



REPORT TO  
CITY OF VANCOUVER COUNCIL, COMPLAINANT AND RESPONDENT

In this matter of

AN INTEGRITY COMMISSIONER INVESTIGATION  
ALLEGATIONS, FINDINGS, AND DECISION

Submitted by Lisa Southern  
Integrity Commissioner  
City of Vancouver

February 21, 2024

## Background

On December 11, 2023, Rob Murray, a member of the public (the “Complainant”) submitted a *Code of Conduct By-Law No. 12886* (“Code of Conduct By-law”) complaint against Ken Sim, Mayor; Trevor Ford, Chief of Staff to the Mayor; and David Grewal, Senior Advisor to the Mayor. The Complainant alleged Mayor Sim and the two employees “caused an illegal (non-open) meeting of the Parks Board to be held” on December 5, 2023 (the “December 5 Meeting” or the “Meeting”) and Park Board Commissioner Laura Christensen was denied the opportunity to attend the Meeting virtually, which was discriminatory given that she was on maternity leave (the “Original Complaint”).

## Process

After receiving the Original Complaint, I conducted a preliminary assessment in accordance with section 6.15 of the Code of Conduct By-law.

I dismissed the concerns pertaining to the employees of Mayor Sim’s Office as outside my jurisdiction (see section 6.13 and section 6.15(a)), given that the Code of Conduct By-law is limited in its application to elected officials, namely, Council Members and Advisory Board Members (see section 1.5).

With respect to the remaining concerns raised about Mayor Sim in the Original Complaint (from hereinafter referred to as the “Complaint”), 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. Accordingly, on December 12, 2023, Mayor Sim (as the “Respondent”) was advised of the Complaint and given an opportunity to respond. Mayor Sim provided a written response on December 19, 2023, through his Chief of Staff.

Since the Complaint related to the exclusion of Commissioner Christensen from the December 5 Meeting, Commissioner Christensen was given a copy of Mayor Sim’s response and an opportunity to respond, which she did both during a virtual interview and in writing. Mayor Sim was then provided with a copy of Commissioner Christensen’s response and an opportunity to provide any additional submissions in reply. I granted an extension of time and further notice to Mayor Sim for a response submission. No further submission was made on his behalf. In addition to the evidence of Commissioner Christensen and Mayor Sim, I interviewed Park Board Commissioner Scott Jensen.

I examined the Complaint in the context of the Code of Conduct By-law, the *Vancouver Charter*, SBC 1953, c 55, and the law.

This report is issued in accordance with section 6.32 of the Code of Conduct By-law. In this report, I summarize my process and the evidence, make findings of fact, and conclude the Complaint is substantiated in part. Given my conclusion, I also make Recommendations as to the appropriate sanction for the breach, required pursuant to section 6.32(b).

## Summary of Complainant Submission

In the Complaint, the Complainant stated that on December 5, 2023, Mayor Sim and the two employees of the Mayor's Office:

*Caused an illegal (non-open) meeting of the Parks Board to be held and during the conduct of the meeting denied a member [of] the board the ability to attend electronically. Both actions are expressly forbidden in the Vancouver Charter (and the second was just plain rude, as the excluded member was home on maternity leave).*

The Complainant cited an article from the *Vancouver Sun* that noted:

*ABC commissioner Laura Christensen, at home with her one-month-old infant, had requested to phone into the meeting. The other five ABC commissioners gathered around the big table in the mayor's wood-panelled ceremonial office, along with Sim's senior adviser, David Grewal, and the mayor's chief of staff, Trevor Ford, who told the commissioners they couldn't phone Christensen to allow her to participate remotely.<sup>1</sup>*

As a resolution to the Complaint, the Complainant asked that the business discussed at the "illegal meeting" be withdrawn from consideration by Council. They also asked that the convenors of the December 5 Meeting be required to attend additional training in the Code of Conduct By-law and provisions of the *Vancouver Charter*, and to recuse themselves from City business until this training was completed to the satisfaction of the Integrity Commissioner.

## Summary of Respondent Submission

Mayor Sim did not dispute that in their actions and communications, his Executive Assistant ("EA") and Chief of Staff were acting on behalf of and/or at the direction of the Mayor.

Mayor Sim submitted that the purpose of the December 5 Meeting was "to inform the Commissioners of his decision to fold the Park Board before the press conference and announcement on December 6." Mayor Sim said he was preparing to formally announce a Council motion asking the Province of British Columbia to change the *Vancouver Charter* by removing the requirement for an independently elected Park Board. In that context, he said he met with ABC Park Board Commissioners at his office on December 5, 2023.

In his written response, Mayor Sim submitted all six ABC Park Board Commissioners were aware of the December 5 Meeting as his Office sent a calendar invitation to them on November 23, 2023, and telephoned them a week later with a reminder. He understood that Commissioner Christensen received

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<sup>1</sup> Fumano, D. (2023, December 8). Turf war: Inside what could be the beginning of the end for Vancouver's park board. *Vancouver Sun*. [vancouver.sun.com/news/local-news/turf-war-inside-what-could-be-the-beginning-of-the-end-for-vancouvers-park-board](https://vancouver.sun.com/news/local-news/turf-war-inside-what-could-be-the-beginning-of-the-end-for-vancouvers-park-board)

a voicemail. Mayor Sim further submitted that Commissioner Christensen “*was clearly aware of the invite as she had asked her fellow Commissioners and other team members about the [December 5 Meeting],*” and noted:

*All communications emphasized that it was an in-person meeting and there was no link for Teams or Zoom. The reason for this was that all present were required to sign an NDA [non-disclosure agreement] that was in effect until the start of the Press Conference.*

Mayor Sim wrote that Commissioner Christensen did not tell him, his EA, his Chief of Staff, or his Senior Advisor that she could not attend the December 5 Meeting in person. Mayor Sim submitted that had she done so, “*an NDA would have been made available to her by someone driving it out to her.*” He contended Commissioner Christensen “*fully was aware of the meeting and chose to neither inform nor seek accommodation for the meeting.*”

According to Mayor Sim, because of the sensitivity of the December 5 Meeting and the NDAs, without an NDA, Commissioner Christensen could not call in to the Meeting, so the decision was made to hold the Meeting without her. He provided no explanation for why she was then excluded from the press conference and from the transition team assigned to assist with the changes resulting from the motion to dissolve the Park Board. The only evidence received regarding these exclusions was that received from Commissioner Christensen, set out below, and it was not refuted by Mayor Sim.

## Summary of Witness Submissions

I interviewed Commissioner Christensen and Commissioner Jensen (who attended the December 5 Meeting). As noted, Commissioner Christensen also submitted a written response.

### *Commissioner Christensen*

Commissioner Christensen gave birth to her daughter on November 4, 2023.

Commissioner Christensen submitted that she was aware of the December 5 Meeting but was not aware of: “*(1) the content of the meeting, (2) the confidential nature of the content, (3) the importance of attendance of the meeting, and (4) the importance of in-person attendance.*” She noted that had she been aware, she could have attended.

Commissioner Christensen provided a copy of the calendar invitation sent by the Mayor’s EA on November 23, 2023, titled “*Monthly Meeting with Mayor Sim.*” The invitation did not include information about the content or importance of the December 5 Meeting. Commissioner Christensen said there was no accompanying email or additional details about the topic or the in-person nature of the Meeting, and she was not aware of the requirement to sign an NDA at the Meeting. She said she did not speak to the Mayor’s EA by telephone, nor did she receive a voicemail. She said the invitation email was sent to her

Park Board @vancouver.ca email address, noting that emails regarding ABC party business had always been sent to her personal email account, as her Park Board email address was reserved for use in her role as a Commissioner of the Park Board.

Commissioner Christensen agreed she communicated with Commissioners and other team members prior to the December 5 Meeting, but she said none of them mentioned the importance of attending the Meeting in person.

She further explained that throughout her pregnancy and following the birth of her child, employees of Mayor Sim's Office and ABC employees had understood in-person attendance was challenging for her. She said that during an ABC retreat in September 2023, in her third trimester of pregnancy, Mayor Sim's Chief of Staff told her attendance was optional. During a meeting in November 2023 for ABC Park Board Commissioners, shortly after the birth of her child, she said the Executive Director of ABC let her know that she was welcome to call in. She further noted she requested a leave of absence from the Park Board until December 11, 2023, which was approved at the September 11, 2023 Park Board meeting.

In her written response, Commissioner Christensen wrote that she was:

*under the assumption that ABC and the Mayor's Office were aware that in-person attendance to meetings was challenging for me with the new baby, and that calling in to a meeting would be expected and understood. For this reason, and that the meeting was simply a "Monthly Meeting with Mayor Sim," I asked Commissioner Scott Jensen to call me in when he arrived at the meeting. He informed me later that he was not allowed to call me in and that he was unable to share the content of the meeting.*

Following the December 5 Meeting, Commissioner Christensen said she did not receive any communications from Mayor Sim's Office until December 6, 2023, when an email to her personal email account from the Chief of Staff informed her that she "chose" to not support Mayor Sim and was "not welcome at the press conference or transitional planning meeting." In addition to being excluded from participating in the December 5 Meeting and obtaining the information prior to it being made public, she noted she was also denied the opportunity to express her views on the proposed motion and whether she supported the Mayor (or not), and flowing from that, excluded from the opportunity to both participate in the press conference and as a member of the transition team.

She said no effort was made after the December 5 Meeting to arrange for her to sign the NDA and be given the information and opportunities that the other ABC Commissioners were given.

As noted, Mayor Sim was provided with a copy of Commissioner Christensen's written response and given an opportunity to respond to it, but he did not respond.

### *Commissioner Jensen*

Commissioner Jensen said he first learned about the December 5 Meeting when he received an email sent by Mayor Sim's EA to his Park Board email account. He said the invitation was only sent to ABC Park Board Commissioners, so it excluded Green Party Commissioner Tom Digby. Commissioner Jensen said he did not find it unusual that Commissioner Digby was excluded as he understood Commissioner Digby was "out of town" on December 5, 2023.

Commissioner Jensen said the December 5 Meeting invitation was described as a "Monthly Meeting with Mayor Sim." He said this was the first invitation he had ever received to such a meeting. While he could not remember the exact date he was sent the invitation, he recalled it being approximately two weeks in advance of the proposed meeting. In addition to receiving the invitation, he said he had a phone call from Mayor Sim's EA about the Meeting and how important it was for him to attend.

He said the email invitation and the call with Mayor Sim's EA did not advise him of the subject matter of the December 5 Meeting. He noted that during the call, he requested an agenda and asked if he needed to do anything to prepare for the Meeting; the EA told him he did not need to prepare.

Commissioner Jensen did not recall receiving any further communication from Mayor Sim or his Office about the December 5 Meeting.

He said on the morning of the December 5 Meeting, he heard from Commissioner Christensen who advised both him and Commissioner Brennan Bastyovanszky that she would not be able to attend the Meeting in person and she asked them to link her in by phone once the Meeting started.

Commissioner Jensen said when he arrived at the Meeting, he was greeted by "a bunch of NDAs we had to sign." He recalled Commissioner Bastyovanszky asking Mayor Sim's Chief of Staff if Commissioner Christensen could call in to the Meeting, and the Chief of Staff replied she could not. Commissioner Jensen also recalled the Chief of Staff saying something about how Commissioner Christensen had been able to text attendees about her attendance so was "probably [able] to be at the Meeting." He noted there was no discussion about whether Commissioner Christensen could have been given the NDA through email, how she could have otherwise attended the Meeting, or if there would be a different opportunity for her to get the information. He said the Chief of Staff essentially responded to the issue of Commissioner Christensen's absence by saying, "She can't be here, so that's it."

Commissioner Jensen said at the Meeting, Mayor Sim told the ABC Park Board Commissioners present about his plan to bring forward a motion regarding the dissolution of the Park Board. He said they did not discuss any Park Board business, and the subject matter of the Meeting was made public during a press conference held by Mayor Sim's Office the following day (December 6, 2023).

## Issue

The issue I must decide is whether Mayor Sim violated the Code of Conduct By-law by holding the December 5 Meeting, or by excluding Commissioner Christensen from the Meeting, or both.

## Assessment of Credibility

The facts underlying the Complaint are generally not in dispute and I accept the evidence of Mayor Sim, Commissioner Christensen, and Commissioner Jensen. The one distinction between Mayor Sim's submission and that of Commissioner Christensen is whether she received a call or a voicemail about the December 5 Meeting. Her account refuting that she did receive a call or a voicemail was provided to Mayor Sim for response, and no further response was provided. Mayor Sim may have assumed that his EA called Commissioner Christensen, as was the case for Commissioner Jensen, but no direct evidence was provided to support this assumption, and Commissioner Christensen's specific evidence that she had no such call nor voicemail was not challenged by Mayor Sim.

## Analysis

### *The December 5 Meeting and the Open Meeting Principle*

Bulletin 2023-03 titled *Open Meeting Principle*<sup>2</sup> outlines in detail the obligations for open meetings set out in the *Vancouver Charter*.

For the reasons set out below, I dismiss the portion of the Complaint alleging Mayor Sim breached the *Vancouver Charter's* open meeting principle and the provision regarding permitting electronic participation in meetings, outlined in sections 165.1(1), 165.3, and 165.91(1).

Although under section 2(f) of the Code of Conduct By-law Mayor Sim must respect and comply with the law, including the *Vancouver Charter*, the December 5 Meeting was not a meeting of Council, and as such, sections 165.1(1), 165.3, and 165.91(1) of the *Vancouver Charter* do not apply.

Further, while the December 5 Meeting was about City business (his planned motion to Council to ask the Province of British Columbia to remove the Park Board), there was no Council decision making involved. The Park Board has no say in Council motions and no Council Members, other than Mayor Sim, were present. There is no doubt there was a quorum of Park Board Commissioners in attendance; however, as

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<sup>2</sup> Southern, L. (2023). *Open Meeting Principle*. City of Vancouver. [vancouver.ca/files/cov/integrity-commissioner-bulletin-2023-03.pdf](https://vancouver.ca/files/cov/integrity-commissioner-bulletin-2023-03.pdf)

noted, what was discussed and conveyed was not Park Board business, but was about his planned motion to Council, and thus, was City business. Given this, there was no violation of the *Vancouver Charter*.

### *Exclusion of Commissioner Christensen from the December 5 Meeting*

Did Mayor Sim create a discriminatory work environment when he did not give Commissioner Christensen a reasonable opportunity to attend the December 5 Meeting? As I explain below, the answer is yes.

Section 2(e) of the Code of Conduct By-law states:

*... 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. (emphasis added)*

The work environment at issue is the City's work environment. Mayor Sim was engaged in City business when he held the December 5 Meeting. He acted in the capacity of Mayor in calling and holding the Meeting, the purpose of which was to share his planned motion to Council to ask the Province of British Columbia to disband the Park Board; to determine who would attend his press conference the following day to announce his plan; and to decide who would participate in the transition planning. Pursuant to the Code of Conduct By-law, in holding the December 5 Meeting, Mayor Sim had to do so without creating a discriminatory work environment.

While the *BC Human Rights Code*, RSBC 1996, c 210 does not apply to elected officials (as an example, see: *Roth v Beaver Creek Improvement District*, 2008 BCHRT 133), section 2(e) of the Code Conduct By-law requires Council Members ensure a non-discriminatory work environment more generally. It is not restricted to discrimination under the *BC Human Rights Code*, which only applies to discrimination in specified areas such as employment, services customarily available to the public, and tenancy.

Although the *BC Human Rights Code* does not apply, I find the case law definition of 'discrimination' under human rights legislation and section 15 of the *Charter of Rights and Freedoms* helpful guidance in interpreting discrimination for the purposes of section 2(e) of the Code of Conduct By-law. Discrimination under the *BC Human Rights Code* requires a characteristic protected from discrimination under the *Human Rights Code*, an adverse impact related to a protected area such as employment, service, or tenancy, and a protected characteristic as a factor in the adverse impact (see: *Moore v British Columbia (Education)*, 2012 SCC 61 at para 33).

Similarly, under section 15 of the *Charter of Rights and Freedoms*, the first requirement of discrimination is an act (including a failure to act) or a rule that on its face, or in its impact, creates a distinction based on certain characteristics, such as sex (see: *Fraser v Canada (Attorney General)*, 2020 SCC 28 at paras 48-55, 81).



In the circumstances of the Complaint, I find the definitions of ‘discrimination’ in the BC *Human Rights Code* and section 15 of the *Charter of Rights and Freedoms* are met.

The characteristics at issue are Commissioner Christensen’s sex and family status. She had given birth to a baby four weeks prior to the December 5 Meeting.

Mayor Sim’s actions created a distinction based on Commissioner Christensen’s sex and family status, and this had an adverse impact on her. He knew Commissioner Christensen had a newborn. Previously, her situation had been accommodated by allowing her to attend meetings remotely because attending in person in the later stages of pregnancy or with a newborn were challenging. However, despite this and despite the importance of the December 5 Meeting to the Park Board, Mayor Sim did not make reasonable efforts to ensure Commissioner Christensen knew the Meeting was important and there could be consequences for her if she did not attend. He also did not make reasonable efforts to ensure she knew the Meeting could not be attended remotely as she had been permitted to do on previous occasions or could not be attended remotely without her first signing an NDA.

While Mayor Sim’s failure to make reasonable efforts to explain the importance of attending the Meeting or of signing an NDA before attending was the same treatment given to the other ABC Park Board Commissioners invited to the Meeting, and in this way was seemingly neutral, it had a disproportionate impact on Commissioner Christensen as a new mother (as an example, see: *Fraser v Canada (Attorney General)*, 2020 SCC 28 at paras 51-55).

It is undisputed that Mayor Sim’s Office sent an email to Commissioner Christensen on December 6, 2023, stating she was “*not welcome at the press conference or transitional planning meeting.*” I find that Mayor Sim assumed Commissioner Christensen did not support his motion and because she did not attend the Meeting, she had no access to information or opportunity to discuss her views. This resulted in her exclusion from his press conference on December 6, 2023, and from opportunities to participate in the transition team. In other words, failing to provide an option for Commissioner Christensen to participate in the December 5 Meeting denied her access to information others received and led to other adverse consequences in terms of her participation in duties related to the City work environment. The result of Mayor Sim’s failure to make reasonable efforts to ensure Commissioner Christensen was not excluded from the December 5 Meeting reinforced, perpetuated, and exacerbated Commissioner Christensen’s disadvantage because of her sex and family status.

For these reasons, I find Mayor Sim breached his obligations under section 2(e) of the Code of Conduct By-law to “*ensure that the work environment is free from discrimination and harassment*” with respect to his actions of excluding Commissioner Christensen.

Finally, I also note section 3.4(c) of the Code Conduct By-law, which clearly addresses communications made “*on behalf*” of a Council Member and extends obligations of respectful conduct to be owed to “*any person.*” It reads:

*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.*

‘Communication’ is not a defined term in the Code of Conduct By-law. Miriam-Webster provides the following definition of ‘communication’:

*1a: a process by which information is exchanged between individuals through a common system of symbols, signs, or behaviour*

What happened was not merely a failure to communicate. Mayor Sim communicated with one group of people and excluded another person in a discriminatory manner for the reasons set out above. Further, I note that the events in question involved oral and written communications, including those orally conveyed by the Chief of Staff to other Commissioners in the December 5 Meeting and in the email Commissioner Christensen received from the Mayor’s Office on December 6, 2023. The impact of these communications, for the reasons set out above, was discriminatory to Commissioner Christensen. Accordingly, I also find a violation of section 3.4(c) of the Code of Conduct By-law in relation to the facts set out above.

This decision should not be interpreted as a finding that there was deliberate, or intentional, discrimination on the part of Mayor Sim. There was no evidence that the exclusions found in this investigation that gave rise to a breach were done on purpose or by design by Mayor Sim. To the contrary, Mayor Sim has demonstrated, consistently, his commitment to inclusion, diversity, and human rights, and has attended all educational sessions that the Office of the Integrity Commissioner has hosted on these topics. However, it is well established in human rights law that intent is not required for a finding of discrimination. Whether someone meant to discriminate, intended to offend, or deliberately set out to exclude is not the question that is examined. Rather, the focus is on discriminatory impact, not discriminatory intent (see, for example: *Stewart v. Elk Valley Coal Corp.*, 2017 SCC 30 at para. 46 and *Fraser v Canada (Attorney General)*, 2020 SCC 28 at paras 28-50). My findings here are based on the discriminatory impact of the actions in question.

## Recommendations

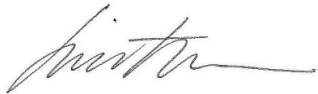
I recommend that the following sanctions be imposed for violating the Code of Conduct By-law:

- a. A letter of reprimand from Council addressed to Mayor Sim;
- b. A request from Council that Mayor Sim issue a letter of apology to Commissioner Christensen;
- c. The publication of both; and
- d. Further training for Council on human rights obligations and training for the Mayor's employees on the same.

## Conclusion

I find that Mayor Sim breached sections 2(e) and 3.4(c) of the Code of Conduct By-law with respect to Commissioner Christensen's exclusion from the December 5 Meeting.

All of which is respectfully submitted.



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

Dated: February 21, 2024

\*Lisa Southern Law Corporation