

From: **"Mochrie, Paul"** <Paul.Mochrie@vancouver.ca>
To: **"Direct to Mayor and Council - DL"**
Date: 10/17/2023 6:14:11 PM
Subject: Integrity Commissioner - investigation report
Attachments: 2023.10.17 - COVIC - 006.pdf

Good evening Mayor and Council,

On behalf of the Integrity Commissioner and pursuant to section 6.31(b) of the Code of Conduct Bylaw, I am writing to share the attached investigation report. The report pertains to an unsubstantiated complaint against Councillor Montague.

In accordance with section 6.31(b), Councillor Montague was provided a copy of the report earlier this afternoon.

Best,
Paul

Paul Mochrie (he/him)
City Manager
City of Vancouver
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The City of Vancouver acknowledges that it is situated on the unceded traditional territories of the x̱m̱əθḵʷəy̱əm (Musqueam), Skwxwú7mesh (Squamish), and səlilwətał (Tsleil-Waututh) Nations.



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

In this matter of

AN INTEGRITY COMMISSIONER INVESTIGATION
ALLEGATION, FINDINGS, AND DECISION

Submitted by Lisa Southern,
Integrity Commissioner
City of Vancouver

October 17, 2023

Background

A member of the public (“Complainant”) submitted a complaint (“Complaint”) against Councillor Brian Montague (“Cllr. Montague”) to the Integrity Commissioner under *Code of Conduct By-Law No. 12886* (“Code of Conduct By-law”).

The Complainant alleged Cllr. Montague wearing a “Thin Blue Line” emblem on his jacket while engaged in his public duties as a Council Member for the City of Vancouver was a form of hate speech and discrimination, and as such, was a violation of the Code of Conduct By-law.

We examined the Complaint and issue this report in accordance with section 6.32 of the Code of Conduct By-law. In this report, we summarize the investigation process, make findings of fact with respect to the allegations in the Complaint, consider the Complaint in relation to the Code of Conduct By-law and the applicable law, and conclude there was no breach of the Code of Conduct By-law.

Process

On December 17, 2022, we received the Complaint. We conducted a preliminary assessment of the Complaint and determined the allegations set out in it, if true, may constitute a violation of the Code of Conduct By-law. In January 2023, we requested further information from the Complainant and notified Cllr. Montague about the Complaint.

On February 13, 2023, we received the requested information from the Complainant.

The parties expressed willingness to explore an informal resolution process (as per sections 6.17 to 6.23 of the Code of Conduct By-law). After efforts were made to draft a joint communication, the Complainant advised on September 13, 2023 that they chose not to proceed with the informal resolution proposed and instead preferred to have a formal outcome.

Summary of Complaint

The Complainant alleged Cllr. Montague breached the Code of Conduct By-law on December 17, 2022 when he wore the Thin Blue Line emblem in public, which the Complainant stated they felt was a form of hate speech and/or was discriminatory.

The Complainant was concerned that the Thin Blue Line emblem was a symbol of hate, division, inequity, and injustice. They said the emblem was closely linked to the “Blue Lives Matter” slogan adopted in response to the Black Lives Matter movement. The Complainant also provided examples of the Thin Blue Line flag where it was seen at far right rallies, including in Canada, and cited the flag appearing as a counter point to a Black Lives Matter rally in Calgary in 2020.

The Complainant noted that because some people saw the Thin Blue Line symbol as racist and controversial, many police forces in Canada had banned their officers from displaying it.

According to the Complainant, the type of pro-police dogmatism symbolized by the Thin Blue Line emblem should be read as thinly veiled racism designed to guard the police from accountability. They were concerned about Cllr. Montague's support for this kind of divisive rhetoric.

Summary of Respondent Submissions

The facts giving rise to the Complaint were not contested by Cllr. Montague. He attended a public event in December 2022 as a Council Member. On his sleeve he wore the Thin Blue Line emblem.

Cllr. Montague said the emblem had a very personal connection. He explained he wore it with the intention of showing support to those who currently served and protected in the Vancouver Police Department ("VPD"), and as a memorial. Cllr. Montague was a member of the VPD prior to becoming a Council Member and explained that he lost friends and colleagues who were police officers.

Cllr. Montague considered the information brought forward by the Complainant about the symbolism some had attached to the Thin Blue Line emblem. He acknowledged that while to him the Thin Blue Line emblem was a sign of support for police, others considered it a sign of division with a negative meaning. He said his intention was never to convey support for intolerance, division, or discriminatory conduct. Cllr. Montague disagreed that the emblem constituted hate speech or discrimination, or that it contravened the Code of Conduct By-law. He relied on the *Charter of Rights and Freedoms* (that protects free and open debate, even on controversial matters), which he said he believed was essential for society's growth and development.

He emphasized his commitment to continued learning about human rights and the diverse and evolving viewpoints of his constituents.

Background: Different Interpretations of the "Thin Blue Line"

Since the 1990s in North America, the Thin Blue Line symbol has been displayed in various forms, including the original black and blue rectangle patch, the Peace Officers' Memorial Ribbon and shoulder flashes, the Thin Blue Line flag emblem, and the Thin Blue Line flag memorial pin. The Peace Officers' Memorial Ribbon and the Thin Blue Line flag memorial pin were designed and worn to honour the line of duty deaths of Canadian police Constable Todd Baylis, and Constables John Davidson and John Goyer, respectively. For some, the symbol represents solidarity and pride within policing, and a way to honour fallen officers, including those who have taken their own lives.

However, the term and the symbol have also been used by other groups for their own purposes. Notably, the Thin Blue Line flag symbol emerged in the United States in the context of the Black Lives Matter movement, by a counter movement named Blue Lives Matter. In Canada, the symbol of a horizontal blue bar across a monochrome Canadian flag has been used by some white nationalist movements.

In response to public concerns raised about the divisive nature of the term and the symbol, Canadian law enforcement agencies initiated discussions within their departments and communities. For example, in 2020, an RCMP directive eliminated the emblem from being worn on uniforms.¹ In 2022, the Calgary Police Department came to the same decision that eliminated the patch from being worn on its uniforms, although a controversy arose in early 2023 when officers were still permitted to wear pins of the symbol on their uniforms.²

Closer to home, in 2023, the VPD decided the use of the emblem and patch would not be authorized to be worn on VPD uniforms. In its January 2023 “Thin Blue Line Briefing Report” (“Briefing Report”³), the VPD acknowledged “conversations around racial justice, police accountability and the relationship between police and community have the same significance as those taking place in the U.S.” The Briefing Report detailed the VPD’s consultation with community members, including the Indigenous Advisory Committee and the African Descent VPD Advisory Committee. The VPD met with the Indigenous Advisory Committee on October 6, 2022, and received consistent feedback on their perception of the Thin Blue Line as a dividing line (i.e. us versus them, with Indigenous Peoples being viewed as “them”), and that this division was at odds with Indigenous philosophy, which was not binary. The African Descent VPD Advisory Committee shared a common theme of racialized peoples’ experience with police (including the impact of policing in Canada on “Indigenous Peoples, Chinese and Japanese during WWII” and how that history informed their view of the thin Blue Line).

The Briefing Report concluded by noting that while “it is not a hate symbol,” the “rapidly developing and passionate context” where a symbol designed as a “well-intentioned display” of support had evolved to one that garnered different interpretations and reactions by some groups and individuals, and had “generated concern and controversy.”

The Code of Conduct By-law and Freedom of Expression

We have considered the Complaint under the Code of Conduct By-law, which reads, in part:

¹ See globalnews.ca/news/7392282/rcmp-directive-thin-blue-line for a related news article.

² See cbc.ca/news/canada/calgary/thin-blue-line-pin-police-1.6717361 for a related news article.

³ The “Thin Blue Line Briefing Report,” January 19, 2023, Prepared by Staff Sergeant Duane van Beek, Legal Coordinator, Investigation Division, VPD at vancouverpoliceboard.ca/police/policeboard/agenda/2023/0119/Attachment 'C' Thin Blue Line Briefing Report

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

...

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

In considering the Complaint, we have reviewed both jurisprudence and decisions from other Integrity Commissioners, which are persuasive given the similarity in the terms of the Codes of Conduct considered and the nature of the subject matter at hand. These cases support an interpretation of the Code of Conduct By-law that provides latitude for elected officials to express their views and opinions, even on controversial subjects. In addition, the Code of Conduct By-law must be interpreted in a manner consistent with the *Canadian Charter of Rights and Freedoms*.

- In *Re VanLeeuwen*, 2021 ONMIC 13, Integrity Commissioner Giorno noted that political expression, including expressions captured by a municipal code of conduct, “should be interpreted in a manner consistent with the *Canadian Charter of Rights and Freedoms*, including the right of freedom of expression.”
- In *Monforts v Brown*, 2021 ONMIC 10, Integrity Commissioner Giorno made the following statements about communications by elected municipal officials:

121. Before turning to the applicable sections of the Code, I wish to make general observations about communications by elected municipal officials. The role of a Council Member includes communicating with members of the public about local issues. This includes not just responding to residents but initiating communication with the public. In fact, the Courts have clearly stated that, as an elected representative of the public, a municipal councillor is entitled to take “an open leadership role” on an issue. As part of the political process, a Council Member has every right to form views, to hold views, to express views and, while in office, to give effect to those views.

*122. In a case involving the previous Mayor of Orangeville, I observed that a municipal elected official is not required to avoid communicating on controversial, high-profile issues. Quite the contrary. “Given the political and representational roles of a municipal councillor, controversial and/or highly visible topics are ones on which a Council Member would be expected to communicate and on which a Council Member is entitled to communicate.” See *Greatrix v. Williams*, 2018 ONMIC 6 (CanLII), at para. 204.*

On a review of applicable law, we have determined that the emblem falls within subject matter of “controversial and/or highly visible topics” which a “Council Member is entitled to communicate.” Cllr. Montague’s wearing of the emblem is a permissible form of expression under the *Charter of Rights and Freedoms* and there is no reasonable basis under the Code of Conduct By-law to restrict his expression in

this instance. His wearing of the emblem is expression of his opinion, and although there may be disagreement with his opinion, the wearing of the emblem does not “discriminate, harass, or defame any person” as those terms are legally interpreted.

In British Columbia, discrimination occurs if one is adversely treated or denied a benefit because of a personal characteristic.⁴ It is a distinction, intentional or not, based on personal characteristics of an individual or group, which has the effect of imposing burdens, obligations, or disadvantages on the individual or group not imposed on others, or which withholds or limits access to opportunities, benefits and advantages available to members of society.⁵ It is prohibited by the BC *Human Rights Code*.

The test for establishing discrimination is set out in *Moore v. BC (Education)*, 2012 SCC 61:

As the Tribunal properly recognized, to demonstrate prima facie discrimination, complainants are required to show that they have a characteristic protected from discrimination under the Code; that they experienced an adverse impact with respect to the service; and that the protected characteristic was a factor in the adverse impact. Once a prima facie case has been established, the burden shifts to the respondent to justify the conduct or practice, within the framework of the exemptions available under the human rights statutes. If it cannot be justified, discrimination will be found to occur.

Cllr. Montague’s action was not discriminatory. Based on our findings about the origin of the Thin Blue Line and its changing and differing interpretations, we find his wearing of the emblem did not make a distinction based on a personal characteristic of an individual or a group. It also did not impose burdens, obligations, or disadvantages on an individual or a group, nor did it limit anyone’s access to opportunities, benefits, or advantages.

The Complainant raised a concern that use of the emblem may constitute “hate speech.” The Supreme Court of Canada’s decision in *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11 (“*Whatcott*”) is particularly instructive on the definition of ‘hate speech’. In *Whatcott*, the Court determined that to amount to hate speech, representations needed to expose a target group to “detestation” which tended “to inspire enmity and extreme ill-will” and which “goes beyond mere disdain or dislike.” The Court found that “Representations vilifying a person or group will seek to abuse, denigrate, or delegitimize them, to render them lawless, dangerous, unworthy or unacceptable in the eyes of the audience. Expression exposing vulnerable groups to detestation and vilification goes far beyond merely discrediting, humiliating, or offending the victims.”

⁴ Protected characteristics include: Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or class of persons.

⁵ See *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143, at p 174.

We find that the emblem's use and meaning, while controversial, is a matter of opinion which may be accepted, challenged, or rejected by those who choose to engage with it and does not rise to the conduct of representations that amount to hate speech as defined by the Supreme Court of Canada.

Decision

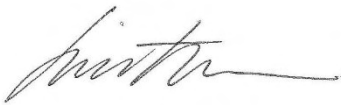
While, by wearing the emblem, Cllr. Montague expressed his views on a controversial and/or highly visible topic, he did so within the boundaries of the Code of Conduct By-law and for the reasons set out above, we conclude Cllr. Montague did not contravene the Code of Conduct By-law.

We note that in 2023, Council unanimously adopted recommendations enhancing the Code of Conduct By-law to include compulsory education from the Office of the Integrity Commissioner, and public disclosure through the Annual Report if a Council Member did not take the compulsory education. In June and July 2023, the Council, including Cllr. Montague, received specific training on human rights issues, including the *BC Human Rights Code*, current case law demonstrating the rapidly evolving nature of human rights issues, and what constituted direct and systemic discrimination. They also participated in a discussion on evolving understandings of language and symbols. This training will occur on an annual basis to ensure that Council Members continue to actively advance their understanding of human rights.

Conclusion

We find Cllr. Montague did not breach the Code of Conduct By-law.

All of which is respectfully submitted.



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

Dated: October 17, 2023

*Lisa Southern Law Corporation