



REPORT TO
CITY OF VANCOUVER COUNCIL, COMPLAINANT AND RESPONDENT

In this matter of

AN INTEGRITY COMMISSIONER INVESTIGATION
ALLEGATIONS, FINDINGS & DECISION

Submitted by Lisa Southern
Integrity Commissioner
City of Vancouver

August 2, 2024

Background

On December 19, 2023, Brennan Bastyovanszky, Vancouver Park Board (the “Park Board”) Commissioner (the “Complainant”) submitted a complaint (the “Complaint”) against City of Vancouver (the “City”) Mayor Ken Sim (the “Respondent”) to the Integrity Commissioner under sections 2c), 2g), 3.4c), 3.5a) to f), 4.7, and 4.8 of the City’s *Code of Conduct By-law No. 12886* (the “Code of Conduct By-law”).

On April 30, 2024, the Complainant submitted a second complaint (the “Second Complaint”), which was related to the Complaint. Together, the Complaint and Second Complaint are the “Complaints.”

I conducted preliminary assessments of the Complaints and determined some aspects fell within my authority and required a formal investigation. I thus investigated, examining the Complaints in the context of the Code of Conduct By-law and the law.

This report is issued in accordance with section 6.31 of the Code of Conduct By-law. I summarize my process, decide preliminary issues, make findings of fact with respect to the allegations set out in the Complaints, and conclude there was no breach of the Code of Conduct By-law.

This complaint process involved numerous legal objections and arguments, but ultimately, the merits of the complaint required me to answer two key questions: (1) in matters where the Respondent was directly involved, was he acting in his capacity as Mayor or in his capacity as leader of a political party; and (2) in matters where he was alleged to have been indirectly, through his staff, involved, were his staff acting or speaking on his behalf?

Process

After meeting with the Complainant on January 2, 2024, I determined the allegations set out in the Complaint, if true, may constitute a violation of the Code of Conduct By-law and there was no basis to dismiss the concerns upon a preliminary assessment (Code of Conduct By-law, section 6.15).

Accordingly, on January 5, 2024, I advised the Respondent of the Complaint and my decision that it required formal investigation. I told him that, under section 6.25 of the Code of Conduct By-law, he had 10 days to give me a written response and submissions. I also told him that, as my Office wanted to interview him, he could defer his written submissions until after the interview. He asked for another preliminary assessment and closure of the Complaint on January 19, 2024.

My Office interviewed witnesses and the Complainant between December 27, 2023, and February 2, 2024. At the beginning of each interview, participants were advised of the need for honesty and their obligation to maintain confidentiality of both the information that we shared and the fact that the investigation

process was occurring. Except as specifically noted below, each participant acknowledged their understanding of these obligations.

The Respondent provided a response to my questions in writing through his counsel. Trevor Ford, the Respondent's Chief of Staff, submitted some evidence by way of sworn statutory declaration and made submissions through his counsel. (See the discussion below of the standing of Mr. Ford and David Grewal, Senior Advisor, for why they were included.)

On January 23, 2024, I sent the Respondent's submissions asking for a reassessment of the Complaint to the Complainant, and the Complainant responded on March 6, 2024.

On March 11, 2024, I sent the Complainant's submissions responding to the Respondent's request for another preliminary assessment to the Respondent, and Mr. Ford and Mr. Grewal.

During this time, I canvassed the parties as to whether informal resolution may be an option. Initially, the parties were open to this avenue. However, on March 21, 2024, the Complainant withdrew his consent to the informal resolution process.

On April 5, 2024, I notified the Complainant, the Respondent, and Mr. Ford and Mr. Grewal, that I was rejecting some aspects of the Complaint for being out of time, as per section 6.9 of the Code of Conduct By-law (see *Preliminary Issues* section below).

I notified the Respondent of the Second Complaint on May 3, 2024, and told Mr. Ford and Mr. Grewal about it on May 7, 2024.

On May 3, 2024, I requested further particulars from the Complainant regarding certain aspects of the Second Complaint and the Complainant provided these on May 16, 2024.

On May 24, 2024, I told the Complainant and the Respondent I was dismissing certain aspects of the Second Complaint on a preliminary basis (see *Preliminary Issues* section below).

On June 18, 2024, I received written submissions from the Respondent, and Mr. Ford and Mr. Grewal, responding to the Complaints. These included a sworn statutory declaration from Mr. Grewal, but not the Respondent.

Following this, on July 2, 2024, I sent a letter to the Respondent with questions about facts in issue in the Complaints, to which he responded through his counsel on July 24, 2024.

On July 8, 2024, I received documents from Commissioner Bastyovanszky that he had obtained in response to an access request under the *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165 ("FOIPPA") to the Pacific National Exhibition (the "PNE"). These were provided to the Respondent, and Mr. Ford and Mr. Grewal, on July 12, 2024 (the "FOIPPA Disclosure").

Standing of Mr. Ford and Mr. Grewal

On February 6 and 22, 2024, Mr. Ford and Mr. Grewal wrote to me to demand they be treated as respondents in the Complaint. They said this was required because [REDACTED]

[REDACTED]¹Mr. Ford and Mr. Grewal also asked me for disclosure of all materials in my possession related to the Complaint and to reassess my decision to investigate for the same reasons given by the Respondent.

As neither employee was named as a respondent in the Complaints and as employees are not subject to the Code of Conduct By-law, I rejected their request for standing. However, on a without prejudice basis, I extended the courtesy of including them in the submission process and providing them with particulars of the allegations. In preparing this report, I have reviewed and considered their submissions relating to the Complaints.

Summary of Complaints

The Complaint alleged the Respondent breached the Code of Conduct By-law directly, or through his staff acting on his behalf, by improperly influencing Park Board governance and breached the Code of Conduct By-law's communications and confidentiality requirements.

The Complaint form referred to two incidents of alleged improper influence: (1) the Respondent pressuring the Complainant to step down as Vice-Chair of the Park Board; and (2) the Respondent dictating who the Park Board should hire as General Manager.

When I met with the Complainant on January 2, 2024, he raised other incidents of alleged improper influence and breaches of the Code of Conduct By-law relating to communications and confidential information. Without reference to any allegations that I determined were out of time (see *Preliminary Issues* section below), he said the Respondent directly, or through Mr. Ford and/or Mr. Grewal:

- Dictated to Park Board Commissioners who they should hire as Park Board General Manager (October 5, 2023);
- Pressured the Complainant to step down as Vice-Chair of the Park Board (July 5, 7, and 12, 2023);
- Told City Council members, Vancouver School Board Trustees, and others that my Office was investigating the Complainant (September and November 22 and 24, 2023) when this was not true;

¹ Redacted pursuant to section 6.33 of the Code of Conduct By-law

- Tried to pressure Park Board Commissioners to appoint a specific person as Chair of the Park Board (November 22 and 24, 2023) by falsely referring to an investigation by my Office; and
- Brought a motion before City Council to ask the Province of British Columbia to amend the *Vancouver Charter* and dissolve the Park Board because he was unable to control decisions of Park Board Commissioners (December 13, 2023).

On April 30, 2024, the Complainant filed the Second Complaint alleging disclosure of confidential information (Code of Conduct By-law, section 3.5), improper use of influence by the Respondent (Code of Conduct By-law, sections 4.7 to 4.9), and bullying, harassment, discrimination, and retaliation by the Respondent for the Complainant filing the Complaint.

After my preliminary assessment of the Second Complaint, I dismissed the portion alleging bullying, harassment, and discrimination.

The rest of the Second Complaint involved further allegations about incidents in issue in the Complaint and additional incidents of alleged improper influence, disclosure of confidential information, breach of the Code of Conduct By-law's respectful communication requirements, and a claim of retaliation. The additional allegations are as follows:

- The Complainant's election as Park Board Chair resulted in the Respondent trying to interfere with the Complainant's attempts to contact First Nations for support for Park Board initiatives and preservation;
- On March 12, 2024, Mr. Ford, acting for the Respondent, falsely advised the City's Manager and the Park Board's General Manager that Chief Sparrow of Musqueam had asked the Complainant to "stop calling" him;
- On or before March 21, 2024, Mr. Ford let a reporter from City News think there was a formal investigation into the Complainant even though my Office had emailed the Respondent on December 4, 2023, to say there was no such investigation; and
- On April 2, 2024, Mr. Ford and Mr. Grewal retaliated against the Complainant by making a complaint against him under the *Park Board Code of Conduct Policy*.

Because the substance of the Second Complaint is closely connected to the Complaint, I have reviewed and considered the Complaints together.

Preliminary Issues

As referenced above, the Respondent, and Mr. Ford and Mr. Grewal, raised numerous objections to the investigation. The following is a summary of those objections, and my decisions about them.

Reassessment of the Complaint

On January 19, 2024, the Respondent responded to my letter of January 5, 2024, informing him of the allegations against him and my determination that a formal investigation was needed, asking for his written response to the Complaint, and giving him notice that my Office wanted to interview him. I had requested the matters be kept confidential, and specifically, that he not discuss these matters with his staff given that they could be witnesses in these matters. The Respondent, and Mr. Ford and Mr. Grewal, asserted they were not bound by confidentiality in the circumstances and the Code of Conduct By-law did not give me authority to direct them not to discuss these matters. The Respondent copied counsel for Mr. Ford and Mr. Grewal, as he continued to do throughout the investigation.

The Respondent took the position that he should not have to give me a substantive response to the Complaint because I had made five “key errors,” which required me to conduct another preliminary assessment and close the Complaint without further investigation. The alleged errors were that I:

- Failed to close the Complaint as not being in good faith, or not being in the public interest to investigate, in light of the Complainant making and using surreptitious recordings of City employees (Code of Conduct By-law, section 6.15). The Respondent submitted that the use of these recordings gave rise to an inescapable inference of bad faith. Also, the Respondent said I should not rely on the recordings because permitting the routine recording of employees would not be a positive policy development given the importance of privacy interests and would have a chilling effect on the proper operation of government.
- Failed to reject allegations about events occurring more than 180 days prior to the receipt of the Complaint (Code of Conduct By-law, section 6.9). Under section 6.9, I must reject complaints about incidents occurring more than 180 days before I received the Complaint. Thus, I should reject all allegations about a breach by the Respondent in relation to events before June 21, 2023.
- Improperly expanded the Complaint to investigate allegations beyond those included in the Complaint form (Code of Conduct By-law, sections 6.4, 6.6, and 6.8). The Respondent said some of the allegations, facts, and provisions of the Code of Conduct By-law set out in my January 5, 2024 letter were not listed in the Complaint form and I had no jurisdiction to expand a complaint beyond what was specifically set out in the form.
- Investigated alleged conduct falling outside the Code of Conduct By-law. The Respondent said the allegation about the Respondent hiring the Park Board General Manager and bringing a motion to Council to ask the Province to dissolve the Park Board was outside the scope of the Code of Conduct By-law because neither allegation, if true, was an improper use of influence under sections 4.7 to 4.10 of the Code of Conduct By-law.

- Failed to provide sufficient particulars (Code of Conduct By-law, section 6.28) because I did not give the Respondent: (1) enough details of the dates, people, and places involved; (2) the specific section of the Code of Conduct By-law allegedly breached by each incident; and (3) information about how the alleged conduct was a breach of those sections.

After receiving the Respondent's request for reassessment, I asked the Complainant for his submissions about this preliminary issue and, as noted above, gave the Respondent a chance to reply. He did so, as did Mr. Ford and Mr. Grewal.

The Complainant's response to the Respondent's request for reassessment was as follows:

- There was no evidence to support an inference of bad faith. It would be inappropriate to weigh and decide such matters conclusively in a preliminary assessment, which only permitted the dismissal of a complaint where there was no evidence in support of, or undisputed evidence against, it. The recordings, even if surreptitious, were admissible.
- The allegations preceding June 21, 2023, were relevant to a pattern of behaviour and harassment continuing through the fall and culminating in November 2023 and provided relevant context for the Complaint. Further, the alleged breaches were continuing in nature.
- I was not limited only to provisions of the Code of Conduct By-law specifically referred to in a Complaint form. I could formulate the final version of a complaint. My powers as Integrity Commissioner included a right to interview witnesses, which would inform my investigation and recommendations to Council. I also had discretion to accept a complaint even if it did not comply with the requirements of section 6.4 (Code of Conduct By-law, section 6.7).
- The Respondent improperly used his influence with respect to hiring the Park Board General Manager and so this incident was within the scope of the Code of Conduct By-law.

Reassessment of the Complaint

Section 6.15 of the Code of Conduct By-law requires me to conduct a preliminary assessment if at any time I am of the opinion that:

- A statement is not with respect to a breach of the Code of Conduct By-law;
- The complaint is frivolous, vexatious, or not made in good faith;
- An investigation would not be in the public interest;

- The investigation is, or might be hampered, or the member might be prejudiced by a complainant's failure to provide a complaint in compliance with section 6.4, or otherwise cooperate with the investigation;
- A complainant wants to withdraw the complaint and I deem it appropriate to allow this; or
- There are no grounds or insufficient grounds to conclude there was a violation of the Code of Conduct By-law.

I determined none of these applied to the Complaints in the context of a preliminary assessment and therefore proceeded with my investigation. For the most part, the Respondent's alleged errors were in fact substantive responses to the Complaints and should be dealt with in a formal investigation.

Timeliness

I agree with the Respondent that some of the Complaint relates to incidents that occurred before June 21, 2023, and are therefore out of time. Section 6.9 of the Code of Conduct By-law says:

The Integrity Commissioner must reject a complaint received more than 180 days after the complainant knew or reasonably ought to have known of the alleged breach of this By-law.

This is a mandatory provision and there is nothing in the Code of Conduct By-law that qualifies it. The Complainant does not argue that he could not reasonably have known of the alleged breaches of the Code of Conduct By-law. I note that as I am also the Park Board Integrity Commissioner, the Complainant attended training on the *Park Board Code of Conduct Policy* (which mirrors the Code of Conduct By-law, including how it applies) from my Office and received orientation training.

Reformulating the Complaints

The Respondent says I improperly expanded the Complaints, because some of the allegations, facts, and provisions of the Code of Conduct By-law I have determined are part of the Complaints were not listed in the Complaint form. The Respondent submits I have no authority to expand a complaint beyond what is specifically set out in the form.

The portions of the Code of Conduct By-law relevant to this issue are sections 6.4, 6.6, 6.7, and 6.8:

6.4 A complaint must be in writing and describe with sufficient detail:

- a) the name of the complainant;*
- b) the name of the respondent;*
- c) the conduct that the complainant alleges to have breached this By-law;*
- d) the date of the alleged conduct;*

*e) the part or parts of this By-law that the complainant alleges has or have been breached;
and*

f) the basis for the complainant's knowledge about the conduct.

6.6 The Integrity Commissioner may prescribe a form for submitting a complaint.

6.7 Provided that a complaint has been submitted, the Integrity Commissioner may accept a complaint, notwithstanding that the form of the complaint does not comply with all of the requirements set out in section 6.4 if, in the Integrity Commissioner's opinion, the circumstances warrant.

6.8 The Integrity Commissioner must not accept multiple complaints concerning the same matter. In the event that the Integrity Commissioner receives multiple complaints concerning the same matter, the Commissioner must proceed with the first complaint accepted, but may expand the complaint and/or add complainants for the purpose of conducting the investigation and preparing the investigation report.

While section 6.4 sets out the general requirements for a complaint, the other sections indicate I have considerable discretion with respect to its formulation: I can prescribe a form for submitting a complaint (section 6.6), accept a complaint despite non-compliance with section 6.4 if the circumstances warrant (section 6.7), and expand the complaint to include related complaints about the same matter (section 6.8). In addition, section 6.16 allows me to request further information from the complainant before determining whether or not there are sufficient grounds for believing that a breach of this Code of Conduct By-law may have occurred.

As described above, after receiving the Complaint form, I interviewed the Complainant. Given the additional information he provided was reasonably related to the issues raised in the Complaint form, I determined the circumstances warranted including all the Complainant's allegations in the Complaint.

After receiving the Second Complaint, as the content was closely connected to the Complaint, under section 6.8, I expanded the Complaint for the purposes of my investigation and preparing this decision.

As noted by the Ontario Superior Court in *Di Biase v City of Vaughan*, 2016 ONSC 5620, at para 42, in exercising my powers, I must be able to interpret and reformulate complaints made by the public, who may lack specific knowledge of the complaint process, and who may, therefore, not be familiar with how to identify and formulate alleged breaches (see also *Moore v Maika*, 2018 ONMIC 7, at paras 77-78; *Gregory v Kerr*, 2021 ONMIC 2, at paras 32-33; *Wallace v Mercer*, 2022 ONMIC 11, at paras 20-21).

Simply put, the interpretation of section 6 of the Code of Conduct By-law advanced by the Respondent is not supported by a plain reading of the language or any legal authority.

Moreover, the Respondent was made aware of all allegations in the Complaints and had full opportunity to address them so there has been no prejudice to him.

Use of Recordings

The evidence provided by the Complainant in support of the Complaint included recordings of telephone calls between Mr. Ford (September 20, 2023), and Mr. Ford and Mr. Grewal (November 24, 2023) and a Park Board Commissioner. The Respondent submits these recordings were made in bad faith and I should not rely on them because this would not be a positive policy development given the importance of employee privacy interests and the chilling effect doing so has on the proper operation of government. He further says surreptitious recordings are deceitful and when there is a question of integrity, such recordings should not be permitted as a matter of principle.

The question of whether the recordings were made in bad faith is the subject of a complaint by Mr. Ford and Mr. Grewal against the Complainant under the *Park Board Code of Conduct Policy* and is properly dealt with in that forum. Even if the Respondent could establish the recordings were made in bad faith, which in *Park Board Complaint against Commissioners Bastyvanszky and Jensen ("PBIC-002")* I find he did not do, this does not respond to the Complaints.

I reject the Respondent's submission that I should not rely on the recordings as evidence in my investigation.

Even if Mr. Ford and Mr. Grewal's privacy interests were impacted, which I found in PBIC-002 was not the case, the recordings were not illegal. A person may record a conversation so long as at least one party to the conversation knows about the recording (*Criminal Code*, s 184(2)(a); see also *Lam v Chiu*, 2012 BCSC 440 at paras 20, 25). In any event, the Complainant did not make the recordings. Someone else did and gave them to him, although the Complainant was present when the November 24, 2023 recording was made.

The recordings are admissible in court or other proceedings such as integrity commissioner investigations (see, for example, *Karygiannis (Re)*, 2021 ONMIC 39; *Dhillon (Re)*, 2020 ONMIC 19; *Li Preti v Angimeri*, 2007 ONMIC 2).

I note the Respondent did not explain how my admitting the recordings in this investigation would have a chilling effect on the proper operation of government.

Particulars

I find the Respondent's submission that I failed to provide sufficient particulars without merit. He had reasonable notice of the Complaints and reasonable opportunities to respond.

Issue

Given my decision on the preliminary issues above, the following aspects of the Complaint remain to be determined:

- Whether the Respondent improperly influenced (sections 2c), 4.7, and 4.8) or did not conduct his duties in an open and transparent manner (section 2g)) by:
 - Pressuring the Complainant to step down as Vice-Chair of the Park Board on July 5, 7, and 12, 2023;
 - Dictating to the Commissioners who they should hire as Park Board General Manager on October 5, 2023;
 - Pressuring Commissioners to appoint a specific person as Chair of the Park Board on November 22 and 24, 2023;
 - Bringing a motion to Council on December 13, 2023, about dissolving the Park Board because he was unable to control Park Board decisions; and
 - Trying to interfere with the Complainant’s attempts to contact First Nations for support for Park Board initiatives and preservation, including having Mr. Ford, on March 12, 2024, falsely advise City and Park Board General Managers that Chief Sparrow had asked the Complainant to stop calling him.
- Whether the Respondent breached sections 3.4c) (public communications) or 3.5 (confidential information) by communicating, or causing to be communicated, statements that my Office was investigating the Complainant in September and November 22 and 24, 2023, and on or before March 21, 2024, letting a reporter from City News think there was a formal investigation into the Complainant when the Respondent knew there was no such investigation.
- Whether the Respondent retaliated against the Complainant on April 2, 2024.

Summary of Complainant’s Submissions

The Complainant’s submissions about the Complaints are summarized above under the *Summary of Complaints* section.

Summary of Respondent’s Submissions

Overall, the Respondent says I should dismiss the Complaints because: (1) the incidents complained of were outside of my jurisdiction as they were political and did not relate to his duties as Mayor; or (2) are conjecture that do not merit investigation. He also says I can consider the allegations in the Complaints

only in relation to sections 4.7 to 4.10 of the Code of Conduct By-law since the Complaint form referred only to “improper use of influence.” I dealt with this submission above under “Preliminary Issues.”

The Respondent says he has two distinct roles: he is the head of ABC Vancouver, a political party, and the Mayor of Vancouver. In his view, the Complaints confuse the Respondent acting in his capacity as leader of a political party with acting in his capacity as Mayor.

The Respondent says Mr. Ford’s and Mr. Grewal’s duties include performing political work for the Respondent. As a result, there is nothing improper about the Respondent asking for, and receiving, assistance with his political duties from them.

The Respondent reiterates that many of the allegations made against Mr. Ford, Mr. Grewal, or others, such as Katy Merrifield, the Respondent’s political consultant, are denied. However, with respect to his response to the specific allegations in the Complaints, the Respondent says:

- Hiring the Park Board General Manager: The Park Board had the authority to, and did, hire a General Manager and the Respondent as Mayor had no control over this process. This allegation thus falls outside the Code of Conduct By-law.
- Calling the Complainant on July 5, 7, and 12, 2023, and asking him to step down as Vice-Chair of the Park Board: The Respondent did this in his capacity as leader of ABC Vancouver and not as Mayor.
- Mr. Ford telling City Council members, Vancouver School Board Trustees, and others outside of ABC Vancouver in late September 2023 that my Office was investigating the Complainant: There is no evidence that supports a finding that the Respondent told Mr. Ford to do this. Also, Mr. Ford was correct in saying during a September 20, 2023 telephone call with a Park Board Commissioner that there was a “written complaint” about the Complainant, and it was going to the “Ethics Commissioner,” since such a complaint had been submitted to me at that time.
- Ms. Merrifield saying at a November 22, 2023 ABC Vancouver caucus meeting that there was an active investigation against the Complainant so he should not accept the Chair nomination: Even if this occurred, the Respondent was not present at the meeting and there is no evidence he directed Ms. Merrifield to make this comment on his behalf.
- Mr. Ford and Mr. Grewal’s statements to a Park Board Commissioner in a November 24, 2023 telephone call: These statements were not mentioned in the Complaint, so I cannot review them. Also, there is no evidence the Respondent directed Mr. Ford to refer to an investigation into the Complainant. Further, I should not consider this evidence because the recording was made without Mr. Ford or Mr. Grewal’s knowledge or consent. About Mr. Ford’s and Mr. Grewal’s

comments about the Respondent wanting a Commissioner other than the Complainant as Park Board Chair, those were not made on behalf of the Respondent in his capacity as Mayor.

- Comments allegedly made by a Park Board Commissioner on November 27, 2023 after the Complainant was made Chair that they “don’t know what they’ve done and there are going to be big things coming”: The allegation does not comply with section 6.4 and is conjecture.
- Mr. Ford falsely advising City and Park Board General Managers on March 12, 2024, that Chief Sparrow had asked the Complainant to stop calling him: There is no connection to the Respondent and any allegation to the contrary is conjecture.
- On March 12, 2024, Mr. Ford letting a reporter from City News think I was investigating the Complainant: My email of December 4, 2023, confirming there was no investigation into the Complainant, went to the Respondent’s confidential (as opposed to public-facing) email so Mr. Ford did not see it; the article does not say the Complainant was under investigation; and the Respondent did not direct what Mr. Ford said to the reporter.
- Mr. Ford and Mr. Grewal filing a complaint against the Complainant under the *Park Board Code of Conduct Policy*: The Respondent had nothing to do with this complaint and any allegation to the contrary is conjecture.
- The Respondent interfered with the Complainant’s attempts to contact First Nations for support for Park Board initiatives and preservation: This is conjecture and unparticularized.

The Respondent also says because the Complaint form did not refer to section 3.4c) of the Code of Conduct By-law, I cannot consider whether it was breached.

Submissions by Mr. Ford and Mr. Grewal

As noted above, although Mr. Ford and Mr. Grewal were not parties to the Complaints, given that they were witnesses to these matters, and the conduct being alleged was largely theirs, purportedly as agents for the Mayor, I gave them an opportunity to make submissions and both provided evidence through sworn statutory declarations. For the most part, their submissions were similar to those of the Respondent.

Mr. Ford and Mr. Grewal echo the Respondent’s points that their responsibilities include supporting the Respondent in his political activities and I should not rely on the September and November recordings as evidence. They also submit I have no jurisdiction to supervise or investigate them as they are City employees.

Mr. Ford submitted a sworn statutory declaration saying that the Respondent did not direct him or Mr. Grewal to discuss any investigation into the Complainant with Park Board Commissioners; that it was his understanding on September 20, 2023 that PNE personnel had filed a complaint to my Office regarding an incident involving the Complainant at the PNE; that on November 24, 2023, he was unaware there was no *Park Board Code of Conduct Policy* investigation into the Complainant so he did not intentionally give the Commissioner involved in that telephone call inaccurate information and that the Commissioner was already aware there was a complaint; and that in March 2024, he was unaware of my December 4, 2023 email to the Respondent confirming there was no investigation into the Complainant.

FOIPPA Disclosure

As referenced, the Complainant obtained disclosure from the PNE in relation to the complaint against him through a FOIPPA access request. He also made a FOIPPA access request to the City. The FOIPPA Disclosure included text messages and drafts of the complaint that included significant additions from its original content (such as adding in allegations of intimidation and bullying). The documents produced demonstrate Mr. Ford was involved in the filing of the complaint, which was consistent with the other evidence. As noted, in his sworn statement Mr. Ford stated that his understanding on September 20, 2023 was that PNE personnel had filed a complaint. The FOIPPA Disclosure shows that he contacted a leader at the PNE on September 19, 2023, provided them with details on how to file a complaint on September 25, 2023, received confirmation of when it was filed from a leader at the PNE on September 26, 2023, and then asked for (and received) a copy of the complaint.

The FOIPPA Disclosure included communications about the complaint with other individuals. However, there was nothing in the documents provided that directly connects the Respondent to any of the allegations.

In addition, I note that in relation to Mr. Ford's statement that he did not receive an email from the Integrity Commissioner Office on December 4, 2023, advising that there was no investigation being conducted about the Complainant's conduct, our Office at 2:01pm on December 4, 2023, forwarded him a copy of the same email that had been sent to the Respondent approximately one hour before.

Material Facts

Assessment of Credibility

Many of the facts are not in dispute. Where there were material facts in dispute, in assessing credibility, I have applied the test set out by the British Columbia Court of Appeal in *Farnya v Chorny* [1952] 2 DLR 354, which is as follows:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of the witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth.

Findings

In my assessment of the evidence provided, applying this test, and in consideration of the documentary evidence in this case, I find that:

- Mr. Ford and Mr. Grewal are City employees who are also political appointees, and as such, their responsibilities include assisting the Respondent with his political work as leader of ABC Vancouver.
- Even if the Respondent pressured the Complainant to step down as Vice-Chair of the Park Board, told Park Board Commissioners who they should hire as General Manager, and had Mr. Ford and Mr. Grewal lobby a Park Board Commissioner to appoint someone other than the Complainant as Chair of the Park Board, he was not acting in his capacity as Mayor at the time.
- The evidence does not establish the Respondent told City Council members, Vancouver School Board Trustees, or others that my Office was investigating the Complainant or that he directed anyone else to do so.
- In a September 20, 2023 telephone call, Mr. Ford told a Park Board Commissioner there was a written complaint going to the “Ethics Commissioner.” There is no evidence the Respondent directed Mr. Ford to say this.
- There is no evidence that at a November 22, 2023 ABC Vancouver caucus meeting, Ms. Merrifield was acting on behalf of the Respondent when she referred to an “active investigation” against the Complainant. The Respondent did not attend this meeting.
- On November 23, 2023, the City’s Manager asked my Office whether I was investigating the conduct of the Complainant. My Office responded that same day confirming that I was not.
- In a November 24, 2023 telephone call, Mr. Grewal told a Park Board Commissioner the Respondent wanted a Commissioner other than the Complainant to be Chair.

- In that same telephone call, Mr. Ford said there were “serious concerns” about the Complainant being Chair because Mr. Ford knew there was an active investigation, which was not an accurate statement.
- In that same telephone call, Mr. Ford made the following statements: “We cannot have someone in the position of Chair when that investigation becomes public” and there “cannot be someone who’s gonna jeopardize all of you because they’ve chosen to become Chair, when frankly, they have done stuff that in any other circumstance, would disallow them from that position.” There is no evidence the Respondent directed Mr. Ford to make these comments.
- On November 27, 2023, Mr. Ford learned there was no Park Board Integrity Commissioner investigation into the Complainant from the City Manager.
- On December 4, 2023, I sent Mr. Ford a copy of an email to the Respondent confirming there was no investigation into the Complainant’s conduct.
- There is no evidence the Respondent directed Mr. Ford on March 12, 2024, to let a reporter from City News wrongly think there was a formal investigation into the Complainant.
- There is no evidence the Respondent directed Mr. Ford on March 12, 2024, to advise the City and Park Board General Managers that Chief Sparrow had asked the Complainant to stop calling him.

Analysis

As noted at the outset, although these matters may seem complex, they can be distilled down to two key questions: (1) in matters where the Mayor was directly involved, was he acting in his capacity as Mayor, or in his capacity as leader of a political party; and (2) in matters where his staff were taking actions that are the subject of these Complaints, were they acting or speaking on his behalf. These questions required answers, and it was not until July 24, 2024, when I received the Respondent’s response to my factual questions that I was able to determine whether the Complaints fell within the Code of Conduct By-law, and/or if the evidence on a balance of probabilities, supported a finding of a breach.

For the reasons below, I dismiss the Complaints.

Improper Influence

Regarding improper influence, the Code of Conduct By-law says:

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

...

4.7 A member must only use the influence of their office for the exercise of their duties.

4.8 A member must be independent and impartial, and must not provide preferential treatment to any person or organization expect (sic) as warranted by the ordinary and lawful discharge of their duties.

Motion to Dissolve the Park Board

I dismiss the allegation that the Respondent brought a motion to Council on December 13, 2023, about dissolving the Park Board because he was unable to control Park Board Commissioners' decisions and that this was improper influence. Even if true, this allegation does not involve conduct regulated by the Code of Conduct By-law. Therefore, it lies outside my jurisdiction.

Interfering with the Complainant's Attempts to Contact First Nations

I dismiss the allegation that the Respondent tried to interfere with the Complainant's attempts to contact First Nations for support for Park Board initiatives and preservation.

The only aspect of the Complaints that could support this allegation is the Complainant's contention that the Respondent had Mr. Ford, on March 12, 2024, falsely advise City and Park Board General Managers that Chief Sparrow had asked the Complainant to stop calling him. Even if true, there is no evidence the Respondent directed or controlled Mr. Ford in relation to anything he may have said or done in this incident.

Interference with Park Board Governance

The remaining allegations relating to improper influence are that the Respondent:

- Pressured the Complainant to step down as Vice-Chair of the Park Board on July 5, 7, and 12, 2023;
- Dictated to Park Board Commissioners who they should hire as Park Board General Manager on October 5, 2023; and
- Pressured Park Board Commissioners to appoint a specific person as Chair of the Park Board on November 22 and 24, 2023.

The essence of the above is that the Respondent interfered with Park Board governance.

Section 4.7 requires Council members to use the influence of their office only in the exercise of their duties as Council members (see e.g. *Toronto Parking Authority and Emery Village BIA (Re)*, 2019 ONMIC 12). Park Board governance is not within the Respondent's duties as Mayor.

Section 2.c) requires a Council member to avoid improper use of influence. There is no definition of 'improper' in the Code of Conduct By-law, but I conclude an illegal act (e.g. bribery or threats) or breach

of a statute would be improper. There are no allegations the Respondent did anything illegal or breached a statute.

However, it would also be “improper” if the Respondent used his influence as Mayor to further his own interests or those of his family, employees, friends, associates, political party, etc. (see e.g. *Toronto Parking Authority and Emery Village BIA (Re)*, 2019 ONMIC 12; *Magder v Ford*, 2012 ONSC 5615, at para 29; *Ford (Re)*, 2007 ONMIC 3). This is codified in section 4.8 of the Code of Conduct By-law, and I note could also give rise to a conflict of interest prohibited by the *Vancouver Charter*.

I conclude the Complainant has not established improper influence prohibited by the Code of Conduct By-law.

Any action the Respondent took on July 5, 7, and 12 (directly), October 5 (indirectly), and November 22 and 24, 2023 (indirectly) was not prohibited by the Code of Conduct By-law. He had no power to influence the Complainant or other Park Board Commissioners by virtue of his position as Mayor and he was not acting in his capacity as Mayor in furthering his political agenda.

Council, including the Mayor, has no legal authority over the Park Board with respect to any of the circumstances forming the subject of the Complaints. Council’s only direct authority over the Park Board is: (1) its ability to revoke a permanent or temporary public park designation by two-thirds majority resolution; (2) its ability to provide, by by-law, for payments to Commissioners in the same way as permitted for Council members; and (3) reviewing and adopting the Park Board budget.

As the Respondent had no authority over the Park Board Commissioners in relation to the incidents raised in the Complaint, he had no ability to influence them through his position as Mayor. This was, of course, different than his ability to politically influence those Commissioners, including the Complainant, who were all members of ABC Vancouver at the time.

Further, on the facts, the Complainant has not established the Respondent was acting in his capacity as Mayor in relation to the incidents in the Complaints. The Complainant did not in fact allege the Respondent was purporting to act in his capacity as Mayor and the Respondent submits that in relation to his messaging to the Park Board, directly or through his staff, he was acting in his capacity as the political leader of ABC Vancouver and not in his capacity as Mayor.

As the evidence does not establish the Respondent was acting in his capacity as Mayor when the incidents complained of occurred, there was no breach of the Code of Conduct By-law. Allegations of political interference in these circumstances are not reviewable conduct under the Code of Conduct By-law.

Section 2.g): Conducting Duties in an Open and Transparent Manner

Section 2.g) of the Code of Conduct By-law says, “transparency: a member must conduct their duties in an open and transparent manner, except where this conflicts with their duties to protect confidential information.”

The Complainant alleges the Respondent did not conduct his duties in an open and transparent manner when he pressured the Complainant to step down as Vice-Chair of the Park Board on July 5, 7, and 12, 2023; pressured Park Board Commissioners to appoint a specific person as Chair on November 22 and 24, 2023; brought a motion to Council on December 13, 2023 about dissolving the Park Board; had Mr. Ford falsely advise City and Park Board General Managers that Chief Sparrow had asked the Complainant to stop calling him; and tried to interfere with the Complainant’s attempts to contact First Nations for support for Park Board initiatives and preservation.

I dismiss the allegations, as the Complainant has not established the Respondent was acting in his capacity as Mayor in relation to any of these incidents even if the conduct occurred as described.

Sections 3.4c) (Respectful Communication) and 3.5 (Confidential Information)

The Complainant alleges the Respondent breached sections 3.4c) (respectful communications) and 3.5 (confidential information) of the Code of Conduct By-law by communicating, or causing to be communicated, statements in September and November 22 and 24, 2023 that my Office was investigating the Complainant, and on or before March 21, 2024, letting a reporter from City News think there was a formal investigation into the Complainant when the Respondent knew there was no such investigation.

Section 3.4 specifically contemplates that a person, other than a Council member, may communicate on their behalf. It also requires that all communications, including those made on behalf of a Council member, not issue any communication that the Council member knows, or ought to have known, to be false:

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:

- a) ensure that their communications accurately reflect the facts of Council decisions;*
- b) ensure that all communications relating to Council business are accurate and not issue any communication that the member knows, or ought to have known, to be false; and*
- 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*

The statements that Mr. Ford made about an investigation being conducted against the Complainant were not accurate. Mr. Ford is the Chief of Staff for the Mayor. However, the role does not automatically equate

with the Chief of Staff's actions being those of the Mayor or an automatic finding that he has spoken on the Mayor's behalf. If this were the case, then all actions of the Chief of Staff would be the actions of the Mayor, with no distinction between the two individuals. For this scenario to be found, I would require clear evidence that *carte blanche* authority was assigned to the role. The evidence in this case is not sufficient to make that finding. The documents produced do not have direct connection to the Mayor. I have considered all the evidence and found that, even if on occasion the Mayor may have indicated that the Chief of Staff spoke for him, this would still be insufficient evidence for me to find that in *any and all* communications made by the Chief of Staff he spoke on the Mayor's behalf. Accordingly, I dismiss this portion of the Complaints since the Complainant has not established the Respondent made any communications or disclosures about a complaint against the Complainant or that he directed or controlled such conduct.

Retaliation

I dismiss the allegation of retaliation. The complaint to the Park Board Integrity Commissioner was made by Mr. Ford and Mr. Grewal, who are City employees, and the Code of Conduct By-law does not apply to them. The Complainant has not alleged the Respondent was involved in their making the complaint under the *Park Board Code of Conduct Policy*.

In any event, the Complainant has not alleged any facts that would indicate the complaint against him to the Park Board Integrity Commissioner was improper.

Conclusion

For the above reasons, I dismiss the Complaints.

All of which is respectfully submitted.



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

Dated: August 2, 2024

* Law Corporation