that there has been a breach of the Code of Conduct in this case.

Process

A preliminary assessment of the Complaint was conducted, and it was determined that the allegations raised in the Complaint, if true, may constitute a violation of the Code of Conduct. Accordingly, on July 4, 2022, the Respondent was provided with notice of the Complaint (as required per section 6.25 of the Code of Conduct).

The Respondent provided a written response to the Complaint on July 4, 2022 (the “Respondent’s Written Response”), in which he denied the allegations raised in the Complaint.

In accordance with Section 6.27 of the Code of Conduct we held interviews via videoconference and telephone with the Respondent and two witnesses (together, the “Participants”). At the beginning of each interview, the Participants were advised of the need for honesty and their obligation to maintain confidentiality of the fact that the investigation was occurring and the information that was discussed. Each Participant acknowledged understanding of both obligations.

Consistent with section 6.33 of the Code of Conduct, we have preserved the anonymity of the witnesses.

On September 29, 2022, we elected to suspend the investigation pursuant to section 6.11 of the Code of Conduct. The investigation recommenced on October 16, 2022 following the general voting day for the municipal election in the City of Vancouver.

Consistent with section 6.29 of the Code of Conduct, we are making this decision “*within 90 days of making a decision to proceed with a formal investigation,*” which, considering the suspension period pursuant to section 6.11, was extended from October 2, 2022 to October 20, 2022.

In reviewing the Tweets, we determined that the Respondent was responding to a tweet of a candidate for Council, who is not currently a sitting Council Member. In the Tweets, he was expressing opinions which did not use objectionable language or content and did not give rise to a potential breach of the Code of Conduct. Therefore, we have not considered the Tweets in our assessment of the Complaint.

Summary of the Complaint

The Complainant alleged that the Respondent breached the Code of Conduct. The Complainant said that the Respondent made it clear on the VanPoli Facebook Group that he was an Advisory Board Member (Co-Chair of the City of Vancouver’s Renters Advisory Committee). The Complainant complained that, in that context, he made the following posts on the VanPoli Facebook Group (the “Facebook Posts”) which, while not specifically referencing Council Member Hardwick, she understood to be referring to Council Member Hardwick: (the Respondent’s original text)

[Name] the only ‘revisionism’ going on is TEAM claiming they support accountability, affordability, and livability in the city.

It’s ok that you don’t like other people and don’t want them to live near you.

But you should communicate that to the voters instead of trying to dupe them.

...

[Name] you, the Witch of the Westside & the Kits Point Cabal can do whatever you like. I’m just telling you that the public are going to catch on, and it’s not going to end well.

The Complainant also alleged that the Respondent behaved in a disrespectful manner towards the Complainant in the VanPoli Facebook Group and otherwise over Facebook, although she said she was unable to provide evidence of their communications as she had been “blocked” by the Respondent and therefore could not access their shared message history.

The Complainant alleged that information in the Facebook Posts breached sections 2(c), 2(e) and 2(f) of the Code of Conduct, which read as follows:

2 A member must uphold the following standards and values:

(c) integrity: a member must avoid improper use of influence and avoid all conflicts of interest, both apparent and real;

...

(e) respect: a member must treat members of the public, one another, and staff respectfully, without abuse, bullying or intimidation and ensure that the work environment is free from discrimination and harassment;

(f) responsibility: a member must respect and comply with the Acts of the Parliament of Canada, the Legislature of British Columbia, including the Vancouver Charter, city by-laws, and applicable city policies, and avoid conduct that, reasonably, undermines, or has the potential to undermine public confidence in city governance, except members may participate in peaceful civil disobedience;

'Member' is a defined term in the Code of Conduct, meaning a Council Member or an Advisory Board Member. 'Advisory Board Member' is defined as "a person sitting on an advisory committee, task force, commission, board, or other Council-established body."

Is it worth noting that the Code of Conduct applies differently as between Council Members and Advisory Board Members. For example, Part 2, which sets out general "Standards and Values," applies to both Council Members and Advisory Board Members, while Part 3, which sets out more specific expectations regarding "Communications and Confidentiality," applies only to Council Members. While some of the information submitted with the Complaint seemed to suggest the Complainant took issue with the accuracy of certain statements made by the Respondent, we have not considered whether there is a breach of Part 3 of the Code of Conduct in this decision as Part 3 does not apply to Advisory Board Members.

Summary of Evidence

Evidence of the Respondent

In the Respondent's Written Response, the Respondent admitted making the Facebook Posts but denied that Council Member Hardwick was identifiable as the subject of the Posts as he had not named her specifically in the Posts. We found this response disingenuous given the contents of the Facebook Posts, including what was generally being discussed online, and his references to Council Member Hardwick's husband, and the reference to the particular neighborhood where she lives in Vancouver.

Given this, we requested an interview with the Respondent. During his interview, the Respondent admitted that Council Member Hardwick was the individual being referred to as the "Witch of the Westside" in the Facebook Posts and that she could be clearly identifiable as such to readers of the Posts. The Respondent said that the Facebook Posts were made as a result of an emotional reaction to previous exchanges he had had on the VanPoli Facebook Group page with the same individuals he had been corresponding with in the Facebook Posts. He admitted the Facebook Posts were inappropriate and described the language he used to describe Council Member Hardwick as "misogynistic." He acknowledged he should not have made the comments.

Evidence of the Complainant

Given the admissions made by the Respondent, we determined it was not necessary to interview the Complainant and no subsequent information was sought from the Complainant beyond what she had provided as part of the Complaint.

Witness Evidence

Two witnesses were interviewed as part of the investigation. Given the admissions of the Respondent (which came later in the investigation), it was not necessary to rely on much of the witness testimony in reaching our findings, with the exception that one witness was able to confirm the personal details referenced in the Facebook Posts were linked to Council Member Hardwick, specifically, where she lives and the name of her husband.

Assessment of Credibility

There were no issues of credibility in this investigation.

Findings

As Co-Chair of the City of Vancouver's Renters Advisory Committee, the Respondent is an Advisory Board Member as defined in the Code of Conduct and his conduct is governed by the Code of Conduct.

The primary concern outlined in the Complaint was that the Facebook Posts breached the Code of Conduct.

We recognize that those elected to Council and appointed to City of Vancouver Committees have wide latitude to express their opinions and engage in free speech.

Political expression, including expressions captured by a municipal code of conduct, "should be interpreted in a manner consistent with the *Canadian Charter of Rights and Freedoms*, including the right of freedom of expression" (see *Re VanLeeuwen*, 2021 ONMIC 13). In our view, an Advisory Board Member, just as with a Council Member, has every right to form views, to hold views, and to express views. (See [Bulletin 2022-02](#) and [Bulletin 2022-4](#) for our reasoning on how speech and communication are addressed under the Code of Conduct.)

We also accept that the nature of social media must be considered in interpreting whether the Facebook Posts amount to a breach of the Code of Conduct (see *Chan v Therrien*, 2021 ONMIC 6).

Regarding the complaints about the interactions between the parties on the VanPoli Facebook Group and Facebook generally, we did not receive sufficient particulars of what was said as both the Complainant

and the Respondent were no longer members of the VanPoli Facebook Group, and as such they did not have access to their message histories. That said, discourteous or rude messaging, without more, would not be sufficient to breach the Code of Conduct.

The limitations to broad expression set out by the Code of Conduct are clear. Section 2(e) of the Code of Conduct requires Advisory Board Members and Council Members to “treat members of the public, one another, and staff respectfully, without abuse, bullying or intimidation and ensure that the work environment is free from discrimination and harassment.”

On his own admission, describing a female Council Member as a “witch” was misogynistic. Advisory Board Members and Council Members who use discriminatory language in their public communications fail to meet the standards set out in section 2(e) of the Code of Conduct. The terminology used to describe Council Member Hardwick in the Facebook Posts was gendered and perpetuated harmful stereotypes when addressing a colleague.

Human Rights Tribunals, including the B.C. Human Rights Tribunal, have confirmed that using gendered, demeaning language may be a violation of the B.C. *Human Rights Code*. In *Pardo v Coquitlam School District No. 43*, 2003 BCHRT 71, the B.C. Human Rights Tribunal noted that all of the circumstances must be taken into account when determining whether a single comment could constitute a contravention of the *Human Rights Code*. The Tribunal identified a non-exhaustive list of relevant factors (the “Pardo Factors”):

- a. *the egregiousness or virulence of the comment;*
- b. *the nature of the relationship between the involved parties;*
- c. *the context in which the comment was made;*
- d. *whether an apology was offered; and*
- e. *whether or not the recipient of the comment was a member of a group historically discriminated against.*

In *Costigane v Nyood Restaurant & Bar*, 2015 HRTO 420 (para 20), the Ontario Human Rights Tribunal considered the following facts:

The applicant ... went to [the employer] ... to obtain payment for her unpaid wages. When the payment was short, she called [the employer] to complain. In response to the applicant’s request to be paid in full, [the employer] shouted obscenities at the applicant, including calling her a ‘bitch’ and a ‘cunt’.

On these facts, the Ontario Human Rights Tribunal found the following:

In my view, calling a female employee a “bitch” and a “cunt” constitutes sexual harassment under the Code. It is clearly a course of conduct that was known or ought reasonably to have

been known by [the employer] to be unwelcome. The words, on their face, are gendered and demeaning. A single comment, if sufficiently serious, can constitute sexual harassment. See Romano v. 1577118 Ontario Inc., 2008 HRTO 9. I find that these words were sufficiently serious to constitute sexual harassment in this case.

While some may question the egregiousness or virulence of the comments in this case, perhaps viewing the word “witch” to be less offensive than the words considered in *Costigane*, the gendered and derogatory meaning of the words are objective and apparent. Indeed, the Respondent agreed that this was the case when he described them himself as “misogynistic” (which means discriminatory towards women). Whether a female leader is being described as a “bitch,” a “witch,” “wicked,” a “nasty woman,” or a “(climate) Barbie” (which was the description used by a reporter for Environment Minister Catherine McKenna during an interaction in 2017), the impact is the same – negative, discriminatory stereotypes are being applied to women who seek and/or hold political office.

In this case, it is not a member of the public making these comments: it is an Advisory Board Member making them against a Council Member. The Respondent’s position requires him to adhere to the Code of Conduct. He is in a position of leadership and responsibility for the City of Vancouver. In all of the circumstances, we find that the Respondent breached section 2(e) of the Code of Conduct by posting the Facebook Posts.

Recommendations and Conclusion

In addition to posting this investigation report online as required by section 6.32(f) of the Code of Conduct, we recommend a letter of reprimand be sent to the Respondent.

We also recommend that the Advisory Board Members receive training on the aspects of the Code of Conduct that apply to their role.

All of which is respectfully submitted.

A handwritten signature in black ink, appearing to read "Lisa Southern".

Lisa Southern

Integrity Commissioner for the City of Vancouver

Dated: October 19, 2022