



CITY OF  
**VANCOUVER**

Office of the  
Integrity Commissioner

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

In this matter of

AN INTEGRITY COMMISSIONER INVESTIGATION  
ALLEGATIONS, FINDINGS, AND RECOMMENDATIONS

Submitted by Lisa Southern  
Integrity Commissioner  
City of Vancouver

August 22, 2025

## Overview

### Introduction

This is the fourth publication from my Office addressing the open meeting requirement in section 165.1 of the *Vancouver Charter*.

In simple terms, the open meeting requirement means that Council must conduct its business in public, unless it falls within one of the limited exceptions found in the *Vancouver Charter*.

My first publication on the topic was Integrity Commissioner Bulletin 2023-03: Open Meeting Principle,<sup>1</sup> a bulletin that was published on the City of Vancouver's website and shared with Council through the Former City Manager. Bulletin 2023-03 was designed to be educational, explained the basic principles of the open meeting requirement in general terms, and included guidance from the British Columbia Ombudsperson.

My second publication was PBIC-003,<sup>2</sup> which was my investigation report in response to the companion complaint to the one addressed in this report, filed by Councillor Pete Fry against six Park Board Commissioners. He complained that they had been holding meetings with quorum in breach of the open meeting requirement. In PBIC-003, I agreed with Councillor Fry, and found the Commissioners had breached their obligations under the *Park Board Code of Conduct Policy*. I explained the rationale for the open meeting requirement in the following terms [footnotes excluded]:

*... local governments derive their power to govern by legislation. Unlike federal and provincial legislatures, there is no constitutional requirement for public debate and decision making. Thus, without statutory requirements for transparency, municipal governments need not be publicly accountable in their decision making.*

*Historically, there was no clear common law requirement for local governments to hold open meetings, but for more than 140 years, there have been statutory requirements in BC that local government meetings be open to the public.*

*As set out at the outset of this report, the BC Ombudsperson, in a 2012 special report to the Legislative Assembly of BC, explained the rationale behind open meetings, which included that:*

*Open meetings advance the democratic process by providing the public with an understanding of the considerations underlying local government actions and by allowing members of the public to observe the performance of their elected officials.*

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<sup>1</sup> Lisa Southern, *Integrity Commissioner Bulletin 2023-03: Open Meeting Principle* (Vancouver: City of Vancouver, 2023), online (pdf): City of Vancouver <https://vancouver.ca/files/cov/integrity-commissioner-bulletin-2023-03.pdf>.

<sup>2</sup> Lisa Southern, *Integrity Commissioner Report PBIC-003: Complaint against Vancouver Park Board Commissioners* (Vancouver: City of Vancouver, 21 February 2025), online (pdf): City of Vancouver <https://vancouver.ca/files/cov/pbic-ic-003-complaint-against-vancouver-park-board-commissioners.pdf>.

*They facilitate citizen participation in the policy development and decision-making processes and serve to build public trust and confidence in local government.*

My third publication on the topic was Integrity Commissioner Bulletin 2025-01: Are staff briefings considered meetings?,<sup>3</sup> where I considered this issue in relation to a complaint brought by a member of the public about Council Members being briefed by City staff about City business. I determined that the overarching factor that distinguished staff briefings from meetings subject to the open meeting requirement in the *Vancouver Charter* was that Council Members did not materially move City business forward in the overall spectrum of a Council decision. During staff briefings, Council Members did not share opinions, discuss the topics, give direction to staff, or engage in the decision-making process. In short, rigorous rules were in place in staff briefings to ensure that they could occur without concern that they would violate the *Vancouver Charter*.

This brings us to the case at hand—my fourth publication on the topic, and this investigation report in response to Councillor Fry’s complaint dated August 5, 2024. In his complaint, Councillor Fry alleged that Mayor Ken Sim and Councillors Sarah Kirby-Yung, Lisa Dominato, Lenny Zhou, Brian Montague, Mike Klassen, Peter Meiszner, and Rebecca Bligh (the “Respondents”) breached section 2f) of the *Code of Conduct By-law No. 12886* (the “Code of Conduct By-law”) by failing to respect and comply with the open meeting requirement in section 165.1 of the *Vancouver Charter* and to avoid conduct that, reasonably, undermines or has the potential to undermine, public confidence in City governance. Councillor Fry identified six different instances where he felt this had occurred. A member of the public brought a separate complaint raising the same issue about a seventh instance. That complaint was consolidated with Councillor Fry’s complaint in compliance with Code of Conduct By-law processes.

### *Nature of the Arguments*

A number of different arguments were raised by the Respondents in answer to Councillor Fry’s complaint. These are dealt with in detail in this investigation report. A summary version of them is as follows:

- Preliminary objections:

In addition to procedural fairness issues, these included that Councillor Fry’s complaint was out of time, that he ought to have made more inquiries and known earlier that there may be a violation (and so bring his complaint earlier), and that his complaint was speculative and he had no evidence to prove it.

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<sup>3</sup> Lisa Southern, *Integrity Commissioner Bulletin 2025-01: Are staff briefings considered meetings?* (Vancouver: City of Vancouver, 2025), online (pdf): City of Vancouver <https://vancouver.ca/files/cov/integrity-commissioner-bulletin-2025-01.pdf>.

- Arguments about the law:

These included that I was wrong when I decided PBIC-003 for a number of reasons, including that I did not properly consider how municipal political parties operated given they were now permitted at that electoral level (i.e., that party caucus meetings are permitted, that I should not have relied on Ontario law in my decision, but should have relied on Quebec law, and that I interpreted the *Vancouver Charter* incorrectly).

- Arguments about the evidence:

These included that the evidence was insufficient to establish when a quorum was in attendance; that the evidence did not show that a matter was “materially” moved forward outside of public meetings; and that the meetings were akin to staff briefings, or other informal meetings, that would not violate the open meeting requirement.

### *Nature of the Evidence*

Obtaining relevant evidence was complicated in this investigation. Although I requested it, I was not provided with certain information that may have been relevant, such as Signal conversations (an open source encrypted instant messaging service), additional email chains that were implied within the documents I did receive, or additional meeting agendas. I relied upon the Respondents to provide me what relevant documentation still existed, and I was limited to what they produced. I requested documents from the Mayor’s Office staff through their legal counsel but received no response to my requests. In short, I was limited in my inquiry and have no statutory power to perform an independent search or review of records, or to compel production from the Respondents or others.

In the absence of an ability to obtain any records independently, and given the limited disclosure of documents I received, I depended on the oral (or in the case of Mayor Sim, written) evidence of the Respondents. As can be seen from this investigation report, they had varying recollections and descriptions generally of their practice, and they said, given the passage of time, they struggled to remember who was present at specific meetings and the contents of what was discussed. As is seen from my analysis below, the limited emails produced proved to be reliable evidence of the nature of their communications, at least on the specific amendments that were being discussed in those emails. While they may be indicative of the nature of other conversations and meetings that are at issue in this investigation, they were an insufficient basis upon which to reach broad inferences about all the matters being investigated. To be clear though, in my findings, where I say there was no evidence, or insufficient evidence, this is not to be confused with a positive finding that the Respondents were in compliance with their obligations. It is a determination that, in those instances, on the evidence I have, I have not found a breach of the Code of Conduct By-law. These are different conclusions.

## Conclusions

### What did I conclude in this case?

Let's start with the law.

Regardless of the fact that party politics are allowed now in British Columbia at the municipal level, the open meeting requirement continues. This requirement of the *Vancouver Charter* has not been changed, and there are no new legislative exceptions to the requirement that meetings of Council and of Council committees (when conducting Council business) be held in public. Super majority or not, party politics or not, Council must continue to do its work transparently to “advance the democratic process by providing the public with an understanding of the considerations underlying local government actions and by allowing members of the public to observe the performance of their elected officials. [Open meetings] facilitate citizen participation in the policy development and decision-making processes and serve to build public trust and confidence in local government.”<sup>4</sup>

No one (including me) is saying that the ABC Council Members cannot meet as a caucus. They can meet. They can meet with quorum, with an agenda, at City Hall. They can discuss all sorts of things. But what they cannot do under the current legislative scheme (and when I say current, I mean longstanding as it has existed within Canada for 140 years) is meet in private with quorum and discuss City business such that it moves that business along in a material way towards a decision of Council.

They cannot insulate themselves from this obligation by simply saying that they are doing this as members of ABC Vancouver and not as members of Council. What matters is the nature of the meeting and what is discussed. What the meeting is called, what they call themselves, or who calls the meeting is not determinative.

Council Members also cannot insulate themselves from their obligations under the *Vancouver Charter* by saying that while they met with quorum and discussed motions that were coming before Council, they did not vote and/or they kept an open mind. The open meeting requirement is not avoided by the absence of a vote, or the declaration that one is keeping an open mind. If Council Members meet with quorum outside of an open meeting, discuss City business, and do so in a way that moves that business along the spectrum of decision making in a material way, there is a problem—they are depriving the public of participation in the policy development and decision-making processes that serve to build public trust and confidence in local government. Democracy is undermined.

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<sup>4</sup> British Columbia, *Office of the Ombudsperson*, Open Meetings: Best Practices Guide for Local Governments, Special Report No 34 (September 2012) at 5, online: <https://bcombudsperson.ca/assets/media/Special-Report-No-34-Open-Meetings-Best-Practices-Guide-for-Local-Governments.pdf>.

### What does this mean in this case?

As I set out above, I found that the emails that were produced were the most reliable evidence about the nature and content of discussions that were contained in the email chains. They showed a progression and evolution of draft amendments through communications with a quorum of Council Members present that ultimately came before Council in the form of last-minute amendments. What came before Council in these instances had clear origins and were substantively connected with the discussions and drafting that took place in the email chains. In the two cases where I was able to review the email chains, I found a breach. While I have concerns generally about the evidence I obtained about regular caucus meetings, I must make my findings based on the evidence before me assessed on a balance of probabilities. Of the seven instances before me, there was sufficient evidence to find a breach in respect of two of them.

### What do I recommend?

A group of the Respondents argued that, if I found a breach of the Code of Conduct By-law because of a failure to comply with the open meeting requirement, then I should not recommend any sanction to Council. They submitted that such conduct was not intentional and at most amounted to an error in judgment, and that this report would be an opportunity for more clarity and guidance around the application of the requirement in relation to caucus meetings. They emphasized the stress caused by the process and pointed to the fact that I made no sanction recommendation against the Park Board Commissioners in PBIC-003.

I have concerns that the conduct of the Respondents was not inadvertent, nor unintentional. I say this for a number of reasons. First, they had training and advice that should have given them pause or cause to question other advice that they may have received. Second, they had a very different experience in staff briefings, and it is hard to reconcile their experiences in staff briefings with what they said happened in caucus meetings and the notion that they felt what they were doing in caucus meetings was compliant. Third, the methods of communication used (including Signal), the lack of documentation, and the general lack of transparency about the meetings were odd if those participating felt that what they were doing was compliant. Why keep to the shadows if what you are doing can be safely and fairly viewed in the transparency of daylight?

But I do agree that those involved exercised poor judgment.

As noted, a group of the Respondents said this investigation report would be an opportunity for more clarity and guidance around the application of the open meeting requirement in relation to caucus meetings. I hope that is true. That was not the response to PBIC-003, where media reported that ABC

Vancouver disagreed with the decision and would continue to caucus,<sup>5</sup> leading the British Columbia Ombudsperson, in a letter to the Minister of Municipal Affairs dated March 26, 2025, to write, “In my view, such statements are a disturbing repudiation of the rule of law ...”<sup>6</sup> PBIC-003 was not seen by ABC Vancouver as an opportunity for “clarity and guidance”; perhaps this report will be.

Eight members of Council are named in this complaint and are found to have breached of the Code of Conduct By-law with respect to the Climate Justice Charter Report. Seven are found to have breached the Code of Conduct By-law with respect to the Moberly Park Funding for a turf field. Under the Code of Conduct By-law, Council determines whether to sanction its members, but no quorum can be reached in these unique circumstances.

The Code of Conduct By-law requires that this report be made available to the public. In my view, publication ensures both transparency and accountability to the public of the allegations, this process, my findings, and the law. Accordingly, my full reasons follow.

If this overview is all you read, I hope it is all you need to understand both the issues and my findings on the law and evidence, and to conclude that the public interest has been served.

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<sup>5</sup> See, for example, Dan Fumano, “ABC Vancouver’s ‘repudiation of the rule of law’ shows gap in B.C.’s municipal oversight, Ombudsperson says,” *Vancouver Sun* (online: 27 March 2025), <https://vancouversun.com/opinion/columnists/abc-vancouver-repudiation-rule-law-shows-gap-ombudsperson>.

<sup>6</sup> British Columbia Ombudsperson, *Letter to the Honourable Ravi Kahlon, Minister of Housing and Municipal Affairs*, 26 March 2025, online: Office of the Ombudsperson [https://bcombudsperson.ca/news\\_release/two-recent-vancouver-municipal-integrity-reports-highlight-need-for-provincial-legislation-bc-ombudsperson-says/](https://bcombudsperson.ca/news_release/two-recent-vancouver-municipal-integrity-reports-highlight-need-for-provincial-legislation-bc-ombudsperson-says/).

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## Background

On August 5, 2024, Councillor Pete Fry (the “Complainant”) submitted a complaint (the “Complaint”) to the Office of the Integrity Commissioner, alleging that Mayor Ken Sim and Councillors Sarah Kirby-Yung, Lisa Dominato, Lenny Zhou, Brian Montague, Mike Klassen, Peter Meiszner, and Rebecca Bligh (the “Councillors”) breached the City of Vancouver’s (the “City”) *Code of Conduct By-law No. 12886* (the “Code of Conduct By-law”).

In this report, Mayor Sim and the Councillors are referred to collectively as the “Respondents.”

The Complaint alleges the Respondents breached section 2f) of the Code of Conduct By-law by failing to respect and comply with the open meeting requirement in section 165.1 of the *Vancouver Charter* and to avoid conduct that, reasonably, undermines or has the potential to undermine, public confidence in City governance. Section 165.1 requires (subject to specific exceptions) that Council hold its meetings in public. Section 165.1 of the *Vancouver Charter* states as follows:

***General rule that meetings must be open to the public***

***165.1 (1) A meeting of the Council must be open to the public, except as provided in sections 165.2 to 165.8.***

***(2) The Council must not vote on the reading or adoption of a by-law when its meeting is closed to the public.***

In a previous report, PBIC-003,<sup>1</sup> I explained the rationale for the open meeting requirement [footnotes excluded]:

*... local governments derive their power to govern by legislation. Unlike federal and provincial legislatures, there is no constitutional requirement for public debate and decision making. Thus, without statutory requirements for transparency, municipal governments need not be publicly accountable in their decision making.*

*Historically, there was no clear common law requirement for local governments to hold open meetings, but for more than 140 years, there have been statutory requirements in BC that local government meetings be open to the public.*

*As set out at the outset of this report, the BC Ombudsperson, in a 2012 special report to the Legislative Assembly of BC, explained the rationale behind open meetings, which included that:*

*Open meetings advance the democratic process by providing the public with an understanding of the considerations underlying local government actions and by*

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*allowing members of the public to observe the performance of their elected officials. They facilitate citizen participation in the policy development and decision-making processes and serve to build public trust and confidence in local government.*

I noted that the case law considering whether municipal gatherings were “meetings” indicated that the fundamental question was whether municipal elected officials had met and discussed matters within a local government’s jurisdiction in a way that deprived the public of the opportunity to observe a material part of the decision-making process. I explained that this approach was consistent with the Supreme Court of Canada’s determination in *London (City) v RSJ Holdings Inc.*, 2007 SCC 29 (“*London*”) that the open meeting requirement was intended to give municipal governments democratic legitimacy through a decision-making process that was transparent and accessible.

Overall, while other factors were relevant, I determined that the key consideration in deciding whether a “meeting” had occurred was whether a quorum of local government elected officials attended a function (the nature of the group) at which local government business was dealt with in such a way as to move it materially forward in the overall spectrum of a decision (the nature of the discussion). In PBIC-003, I found that certain Park Board Commissioners breached their obligations by violating section 165.1 of the *Vancouver Charter*.

Subsequently, in Integrity Commissioner Bulletin 2025-01: Are staff briefings considered meetings? (“IC Bulletin 2025-01”),<sup>2</sup> I considered this issue in relation to a complaint brought by a member of the public about Council Members being briefed by City staff about City business. The member of the public complained that the staff briefing was a “meeting,” which occurred contrary to the open meeting requirement. I determined that the briefing was not in contravention of the open meeting requirement. I noted:

*City staff regularly meet with Council Members to brief them on matters relating to City business. Information provided to our Office about the briefings indicates that they are chaired by a City staff member, they are narrow in scope, and attendance by Council Members is optional. Although Council Members are aware of the topics in advance of the briefing, there is no agenda and minutes are not prepared. Council Members can ask questions of staff at the briefings to get information, but they do not share opinions, discuss the topic, or make any decisions. Further, Council Members do not provide any direction to staff at the briefings, and staff do not make any revisions to their recommendations as a result of a briefing.*

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<sup>2</sup> Lisa Southern, *Integrity Commissioner Bulletin 2025-01: Are staff briefings considered meetings?* (Vancouver: City of Vancouver, 2025), online (pdf): City of Vancouver <https://vancouver.ca/files/cov/integrity-commissioner-bulletin-2025-01.pdf>.

I determined that the overarching factor that distinguished staff briefings from meetings subject to the open meeting requirement in the *Vancouver Charter* was that Council Members did not materially move City business forward in the overall spectrum of a Council decision (the nature of the discussion). I noted that during staff briefings, Council Members did not share opinions, discuss the topics, give direction to staff, or engage in the decision-making process. As a result, I found that staff briefings did not deprive the public of the opportunity to observe a material part of Council's decision-making process.

In this case, in addition to considering certain preliminary objections and assessing the evidence, I have considered further arguments regarding the open meeting requirement in section 165.1 of the *Vancouver Charter*, including whether it applies to the meetings of a political caucus.

## Summary of the Complaint

The Complainant alleges that, contrary to section 165.1 of the *Vancouver Charter*, the Respondents voted in open Council meetings based on decisions about City reports and motions made in meetings of ABC Council Members held before open Council meetings, including with respect to the following:

1. Eliminating the City's Renters Office in January 2023 ("Renter Office Amendment");
2. Eliminating the Climate Justice Charter in February 2023 ("Charter Report");
3. Funding a Moberly Park turf field in July 2023 ("Moberly Park Funding");
4. Eliminating the Vancouver Park Board in December 2023 ("Park Board Motion");
5. Amending the 2023-2026 Capital Plan in June 2024 ("Capital Plan Mid-Term Amendments"); and
6. Eliminating the ban on natural gas use in new buildings in July 2024 ("Natural Gas Amendment").

The Complainant further alleges that the Respondents agreed to and/or participated in a plan to make decisions outside of open meetings by:

- Participating in ABC caucus meetings where City business was moved along the spectrum of decision making;
- Agreeing to and/or participating in a practice not to include regular ABC caucus meetings in the City calendar;
- Agreeing to vote, and voting, along "party lines" for Council reports and motions concerning budgets and ABC campaign promises, and for any matter where a directive was provided by Mayor Sim; and

- Attending (except for Councillor Klassen) a retreat for ABC Council Members, Park Board Commissioners, and School Trustees on Bowen Island (the “ABC Retreat”) at the home of Park Board Commissioner Marie Rogers on September 23, 2023, where caucus voting and rules for ABC elected officials were discussed and established; specifically, “whipped” votes on budgets and ABC campaign promises, and any matter where a directive was provided by Mayor Sim.

On September 3, 2024, I received an additional complaint by a member of the public alleging violations of the open meeting requirement in relation to Council eliminating protection for view cones in July 2024 (the “View Cones Motion”). I exercised my discretion under section 6.8 of the Code of Conduct By-law to expand the Complaint to include the View Cones Motion allegation. While the specific allegation is different, the conduct complained of is the same: a breach of section 2f) of the Code of Conduct By-law because of the Respondents’ failure to comply with the open meeting requirement set out in section 165.1 of the *Vancouver Charter*.

## Process

After receiving the Complaint, I met with the Complainant and determined that the allegations set out in the Complaint, if true, may constitute a violation of the Code of Conduct By-law and that there was no basis under section 6.15 to dismiss the Complaint on a preliminary assessment.

On August 22, 2024, I provided notice of the Complaint to each of the Respondents and advised them that, pursuant to section 6.25 of the Code of Conduct By-law, they had 10 days to provide me with a written response and submissions. I advised each Respondent that I could arrange an interview to receive their responses if they would prefer.

I was advised on September 2, 2024, that Mayor Sim and Councillors Kirby-Yung, Zhou, Montague, Klassen (“Respondent Group 1”) had retained shared legal counsel. On September 3, 2024, I was advised that Councillors Meiszner, Bligh, and Dominato (“Respondent Group 2”) had also retained shared legal counsel.

On September 3, 2024, I provided notice to the Respondents’ legal counsel that I had received the View Cones Motion, and that the Complaint had been expanded to include this new allegation.

On September 23, 2024, pursuant to section 6.27 of the Code of Conduct By-law, I asked to interview the Respondents and requested disclosure of relevant documents.

On October 24, 2024, I provided the Respondents a further opportunity to respond to the Complaint and repeated my request for relevant documents and to interview them.

At the request of their legal counsel, I gave the Respondents an extension from October 31, 2024, to November 8, 2024, to provide the requested documents. On November 8, 2024, I received documents from the Respondents.

I provided copies of questions and related documents in advance of my interviews of the Respondents.

Interviews were scheduled with Councillors Meiszner, Bligh, and Dominato for the week of December 9, 2024, but were adjourned after I received unsolicited documents from a witness the night before the interviews. Interviews for Councillors Meiszner, Bligh, and Dominato were rescheduled and held the week of January 13, 2025, with follow-up interviews on January 27 and 28, 2025. A further follow-up interview was held with Councillor Bligh on April 24, 2025.

Interviews were scheduled with Councillors Kirby-Yung, Montague, Klassen, and Zhou on February 12 and 14, 2025. These interviews were adjourned at the request of their legal counsel in order to provide me with additional documents. An interview with Mayor Sim was scheduled for March 31, 2025. The interview was adjourned at his request because of an urgent matter arising in his schedule.

I made further document requests on March 5, 2025.

On March 19, 2025, legal counsel for Respondent Group 1 advised that his clients did not have any documents in response to my request dated March 5, 2025. I subsequently asked legal counsel, in person and in writing, on March 31 and April 14, 2025, to confirm if the Mayor's Office staff had documents responsive to my March 5, 2025, request. No substantive response to this request was received.

On April 10, 2025, legal counsel for Respondent Group 2 provided additional documents in response to my request dated March 5, 2025.

Interviews with Councillors Kirby-Yung, Montague, Klassen, and Zhou took place between April 3 and April 11, 2025.

Mayor Sim's interview was rescheduled to April 9, 2025, but was cancelled because another matter arose in his schedule. I subsequently agreed with his legal counsel that Mayor Sim would provide his evidence by way of written response. I provided updated questions to Mayor Sim's legal counsel on April 9, 2025, and received his written response on May 14, 2025.

At the request of their legal counsel and with the consent of all Respondents, on June 12, 2025, I provided each legal counsel with a written summary of the evidence of each Respondent.

On June 25, 2025, I received written submissions from each of Respondent Groups 1 and 2.

In sum, the Respondents raised four different arguments. First, they maintained their preliminary objections, including that the Complaint was out of time. Second, they said the open meeting requirement

did not apply to political caucuses. Third, they argued for a narrow interpretation of the substance of the open meeting requirement. Fourth, they argued that the facts did not support a finding of a breach, even if I applied my interpretation of the open meeting requirement as articulated in PBIC-003. I address their preliminary objections immediately below and the remainder of their arguments in the *Analysis* section.

## *Preliminary Objections*

### September and October 2024 Objections

In their final submissions, Respondent Group 1 said they reiterated their submissions of September and October 2024. On September 8 and 9, 2024, I received submissions from Respondent Group 1 and Respondent Group 2, raising preliminary issues concerning procedural fairness, my preliminary assessment of the Complaint, timeliness, clarification of the Complaint, and requests for evidence obtained by my Office.

I responded on September 23, 2024, as follows:

1. Under section 6.28 of the Code of Conduct By-law, the Respondents were entitled to procedural fairness at the formal investigation stage, and after considering the requirements necessary for a fair investigation in the circumstances, I had fulfilled my duty. I would continue to provide procedural fairness to the Respondents, recognizing that its content might change as my investigation progressed. I also made clear that my role as Integrity Commissioner was not as a decision maker in a judicial or quasi-judicial process, and the Code of Conduct By-law required me to investigate and report my findings to Council.
2. I did a preliminary assessment and determined a formal investigation was required. I explained the basis for my determination. I said I remained open to reconsidering my preliminary assessment if new information led me to the opinion that the matter should be closed in accordance with section 6.15 of the Code of Conduct By-law.
3. I determined the Complaint was not out of time under section 6.9 of the Code of Conduct By-law. The Complainant told me that while he knew about ABC caucus meetings, and suspected Council decision making was being advanced during those meetings, he recognized suspicions alone were insufficient grounds for a complaint given that a political party could caucus without violating the open meeting requirement. However, in late July and early August 2024, he said he received information that indicated ABC members were breaching the Code of Conduct By-law. He also reviewed my investigation report dated August 2, 2024, of a complaint made by the Mayor's Chief

of Staff and his Senior Advisor (the PBIC-002 report<sup>3</sup>), which raised concerns for him that the Chief of Staff was telling elected representatives how to vote. He noted it was only with the information received in July and August 2024 and after reading PBIC-002 that he was satisfied there was a basis on which to bring forward his Complaint under the Code of Conduct By-law. He also said his Complaint was based on his observations that there appeared to be significant and notable coordination among some or all of the Respondents in bringing last-minute amendments before Council in a way that indicated there might have been decisions made on certain City business outside of open Council meetings.

4. I provided clarification of the Complaint.
5. In response to the requests for evidence obtained about the Complaint by my Office, I confirmed I had provided sufficient details, as required by section 6.25 of the Code of Conduct By-law, to enable the Respondents at this stage of the process to respond to the allegations against them.

On October 15, 2024, I received submissions from legal counsel for each Respondent Group reiterating concerns raised in their respective September 8 and 9, 2024, letters.

On October 24, 2024, I responded to each Respondent Group saying that my letter of September 23, 2024, had comprehensively addressed the issues raised; I provided them with a further opportunity to respond to the Complaint; and I repeated my request for relevant documents and for interviews.

Except for the issue of timeliness, the Respondents did not make any new arguments in relation to their preliminary objections. I provided my response to their preliminary objections on September 23 and October 24, 2024, and except for timeliness, do not need to revisit them.

### Timeliness

Both Respondent Groups submitted in September 2024 that the Complaint was out of time. In their final submissions, they made further arguments about timeliness.

Respondent Group 1 continued to argue that the Complaint should be dismissed because it was out of time. Respondent Group 1 said the Complaint was time-barred under section 6.9 of the Code of Conduct By-law. The argument was largely the same as in their October 15, 2024, submission: the Complainant knew or reasonably ought to have known the facts of the Complaint more than 180 days before it was

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<sup>3</sup> Lisa Southern, *Integrity Commissioner Report PBIC-002: Complaint against Vancouver Park Board Commissioners* (Vancouver: City of Vancouver, 2 August 2024), online (pdf): City of Vancouver <https://vancouver.ca/files/cov/complaint-against-commissioners-bastyovanszky-and-jensen.pdf>.



submitted and the additional information he learned in July and August 2024 did not make the Complaint timely, particularly since most of the information related to the Park Board.

Further, Respondent Group 1 said significant prejudice had arisen because of the time between when some of the alleged events occurred and when they were interviewed, which was shown by the many instances when they told me they could not remember whether they attended certain meetings or what was discussed.

Respondent Group 2 also stated, as they said in the fall of 2024, that the Complaint was out of time because many of the issues raised in the Complaint occurred more than 180 days before the Complaint was made. They said the Complainant knew or reasonably ought to have known the facts of the Complaint more than 180 days before it was submitted.

The Complainant said he knew that the Respondents met as a caucus immediately following their election and “long suspected” that there was inappropriate caucusing. Thus, Respondent Group 2 said he could not just wait to file the Complaint until he had more information on which to reasonably believe there had been a breach of the Code of Conduct By-law. Section 6.9 of the Code of Conduct By-law is intended to apply to circumstances where one had the means to know certain facts but did nothing to find out. The time starts to run when the material facts on which a complaint is based have been discovered or should have been discovered (*Grant Thornton LLP v New Brunswick*, 2021 SCC 31 (“*Grant Thornton LLP*”) at paras 29, 42). This is generally called “discoverability.”

While these Respondents acknowledged that suspicion was not enough to ground knowledge for discoverability purposes (see, e.g., *Grant Thornton LLP* at para 46), they said it might trigger an obligation to investigate material facts with reasonable diligence (see, e.g., *Grant Thornton LLP* at para 44). They said the Complainant had a duty to inquire with reasonable diligence whether the Code of Conduct By-law was being breached and did not do so. They noted the duty arose because he had the means to confirm in 2023 whether his suspicions were merited; thus, it was incumbent upon him to investigate his suspicions. They suggested it was reasonable to infer that if he had done even a superficial investigation to confirm his suspicions at the outset, he would have had evidence that would have made it reasonable for him to advance a complaint and the time to file a complaint would have started to run.

Related to the timeliness question was Respondent Group 2’s submission that if I determined that some of the allegations were out of time, then the public interest required me to dismiss the remaining allegations (section 6.15 c) of the Code of Conduct By-law). They said this was because the remaining allegations were distinct issues but were all examples of the same breach (violation of the open meeting requirement), and if I allowed complainants to sit on their complaints until they were time-barred and then to bring a subsequent complaint because the conduct had continued, it undermined the integrity of the complaint process.



### Findings: Timeliness

I find the Complaint was filed in time and none of its allegations is out of time.

While the Complainant said he “long suspected” the Respondents of not complying with the open meeting requirement, I accept that it was not until late July and early August 2024 that he learned information that supported a reasonable belief that this might have been occurring. Even though much of the information related to ABC Park Board Commissioners, there was also information that spoke to ABC Council Members engaging in similar behaviour.

I do not agree with Respondent Group 2 that the Complainant had a duty to inquire because he had the means to confirm in 2023 whether his suspicions were merited. There was no evidence from the Complainant or the Respondents or in the documents that the Complainant had any means to confirm his suspicions until he learned what he did in late July and early August 2024 from a source he believed was credible and knowledgeable and from reading PBIC-002.

With respect to any potential prejudice, I conclude that the Respondents have not been prejudiced. The allegations involve events occurring between January 2023 and July 2024. I began my investigation in August 2024, first asked the Respondents for interviews and relevant documents in September 2024, and completed my interviews in May 2025. This means the Respondents were asked for interviews about events occurring 1.75 years to a couple of months prior and my fact-finding from the Respondents ended 2.25 years to nine months before the events in issue occurred.

Further, the delay between September 2024 and May 2025 in getting the Respondents’ evidence was primarily caused by the Respondents. The earliest my Office could schedule interviews with Respondent Group 2 was December 2024 (and these had to be rescheduled because I received unsolicited documents from a witness the night before we were to meet). I conducted interviews and follow-up interviews of Respondent Group 2 in January 2025. The earliest I was able to schedule interviews for Respondent Group 1, excluding Mayor Sim, was February 2025. These interviews were rescheduled to April 2025 at the request of their legal counsel. The earliest I was able to schedule an interview with Mayor Sim was March 31, 2025, and I agreed to adjourn this interview at his request. Finally, when a planned April 2025 interview was delayed because of Mayor Sim’s schedule, after discussions with his legal counsel, I agreed to have him give his evidence in writing and he did so in mid-May 2025.

I now turn to a consideration of the evidence.

## Summary of Evidence

In addition to the Complainant and Respondents, I also asked questions of the City Manager who held that position from April 2021 to July 22, 2025 (the “Former City Manager”). In addition, a witness provided me with copies of the Respondents’ public calendar entries related to certain meetings held in the Mayor’s Office.

Mayor Sim gave written answers to some of my questions. Interviews took place with the Councillors virtually or in person, as preferred by each Respondent. The Respondents were free to have legal counsel attend with them.

Those who attended virtually used video, save for Councillor Montague. I advised him that all online interviews had been conducted with both video and audio, and this was my preference, but he indicated he would not have video on during his interview and we proceeded without it.

Respondents Zhou, Meiszner, Klassen, Kirby-Yung, Dominato, Blight, and Mayor Sim answered all questions (subject to some limited objections from their legal counsel). Councillor Montague provided a statement but refused to answer most of my questions (as detailed below).

Respondent Group 2 also attended follow-up interviews and provided additional information as requested.

For the open Council meetings that related to the six instances raised in the Complainant’s portion of the Complaint, I was able to view the relevant public meetings on YouTube. The Complainant pointed to last-minute amendments as evidence that ABC Vancouver was engaging in Council business outside of public meetings. The videos supported the Complainant’s concern that the amendments in question were introduced as last-minute amendments during Council meetings.

### *Councillor Montague*

Councillor Montague did not wish to answer the questions I had shared with him in advance of his interview and chose to make a statement at the start of his interview. He said he reviewed the questions I provided and understood that the issue was the open meeting requirement. He said he did not intend to violate the open meeting requirement and did not believe that he did. He said his intention was to have effective governance and share thoughts and experience; it was not to exclude public participation.

Councillor Montague said courts had recognized the importance of caucus discussions and his intent was to come to Council with an “open mind and not an empty one.” He said he read PBIC-003 and disagreed with my interpretation of how elected officials could work together.

He said the “discussions that are in question” were “informal strategy sessions” where no decisions were made, no minutes were taken, attendance was optional, no direction was provided to staff, and City business was not materially moved forward. He added there was no difference between meetings of ABC Vancouver caucus meetings and staff briefings held by City staff.

Councillor Montague referenced material provided to my Office by his legal counsel, which he said showed more than 70 instances when ABC Council Members voted differently from one another. He referenced many occasions when ABC Council Members voted differently, including the Natural Gas Amendment at issue in this Complaint. He said the allegation of improper meetings was “crazy.”

In response to this, I put to him a specific document that appeared to indicate otherwise.

The July 24 to 26, 2023 email chain (the “July 24-26 Email Chain”) contains discussions among ABC Council Members (except for Mayor Sim) and the Mayor’s Office staff on their personal email addresses, leading up to Council’s vote on funding for a Moberly Park turf field.

On July 24, 2023, the Operations Manager in the Mayor’s Office emailed ABC Council Members draft language he prepared with the Director of Legislative Affairs in the Mayor’s Office for an amendment to staff recommendations about the Growing Communities Fund. He wrote that Councillor Zhou had agreed to bring it to Council. Councillor Montague responded, asking:

*Just a clarification... moving “A” and supporting with “D” (amended) .... But are we voting down “B” or are we taking the leap of faith that staff don’t run wild down the road and voting in favour. I lost track at the end.*

(the “July 24, 2023 Email”).

Councillor Montague was asked about his statement. He said he had no recollection of what he was referencing given the passage of time. He was then asked if he could reconcile what he had written in this email with his evidence to me that the Respondents did not make decisions in advance of Council meetings. He said he could not reconcile it.

Councillor Montague declined to answer any further questions. He said he did not see the point in participating further as he felt the outcome was predetermined, he had lost confidence in the process, and did not think it was fair.

### *Documentary Evidence*

As referenced above, I asked for, and received, documentary evidence from the Respondents. These included emails on City accounts, emails on personal email accounts, agendas, and Council minutes. However, as explained below, I was unable to obtain evidence related to communications conducted on Signal (an open source encrypted instant messaging service) and by text message, and I received no

response to my repeated request for documents from the Mayor's Office staff (not even confirmation that they had no responsive records).

### Emails

All Respondents have at least two City email addresses, as well as personal email addresses. The Respondents said they tried generally to use their City email accounts for City business and their personal email accounts for political and personal business. There was evidence that members of Council received training from City staff about using City email accounts for City business and personal email accounts for personal and political business.

Emails that the Respondents produced in response to my request started in January 2023 and went to July 2024. Of these, initial emails among the Respondents and the Mayor's Office staff were sent on City accounts by all in the chain. Emails from July 2023 onwards were more commonly sent from and to personal accounts.

The emails that were produced, with limited exception, had a quorum of Council Members.

One exception was email chains concerning the Renter Office Amendment. The first chain, initiated by Councillor Zhou, took place between January 16 and 18, 2023, and included emails sent and received by the Former City Manager (the "Councillor Zhou Email Chain").

In the Councillor Zhou Email Chain, the Former City Manager replied to an email that included a group of only four ABC Council Members (Councillors Zhou, Kirby-Yung, Klassen, and Dominato), and then, in a subsequent email, just to Councillor Zhou. However, as the chain progressed, and communications no longer involved the Former City Manager or his senior staff, the number of participants of the email group was expanded to a quorum of Council Members.

The Councillor Zhou Email Chain concerned a draft amendment to an upcoming motion and included sharing draft amendment language with a quorum of Council. In a separate January 18, 2023 email chain from Councillor Zhou to a quorum of Council Members, with a subject line "FOR DISCUSSION – Amendment renter office," Councillor Zhou provided draft amendment language and Councillor Bligh responded by asking, "Is this the extent of amendments [Councillor Zhou]? Seems we are missing direction on other recommendations."

The Former City Manager was asked if he was ever involved in an email exchange with a quorum of Council Members that included discussion or debate on draft motions or amendments. He had no record or recollection of having done so. He also confirmed he had no record or recollection of email correspondence received from a Council Member using a personal email account.

## Signal

There was evidence that the Respondents also used Signal to communicate.

I had one screen shot of a conversation on Signal between Park Board Commissioners (who, at the time, were all ABC Vancouver members), the Mayor's Office staff, and Councillor Kirby-Yung. In it, Councillor Kirby-Yung told Park Board Commissioners that texting was used in Council. The conversation that occurred during a public meeting was as follows:

Commissioner Viridi: *Can people see us texting?*

Mayor's Office staff: *On Signal? No.*

Councillor Kirby-Yung: *You're ok. Just be discreet. We do in Council.*

Although some Respondents objected to questions about the use of Signal, most answered and confirmed there was a chat group on Signal with ABC Council Members, which represented a quorum of Council. Councillor Bligh said the Mayor's Office staff were also on this chat group. Councillor Dominato said ABC Council Members primarily used Signal to communicate with each other, although they might also use texts and Slack.

There was some limited difference in the evidence of the Respondents on the nature of communications on Signal. Councillor Dominato said the chat group involved informal discussions about upcoming reports to Council and sharing ideas about these. She stated people might indicate if they had a different opinion than the report. She did not think there were moments when people "land on consensus." She did not have any concern with these communications considering the advice they were provided about open meetings as she saw these communications as informal discussions.

Councillor Meiszner said the topics discussed on the Signal chat group included progress on platform commitments, motion ideas, bringing amendments, fundraising, and other party-related items. He said people shared what they were thinking about, such as ideas or motions, to inform others as an "FYI." He said communication on amendments included "testing of the waters," seeing how people were feeling, and giving a heads up. He said the communications did not include discussions of how Council Members would vote. Councillor Meiszner was not concerned about the communications on the Signal chat group being contrary to the open meeting requirement because ABC Council Members were assured by the Mayor's Office staff that if they were not making decisions and not voting, it was "perfectly okay" to meet as members of the same party.

Councillor Zhou said the Signal group chat was used to exchange information but not to make decisions.

All Respondents, except for Councillor Montague who did not answer these questions, said ABC Council Members sometimes used the Signal chat group during Council meetings. The Respondents said the discussion on Signal did not involve voting; rather, it was a dialogue about the substance of what was going on in the public meeting.

Councillor Bligh said that since she joined Council in 2018, this type of electronic communication had been a practice amongst all Council Members in all political parties.

Councillor Klassen said ABC Council Members communicated on the Signal chat during Council meetings on a range of issues, including commenting on speakers and administrative matters, and checking on information that might have been missed. Councillor Klassen said Council Members could lose track of what was happening in a public meeting, but the use of Signal during meetings did not mean there were decisions being made outside of public meetings.

Councillor Meiszner said ABC Council Members used Signal to chat during Council meetings and this could include the topic being discussed in the Council chamber at the time. He said the Signal discussions were more about when breaks would happen and time extensions, and not around voting. He added there might be some dialogue about motions or amendments, but that was not the main content of the chat.

Councillor Kirby-Yung said the Signal chat group during Council meetings served a functional purpose, including being able to ask questions, finding out where the meeting was at with the voting, and making comments about speakers.

Mayor Sim understood that all Council Members regularly messaged each other during Council meetings. He said he was not aware of any Signal chats that dealt with the decisions at issue in this investigation. Mayor Sim declined to answer general questions about ABC Council Members' use of Signal with quorum as his legal counsel objected to these questions as not relevant to the investigation.

No Signal messages among ABC Council Members survive today as these messages automatically delete and no Respondent provided me with screen shots like the one with Councillor Kirby-Yung and Park Board Commissioners. As a result, although I had evidence of general practice, I was unable to assess whether there were specific Signal discussions on the seven matters that are the subject of the Complaint and/or the nature of such discussions if they occurred.

### Cell Phones

A number of Respondents confirmed that texting via cell phone was used as a way for ABC Council Members to communicate. Councillor Bligh explained she used cell phones for quick communications, including to text other councillors during Council meetings about how they felt about an upcoming issue. According to her, cell phones were used in Council meetings but not to move decisions forward.

Councillor Dominato said ABC Council Members used cell phones with a quorum of ABC members during Council meetings and the dialogue included what was happening during the meeting in real-time.

Councillor Meiszner said ABC Council Members communicated as a group using text messages.

No Respondent provided me with any text messages.

#### Public Calendars

A member of the public conducted a review of Council calendars and produced copies of entries from the Respondents' Council calendars, including the following: Mayor's Office General Discussion, Mayor's Office Biweekly Check-in, Touch Base meetings, and Motion Discussions.

The Respondents' evidence was consistent that regular meetings for ABC Council Members and the Mayor's Office staff were held in the Mayor's Office and were normally scheduled for Monday and Thursday.

#### Agendas for ABC Caucus Meetings

We received three agendas for ABC caucus meetings that were relevant to the Complaint:

1. Meeting held on May 16, 2024, from 15:00 to 17:00, in the Mayor's Office Boardroom: the agenda included "Upcoming Motions" and referenced "Increasing Tree Canopy Cover," the Midterm Capital Update, and Growing Communities;
2. Meeting held on June 27, 2024, from 15:00 to 17:00, in the Mayor's Office Boardroom: the agenda included "Upcoming/potential motions" and listed "Natural Gas and CEAP"; and
3. Meeting held on July 11, 2024, from 15:00 to 17:00, in the Mayor's Office Boardroom: the agenda included "CEAP Amendment."

The agendas, consistent with the evidence of the Respondents, show that upcoming or potential motions were commonly topics at ABC caucus meetings.

All Respondents confirmed no minutes were kept at ABC caucus meetings, although there was some evidence that the Mayor's Office staff would take informal notes.

#### Orientation Materials and Integrity Commissioner Bulletin 2023-03: Open Meeting Principle

The Former City Manager told me the orientation for Council concerning the open meeting requirement took place on November 1, 2022. I was provided with a copy of materials concerning the open meeting

requirement that included a description from the British Columbia Ombudsperson's special report, released in 2012,<sup>4</sup> that described that:

*A gathering is more likely a meeting if:*

- *a quorum of council, board or committee members are present*
- *it takes place at the council or board's normal meeting place or in an area completely under the control of the council or board*
- *it is a regularly scheduled event*
- *formal procedures are followed*
- *the attendees hold a vote and/or*
- *the attendees are discussing matters that would normally form the basis of the council's business and dealing with the matters in a way that moves them toward the possible application of the council's authority*

My office released Integrity Commissioner Bulletin 2023-03: Open Meeting Principle to provide guidance on the open meeting requirement<sup>5</sup> (the "IC Bulletin 2023-03").<sup>6</sup> The Former City Manager told me that he provided IC Bulletin 2023-03 to Council on September 14, 2023, and again on February 1, 2024.

With respect to the orientation and IC Bulletin 2023-03, the Respondents' evidence was as follows:

- Councillor Bligh said she attended orientation about open meeting requirements.
- Councillor Dominato recalled that Council Members had orientation following the most recent election and she attended orientation that included "some discussion" on quorum and open meeting requirements under the *Vancouver Charter*. Councillor Dominato recalled receiving the IC Bulletin 2023-03. She said it reinforced for her that the open meeting requirement was important and to be mindful of gatherings and in any discussions.
- Councillor Kirby-Yung acknowledged the guidance provided by the City with respect to the open meeting requirement as set out in the orientation materials. She said she followed the guidance to the best of her ability. Councillor Kirby-Yung agreed she had read IC Bulletin 2023-03 on the open meeting requirement and that it was a more fulsome explanation of what was contained in the orientation material. Councillor Kirby-Yung said she attended Council meetings "not with an empty mind but an open one."

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<sup>4</sup> British Columbia, *Office of the Ombudsperson*, Open Meetings: Best Practices Guide for Local Governments, Special Report No 34 (September 2012) at 5, online: <https://bcombudsperson.ca/assets/media/Special-Report-No-34-Open-Meetings-Best-Practices-Guide-for-Local-Governments.pdf>.

<sup>5</sup> The 'open meeting principle' and 'open meeting requirement' can be used interchangeably.

<sup>6</sup> Lisa Southern, *Integrity Commissioner Bulletin 2023-03: Open Meeting Principle* (Vancouver: City of Vancouver, 2023), online (pdf): City of Vancouver <https://vancouver.ca/files/cov/integrity-commissioner-bulletin-2023-03.pdf>.



- Councillor Klassen said he attended orientation where the open meeting requirement was discussed and he read IC Bulletin 2023-03, and he was aware of guidelines presented by Union of BC Municipalities on the topic of open meetings.
- Councillor Meiszner recalled attending orientation training and the issue of Council Members meeting in quorum was discussed at orientation. He said what they had been told was that if they were not advancing City business, it was fine, as long as decisions were not being made.
- Mayor Sim wrote that he reviewed the Council orientation material concerning the open meeting requirement and that he may have received IC Bulletin 2023-03 on the topic sent by the Former City Manager. Mayor Sim was not aware of “any specific advice political staff provided to members of Council about open meeting principles.” He recalled a phrase being used that “Mayor and Councillors always had to have an open mind concerning any issues being discussed in public Council meetings; however, they did not have to have an empty mind.” Mayor Sim recalled that “Mayor and Council were entitled to get information, have discussions and even form an impression on issues.”
- Councillor Zhou said he remembered the presentation during orientation concerning the open meeting requirement. Councillor Zhou agreed that he had seen IC Bulletin 2023-03 on the open meeting requirement. He did not recall if he had any specific questions about it.

### *ABC Caucus Meetings*

The oral and documentary evidence was consistent that there were regular meetings in the Mayor’s Office with ABC Council Members and the Mayor’s Office staff, sometimes with quorum.

The evidence was also consistent that attendance was expected but not required, and if the Respondents had events that conflicted with the ABC caucus meetings, they might not attend the ABC caucus meetings. There was some evidence that virtual attendance could occur. Attendance was not tracked, and as noted, no minutes were kept nor notes produced. The calendar entries were not reliable indicators of who was present at specific meetings, nor were the agendas. As a result, it was difficult to ascertain if a specific ABC caucus meeting achieved quorum.

The Respondents had different descriptions of what occurred in those meetings, with one common thread: all Respondents said no vote or final decision was reached.

- Councillor Bligh said the ABC caucus meetings were a chance to connect, talk about team issues that individuals were focused on, move forward with ABC-related platform items, and discuss upcoming items for Council. Councillor Bligh said there was a fine line around the “groundwork necessary” for a decision, but that decision making was done in Council meetings. She said, “In the interest of expediency and efficiency, six conversations versus one to pitch a policy ... that is

about it. You have seven conversations, or you have one.” She said there was no decision making or votes in ABC caucus meetings.

- Councillor Dominato said there was a sharing of information on a range of topics, and discussions included updates from the Mayor’s Office on current issues and public safety issues, and briefings on upcoming Council agendas and reports. Councillor Dominato said ABC political staff would give summary reports and there were discussions about ABC’s political platform and how to deliver on that. She noted it was common practice for Council Members to inform others about motions they were raising, and if someone was working on a member motion, the Mayor’s Office staff might prepare a draft, share it, and request feedback. She added that Council Members might also solicit feedback on their motions, and feedback might be given at the ABC caucus meeting or might be taken “offline.” Councillor Dominato said there were discussions of different views and opinions.
- Councillor Kirby-Yung said ABC Council Members shared ideas and discussed what was on their minds and what they were hearing at ABC caucus meetings. She said the meetings were conducted like City staff briefings to Council Members and provided an example of when a councillor might share that they were interested in bringing a matter forward about road safety and she would respond, “That is interesting” and she “looks forward to hearing about it.”
- Councillor Klassen said the ABC caucus meetings had value to his work as a councillor in the sharing of information that occurred. He said the meetings were a dialogue and a way for people to share information to become better informed in terms of making decisions subsequently made in public.
- Mayor Sim did not recall any specific discussions at ABC caucus meetings about matters relevant to the Complaint. He did not recall what, if anything, was shared with him at these meetings. He said issues surrounding matters relevant to the Complaint were discussed with staff, members of the public, ABC Council Members, and other Council Members. He could not provide specific details or recollections of what or when discussions were had or with whom he had discussions, except to say that City business was regularly discussed with dozens of people.
- Councillor Meiszner said ABC Council Members received updates from the Mayor’s Office about things like staffing, public safety, and major incidents that they needed to be aware of. He said the agenda included items for upcoming meetings of Council; this was a standing item for the meetings. He noted there might be a “testing of the waters” for ideas on motions and amendments, but the Respondents did not make decisions about whether they were going to support an amendment as they knew that was not allowed because the decision must happen in public.

- As noted, Councillor Montague said ABC caucus meetings were informal discussions to get ABC Council members' thoughts, experiences, and opinions, and no formal decisions were made. He said they were the same as staff briefings.
- Councillor Zhou said ABC Council Members received information but did not make decisions at ABC caucus meetings. He noted there was informal discussion about how Council Members felt about issues, including Council business, and they exchanged ideas, but there was no voting. He stated ABC Council Members wanted to hear what their colleagues thought so they could come to public Council meetings prepared. He explained he approached Council meetings with an "open mind but not an empty mind."

The Former City Manager said he was not aware of the ABC caucus meetings.

### *Voting Protocol*

On February 21, 2024, the Mayor's Deputy Chief of Staff and his Director of Policy emailed ABC Council Members at their personal email addresses and the Mayor's Office staff (the "February 21, 2024 Email") with a description of "Team voting rules" (or a voting protocol), as follows in Figure 1:

*Figure 1: Voting protocol*

#### **Team voting rules:**

- All Mayor motions and budget votes are whipped.
- ABC team member motions are to be supported
  - In the event that a team member feels they cannot support a motion, advance notice must be provided to the Chief of Staff and the motion mover.
  - If an individual feels they cannot support a motion there are three avenues to move forward
    - 1. Abstain
    - 2. Be absent
    - 3. Vote no
- Voting on any opposition amendment to an ABC moved motion will be at the discretion of the mover.
- Opposition motions will be decided on a case by case basis through discussion with the group.
- In-camera: free vote with the exception when it is clear the majority of team members support a particular outcome and this cannot be achieved if one team member votes differently.
  - In the event that one individual vote will upend the outcome, team members are asked to absent themselves.
- $\frac{2}{3}$  votes will be supported by the entire team.

According to Councillor Dominato, the voting protocol was put in place in the fall of 2023 at the ABC Retreat and she understood it was developed because ABC Vancouver had a political platform to deliver. She said it required ABC Council Members to support motions made by Mayor Sim, but ABC Councillors could exercise personal agency. She said she did not follow other parts of the voting protocol. She

provided an example of when she voted “no” on the Natural Gas Amendment; she did not give notice to the Chief of Staff but told Council Members she would vote “no.”

Councillor Meiszner said the voting protocol was guidance from the Mayor’s Office on what the Mayor’s Office staff would like to happen if there was a lack of alignment on a particular item before Council. He said it was not mandatory, he had not followed it, and he went to Council meetings with an open mind.

Councillor Zhou said the voting protocol was a guideline and not a hard rule to follow. He said he always had the freedom to vote as he saw fit and did so. He did not remember how he first learned about the voting protocol.

Councillor Bligh said there was a proposed “voting protocol” for ABC Council Members to seek alignment on issues that she first learned about at the ABC Retreat on Bowen Island. She said she took it as a wish or a guideline and not something to be ruled by. She stated she had deviated from the proposed voting protocol.

Councillors Kirby-Yung and Klassen said there were discussions about an ABC voting protocol but, in the end, no protocol was agreed upon. Councillor Klassen further said there were many times ABC Council Members had not voted together.

Councillors Montague and Zhou referred to records of votes where there was not unanimity among ABC Council Members.

Mayor Sim’s evidence was that the voting protocol was a working document that was never adopted and only reflected a working guideline, noting ABC Council Members had the right to vote as they wished on Council matters.

Regarding the February 21, 2024 Email, Mayor Sim and Councillors Bligh, Kirby-Yung, and Zhou did not know why it referred to the voting protocol in the context of a “refresher.”

#### [Discussion about Opposition Motions](#)

The voting protocol described in the February 21, 2024 Email states, “opposition motions will be decided on a case-by-case basis through discussion with the group.”

Councillor Dominato said there were “roundtable” discussions on opposition motions with ABC Council Members offering their perspectives, and these discussions took place mostly in person. She said there was discussion and “getting a sense of peoples’ views and opinions on motions, and amendments to motions,” but she did not know if there were “decisions.” She said, “We ran together, we are of like mind, no surprise after discussion of a motion that there is a similar view on the motion.” She said there was no voting, but “in practice,” she could tell if people agreed, and if there was “common thought.”

Councillor Klassen said ABC Council Members had free and open discussion around opposition motions. When asked if these discussions happened at the ABC caucus meetings, he said, “They are happening again right through the whole cycle” of the motion. He said he had discussions with staff, peers, and people in the public.

When asked if there was discussion by ABC Council Members about opposition motions, Councillor Zhou said they would express their opinions but would not make a decision.

### *Briefings by City Staff*

The Former City Manager told me that City staff ensured staff briefings of Council Members were outside the open meeting requirement by having:

- Briefings be a one-way download of information, and staff did not ask questions of Council Members or take any feedback on the information they were providing;
- The City Manager (or occasionally a deputy City Manager) chaired the meetings in a way that restricted Council Members from asking questions of staff; and
- There was no discussion of forthcoming amendments or motions.

Councillor Bligh agreed with the Former City Manager that this was how staff briefings were run. She was asked why she thought discussion with quorum was okay in ABC caucus meetings when it was not allowed in staff briefings. She said staff briefings were not the same as ABC caucus meetings, as the receipt of information was similar, but in staff briefings, councillors might start to share an opinion and then wrap it up as a question whereas at ABC caucus meetings, there was sharing of information, asking clarification questions, and expressing how people were feeling.

Councillor Dominato agreed that staff carefully worked to structure staff briefings. She said councillors asserted opinions and sought feedback through their questions. She agreed the Former City Manager cautioned Council Members who engaged in “a lot of preamble” to questions they asked at staff briefings and understood he had cautioned Council Members about giving direction to staff and engaging in debate with staff. She agreed there was no back-and-forth conversation between staff and Council Members in staff briefings.

Councillor Kirby-Yung said City staff had drawn a distinction with respect to the open meeting requirement for staff briefings. She said staff briefings occurred regularly on Monday afternoons and staff presented information and Council Members could ask questions.

Councillor Klassen said opinions were “less articulated” in staff briefings than in ABC caucus meetings but nevertheless, “You also pick up a lot from people’s questions and where they are going with certain things.” He was asked if the “inference drawing” he described was the same as the dialogue that occurred

in ABC caucus meetings. In response, he said when people shared their experience, it was infused with their own viewpoints. He said information learned in ABC caucus meetings provided opportunities to build a stronger decision-making capacity.

Councillor Montague said there was no difference to staff briefings held by City staff, which were not contrary to the open meeting requirement. I understood his comments to be a comparison of staff briefings to the ABC caucus meetings.

Councillor Zhou said informal caucusing with ABC Council Members was similar to staff briefings provided by City staff. He added they were “aligned with” staff briefings, where councillors were allowed to ask questions and give opinions but not give direction to staff.

### *Timing of Council Motions and Amendments*

As noted, the Complainant pointed to the last-minute nature of the amendments in question as evidence that the Respondents were engaging in Council business outside of public meetings.

Councillor Dominato said the timing of bringing amendments at Council meetings was a function of the governance model and was the practice of councils around the country. Councillor Kirby-Yung said it was the nature of the proceedings, and she noted last-minute amendments were normal and indicated that councillors were listening. She added that it was a very fluid situation and while one was supposed to be prepared, amendments might have to be crafted on the go.

### *Specific Council Motions and Amendments*

The Complaint alleges that the Respondents violated the open meeting requirement in relation to seven specific Council motions and amendments.

#### Renter Office Amendment

On January 18, 2023, at the Standing Committee of Council on Policy and Strategic Priorities, Councillor Zhou put forward an amendment to a staff report that resulted in a majority of Council voting to close down the Renter Office.

As described above, the Councillor Zhou Email Chain started with emails between Councillor Zhou and the Former City Manager, where Councillor Zhou was seeking feedback about proposed amendments to the Renter Office report. The second-to-last email in the thread occurred on January 18, 2023, when a Mayor’s Office staff member forwarded this discussion to four ABC Council Members at their City email addresses. Later that day, Councillor Zhou expanded the group and emailed all ABC Council Members and the Mayor’s Office staff with a draft of a single amendment (the “RO Amendment”).

Councillor Bligh agreed ABC Council Members received the RO Amendment in advance of the January 18, 2023, meeting, but she did not remember if it was discussed at the ABC caucus meeting held on January 16, 2023. According to her, the way the RO Amendment was brought forward at the City's Standing Committee of Council on Policy and Strategic Priorities on January 18, 2023, was not unusual, and was compliant with Robert's Rules of Order.

Councillor Dominato did not recall a specific ABC caucus meeting where the RO Amendment was discussed, but did remember there was discussion about it. She said ABC Council Members were very like-minded in their view. She noted her reading of the Councillor Zhou Email Chain was that Councillor Zhou volunteered to bring forward the RO Amendment. She said the email showed an informal dialogue of people who were in the same party. She said it looked like collaboration but in the context of teammates, adding ABC Vancouver was a political party so input was sought.

Councillors Kirby-Yung and Klassen said the Councillor Zhou Email Chain was Councillor Zhou preparing an amendment and getting feedback from City staff. Councillor Kirby-Yung said it was not a discussion among ABC Council Members.

Councillor Meiszner remembered a general discussion about the Renter Office but could not recall any specific discussion. He said there was a desire from the Mayor's Office to be united on the RO Amendment, but he voted with his conscience. He said the RO Amendment was being "socialized" for ABC Council Members in the Councillor Zhou Email Chain. I understood this to mean that it was shared to allow time for ABC Council Members to consider the RO Amendment. Councillor Meiszner further said the RO Amendment was brought forward in accordance with Robert's Rules of Order, and amendments were brought in this manner "all the time." He said motions and amendments had to be drafted in advance or the meeting would "grind to a halt," and while this could make it challenging for the public to speak to an amendment, it was part of the rules and was permitted.

Councillor Zhou said he put the RO Amendment forward at the last minute and did not remember discussing it with other ABC Council Members. He said the Councillor Zhou Email Chain showed he was working with City staff on the language of the RO Amendment. He said it was normal to socialize an amendment with staff prior to putting it forward and he passed on the staff feedback to his ABC colleagues as an "FYI." He said he never asked his colleagues to support, oppose, or make a decision about the RO Amendment. Councillor Zhou maintained there was no decision made with respect to this motion before the public meeting where it was considered.

The Former City Manager told me it was common for Council Members, regardless of political affiliation, to copy other Council Members on email messages to him or other staff. He said Council Members commonly sought staff input on draft motions and when staff advised a Council Member on a draft motion, that was subsequently submitted for inclusion on a meeting agenda, staff feedback would be



shared with the remainder of Council. He said Council Members had discretion to share the advice received from staff on draft motions with other Council Members. The Former City Manager said Council Members might also seek advice from staff on amendments or motions advanced by other members, as was the case in the Councillor Zhou Email Chain. He explained in those cases, staff did not proactively circulate any advice provided to other members of Council; if the amendment was ultimately tabled in a meeting and another member of Council questioned whether the mover of the amendment received input from staff, staff would confirm the advice provided.

### Charter Report

On February 15, 2023, a majority of Council voted at the meeting of the Standing Committee of Council on Policy and Strategic Priorities on the Charter Report prepared by the City's Climate Equity Working Group.

There is an email chain dated February 10 to 12, 2023 (the "February 10-12, 2023 Email Chain") about amendments to the Charter Report. On February 10, 2023, the Director of Legislative Affairs in the Mayor's Office emailed other political staff in the Mayor's Office and ABC Council Members, at their City email addresses, with potential amendments to City staff recommendations in the Charter Report. Councillor Dominato replied to the Director of Legislative Affairs' email on February 12, 2023, with a reworking of the suggested amendments "for consideration." Councillor Dominato said "for consideration" referred to feedback from her colleagues.

With respect to the February 10-12, 2023 Email Chain:

- Councillors Kirby-Yung, Klassen, and Zhou said it was usual for the Mayor's Office staff to assist with the preparation of amendments;
- Councillor Kirby-Yung said Councillor Dominato was putting forward her perspective and opinion and sharing it for information; it was similar to staff briefings;
- Councillor Bligh said the email chain was not an example of moving City business forward. She acknowledged it was a fine line, but she saw this as the "leads" canvassing for feedback and not crossing any line. She noted canvassing for feedback was a standard practice; the difference here was that it started to expand to more than six people in the email chain;
- Councillor Klassen said the email was an opportunity for people to better understand the issue and share information among their peers. He said it was "fodder for a decision-making process";
- Councillor Meiszner agreed it showed an evolution of an amendment. He had no recollection if there was any further discussion. He said the email chain was "testing the water" and trying to get the amendment to the best place it could be. When asked why the discourse did not happen



in a public meeting, he said it was happening on public email, doing amendments “on the fly in chambers is messy,” and it was common practice to have amendments ready to go; and

- Councillor Zhou said it was usual for ABC Council Members to get feedback from each other, but no decisions were made in the February 10-12, 2023 Email Chain. He added amendments could change based on feedback from ABC Council Members, but they could also change at the public meeting.

There is a lengthy email chain dated February 13 to 14, 2023 (the “February 13-14, 2023 Email Chain”) among ABC Councillors, Mayor Sim (for a portion), and the Mayor’s Office staff about the Charter Report. The Respondents’ City email addresses were used on the February 13-14, 2023 Email Chain. The following summary is from these emails.

- February 13, 11:28 AM: The Director of Legislative Affairs sent draft amendments to, and notes about, the Charter Report’s recommendations. As illustrated in Figure 2, the recommendations provided in the email read as follows:

Figure 2: Recommendations

#### Recommendations

1. THAT Council receive *A Climate Justice Charter for Vancouver*, written by the Climate Equity Working Group, **for information.** ~~and direct staff to use it to guide Vancouver’s climate work.~~
2. THAT Council direct staff to report back **with recommendations to enhance and otherwise explicate existing equity, climate, and social justice measures embodied in the City’s Equity Framework, Climate Emergency Action Plan, and other frameworks and strategic policies such as the Healthy City Strategy, to ensure equity and climate justice are appropriately integrated and supported through the City’s climate actions and sustainability work.** ~~on progress related to the Climate Justice Charter in the Climate Emergency Action Plan annual report and include an explicit analysis of equity impacts in climate-related reports.~~
3. **THAT Council defer the creation of any new equity focused RFT Planner II staff position pending a report back from staff as per clause “B” above.**

- February 13, 1:38 PM: Councillor Bligh wrote this looked good as a “strong start for consideration and discussion tomorrow morning.”
- February 13, 2:27 PM: Councillor Dominato wrote, “Agree with [Councillor Bligh]. This is shaping up well.”
- February 13, 4:32 PM and 4:42 PM: The Director of Legislative Affairs sent updated staff recommendations and then sent a comparison between staff’s former and current recommendations.

- February 13, 6:12 PM: Councillor Montague wrote he liked the original suggested amendments better.
- February 14, 8:19 PM: Councillor Bligh wrote, “who is taking the lead and how are we all feeling about the language?”
- February 14, 8:24 to 8:54 PM: Councillors Bligh, Kirby-Yung, and Montague commented on the three proposed amendments, including Councillor Montague, writing, “I like 1 and 3... 2 seems wordy to me and hard to follow – can we simplify it?” and “could do away with 2 altogether”; Councillor Kirby-Yung wrote she was “not loving one but open to discussion. Two is wordy”; and Councillor Bligh wrote, “I think the wordiness is by design to make sure we are appropriately integrating the climate lens into our existing equity framework.”
- February 14, 9:02 PM: Councillor Klassen wrote he tried editing the amendments but gave up on the second one. He then wrote he was taking Mayor Sim off the thread “for now.”
- February 14, 9:07 PM: Councillor Kirby-Yung wrote, “Seems consensus it [*sic*] that it needs further work...”

On February 14, 2023, Councillor Bligh asked Councillor Klassen if he was willing to lead on the amendments, possibly with “LD,” and to work with the Director of Legislative Affairs to clear up the language in the second amendment. Councillor Klassen then replied in the February 13-14, 2023 Email Chain that he would work with the Director of Legislative Affairs to firm up an amended motion.

With respect to the February 13-14, 2023 Email Chain:

- Councillor Bligh said her statement about a “discussion tomorrow” referred to the Council meeting held on February 14, 2023, and it would have been easy for her to confuse the Council meeting and the Committee meeting scheduled for February 15, 2023. Councillor Bligh was not concerned that the email chain was contrary to the open meeting requirement. She said it canvassed for feedback and broad alignment. She said information raised in Council chambers, including from City staff and other Council Members, could quickly change the direction of a motion and that was when the decision was made.
- Councillor Dominato said the email chain did not concern her with respect to the open meeting requirement because its purpose was to share information and get feedback on the wording of the amendments. She admitted the email chain could be construed as off-side the open meeting requirement, but she commented on the complexity of working within the open meeting requirement and a political party system.

- Councillor Kirby-Yung said she saw people expressing opinions and not agreeing with one another. She disagreed she was being informed by the dialogue she had with her peers in the emails. She said it was up to each Council Member to bring amendments. She did not know if there was coordination of who would bring the amendments. With respect to her comments in the email, she said she was providing facts and exercising free will. She noted there were different opinions in the email but not any outcomes.
- Councillor Klassen described the email chain as “information sharing” and agreed it represented part of the evolution of what ultimately appeared before Council. He explained as follows:

*... I would sort of say at the end of the day these are dialogues, these are discussion points to try and better understand how we can wrap our heads around these issues. Ultimately, this is a decision though, this is obviously is one that is tabled and put in for the public to see and for debate to happen in the chamber... but actually in wordsmithing all of this and getting to a place where it kind of meets all the objectives, that is work that we count on our staff to have so that is why there are a lot of references back and forth with [Director of Legislative Affairs].*
- Councillor Meiszner said the email chain was “seeing where people are at” but he did not have any specific memory about whether consensus was reached.
- Councillor Zhou said the email chain was “re-tweaking the language about an amendment,” but maintained there was no decision making.

The minutes of the Standing Committee of Council on Policy and Strategic Priorities meeting held on February 15, 2023, show that Councillor Klassen moved an amendment with respect to the Charter Report, which was carried with all ABC Council Members supporting it. The motion, as amended, was then carried unanimously with Councillor Carr and the Complainant abstaining. The final approved motion read as follows:

*A. THAT Council receive A Climate Justice Charter for Vancouver, attached as Appendix A to the Report dated January 16, 2023. Entitled “A Climate Justice Charter for Vancouver,” written by the Climate Equity Working Group.*

*B. THAT Council direct staff to apply an equity lens and the City’s Equity Framework to climate strategy and initiatives.*

The proposed amendment to ‘A’ discussed in the email chain was substantively what was put forward at the Committee meeting, with the additional removal of the words “for information.” Further, the feedback from multiple Councillors in the email chain was the proposed language for ‘B’ was wordy, hard to follow, and may need to be simplified. That feedback appears to have been incorporated into the amendment.

### Moberly Park Funding

On July 26, 2023, Council approved the Moberly Park Funding, an initial multi-year capital budget and funding adjustment for City projects identified in the provincial Growing Communities Fund, and directed a portion of funds be used for a new turf field at Moberly Park.

As noted above, Councillor Montague was asked about a July 24, 2023 Email, contained in the July 24-26 Email Chain in which he responded to draft language prepared by the Operations Manager by asking:

*Just a clarification... moving "A" and supporting with "D" (amended)....But are we voting down "B" or are we taking the leap of faith that staff don't run wild down the road and voting in favour. I lost track at the end.*

In the July 24-26 Email Chain, Councillor Kirby-Yung replied on July 24, 2023, writing that the draft was missing a number of the "key tenets that we discussed today that we wanted to include reference to help guide and frame the review" and included a list of those tenets. Within 15 minutes, the Operations Manager sent a revised draft of the amendments, which incorporated these items. Later that night, Councillor Kirby-Yung suggested revised wording for the listed tenets.

On July 25, 2023, the Operations Manager sent draft amendments about the Moberly Park Funding "for tomorrow." That same day, Councillor Kirby-Yung sent her comments and suggestions for the amendments and the Chief of Staff said he would work on changes the next morning.

On the morning of July 26, 2023, the Chief of Staff sent, via email, revised amendments based on Councillor Kirby-Yung's suggestions. There was then a "1st Amendment" and a "2nd Amendment to the Amendment." Later that morning and before the Council meeting, the Operations Manager sent the latest version of the draft amendments about the Moberly Park Funding, and these were then in the form of a "1st Amendment" and an "Amendment to Amendment" and read as follows:

#### *1<sup>st</sup> Amendment*

*C. THAT Council direct staff to include Parks within the priorities for the initial Growing Communities fund grant, and that a portion of funding for temporary plazas be used to fund a new turf field at Moberly Park that has been identified as a priority by the South Vancouver community;*

*AND that staff conduct the appropriate analysis and report back to Council regarding the scope, cost, and delivery timelines of these projects*

#### *Amendment to Amendment*

*C. THAT Council direct staff to include Parks within the priorities for the initial Growing Communities fund grant, and that a portion of funding for temporary plazas be used to fund a new turf field at Moberly Park and a spray park at Ross Park, both of which have that has been identified as a priority by the South Vancouver community; [red text in original]*

*AND that staff conduct the appropriate analysis and report back to Council regarding the scope, cost, and delivery timelines of these projects;*

The minutes of the Standing Committee of Council on Policy and Strategic Priorities meeting held on July 26, 2023 (the “July 26 Committee Meeting”) show that the amendments communicated by the Chief of Staff in the July 26, 2023 email were substantially similar to the amendments moved by Councillors Kirby-Yung and Klassen at the July 26 Committee Meeting. The amendment moved by Councillor Kirby-Yung, as amended by Councillor Klassen, was then carried with Councillors Boyle and Carr, and the Complainant opposed.

The Respondents provided the following evidence with respect to the July 24-26, 2023 Email Chain and the July 26 Committee Meeting:

- Councillor Bligh acknowledged that Councillor Montague’s comments about voting crossed a line and raised concerns.
- Councillor Dominato said it looked like the Mayor’s Office was sharing an amendment in advance with ABC councillors. She read Councillor Montague’s comment as “seeking alignment or consensus.” She said he was voicing his view, but she went into Council meetings with an open mind.
- Councillor Kirby-Yung said she had no recollection of what Councillor Montague’s comments about “voting” were referring to. She said she disagreed in the email with what he was expressing.
- Councillor Kirby-Yung said, with respect to the amendment and the amendment to the amendment, that Councillors decided whether to bring amendments. She said it looked like Councillor Klassen decided to bring an amendment for the spray park. She said she prepared her amendments and other Councillors brought theirs; that was the process.
- Councillor Klassen said:

- In the email discussions, ABC Council Members were trying to get a stronger sense of what might happen with amendments. Councillors did not want to waste time, so they tried to understand if there was a baseline of support. These discussions could also happen with non-ABC Council Members.

He said, “You want to make sure you are successful. Usually if you brought your own motion in on something you put a lot of work into, you want to make sure [you have] the number of votes you need to make sure it passes.”

- With respect to the amendment to the amendment, it was possible this was because of real-time feedback received from the community during the Council meeting that the turf field was not enough, and more was needed. When asked about the email on July

25, 2023, which indicated that this form of the amendments existed before the Council meeting, he said they were hearing from community groups throughout the process urging them to make this change. He said they left it to the Mayor's Office staff to process an initial draft and "come back with a recommendation." He admitted it was possible that there was coordination before the meeting about who would bring the 1st Amendment and the Amendment to Amendment.

- Mayor Sim did "not recall much conversation" about Moberly Park. His observation was that in his July 24, 2023 Email, Councillor Montague "appears to be exercising his right as a councillor to share his opinion on a potential upcoming decision."
- Councillor Meiszner said his understanding was that the amendment was being "socialized" to ABC councillors. He did not know what Councillor Montague was referring to in his comments in his July 24, 2023 Email.
- Councillor Zhou said he did not know what Councillor Montague's comments in his July 24, 2023 Email meant. He said ABC Council Members expressed their opinions with one another but always made decisions in public. He was asked if part of expressing opinion was indicating how people would vote. He said, "Not necessarily" and noted he would share his opinion and express that he would like to hear from others.

#### Park Board Motion

In December 2023, Council passed the Park Board Motion, a motion asking the provincial government to help transition Park Board responsibilities to Council.

Most of the Respondents agreed that before the Council meeting where Mayor Sim introduced the Park Board Motion, Mayor Sim shared the motion with ABC Council Members and kept them informed. Mayor Sim provided no information about how he communicated the Park Board Motion to ABC councillors. ABC Council Members were asked to attend Mayor Sim's press conference on December 6, 2023. Before the press conference, Councillors Zhou, Kirby-Yung, and Dominato received "key messages" about the Park Board Motion from the Mayor's Office staff.

Councillor Bligh told me she was not involved in the decision to bring the Park Board Motion, and did not attend the press conference, but she participated in communications and meetings where the topic was discussed prior to the press conference. She said there was a meeting in the Mayor's Office about the Park Board Motion with discussion from a policy perspective of why Mayor Sim was moving this forward and how ABC councillors felt about it at a high level.

Councillor Kirby-Yung denied there was a predetermined decision on the Park Board Motion. She said it was common for motions to be publicized in advance of a public meeting because it was a chance to

socialize the motion and build support. She explained it was a chance to “read the room” and know if there was going to be a big discussion. She said she attended the press conference and received a copy of the speaking notes because of her previous role as Park Board Commissioner, which meant she might have had to answer questions.

Mayor Sim said the outcome of the vote on the Park Board Motion was not known until the vote in Council was taken.

Councillor Meiszner said the Park Board Motion was likely discussed before it came before Council; the discussion would have been about how people were feeling about the Park Board Motion and “that sort of thing.”

Councillor Zhou said he was sent speaking points for the Park Board Motion because there was a lot of support from the Chinese Canadian community about eliminating the Park Board, so “they wanted him to know the key messages.” He said the vote on this matter was not pre-determined by the voting protocol.

#### Capital Plan Mid-Term Amendments

On June 27, 2024, Council approved significant amendments to the 2023-2026 Capital Plan. The Standing Committee of Council on City Finance and Services had met on June 26, 2024, and voted on recommendations to Council about the adjustments.

An agenda from an ABC caucus meeting held on May 16, 2024, includes the Mid-term Capital Plan Update (the “Update”).

On May 27, 2024, Council received a staff briefing about the Update.

On June 14, 2024, the Former City Manager sent a memorandum to Council with supporting information for the Update.

On the morning of June 17, 2024, the Deputy Chief of Staff and his Director of Policy sent a Google form to ABC Council Members asking for input for the approximately \$17 million available for allocation based on the Update (the “Google Form”).

On the evening of June 17, 2024, the Deputy Chief of Staff and his Director of Policy asked ABC Council Members to complete the Google Form by 8:00 AM on June 20, 2024, so that responses could “be shared with all at the Thurs meeting.”

Councillor Dominato said the Mayor’s Office circulated the Google Form to ask ABC councillors for input about the Update, and she filled it out. She recalled an ABC caucus meeting on June 20, 2024, where the Mayor’s Office staff gave a summary of everyone’s input about how to allocate the \$17 million and identified what might fit within the additional funding. She thought there was a list of top priorities. She



did not think there was discussion of any apportionment. She believed the Mayor's Office was taking the lead on this and next steps would have been for them to take the input and identify what would be feasible for the Capital Plan. She said no decisions were made.

Councillor Bligh could not recall if she completed the Google Form or if there was a discussion among ABC Council Members about prioritizing how the funds would be allocated. She did not know how ABC Council Members would vote on her eventual amendment to the motion.

Councillor Kirby-Yung said she did not complete the Google Form or see its results, but she did express opinions around funding needs and there was discussion among ABC Council Members about what they were hearing from the public about funding priorities.

Councillor Klassen recalled that ABC Council Members were asked for capital-related items that they felt strongly about, noting they had the opportunity to "put items in the hat" and see what things cost. He did not think he filled out a Google Form but did tell people what he was interested in. He said ABC Council Members had strong feelings about items and there were limited dollars, but he did not remember how those discussions occurred or who they occurred with. He did not recall getting an email that was sent to all ABC Council Members setting out their priorities.

Councillor Klassen said the Mayor's Office staff looked at the items and the costing, and noted that "the limit of the coordination was that [ABC Council Members] were able to submit [priorities] and put in a list for people to look at and essentially that list was taken out and it was presented to Council with actual cost figures that had probably [been] checked by staff."

Mayor Sim wrote he did not recall attending an ABC caucus meeting where priorities and allocation of funds for the Update were discussed. His best recollection was that he did not complete the Google Form. He was asked whether ABC Council Members established priorities for the funds, coordinated about priorities, or discussed how to allocate the funds prior to the public Committee meeting. Mayor Sim's response was that "to the best of his recollection, there was no set meeting." His evidence was also that to the best of his knowledge, he did not receive an email with information about other ABC Council Member amendments and allocations.

Councillor Meiszner recalled discussion about the Update at the ABC caucus meeting held on May 16, 2024, including about identifying priorities, and noted he filled in the Google Form. He said the Mayor's Office tried to take everyone's desires into consideration to allocate the funds available, ABC Council Members worked with the Mayor's Office on priorities they wanted moved forward, and there was an effort by the Mayor's Office to fit those priorities within the amount available. He said he did not believe Council Members coordinated their amendments, and he could not recall if he saw other ABC councillors' amendments before the Standing Committee meeting held on June 16, 2024. Councillor Meiszner said he did not know how the ABC Council Members would vote at the Standing Committee meeting.



In contrast, Councillor Dominato said she was aware of the amendments and budget allocations that ABC Council Members were going to bring forward at the Standing Committee meeting, and noted she had received an email with the amendments her colleagues were bringing. She agreed that ABC Council Members coordinated their amendments.

Councillor Zhou recalled ABC Council Members brought ideas to the Mayor's Office and City staff on how to allocate the funding, but he could not remember how this occurred. He remembered the Google Form. He said he knew before the Standing Committee meeting what other ABC Council Members were putting forward about the Update, but denied there was a plan or tentative plan for how they would vote. He said they did not make decisions in advance.

#### Natural Gas Amendment

On July 18, 2024, Council voted on the Natural Gas Amendment concerning the City's ban on natural gas as a source for heating and hot water in newly built homes. Before this vote, several communications were exchanged, and the topic was on the agenda for ABC caucus meetings.

#### *June 27, 2024 Email and ABC Caucus Meeting*

On June 27, 2024, Councillor Montague emailed some high level, potential wording for a motion about the City's Climate Emergency Action Plan ("CEAP") report (the "June 27, 2024 Email"). His proposal included amending the CEAP report and City bylaws to allow for the use of all energy options, including renewable gasses. He was on the agenda to discuss natural gas and CEAP for the ABC caucus meeting scheduled on June 27, 2024.

Councillor Bligh said she received the June 27, 2024 Email. She said she was likely at the June 27, 2024, ABC caucus meeting. She said the discussions were a sharing of perspectives, noting, "You are kind of shaping a conversation but not finalizing any outcome. Probably one of those finer lines in the discussion." She agreed that deliberation occurred in that there was active listening and building on ideas together to try and collectively learn.

Councillor Dominato said she attended the June 27, 2024 ABC caucus meeting and noted Councillor Montague wanted to amend the CEAP report to restore natural gas in new construction. She said there might have been discussion, but there was no debate or voting that she recalled.

Councillor Kirby-Yung said the June 27, 2024 Email was Councillor Montague sharing information with his colleagues. She thought Councillor Montague spoke individually to councillors to build support for his amendment. She recalled some conversation around natural gas but could not say when it was. She said for these types of discussions, sometimes there were three councillors in the room, sometimes there were seven, but they were not making any decisions. She said ABC Council Members did not debate during their discussions around natural gas.

Councillor Meiszner said the June 27, 2024 Email was Councillor Montague providing awareness of what amendment he was proposing, adding there were also in-person discussions about the Natural Gas Amendment and related amendments. He said there were strong opinions voiced on all sides with respect to the Natural Gas Amendment, but he would not call it a “debate.” He said Councillor Montague was passionate and was trying to “pitch” his idea. He said Councillor Montague tried to convince ABC Council Members why his amendment was important, but there was no indication of how people would vote. Councillor Meiszner said he did not indicate how he would vote but he made his position clear.

Mayor Sim attended the ABC caucus meeting held on June 27, 2024. He did not remember any specific discussions about matters relevant to the Complaint.

Councillor Klassen said he could not recall if he attended the ABC caucus meeting held on June 27, 2024.

#### *July 11, 2024 ABC Caucus Meeting*

Councillor Montague was also on the July 11, 2024, ABC caucus meeting agenda to discuss his CEAP report amendment.

Councillor Dominato attended the ABC caucus meeting held on July 11, 2024. She said there was a good likelihood there was quorum. To the best of her recollection, Councillor Montague reiterated that he wanted to amend the CEAP report. She did not remember what was being presented by him, but she thought it “would not been far off” what was proposed in the Council meeting.

Councillor Meiszner attended the ABC caucus meeting held on July 11, 2024. He did not remember any specifics other than Councillor Montague advocating for his position.

Mayor Sim attended the ABC caucus meeting held on July 11, 2024. He did not remember any specific discussions about matters relevant to the Complaint.

Councillors Bligh and Kirby-Yung said they did not recall if they attended the ABC caucus meeting on July 11, 2024. Councillor Klassen said he did not attend this ABC caucus meeting.

#### *July 18, 2024 Email and Communications Strategy*

On July 18, 2024, the Deputy Chief of Staff and Director of Policy emailed ABC Council Members a draft amendment to recommendations about “Vancouver’s Next Climate Plan” (the “July 18, 2024 Email”). The proposed amendment would overturn the natural gas ban for new construction. Also on July 18, 2024, ABC Council Members and the Mayor’s Office staff were sent a draft communications strategy for Councillor Montague’s Natural Gas Amendment.

Councillor Meiszner agreed the July 18, 2024 Email showed an evolution of the amendment. He understood he received it for awareness, as a “heads up.”

#### *July 19, 2024 Email and July 22, 2024 Discussion*

On July 19, 2024, the Operations Manager emailed ABC Council Members with three draft amendments to be discussed on July 22, 2024 (the “July 19, 2024 Email”). One of them was Councillor Montague’s Natural Gas Amendment.

Councillor Bligh said the July 19, 2024 Email looked like a series of amendments that one of the policy staff in the Mayor’s Office prepared. She said it was common practice to circulate amendments to ABC Council Members so there were no surprises at Council meetings, and it was not uncommon for draft amendments to be shared with all councillors ahead of time.

Councillor Dominato remembered the July 19, 2024 Email but did not remember the July 22, 2024 discussion it referenced. However, she said amendments were being circulated and she anticipated they were going to pass, largely because, based on one-on-one discussions, she understood that most people agreed with Councillor Montague. Councillor Dominato shared her view that she did not support the idea. She said there was no debate around the Natural Gas Amendment but there was around the concept of the bigger picture issue. She said people shared their perspectives about it, and she understood this was okay to do. She said ABC Council Members were not clear about the outcome of the vote prior to the Council meeting. She said she did not feel pressure to change her vote on this topic.

#### *Other Recollections*

Councillor Klassen recalled ABC Council Member discussion about the Natural Gas Amendment. He said Councillor Montague had a lot of energy for this motion and he heard from him individually and as part of a group. He described Councillor Montague as trying to inform councillors about his amendment.

Councillor Montague said it would not make sense for him to have brought forward the Natural Gas Amendment if it was going to fail.

Councillor Zhou said there were discussions by ABC Council Members about the Natural Gas Amendment. He said ABC Council Members had different opinions, which was reflected in the final vote. He said people were not trying to convince each other but there was a sharing of opinions. He said the outcome of the amendment was not a surprise because they knew each other’s perspectives.

#### View Cones Motion

On July 10, 2024, Council voted to revise development guidelines, including removing protections for views (“View Cones”). The Complaint alleges that Councillors Bligh, Dominato, Klassen, Kirby-Yung, Montague, and Zhou attended meetings with two different developers on March 10, 2023, and on September 7, 2023, and that those meetings concerned the View Cones Motion.

Councillor Bligh said she attended a gathering held on March 10, 2023, where she received information about View Cones. She said they received information and could ask questions and “that was that.” She compared it to a staff briefing. She did not remember who was there and could not remember specifics of the gathering.

Councillor Bligh took issue with changing View Cones and recalled that she amended the View Cones Motion on the Council room floor. She said she worked directly with Councillor Meiszner, and thought she probably told him about her amendment, and she might have shared it with the Complainant.

Councillor Dominato recalled discussions with ABC Council Members about View Cones and said it was possible that quorum was present. She does not recall if draft amendments were circulated.

Councillor Meiszner said there were meetings with staff and a few stakeholders about View Cones. He said he could not recall if any of these had quorum. He added there were two meetings about View Cones with developers. As the View Cones Motion was his, he noted he had meetings with ABC political staff. While he did not specifically remember an ABC caucus meeting discussing the View Cones Motion, he said it would have been on an agenda for one of the meetings and as the View Cones Motion was written by the Mayor’s Office, he could not recall if it was sent out to ABC Council Members before it was submitted.

Councillor Zhou said he attended two meetings with developers, but no decisions were made in advance of Council meetings.

Councillor Kirby-Yung said she was invited to meetings with developers on March 10, 2023, and September 7, 2023, but she did not attend either.

## Issues

I must decide whether the Respondents breached section 2f) of the Code of Conduct By-law when they met and discussed City business outside of open Council meetings with respect to the following:

1. Renter Office Amendment;
2. Charter Report;
3. Moberly Park Funding;
4. Park Board Motion;
5. Capital Plan Mid-Term Amendments;
6. Natural Gas Amendment; and
7. View Cones Motion.

I must also decide whether, more generally, the Respondents agreed to and/or participated in a plan to make decisions outside of open Council meetings by:

- Participating in ABC caucus meetings and not including these meetings in the City calendar; or
- Voting along “party lines” in compliance with an ABC Council Member voting protocol.

## Findings of Fact

There was limited disagreement about the relevant events. The Complaint is largely about different views about the open meeting requirement in section 165.1 of the *Vancouver Charter*.

I make the following findings of fact based on the evidence reviewed above:

1. While the Complainant suspected for some time that the Respondents may have been caucusing in private in breach of the open meeting requirement, it was not until late July and early August 2024 that he had information from a credible and knowledgeable source and had read PBIC-002. These gave him a reasonable belief that the Respondents had breached the Code of Conduct By-law because they had not complied with the open meeting requirement.
2. There was a Signal chat group with all ABC Council Members, which represented a quorum of Council. Staff from the Mayor’s Office were also on this chat group. The Signal chat group was active outside of Council meetings and was used during Council meetings. There was discussion about City business, including motions and amendments, that was either coming to Council or was before the Respondents in real-time at Council meetings.
3. The Respondents regularly communicated in quorum about City business over email. City business was discussed, including motions and amendments on upcoming Council and committee meetings. Proposed motions and amendments about City business that might not be on a Council or committee meeting agenda, but which one or more of the Respondents wanted to bring forward, were also discussed.
4. All ABC Council Members were invited to regular ABC caucus meetings held in the Mayor’s Office. There would have been a quorum of Council if six ABC Council Members attended a meeting. Attendance was expected but not required, and ABC Council Members might not have attended because of conflicting meetings in their schedules.
5. The Respondents, individually, did not keep reliable records of when they attended ABC caucus meetings. No attendance was taken or recorded at the meetings and no minutes were prepared. Agendas were generally prepared by the Mayor’s Office staff, but items could be added to the agenda as late as the meeting itself.

6. City business was routinely discussed, including motions and amendments on upcoming Council and committee meetings, at ABC caucus meetings. As evidenced in the emails, ABC Council Members shared their views on Council motions and amendments. They shared draft language, sometimes discussed these drafts, and in some instances, the motions or amendments evolved through these communications with quorum present.
7. There was no evidence provided to me of formal votes using Signal, cell phones, email, or at ABC caucus meetings.
8. There was a proposed voting protocol for ABC Council Members. The evidence was that, although written in prescriptive terms, in practice it was no more than a guideline, and not strictly adhered to by ABC Council Members.
9. Staff briefings were different from discussions the Respondents had about City business with each other and with the Mayor's Office staff using Signal, cell phones, and email, and in ABC caucus meetings. Staff briefings were a one-way download of information, and did not involve Council Members sharing their opinions or discussing them with each other and staff. There was no discussion, including about upcoming motions (and amendments to them).
10. The following occurred in relation to the seven specific instances the Complaint said were examples of the Respondents violating the open meeting requirement.

Instance 1. Renter Office Amendment: Councillor Zhou sought feedback from the other Respondents. I have no evidence that Councillor Zhou received feedback on his proposed amendments or made changes to the proposed amendments as the result of feedback.

Instance 2. Charter Report: From February 10 to 12, 2023, the Mayor's Office staff circulated potential amendments to the Charter Report to the Respondents and Councillor Dominato suggested some changes. In the February 13-14 Email Chain, Councillors Bligh, Dominato, Kirby-Yung, Klassen, and Montague discussed drafts of the amendments with all ABC Council Members, including Mayor Sim for a portion, and edits were made in response before the amendments were brought to Council. The proposed amendment to 'A' discussed in the email chain was substantively what was put forward and the feedback about simplifying 'B' was incorporated into the amendment. What was ultimately moved in Council chambers as an amendment and adopted by Council was built upon an evolution in decision making that occurred in the Respondents' communications that took place via email with quorum present.

Instance 3. Moberly Park Funding: On July 24, 2023, the Mayor's Office sent draft language to the Respondents, except Mayor Sim, on an amendment to a Council item that would result in the Moberly Park Funding. The July 24-26 Email Chain showed Councillors

Kirby-Yung and Montague discussing the content of proposed amendments and a change to the language based on the former's input. Councillor Montague sent an email in which he appeared to be asking for clarification about how the Respondents had decided to vote on the item. The email chain concluded with the Mayor's Office staff providing the "latest version" of draft amendment language, including a first amendment and an amendment to the amendment. On review of the information from the Respondents about their discussions, the July 24-26 Email Chain, and the minutes of the July 26 Committee Meeting, I find that the amendments moved by Councillors Kirby-Yung and Klassen at the July 26 Committee Meeting were substantively the same as the "latest version" provided in the July 24-26 Email Chain. What was ultimately moved in Council chambers as an amendment and adopted by Council was built upon an evolution in decision making that occurred in the ABC Councillors' communications that took place via email with quorum present.

- Instance 4. Park Board Motion: Before introducing the motion at Council, Mayor Sim shared it with ABC Council Members and kept them informed about it. He invited ABC Council Members to his press conference announcing the Park Board Motion.
- Instance 5. Capital Plan Mid-Term Amendments: The Mayor's Office staff canvassed the Respondents, including through the Google Form and at the ABC caucus meeting on June 20, 2024, for input on how money could be allocated based on the Update. The Respondents discussed what they wanted to see funded and coordinated their amendments in the sense that they made each other aware of them before attending the Standing Committee meeting.
- Instance 6. Natural Gas Amendment: Councillor Montague wanted to reverse the City's ban on natural gas for heating and hot water in new construction. He brought proposed amendments to the Respondents via email and at ABC caucus meetings on June 27 and July 11, 2024, and there was likely quorum for the meeting held on July 11, 2024. He also spoke individually with councillors to build support for his amendments. The July 18, 2024 Email shows an evolution of the content of the Natural Gas Amendment.
- Instance 7. View Cones Motion: The Respondents discussed the View Cones Motion before the Council meeting at which it was decided. Some of the Respondents went to meetings with developers about View Cones. It was alleged that only six of the Respondents attended the meetings. As one of those Respondents, Councillor Kirby-Yung stated she did not attend either meeting; as such, I find that there was no quorum at the meetings.

11. The Respondents were aware of section 165.1 of the *Vancouver Charter* and the open meeting requirement, but they assumed that that if no final decision was made or formal vote taken on an issue and there was a subsequent public vote on it, then they were acting in compliance with section 165.1.
12. Four of the five Respondents in Respondent Group 1 repeated the same sentiment. Councillor Zhou said, “We need to keep open minded but not empty minded”; Mayor Sim recalled a phrase being used that “Mayor and Councillors always had to have an open mind concerning any issues being discussed in public Council meetings; however, they did not have to have an empty mind”; Councillor Kirby Yung said, “I come in not with an empty mind ... but an open one”; and Councillor Montague said, “My intent isn’t to break any rules ... it’s to come into Council with ... an open mind and not an empty one.”

## Analysis

I now turn to the three substantive issues raised by the Respondents in their submissions to me:

1. That the open meeting requirements do not apply to political caucuses;
2. The substance of open meeting requirement; and
3. Was the open meeting requirement breached?

### *The Open Meeting Requirement and Political Caucuses*

In PBIC-003, I determined that the open meeting requirement in the *Vancouver Charter* would be breached in instances when there was a quorum of decision makers who met and materially moved Park Board decisions forward outside of public view.

Respondent Group 1 said the test I applied in PBIC-003 was incorrect. They said I defined “meeting” similarly to how it was defined in Ontario’s *Municipal Act, 2001*, SO 2001, c 25, which defines “meeting” as a quorum of members where members discuss or otherwise deal with any matter in a way that materially advances municipal business or decision making. Respondent Group 1 said the *Vancouver Charter* only required a “meeting of the Council” to be open to the public and any other type of meeting was allowed to be private. They pointed out that, unlike in Ontario, neither “meeting” nor “meeting of Council” was defined in the *Vancouver Charter*.

Respondent Group 1 said I was wrong to rely on the Ontario legislation because Ontario Ombudsperson decisions that led to this definition were not binding in British Columbia and the Ontario definition arose in the context of a province where municipal political parties were not recognized. These Respondents said that in arriving at my definition of a “meeting,” I did not grapple with whether legislators meant section 165.1 of the *Vancouver Charter* to apply to party caucus meetings.



Respondent Group 1 argued I should have considered how the open meeting requirement had been interpreted in Quebec, as it was the only other province to recognise municipal political parties and the scope of meetings to which the open meeting requirement applied was much narrower than in Ontario.

The *Cities and Towns Act*, CQLR, c C-19, states “sittings of the council” must be public (section 322) and defines a “sitting” as either a regular sitting or a special sitting of the council (section 6(5)). Consistent with this narrower definition, Quebec courts have found that private caucuses and informal meetings of council are permitted (*Iredale c. Mont-Tremblant (Ville de)*, [2011] JQ No 1669 (QCCS) (“*Iredale*”); *Perez c. Dollard-des-Ormeaux (Ville de)*, 2014 QCCA 76 (“*Perez*”); *Ville de Vaudreuil-Dorion c. Municipalité régionale de comté de Vaudreuil-Soulanges*, 2023 QCCS 2102 (“*Ville de Vaudreuil-Dorion*”); *Le Lay c. Municipalité des Îles-de-la-Madeleine*, 2024 QCCS 3480 (“*Le Lay*”); *Dumesnil c. St-Sulpice (Corporation municipale de la Paroisse)*, [1984] JQ No 861 (QCCS), appeal dismissed for late filing of notice of appeal, [1984] RDJ 107 (“*Dumesnil*”).

According to Respondent Group 1, if the Legislature of British Columbia wanted to restrict the ability of elector organizations (including a successful one that elects a majority of Council Members) to caucus in private, it could have defined “meetings of the Council” to include such party caucus meetings, but it chose not to do so.

They also submitted that the statutory interpretation principles of implied exclusion and internal coherence meant that because the *Vancouver Charter* expressly allowed for political parties but did not refer to them in a definition of “meetings of the Council,” the Legislature of British Columbia intended to exclude party caucus meetings from this definition.

Respondent Group 2 stated that the open meeting requirement applied only to meetings held outside of Council chambers to which all Council Members were invited and a quorum of Council Members attended; thus, the principle did not apply when members of a political caucus met.

Respondent Group 2 pointed out that the *Vancouver Charter* expressly allowed for political parties and contemplated their involvement in municipal affairs, and so the need for political parties to discuss political priorities and business was implied in the legislation. These Respondents said this should inform, and be reconciled with, the scope and content of the open meeting requirement.

Respondent Group 2 acknowledged that the case authorities did not address how to reconcile the open meeting requirement with a party caucus meeting, but said the following authorities supported their position that the open meeting requirement did not prevent political parties on Council from meeting (i.e., caucusing) to discuss City business: *London; Southam Inc. v Hamilton-Wentworth Regional Municipality* (1988), 66 O.R. (2d) 213 (CA) (“*Southam v Hamilton-Wentworth*”); *Southam Inc. v Ottawa (City) Council* (1991), 5 O.R. (3d) 726 (Div. Ct.) (“*Southam v Ottawa*”); and *Queen Elizabeth Annex (QEA) Parents’ Society v Vancouver School District No 39*, 2023 BCSC 2123 (“*Queen Elizabeth Annex*”). They

stated that allowing party caucus meetings respected an important part of the political process in Vancouver, accorded with the reasonable expectations of citizens, and did not undermine the concerns expressed by the authorities that arose when Council met as a whole outside of Council chambers to discuss and/or decide on Council business.

#### Findings: The Open Meeting Requirement and Political Caucuses

For the reasons below, I conclude that the open meeting requirement in section 165.1 of the *Vancouver Charter* is engaged in any instance when a quorum of Council Members is present and is considering City business in such a way as to move it materially forward in the overall spectrum of a City decision. This may capture instances when Council Members are attending ABC caucus meetings (or any other meeting of an “elector organization”), depending on who attends the meeting and what is discussed. It is the nature of the group and the nature of the discussion that are the key factors in determining if a gathering is a “meeting,” and not the label given to the meeting or the political affiliation of the attendees.

Elector organizations are permitted at the local government level in British Columbia and therefore the Legislature has contemplated the involvement of political parties in local government affairs. However, I do not accept the submissions made by both Respondent Groups that party caucus meetings are incapable of being considered as “meetings” to which the open meeting requirement applies.

Respondent Group 1’s submissions about what is permissible for a political caucus under the *Vancouver Charter* flow from an initial assertion that municipal governments are permitted to engage in debate and decision making behind closed doors unless it is specifically prohibited by statute. With respect, the opposite is true: local government boards and councils in British Columbia are required to conduct their business in public unless one of the exceptions to holding an open Council meeting is applicable. This is the case under both the Vancouver Charter (section 165.1(1)) and the Community Charter (section 89).

Respondent Group 1 further asserted that the Legislature of British Columbia intended that only a “meeting of the Council” was required to be held publicly and that any other type of meeting was permitted to occur privately. A review of other relevant provisions in the *Vancouver Charter* shows this is incorrect. In addition to the requirement for a “meeting of the Council” to be held publicly, so must the meetings of any commission, advisory body, or advisory committee established by Council under legislation, as well as the meetings of other local government bodies that exercise authority granted to them by legislation (including the Building Board of Appeal, the Board of Variance, and the Park Board): section 165.7 of the *Vancouver Charter*. These requirements show the breadth of the open meeting requirement, particularly since most advisory bodies established by Council do not exercise independent decision-making authority but discuss specified matters and make non-binding recommendations to Council. Nonetheless, the public is still entitled to observe these discussions and debates, subject to specified exceptions.

Respondent Group 1 also submitted that if the Legislature had intended to include “caucus meetings” within the definition of “meeting of Council,” it could have expressly chosen to do so. Respondent Group 1 relied on principles of statutory interpretation to argue that the Legislature intended to exclude party caucus meetings from the definition.

I find this submission to be without merit. The *Vancouver Charter* does not define “meeting” at all. It defines quorum and sets out a general requirement that meetings must be open to the public, including meetings of Council and any of its advisory bodies, committees, and other local government bodies. The definition of what constitutes a “meeting” comes from the case authorities, and as discussed, flows from the underlying policy rationale of imbuing municipal governments with a robust democratic legitimacy, which springs in part from a decision-making process that is transparent, accessible to the public, and mandated by law (*London*, at para 38). The mere inclusion of “elector organizations” in the *Vancouver Charter* (which notably is limited only to those Divisions in the Act dealing with elections and not to any of the Divisions addressing the powers of a Council), is not a sufficient basis to conclude that the Legislature of British Columbia intended to narrow the application of the open meeting requirement.

Moreover, there is a simple explanation for the fact that a meeting of an “elector organization” is not expressly listed as a meeting that is subject to section 165.1(1) of the *Vancouver Charter*: these organizations do not have or exercise any decision-making authority under the *Vancouver Charter*. Candidates for Council may belong to elector organizations, including after they are elected, but once elected, they exercise their authority under the *Vancouver Charter* as Council Members, not as members of an elector organization. It is also worth highlighting that the role of elected officials is not a hat that can be taken on and off. If a Council Member is fulfilling the powers, duties, or functions granted to them under the *Vancouver Charter* (such as discussing a recommendation in a staff report for an upcoming meeting), they are acting as a Council Member, not merely as a member of an elector organization.

Respondent Group 2 said it was reasonable for citizens to expect that members of an elector organization like ABC would meet privately as a political party to discuss municipal issues from the perspective of their political agenda. I agree. However, it is also reasonable for citizens to expect the same level of transparency and accessibility to the decision-making process of its municipal council, whether or not a majority of its members belong to an elector organization. To that end, members of ABC are entitled to come together as a group and discuss political ideas, party platforms, and policies. The party may hold meetings with or without members of Council who are also members of the party. However, if a quorum of Council attends an ABC meeting (whether titled a “caucus meeting” or otherwise) and discusses matters that form the basis of City business in such a way as to move them materially forward in the overall spectrum of a City decision, that “caucus meeting” is, in essence, a Council meeting. Such meetings are required to comply with the requirements of the *Vancouver Charter*.

The cases relied on by the Respondents do not change my analysis in this regard.

While I agree with Respondent Group 1 that decisions of the Ontario Ombudsperson are not binding, the policy rationale underpinning those decisions (which is the same rationale underpinning the Supreme Court of Canada's decision in the *London* case) is the same as the rationale for the open meeting requirement in British Columbia. As noted above, the mere fact that members of a municipal council might belong to the same elector organization does not, on its own, narrow the application or rationale of the open meeting requirement.

Respondent Group 1 pointed to the narrower definition of "meeting" in Quebec's municipal legislation (referred to as a "sitting"), as well as case law, which they said showed Quebec courts had consistently found that private caucuses and informal meetings of council were permitted.

With respect, Respondent Group 1's reliance on the Quebec legislation and case law is misplaced. I do not find the Quebec legislation or case law to be instructive on the application of the open meeting requirement in British Columbia.

The open meeting requirement in Quebec's *Cities and Towns Act* appears to be different in substance from section 165.1 of the *Vancouver Charter*. The only meetings that are required to be open to the public are regular or special "sittings" of the council (section 322). Councils can establish other committees, including committees that are comprised solely of council members (sections 70, 70.1), but these meetings do not have to be public. Further, unlike the *Vancouver Charter*, the *Cities and Towns Act* does not regulate or prohibit closed or *in camera* meetings, except indirectly by saying only resolutions and bylaws adopted at "sittings" of a council are valid and binding on a municipality. This was the issue addressed by the courts in the *Perez*, *Ville de Vaudreuil-Dorion*, and *Dumesnil* cases relied on by the Respondents.

Interestingly, although council members in Quebec can discuss and deliberate on municipal matters privately before voting on them in a public "sitting," the courts have acknowledged that council members are "undoubtedly exercising their functions" at these other meetings (*Houde v Benoit* [1943] BR 713, at p. 719, as cited by the court in *Dumesnil* at paras 31-33). This is similar to the point made above about Council Members fulfilling their functions as Council Members rather than merely as members of an elector organization when they are discussing City business.

I do not find the case law Respondent Group 2 said supported its position that the open meeting requirement did not prevent political parties as a subset of Council from meeting to discuss City business assisted their argument. I address these authorities below in my response to Respondent Group 2's submissions about the substance of the open meeting requirement.

In sum, the existence of municipal political parties in British Columbia does not narrow the scope or application of the open meeting requirement. Meetings of a political caucus can be found to breach the

open meeting requirement if a quorum of Council Members attend and move City business materially along the spectrum of decision making.

### *Substance of the Open Meeting Requirement*

Respondent Group 1 said the test I applied in PBIC-003 to determine whether ABC Park Board Commissioners had breached the open meeting requirement was wrong.

These Respondents submitted the correct test for the open meeting requirement was whether the public was deprived of observing a material part of the decision-making process (*Southam v Ottawa*) and, if this test was applied to the Complaint, it was not met.

Respondent Group 1 said that, other than in the Ontario Ombudsperson cases, the relevant case law showed that where council members—even after a private meeting—met publicly, invited submissions, considered the issues, kept an open mind, and then made a decision, the public was not deprived of observing a material part of the decision-making process (*Vanderkloet et al. v Leeds & Grenville County Board of Education*, 1985 CanLII 1976 (ONCA) at paras 33-35, leave to appeal refused, [1986] 1 SCR 1 xv; *Metchosin (District of) v Metchosin Board of Variance*, 1992 CanLII 499 (BC SC) at paras 30-32,36, aff'd 1993 CanLII 2882 (BC CA) ("*Metchosin Board of Variance*"); *Iredale* at paras 172-175; *Huron East (Municipality) v Avon Maitland District School Board*, [2002] OJ No 2697 (SCJ) at para 7; *374683 Canada Inc. v Parry Sound (Town)*, [2004] OJ No 5061 (SCJ) at para 66; *Queen Elizabeth Annex*, at paras 48, 140).

Respondent Group 1 understood that they were required to attend Council meetings with an "open mind" but not an "empty mind." They submitted that the above cases established that discussion, debate, and seeking / providing input on motions and amendments were not offside the open meeting requirement so long as the "heart" of the decision making was not removed from the public eye.

Respondent Group 1 further said that only when all Council Members met outside the public view and made decisions without accountability to the public would the open meeting requirement be breached (*Southam v Hamilton-Wentworth*; *Southam v Ottawa*; *London*; *City of Yellowknife Property Owners Assn. v. Yellowknife (City)*, [1998] NWTJ No 74 (SC)). They said the alleged breaches in the Complaint did not meet this standard.

Respondent Group 2 submitted that the authorities that consider the open meeting principle (*London*; *Southam v Hamilton-Wentworth*; *Southam v Ottawa*; and *Queen Elizabeth Annex*) typically identified the following three circumstances as indicating a breach of the requirement:

1. Council Members were invited to attend meetings outside of Council chambers to discuss and vote on issues before Council;
2. Meetings had formalities associated with Council meetings but not necessarily a vote; and

3. There was no debate at the subsequent Council meeting about the issues approved at the private meeting held before the public one.

Respondent Group 2 also said that even if a quorum of Council Members attended a meeting held outside of Council chambers to which all members were invited, the nature and content of the meeting must be such that the “meeting” violated the open meeting principle. These Respondents said the following factors militated strongly against my finding the ABC caucus meetings were “meetings”:

- The meetings were restricted to members of a political party;
- Attendance was voluntary, there were no minutes or records of attendance, and no procedural formalities observed; and
- No votes were called for or decisions made.

Respondent Group 2 acknowledged that if a political party held all seats on Council, the open meeting principle could apply to party caucus meetings, but they said it would still depend on the nature and content of the meetings. They also said that if a group of Council Members met before a meeting and agreed on how they would vote before a Council meeting, this would be improper fettering of their discretion and not an open meeting violation. Respondent Group 2 submitted that neither of these hypothetical circumstances was in play on the evidence in this case, but consideration of them assisted with the analysis of whether party caucus meetings could violate the open meeting principle.

#### Findings: Substance of the Open Meeting Requirement

The substance of the open meeting requirement is set out in *Southam v Ottawa*. The Ontario Divisional Court stated:

*... The key would appear to be whether the councillors are requested to attend (or do, in fact, attend without summons) a function at which matters which would ordinarily form the basis of Council's business are dealt with in such a way as to move them materially along the way in the overall spectrum of a Council decision. In other words, is the public being deprived of the opportunity to observe a material part of the decision-making process?*

In *Queen Elizabeth Annex*, the British Columbia Supreme Court (the “BCSC”) accepted the test in *Southam v Ottawa* (at para 46).

In PBIC-003, I concluded that the key consideration in determining whether a “meeting” had occurred was whether local government elected officials had attended a function (the nature of the group) at which local government business was dealt with in such a way as to move it materially forward in the overall spectrum of a decision (the nature of the discussion). I rely on that conclusion here and consider it to be consistent with the relevant case law, including *Southam v Ottawa*. If Council business has been materially

advanced outside of public view, or put another way, dealt with in such a way as to move it materially along the way in the overall spectrum of a Council decision, then the public has not had the chance to see a material part of the decision-making process.

The reason I conclude quorum is required for this to occur is because without quorum, no municipal decision can be made. Quorum is fundamental to municipal decision making and therefore is required for a decision-making process held in private to be material.

I emphasized in PBIC-003 that business could be materially advanced by having a quorum of Council engage in conduct that fell short of a vote or purported decision on a matter, stating that “discussions, debates, or decisions intended to lead to specific outcomes or to persuade decision makers one way or another materially advances the business or decision-making process.”<sup>7</sup> I remain of this view.

In any given case, whether a particular discussion, debate, or exchange of opinions amongst Council Members “materially advances” the decision making of Council will depend on a number of factors, including whether the subject matter pertains to City business and, if it does, whether such business is the subject of a recent or impending Council decision. I agree with the analysis of the Ontario Ombudsperson in *Casselman (Village of) (Re)*, 2018 ONOMBUD 11, that the mere receipt or exchange of information is unlikely to “materially advance” business or decision making, as long as there is no attempt to discuss or debate information that is or will be before a council (at para 31). The distinction between mere receipt of information and other conduct is also emphasized in IC Bulletin 2025-01 about staff briefings.

Respondent Group 1 suggested that conduct such as discussing, debating, and seeking or providing input on motions did not fall offside the open meeting requirement, so long as the “heart of the decision” was not removed from the public eye. Other than referencing case law where the open meeting requirement was not found to have been breached, they did not explain what they mean by the “heart” of the decision-making process. However, by suggesting that privately discussing, debating, and seeking or providing input on motions is permissible, one interpretation of their argument is that the “heart” of the matter is limited to a vote or formal outcome. I note that Respondent Group 2 also referred to the lack of vote or formal decisions in ABC caucus meetings as a factor that pointed away from a breach of the open meeting requirement.

A vote may be indicative of a “meeting,” but there is nothing in the *Southam v Ottawa* decision or any of the other cases relied on by the Respondents (other than the Quebec cases, which are distinguishable) that supports the proposition that the only “material” part of a Council decision-making process is the

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<sup>7</sup> Hamilton (City of)(Re), 2019 ONOMBUD 7 at para. 69; Southgate (Township of)(Re), 2020 ONOMBUD 7; Casselman (Municipality of) (Re), 2024 ONOMBUD 1 at para. 34.



vote or formal outcome. I have addressed *Queen Elizabeth Annex* below, but note that one reason the BCSC in that case found the public had not been deprived of an opportunity to observe a material part of the decision-making process was because the trustees had not discussed or debated the matter that was the subject of an upcoming meeting (the school closure). In other words, the analysis about what the public had or had not been deprived of was not limited solely to a consideration of whether the trustees had made a decision in private. The BCSC's analysis supports the conclusion that discussions and debates are also a material component of the decision-making process.

As noted, Respondent Group 1 also said the relevant case law showed that where Council Members—even after a private meeting—met publicly, invited submissions, considered the issues, kept an open mind, and then made a decision, the public was not deprived of observing a material part of the decision-making process. They said only where all Council Members met outside the public view and made decisions without accountability to the public would the conduct be offside the open meeting requirement.

As I did in PBIC-003, I reject the position that if there is a subsequent public and formal vote, no breach of the open meeting requirement can be found. If City business is discussed in private and is materially advanced, the public is deprived of the opportunity to observe this decision-making work. A subsequent public vote on the issue does not change the fact that Council decision making was materially moved forward outside of a public meeting. The practice of coming to decisions in private only to vote formally in public was denounced by the Supreme Court of Canada in *London*.

Moreover, I find this aspect of Respondent Group 1's argument conflates the open meeting requirement with certain procedural fairness principles, including the right to be heard and the rule against bias. The matters before me do not concern Council decisions that first required statutory public hearings and an opportunity for the public to be heard. Nor do they concern instances when Council Members were acting in an adjudicative capacity and thus had to be free from a reasonable apprehension of bias (as in the *Metchosin Board of Variance* case relied on by these Respondents). Council Members can come to meetings with open minds and having met certain procedural fairness obligations but still be in breach of the open meeting requirement. The concepts and corresponding legal tests are distinct. If I accepted this conflation of the need to be free from bias in decision-making and the open meeting requirement, it would result in an unjustified narrowing of the latter. The requirement does not just provide for open government, but it also allows the public to see that municipal decision-making is transparent. Focusing solely on the subjective mindset of individual Council Members would disregard the public's perception of an open government. In other words, justice must not just be done, but it must also be seen to be done.

Respondent Group 2 argued that the open meeting principle applied only to meetings held outside of Council chambers to which all Council Members were invited and a quorum of Council Members attended.

I do not agree that the cases establish that a pre-requisite to a finding of an unlawful meeting is that all of Council has been invited to attend the gathering. The facts in both *Southam* cases relied on by Respondent Group 2 involved gatherings to which all of Council had been invited, but in *London*, the Supreme Court of Canada found that a closed meeting of the council planning committee (which was only a subset of council) also violated the open meeting requirement. Respondent Group 2 did not offer any rationale for why a meeting to which all Council Members were invited but not all attended was subject to the open meeting requirement, but a meeting to which some members were invited, attended, and formed a quorum was not. This would prioritize the form of the gathering over the substance of what occurs at it, which is at odds with the policy rationale for the open meeting requirement. It would also enable a quorum of Council (whether they are members of the same “elector organization” or not) to permissibly gather and move business forward out of public view simply by ensuring they do not invite every member of Council to attend or by omitting other procedural formalities, such as keeping minutes.

To the extent Respondent Group 2 relied on the *Queen Elizabeth Annex* case, it does not involve the three circumstances they said could be summarized from the case law and I disagree that it lends support to the broader propositions they advance about party caucus meetings, particularly in the context of the evidence before me.

In *Queen Elizabeth Annex*, the BCSC considered whether two “workshops” that were attended by a majority of school board trustees violated the open meeting requirement in the provincial *School Act*. The evidence established that the workshops only involved oral briefings of the trustees by third party consultants on the public consultation process for a proposed school closure. It is notable that the public consultation process itself was not the subject of any future meeting of the school board, only the school closure was. The evidence established that, before the workshops, the trustees received an email from the school board’s Deputy District Superintendent advising them that discussion at the workshop would be limited to the public engagement process and that the proposed closure should not be discussed as any discussion should occur in public at the upcoming meeting.

The BCSC ultimately concluded that the meetings were permissible as the public had not been deprived of an opportunity to observe a material part of the decision-making process. Material to the BCSC’s conclusion were the findings that no decisions were made at the workshops, and the trustees did not discuss or debate the school closure at all. The workshops were a way of keeping the school board informed about the public consultation process but were not material to the substance of the decision the school board ultimately considered. In other words, the BCSC concluded that something akin to a staff briefing was permissible (and this decision as affirmed by the British Columbia Court of Appeal: 2025 BCCA 160). I also found City staff briefings permissible, provided they stayed within certain parameters (IC Bulletin 2025-01). *Queen Elizabeth Annex* does not support the proposition that a quorum of Council

Members who belong to the same political party can attend private caucus meetings, and discuss and debate matters that are to be the subject of a vote at an upcoming Council meeting.

With respect to Respondent Group 2's argument that if a group of Council Members meet before a meeting and agree on how they will vote before a Council meeting, this would be improper fettering of their discretion and not an open meeting violation, there may well be an issue about improper fettering of discretion, but this does not preclude my finding non-compliance with the open meeting requirement. The same facts can give rise to different breaches, illegalities, or causes of action. Further, as set out above, the open meeting requirement can be breached in instances when Council Members engage in conduct short of agreeing how they will vote.

### *Was the Open Meeting Requirement Breached?*

In their final submissions, both Respondent Groups argued that based on the evidence, the Complaint should be dismissed. They said the facts did not support a finding of a breach, even if I applied my interpretation of the open meeting requirement as articulated in PBIC-003.

#### Respondent Group 1

Respondent Group 1 said that even accepting the test was whether Council business or decision making was materially advanced, this did not occur for any of the alleged instances because there was no quorum and/or the facts did not support a finding that the business or decision making of Council was materially advanced.

Respondent Group 1 said drafting and revising wording for proposed amendments before Council meetings might potentially advance City business or Council decision making, but did not meet the high threshold of materially advancing that business or decision making; rather, it promoted the efficiency of Council.

### *Electronic Communications and ABC Caucus Meetings Generally*

With respect to their use of Signal and email generally, Respondent Group 1 said the evidence did not establish that communications generally advanced City business or Council decision making in a material way. They said these were informal discussions such as progress on platform commitments, motion ideas, and dialogue during Council meetings, including when breaks would occur and comments on speakers. They stated there was no evidence of votes being taken or consensus being reached on how they would vote on motions, and further wording changes were often made, and they did not always vote in alignment.

As for the ABC caucus meetings generally, Respondent Group 1 said the evidence did not establish that there was quorum at any given meeting, including those where the seven alleged specific instances were

discussed, or that these meetings materially advanced City business or Council decision making. They said they were merely twice-a-week informal caucus meetings that provided a chance to connect, talk about team issues, move forward with ABC-related platform items, and discuss upcoming reports, amendments, and motions. They noted no minutes were taken. Importantly, unlike with the Park Board investigation (see PBIC-003), they said there was no evidence showing that ABC Council Members made any decisions, voted on decisions, or came to a consensus on how they would vote; to the contrary, the evidence was that ABC Council Members did not always vote in alignment and understood they needed to keep an open mind.

### *The Seven Specific Instances Alleged in the Complaint*

For all seven specific instances alleged in the Complaint, Respondent Group 1 said the evidence did not establish that there was quorum or that they materially advanced the issues outside of public view. They stated the evidence showed that Council voted on each matter in public Council meetings only after hearing from speakers and/or City staff, asking questions, and engaging in debate and discussion, and the Respondents did not all vote in the same way. Respondent Group 1 also noted the following:

1. Renter Office Amendment: While they received the content of the RO Amendment in advance of the Council meeting and commented on it, they did not make a decision before the public meeting.
2. Charter Report: The only consensus noted in the February 13-14, 2023 Email Chain is that the amendment “needs further work” and that Councillors Klassen and Dominato agreed to work with the Mayor’s Office staff to “firm up” the amended motion. Work outside the February 13-14, 2023 Email Chain to prepare the wording that was presented to Council and was done by only two Councillors, so was not a “meeting” because there was no quorum. There was also no evidence that there was quorum at the February 8, 2023 ABC caucus meeting where the issue was discussed.
3. Moberly Park Funding: In the July 24-26, 2023 Email Chain, various Councillors gave feedback, and the Mayor’s Office staff provided revised wording for the draft amendments. The Mayor’s Office produced the “latest version” of the draft amendment for clause C, without any follow-up from the Respondents that would suggest they had further feedback and agreed or disagreed with the revisions. Regarding Councillor Montague’s statement on July 24, 2023, about what the voting would be on amendment clauses A, D, and B, the other Respondents said they were unclear as to why he said “voting” and Councillor Montague said he did not remember the context in which he used this word. In any event, despite his email, at no time did the Respondents vote on the amendments, make any decision in relation to them, or come to a consensus on how they would vote in the July 24-26, 2023 Email Chain. The fact that two ABC Council Members did not vote in

support of clause D(i) and that the ultimate wording put forward at the public Council meeting was different from the last version on the July 24-26, 2023 Email Chain supports this conclusion.

4. Park Board Motion: Mayor Sim spoke to the other Respondents about this motion from a policy perspective and to answer questions about the existing structure and the potential timing of a change in governance. About his use of “we” in announcing the Park Board Motion at the press conference held on December 6, 2023, Mayor Sim said this was how he spoke to the public. The evidence about the voting protocol was that the Respondents did not believe they had to follow it and did not follow it on many occasions.
5. Capital Plan Mid-Term Amendments: Not all Respondents completed the Google Form, and the evidence did not establish there was quorum at any ABC caucus meeting where this was discussed. The June 26, 2024 Report to Council showed that the Respondents voted on the Capital Plan only after listening to presentations from staff and asking questions.
6. View Cones Motion: The evidence indicated the two meetings with developers involved receiving information and asking questions, not making decisions. There was no quorum at either of these meetings.
7. Natural Gas Amendment: None of the other Respondents replied to Councillor Montague’s June 27, 2024, proposed potential wording to amend the CEAP report and City bylaws to repeal the natural gas ban. There was little discussion in the July 18, 2024 Email and July 19, 2024 Email, and while there was dialogue at ABC caucus meetings and discussion, there were strong opinions and disagreement about the Natural Gas Amendment. Also, the evidence indicated there was no quorum at any ABC caucus meeting where the issue was discussed. The wording of the proposed amendments brought to the Council meeting was different from the draft wording in play on July 18 and 19, 2024, and two of the Respondents voted against the Natural Gas Amendment.

#### Respondent Group 2

Respondent Group 2 said they did not apply to the meetings in issue. They also addressed the recommendation I should make to Council if I found a breach of the Code of Conduct By-law.

With respect to ABC caucus meetings, Respondent Group 2 said there was no proof that there was ever quorum, and, unlike the evidence in PBIC-003, no decisions were made. They noted these meetings were functionally equivalent to staff briefings and at the “non-meeting” end of the continuum.

Respondent Group 2 said the voting protocol was a working guideline that was never formally adopted; they did not feel bound to follow it and did not follow it. They said the evidence showed that Council voted on each matter in public Council meetings only after hearing from speakers and/or City staff, asking questions, and engaging in debate and discussion. They also pointed out that the Respondents did not all

vote in the same way. The Respondents' evidence was that they did not believe they violated the open meeting requirement by attending ABC caucus meetings or engaging in other caucus communications before Council meetings.

Respondent Group 2 said ABC caucus meetings were not intended to be, and were not, a substitute for a Council meeting. They said ABC caucus meetings were in the context of a political party and were intended to allow discussion of issues from the perspective of the party's political mandate. They noted there was no evidence that anything discussed impeded full discussion, debate, and decision making at Council meetings.

#### Findings: Applying the Open Meeting Requirement to the Facts

For the reasons below, I conclude that the Respondents breached the Code of Conduct By-law in two instances: the Charter Report and the Moberly Park Funding.

#### *The Voting Protocol*

I dismiss the Complaint as it relates to the voting protocol. At best, it was a wish by ABC to control the ABC Council Members' votes and impose a process for dialogue in some instances. I accept that the Respondents did not follow it.

#### *ABC Caucus Meetings Generally*

I have concerns about the ABC caucus meetings generally, particularly based on attendees acting on advice they said they received that unless a vote and/or final decision was reached, irrespective of what was discussed, including if they were collectively discussing, drafting, and evolving motions or amendments, their actions in a meeting with quorum would be compliant with the *Vancouver Charter*.

My concern is further supported by four of the Respondents giving the same statement about "open minds" not "empty minds," showing compliance with the open meeting requirement. As noted above, having an open mind in a vote is a different obligation to ensuring that the business of the City is conducted in public—and seen to be conducted in public—and not behind closed doors. The Respondents have incorrectly conflated these two obligations.

That said, I must assess the evidence on what I have been able to gather, not on my concerns regarding the Respondents' general practice and/or their expressed understanding of what is permissible or not.

The evidence about the existence of regular ABC caucus meetings, and the Respondents' use of the Signal chat group, texts, and emails to communicate is insufficient to establish a breach of the open meeting requirement and therefore of the Code of Conduct By-law. I cannot determine if quorum was present for a specific meeting. Further, I do not have the ability to review the communications on Signal and text.

I can evaluate only the evidence I have been able to obtain, which is the oral and documentary evidence, including emails, that I have summarized in this report. In this case, I find the email evidence to be a reliable source of the nature and content of certain discussions. In PBIC-003, I concluded that “meetings” required by section 165.1 of the *Vancouver Charter* included electronic meetings, as well as email and electronic messaging. I noted the reasoning of the British Columbia Ombudsperson’s 2012 special report, which states:

*Recognizing Electronic Meetings*

*The most important thing for local governments to recognize is that the same key factors determining whether an informal gathering is a meeting also apply to electronic communications. If members of a local government are, through electronic communications, advancing matters within their jurisdiction, all of the rules about open meetings apply. For example, the content of instant messaging and group emails between local government members, whether the emails are sent from or to public or private accounts, may unwittingly transition from topics that do not need to be discussed in an open meeting to matters that must be discussed in an open meeting. Local governments need to be conscious that all meetings of council members, not simply those that take place in an official setting, are subject to the open meeting requirements.*

Although both Respondent Group 1 and Respondent Group 2 took issue with my interpretation of the opening meeting requirement, neither disputed my determination that “meetings” included electronic meetings, including email.

I turn now to the seven specific Council motions and amendments raised in the Complaint.

*Renter Office Amendment*

Based on the evidence I have been able to obtain, I dismiss this allegation. Councillor Zhou sought feedback from the other Respondents on his RO Amendment but there is no evidence that he received feedback or made changes to the RO Amendment as the result of feedback or that the Respondents otherwise discussed and worked on the RO Amendment in a way that materially advanced it along the overall spectrum of a Council decision.

*Charter Report*

I find a breach of the open meeting requirement in relation to the Charter Report. I am satisfied that all Respondents were part of an email chain in which decision making about City business was materially moved along the spectrum of a decision.

The February 10-12, 2023 Email Chain and the February 13-14, 2023 Email Chain have a quorum of Council and show work to continually change and then finalize amendments relating to the Charter Report. The wording of the amendment that was ultimately moved and adopted by Council at the Standing Committee of Council on Policy and Strategic Priorities meeting on February 15, 2023, reflected the evolution of the



Respondents' decision making shown in the email chains. In this case, I find that their communications materially advanced City business along the overall spectrum of a Council decision.

The fact that some ABC Council Members did not add their voices to the email chains is irrelevant. If a quorum was on the email chains, and in those communications the business of the City was materially advanced, the open meeting requirement was breached. Nothing in the jurisprudence supports a conclusion that each person present must contribute something to the discussion to move the matter along. Their presence establishes quorum. The fact that they do not add their voice to the dialogue is not a consideration. If a quorum of ABC Council Members had met in person and materially advanced a motion or amendment, but not every member had spoken at the meeting, it would still be a breach.

In any event, the language in the emails supports an inference of broad participation by the Respondents. For example, on February 14, 2023, Councillor Bligh said, "Who is taking the lead and how are we all feeling about the language?" Given the distribution list, "we" was a reference to the ABC Council Members who were on the thread. Later that same day, Councillor Kirby-Yung said, "Seems consensus it [*sic*] that it needs further work..." Consensus implicates the ABC Council Members on the thread.

Later on February 14, 2023, Councillor Bligh asked Councillor Klassen if he was willing to lead on the amendments, possibly with "LD," and work with the Director of Legislative Affairs to clear up the language in the second amendment. Councillor Klassen then replied in the February 14-16, 2023 Email Chain that he would work with the Director of Legislative Affairs to firm up an amended motion. All ABC Council Members were on this email chain. Quorum was met, and remained, regardless of whether each person present added to the discussion by email.

#### *Moberly Park Funding*

I also find a breach of the open meeting requirement in relation to the Moberly Park Funding. I find that seven Respondents participated in a group email chain in which decision making about City business was materially moved along the spectrum of a decision. Mayor Sim was not on this email chain.

On July 24, 2023, the Mayor's Office sent draft language to the Respondents on an amendment for the Moberly Park Funding. The July 24-26 Email Chain with all Respondents, except Mayor Sim, shows Councillors Kirby-Yung and Montague commenting on the content of proposed amendments and a change to the language based on the former's input. Councillor Montague appears to be asking for clarification about how the Respondents had decided to vote on the item.

The July 24-26 Email Chain concludes with the Mayor's Office staff providing the "latest version" of draft amendment language, which was substantively the same as the amendments later moved by Councillors Kirby-Yung and Klassen at the July 26 Committee Meeting.

As with the Charter Report, I find there is sufficient evidence to find a breach.

With a quorum of Council Members, seven Respondents discussed an upcoming amendment about the Moberly Park Funding in the July 24-26 Email Chain. Various Respondents commented on draft language and these comments were substantively incorporated into the amendment presented at the July 26 Meeting and approved by the Respondents. These circumstances reasonably support a finding that the public was deprived of an opportunity to observe a material part of Council’s decision-making process.

In addition to this, the July 24, 2023 Email indicates that there were further discussions outside of the July 24-26 Email Chain that materially moved the Respondents towards a decision on the Moberly Park Funding. Councillor Montague was asking for clarification about what the Respondents had decided with respect to the amendments. There appears to have been consensus on presenting and voting for ‘A’ and ‘D’ (as amended). With respect to amendment ‘B,’ Councillor Montague asked whether the Respondents were going to vote it down or vote in favour. This implies that there was also going to be consensus on amendment ‘B.’ Respondent Group 1 admitted in final submissions that work on motions and amendments occurred outside of email. Councillor Bligh acknowledged that Councillor Montague’s comments crossed a line and raised concerns, and Councillor Dominato read Councillor Montague’s comment as “seeking alignment or consensus.”

I also note Councillor Klassen’s evidence that in discussions about motions and amendments, ABC Council Members tried to get a stronger sense of what might happen with amendments and understand if they had a baseline of support. Councillor Klassen said if an ABC Council Member brought a motion, “you want to make sure [you have] the number of votes you need to make sure it passes.”

What was ultimately passed reflected the discussions and drafts shared in the July 24-26 Email Chain, and I have found a breach on that basis. What was ultimately adopted does not reflect what Councillor Montague referenced in his communication. However, I note that the rejection of ideas, options, and proposed language through discussion with quorum may equally be an example of discussions that materially advance City business along the overall spectrum of a Council decision—rejecting one idea or draft and taking it off the table, so to speak, is equally a part of decision making as is adopting an idea or draft.

#### *Park Board Motion*

I dismiss this allegation. The only evidence is that before introducing the Park Board Motion at Council, Mayor Sim shared it with ABC Council Members, kept them informed about it, and organized a press conference that some Respondents attended. The evidence does not support a conclusion that a quorum of Council Members materially advanced the motion along the overall spectrum of a Council decision.

#### *Capital Plan Mid-Term Amendments*

I dismiss this allegation. I was unable to review the completed Google Form and had inconsistent evidence about what was known by each Respondent before the public meeting. Based on the YouTube video of

this meeting, and the evidence, including, in particular, the evidence of Councillor Dominato, I am concerned there was coordination about priorities and allocation of funds. On balance, though, there is insufficient evidence to establish that this was done in breach of the open meeting requirement.

#### *Natural Gas Amendment*

I dismiss this allegation. While the email communications indicate some evolution of the content of the Natural Gas Amendment, the evidence does not support a conclusion that a quorum of ABC Council Members decided, in advance of the public meeting, the substance of the amendment or otherwise materially moved it along.

#### *View Cones Motion*

I dismiss this allegation. While some of the Respondents went to meetings with developers and discussed the View Cones Motion before the Council meeting where it was decided, there was no quorum during the meetings with developers and I cannot on the evidence determine if there was quorum or any other discussion among ABC Council Members or what was discussed.

#### Conclusion: Breach of the Code of Conduct By-law

I conclude that the Respondents breached section 2f) of the Code of Conduct By-law when they failed to comply with the *Vancouver Charter's* open meeting requirement with respect to the Charter Report and the Moberly Park Funding.

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

##### *PART 2 – STANDARDS AND VALUES*

##### *2. A member must uphold the following standards and values: [...]*

*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; ...*

Section 2f) indicates that public confidence in City governance is reasonably undermined or potentially undermined when a Council Member does not respect or comply with federal and provincial laws, City bylaws, and City policies.

The open meeting requirement is specifically intended to increase public confidence in the integrity of local government by ensuring the open and transparent exercise of municipal power by requiring open debate and the opportunity for meaningful public input. The requirement aims to imbue municipal governments with a robust democratic legitimacy, which in addition to periodic elections, comes from a decision-making process that is transparent, accessible to the public, and mandated by law.

When a municipal government improperly acts with secrecy, the democratic legitimacy of its decision is undermined. A failure to comply with the *Vancouver Charter's* open meeting requirement in relation to the Charter Report and Moberly Park Funding thus reasonably undermined, or had the potential to undermine, public confidence in City governance.

## Recommendations

Respondent Group 1 made no submission on recommendations.

Respondent Group 2 submitted that if I were to find a breach of the Code of Conduct By-law because of a failure to comply with the open meeting requirement, then I should not recommend any sanction to Council. They submitted that such conduct was not intentional and at most amounted to an error in judgment.

Respondent Group 2 said my investigation report would be an opportunity for more clarity and guidance around the application of the requirement in relation to caucus meetings. They said that this, combined with the fact that the investigation had added materially to the demands and stress on the Respondents, meant the investigation report alone was sufficient to fulfil the interests of the public.

Further, they noted that PBIC-003 did not recommend a sanction, and they said the same reasoning should apply here.

I have concerns that the conduct of the Respondents was not inadvertent, nor unintentional. I say this for a number of reasons.

The Respondents all received training on the open meeting requirement and were given further guidance by my Office through IC Bulletin 2023-03, which the Former City Manager shared with them on two separate occasions. The message they received from City training and the bulletin was consistent: a number of factors are considered in determining if a gathering runs afoul of *Vancouver Charter* obligations for open meetings. They were not informed during their orientation nor advised by my Office that, as long as they did not hold a vote or make a final decision, and kept an open mind, regardless of what was discussed, or what business was conducted, they could meet with quorum and still comply with their open meeting obligations.

Further, it is difficult to reconcile the evidence that they felt they were at liberty to meet, and discuss, share opinions, and draft motions and amendments with quorum given that they also attended staff briefings. The evidence was clear that staff briefings were rigorously conducted to ensure compliance with the open meeting requirement.

I also note that, from the Councillor Zhou Email Chain, when City staff such as the Former City Manager or his Deputy were on email chains, the sender did not include all ABC Council Members, but a smaller subset that would not attract quorum. As noted, the Former City Manager had no record or recollection of involvement in email exchanges with a quorum of Council Members that included a discussion or debate on draft motions or amendments.

I am also concerned that the Respondents used communication tools that were not transparent. The evidence shows the Respondents moving their private discussions about upcoming meetings, motions, and amendments from City emails to personal ones in July 2023, despite the content of these communications being about City business. Further, they used Signal, an application that automatically deletes messages. The ABC caucus meetings were not consistently recorded in their public calendars. The Former City Manager had no knowledge that these regular meetings were occurring, although they happened at City Hall. There is no recording of who attended the meetings, nor were any notes produced.

Taking into account these circumstances, I do not find their actions were unintentional or inadvertent, but I agree that they amount to bad judgment.

Respondent Group 2 said my investigation report would be an opportunity for more clarity and guidance around the application of the requirement in relation to caucus meetings. I hope that is true. I note that after I issued PBIC-003, media statements, attributed to ABC Vancouver, indicated ABC elected officials might continue to caucus in private notwithstanding my findings (an example of this was in the news article written by Dan Fumano<sup>8</sup>). Citing these reports, the British Columbia Ombudsperson, in a letter to the Minister of Municipal Affairs dated March 26, 2025, wrote, “In my view, such statements are a disturbing repudiation of the rule of law ...”<sup>9</sup> If PBIC-003 was not taken as an opportunity for “clarity and guidance,” perhaps this report will be.

Eight members of Council are named in this Complaint and are found to be in breach of the Code of Conduct By-law with respect to the Charter Report. Seven are found to be in breach of the Code of Conduct By-law with respect to the Moberly Park Funding. Under the Code of Conduct By-law, Council determines whether to sanction its members, but no quorum can be reached in these unique circumstances.

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<sup>8</sup> Dan Fumano, “ABC Vancouver’s ‘repudiation of the rule of law’ shows gap in B.C.’s municipal oversight, Ombudsperson says,” *Vancouver Sun* (online: 27 March 2025), <https://vancouver.sun.com/opinion/columnists/abc-vancouver-repudiation-rule-law-shows-gap-ombudsperson>.

<sup>9</sup> British Columbia Ombudsperson, *Letter to the Honourable Ravi Kahlon, Minister of Housing and Municipal Affairs*, 26 March 2025, online: Office of the Ombudsperson [https://bcombudsperson.ca/news\\_release/two-recent-vancouver-municipal-integrity-reports-highlight-need-for-provincial-legislation-bc-ombudsperson-says/](https://bcombudsperson.ca/news_release/two-recent-vancouver-municipal-integrity-reports-highlight-need-for-provincial-legislation-bc-ombudsperson-says/).

The Code of Conduct By-law requires that this report be made available to the public. In my view, publication ensures both transparency and accountability to the public of the allegations, this process, my findings, and the law.

All of which is respectfully submitted.



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

Dated: August 22, 2025

\* Law Corporation