



OFFICE OF THE
INTEGRITY COMMISSIONER
FOR THE CITY OF VANCOUVER

Annual Report

Office of the Integrity Commissioner

The City of Vancouver

Council Code of Conduct By-law No. 12886

Reporting for the period January 1, 2022 to October 31, 2022

Submitted to Paul Mochrie, City Manager, City of Vancouver

Submitted by Lisa Southern, Integrity Commissioner, City of Vancouver

December 1, 2022

Message from Integrity Commissioner

On January 1, 2022, I was appointed by the City of Vancouver as its first Integrity Commissioner. It has been an honour to serve the City, the Council, and the community in this integral role of supporting Council and Advisory Board members to maintain a high level of integrity and accountability in their important work.

In its first year, the Office of the Integrity Commissioner (the “Office”) has focused on establishing and implementing systems for fulfilling its duties and responsibilities of advice, education, and complaints made under the [Code of Conduct By-law No. 12886](#) (the “Code of Conduct By-law”).

As is detailed in this report, we have successfully built a web page where both the public and Council can access information about the Code of Conduct By-law and publications that assist in explaining important principles that define appropriate communications, or conflicts of interest, under the Code of Conduct By-law. We also created tools to assist those who want to understand the process for filing and investigating a complaint, and templates for communications to those involved in the complaints process. In short, one of our critical first-year goals was to establish systems for the functioning of the Office that would be sustainable and consistent for the future. We have met this goal, and look forward to enhancing this work in the second year of our term.

At the same time, we were assessing and investigating complaints. In essence, we were flying the plane while building it. Over the course of our first year, we processed 37 complaints and published two formal investigative reports. We also produced four bulletins flowing from matters that we dismissed without requiring a formal investigation in order to provide precedent and educational resources to both the public and Council about matters under the Code of Conduct By-law.

The Office is not a one-person show. Quite the contrary, without the support of a team of dedicated colleagues, we would not have been able to accomplish the work we have in this inaugural year. I would like to thank the other members of the Office, especially Michael Oland, Deanna Brummitt, Emily Harrison, Sherri Corrie, Taralee Hallson, and Maia Tsurumi, for their collective hard work and extraordinary efforts to support the success of the Office.

In addition, I wish to thank the City’s Office of the City Clerk, Legal Services, the Civic Engagement and Communications team, the Digital Channels team, and the Chief Election Officer. I want to personally thank City Manager Paul Mochrie for his time and commitment to ensuring the Office had the support required to establish itself in its inaugural year. It has been a pleasure getting to know and working with these dedicated public servants.

In 2022, we had the unique experience of creating an Office that did not exist prior to our appointment. In addition, we had the honour of supporting Council and the City as it moved through an election cycle. In 2023, we look forward to continuing to improve and build on the systems and tools we created in 2022, and working with the newly elected Council to support common understandings of their distinctive roles and responsibilities as elected officials. As noted at the outset, the Office has a number of important functions. A key focus for 2023 with a newly formed Council will be providing advice and education to build capacity and understanding.

I look forward to continuing this important work into the second year of my term and thank all involved for their support and dedication to the success of the Office.

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

Lisa Southern, Integrity Commissioner

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Introduction

In response to a City of Vancouver-led review that recommended a new code of conduct be drafted for Council and Advisory Board members, the City of Vancouver established the Office of the Integrity Commissioner (the “Office”) on January 1, 2022, and appointed Lisa Southern, Barrister & Solicitor as the Integrity Commissioner. In its inaugural year, the Office has focused on both establishing the Office and fulfilling its duties and responsibilities as set out in [section 5.7 of the Code of Conduct By-Law No. 12886](#) (the “Code of Conduct By-law”). The duties can be summarized as follows:

1. **Advice to Elected Officials:** Provide advice and recommendations to City Council and Advisory Board members regarding their ethical obligations and responsibilities;
2. **Community Outreach:** Aid the public in their understanding of the [Code of Conduct By-law](#), the [Vancouver Charter](#), and the [Code of Conduct](#);
3. **Complaints:** Investigate City Council and Advisory Board members Code of Conduct By-law complaints;
4. **Budget:** Produce an annual budget; and
5. **Recommendations:** Produce an annual report, including recommendations for improvements to the Code of Conduct By-law.

The Annual Report provides the following:

- a) A summary of the steps taken to establish the Office;
- b) A summary of the activities undertaken by the Integrity Commissioner during the past year, organized by duty;
- c) A summary of trends and themes drawn from the complaints received and investigations conducted in the past year; and
- d) A list of recommendations for improvements to the Code of Conduct By-law and the functioning of the Office.

Establishment of the Office

We were tasked in early January 2022 to create the policies and procedures to support and action the five duties of the Office. As the Integrity Commissioner’s term is only two years, these policies and procedures needed to be sustainable (be usable over time), transferable (easily moved from one Office holder to the next), and reproduceable (the processes can be applied in the same way by a new Office). We successfully created and ‘bundled’ various tools that together form the structure of the Office. These include administrative timelines, internal policies, reporting spreadsheets, budget forms, procedure manuals, checklists, and templates.

Knowing that we would be tasked with both reporting out in this Annual Report and setting a budget for 2023, we tracked our statistics and categorized the services and tasks we performed throughout the year to assist in compiling the information at year end.

The Office team established a weekly meeting to track timelines for active files and assign work in an efficient and effective way. In addition, regular check-ins were established with the City Manager and Legal Services to collaborate on educational priorities and ways the Office could assist Council and the public.

Education and Advice to Elected Officials

We consider the advisory function critical. Throughout the year, we have been available to help elected officials proactively understand how the Code of Conduct By-law applies in practice through advice and education. Our focus has been on building capacity and common understandings with a view that this would minimize contraventions to the Code of Conduct By-law.

We delivered a series of educational presentations for Council initially focused on the duties and functions of the Office, the Code of Conduct By-law, and duty-specific topics. Presentations were as follows:

- January 10: Meet and Greet: The Duties of the Integrity Commissioner / Goals and Focus for 2022
- March 7: The New Code of Conduct By-law
- April 11: Election Dos and Don'ts
- July 11: Conduct with Staff

In addition to educational presentations, we were accessible to Council to provide guidance throughout the year on various matters, including conflicts of interest, election-related questions, and communications. We conducted periodic one-on-one meetings to discuss questions and issues with Council members, and these discussions assisted us in establishing our educational curriculum.

Educational materials were created to provide guidance on key issues. The first was on Council's duties, rights, and obligations specifically related to the election period. The second was for the new Council and was designed to assist in providing guidance on conflicts of interest.

Community Outreach

Our focus for community outreach was on building the [Office's web page](#), a key tool to provide information and act as a portal for members of the public to learn about the Code of Conduct By-law, the Office, and the complaint process.

Since its launch on January 4, 2022 up to October 31, 2022, there have been approximately 2,000 visits to the web page.

Building on the information we published in January 2022, we have actively populated the page with new information throughout the year, including providing additional information about the complaints process, updates that specifically relate to the election period and its impact on the processing of complaints, formal investigation reports, and bulletins.

Unlike when the Office publishes a formal investigation decision, which is mandatory under the Code of Conduct By-law, the Integrity Commissioner has discretion in determining whether to publish a bulletin.

One criterion we consider is whether it is in the public interest to provide a bulletin. As of the publishing of this Annual Report, a total of four bulletins were posted in 2022:

- 2022-01: [Hate crimes and hate speech complaint](#)
- 2022-02: [Freedom of speech and defamation](#)
- 2022-03: [Election activities and conflict of interest](#)
- 2022-04: [Freedom of speech and jurisdiction regarding multiple complaints](#)

As is noted below, some of the complaints made by members of the public were not within the jurisdiction of the Integrity Commissioner. We considered part of our role to provide guidance and assisted wherever possible with directing them to the proper channels to pursue their concerns or questions.

In addition to informing the public through the web page, we also provided information to the media in response to requests for information. The Office was referenced in or by the media throughout the year, including:

- *CBC Radio* segment titled “Surrey became first in the province to hire an ethics commissioner in 2019, and with quite some fanfare, but his departure wasn’t as glorious”
- *Pique News Magazine* article titled “[Vancouver mayor violated code of conduct with misleading Olympic Tweets: integrity commissioner](#)”
- *Vancouver Is Awesome* article titled “[Vancouver’s integrity commissioner receives 22 complaints about city council](#)”
- *Vancouver Sun* article titled “[Vancouver mayor breached policy with a series of inaccurate tweets, says integrity commissioner](#)”
- *Vancouver Sun* article titled “[Vancouver board member reprimanded for calling former councillor ‘Witch of the Westside’](#)”

Other community outreach included meeting with our counterparts across Canada, the City’s Auditor General, the City’s Chief Equity Officer, and Councillors from other municipalities in B.C. who wanted to learn more about the role.

Complaints

A significant achievement in our first year was the establishment of the administrative process for receiving and addressing complaints. The Office approached this from two fronts: 1) how to file a complaint (the process is explained on the [Integrity Commissioner’s web page](#) under ‘Filing a Complaint’ to help inform the public and improve the accessibility of the complaint processes); and 2) what the Office does procedurally when a complaint is received, from conducting a preliminary assessment to proceeding with a complaint through an informal or a formal resolution (such as an investigation), and the submission and distribution of the results and recommendations, if applicable. Figure 1 provides a flow chart of the complaint process.

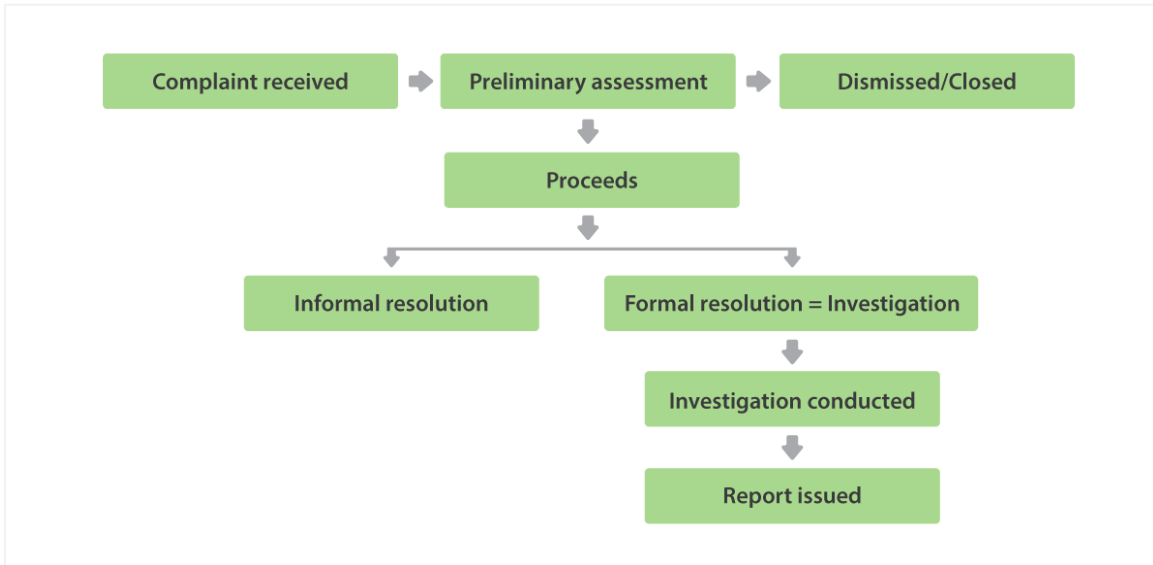


Figure 1: Complaint Process

Summary of Complaint Statistics

The Office received 37 complaints from January 1 to October 31, 2022. As illustrated in Figure 2, the majority of the complaints (27) were dismissed (73%). These complaints were dismissed for various reasons, as illustrated in Figure 3, namely because they were found not to be breaches of the Code of Conduct By-law after the preliminary assessment (13 or 48%), they did not relate to the Code of Conduct By-law (10 or 38%), or the Council member in question was not re-elected (four or 15%, as per s. 6.14 of the By-law). There were also seven complaints that were automatically rejected: three due to the election being called (as per s. 6.10 of the By-law, we cannot receive any complaints regarding a Council member seeking re-election during the election period) and four were duplicate complaints (as per s. 6.8 of the By-law).

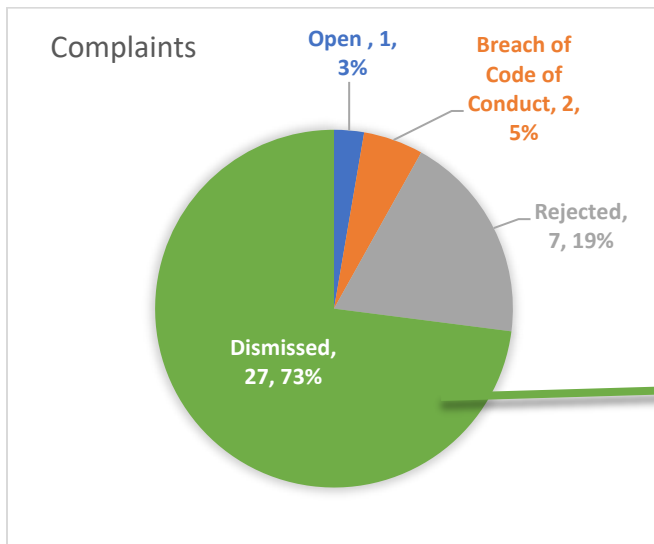


Figure 2: Complaints

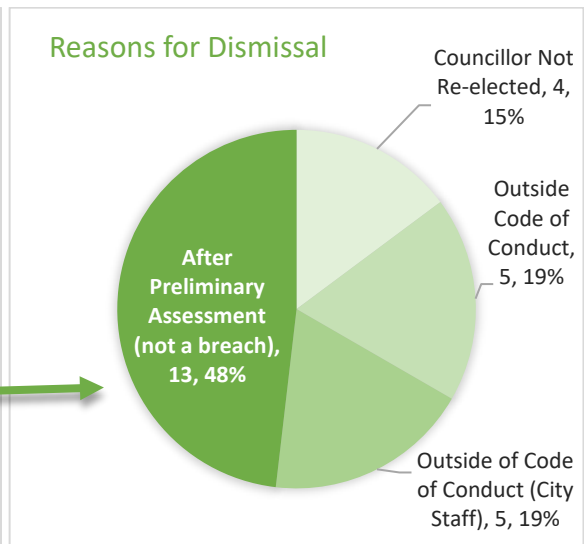


Figure 3: Reasons for Dismissal

As of the date of publishing this report, there were two complaints where a breach of the Code of Conduct By-law was found. As is required, formal investigation reports for these complaints were published on the web page:

- July 5, 2022: [Councillor Colleen Hardwick brought forward a complaint against Mayor Kennedy Stewart](#)
- October 19, 2022: [A member of the public brought forward a complaint against Kit Sauder](#)

The Integrity Commissioner is directed by the Code of Conduct By-law to complete the complaint process in a timely manner. As of the date of this report, in 2022, the duration in days ranged from 1 day to 129 days, with an average length of 35 days. Files with lengthier time frames were first assessed for possible mediation, and then progressed to formal investigation.

Complaint Process Duration	Days
Shortest Duration	1
Longest Duration	129
Average Duration	35

Notably, as shown in Figure 4, the number of complaints received in the months directly prior to the election (held on October 15, 2022) increased significantly. Section 6.11 of the Code of Conduct By-law provides that “In the period 90 days prior to general voting day, the Integrity Commissioner *may* suspend any investigation underway until the day after the general voting day.” In 2022, this period ran from July 18, 2022 until October 16, 2022. We exercised our discretion to freeze five complaints between September 21 and September 29, 2022, given their proximity to the election itself, and out of concern that any action we took in response to these complaints could impact the election in an unintended way. Section 6.10 of the By-law also provides that “The Integrity Commissioner *must* reject a complaint received regarding a Council member seeking re-election in the period from the last day of the nomination period to the general voting date.” This period ran from September 9, 2022 until October 15, 2022. We rejected three complaints under section 6.10.

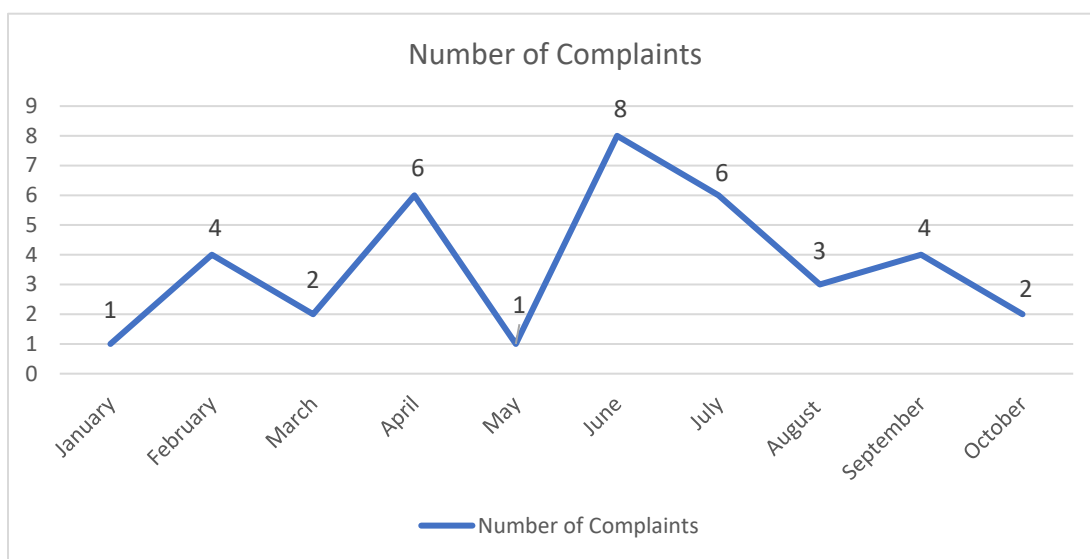


Figure 4: Complaints Received from January to October 2022

Prior to the election period, the most common complaints received by the Office within our jurisdiction were related to communications. Specifically, complaints were made that involved the question of what an elected official could and could not say under the Code of Conduct By-law. These complaints touched on important legal principles in the application of the Code of Conduct By-law.

- Political expression, including expressions captured by a municipal code of conduct, “should be interpreted in a manner consistent with the *Canadian Charter of Rights and Freedoms*, including the right of freedom of expression” (see *Re VanLeeuwen*, 2021 ONMIC 13). Free and open debate is guaranteed under the *Canadian Charter of Rights and Freedoms* and is subject to limitations only as can be justified in a free and democratic society.
- Matters of opinion can be accepted, challenged, or rejected by those who choose to engage with such opinions. A “Council member is entitled to communicate” opinions that fall within subject matter of “controversial and/or highly visible topics” (see *Monforts v Brown*, 2021 ONMIC 10).
- There are limits on expression that flow from the Code of Conduct By-law. For example, a Council or Advisory Board member will violate their obligations if they engage in hate speech, make discriminatory comments, or make inaccurate statements about another Council or Advisory Board member.
- “The role of a Council Member includes communicating with members of the public about local issues. This includes not just responding to residents but initiating communication with the public. In fact, the Courts have clearly stated that, as an elected representative of the public, a municipal councillor is entitled to take ‘an open leadership role’ on an issue. As part of the political process, a Council Member has every right to form views, to hold views, to express views and, while in office, to give effect to those views” (see *Monforts v Brown*, 2021 ONMIC 10).
- The nature of social media must be considered in interpreting whether a Twitter post amounts to a breach of the Code of Conduct By-law (see *Chan v Therrien*, 2021 ONMIC 6).

During the election, an issue that arose in several complaints referred to a Council member’s right to participate in a vote when they were running on a platform that related to that topic. Members of the public sought to have Council members recuse themselves, or be declared in a conflict of interest, on such matters. These concerns also touched on important legal principles in the application of the Code of Conduct By-law.

- “Elected officials are expected to have opinions about civic priorities and policies and to campaign on those positions. A candidate who receives campaign contributions from supporters of their positions and then carries out their promises when elected does not, without more, breach the conflict of interest provisions of the *Community Charter*. As the case authorities establish, electors have a democratic right to make campaign contributions to a candidate they believe will support policies or platforms they wish to see enacted or undertaken” (see *Allan v Froese*, 2021 BCSC 28).
- A member of a municipal council should not be disqualified by reason of bias (absent a conflict of interest) unless he or she has prejudged the matter to be decided to the extent of being no longer capable of persuasion (see *Old St. Boniface Residents Assn. Inc. v Winnipeg (City)*, [1990] 3 SCR 1170).

Budget Summary

The Office has an annual budget of \$200,000 for the 2022 calendar year.

As of October 31, 2022, costs for services were \$159,595 (excluding taxes). This total includes certain necessary start-up costs associated with establishing the Office, which began in December 2021, prior to the commencement of the term. These costs included creating the Integrity Commissioner web page content, developing administrative processes and policies, drafting templates, reviewing policy, developing the initial educational presentations, and conducting legal research.

In addition, costs attributed to research, review, and response to an increased number of complaints in the buildup to the election, and opportunities to provide topic-specific advice on elections, were unique to 2022.

We note that no fees were charged for the administrative support provided to the Office from Emily Harrison and Taralee Hallson (both Southern Butler Price LLP employees).

The breakdown of services delivered, and their relative costs, is illustrated in Figure 5.

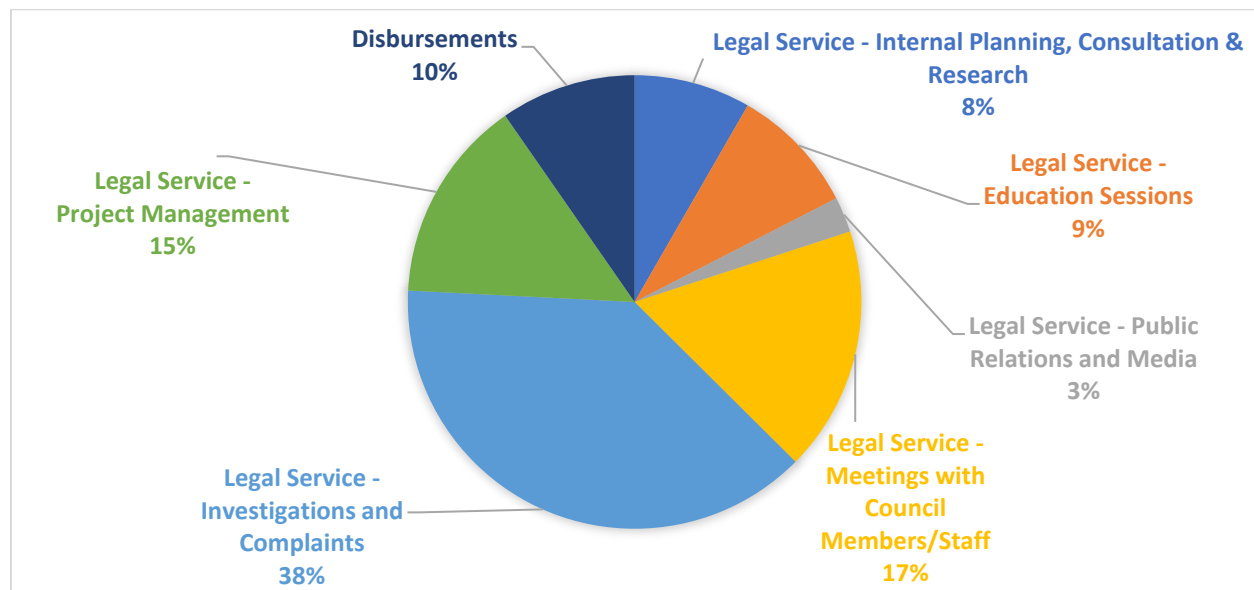


Figure 5: Cost Breakdown

2023 Budget Recommendations

We recommend that the same budget be applied for 2023. Although in 2023 there will be no start-up costs, we have established the continued improvement of the web page content to be a goal, including an online form portal that will assist complainants in providing important details of their complaint, and streamlining the response to complaints that are not within the jurisdiction of the Office.

In addition, we anticipate that the educational offerings in 2023 may be more robust, as will our services in providing advice and guidance, given that the Council is comprised of a majority of new members.

As noted, administrative support costs have not been included in the 2022 budget. With the complaints assessment and investigation processes developed and implemented, it is expected the day-to-day operations of the Office would be managed more at the administrative level, with the Office's legal team attending to complaints, education, research, public relations, and meetings. We will build administrative costs into the fee structure but anticipate that this will not require an increased budget and will be covered by reduced work at the lawyer level.

Recommendations

The Code of Conduct By-law requires that we provide advice or recommendations to improve the text or operation of this By-law. As we approach the end of our first year, reflecting on the practical application of the Code of Conduct By-law in action, we have identified the following recommendations that will improve the efficacy of the Code of Conduct By-law, and the knowledge and capacity of Council and Advisory Board members to make informed decisions on complex matters.

Many of our recommendations are fashioned out of our philosophy that education, advice, and shared understandings are proactive and preferable ways to approach this important work. While complaints and investigations are a necessary corollary to ensure accountability, consistency, and transparency, we remain of the view that the more that Council and Advisory Board members understand their obligations and duties and can seek guidance before taking action, the fewer breaches of the Code of Conduct By-law will arise.

Based on this understanding, we make the following recommendations:

- Integrity Commissioner educational presentations should be made mandatory. In the event that Council members fail to attend, this would be reported in the Annual Report.
- Advisory Board members must complete a minimum of 4 hours of compulsory education on key topics of conflicts of interest, the Code of Conduct and communications each year. If Advisory Board members fail to meet this requirement, this would be reported in the Annual Report.
- The Mayor and Councillor Expenses By-Law No. 11529 should be amended to allow the Mayor and Councillors to incur eligible expenses of up to \$5,000 per annum for the purpose of obtaining independent legal advice as to their duties and obligations under the Code of Conduct By-Law, the Financial Disclosure Act and the following provisions of the Vancouver Charter: conflict of interest (s.145.2-145.3, 145.6); inside/outside influence (s. 145.4-145.6); gifts (s. 145.7-145.8); disclosure of contracts (s.145.9); and use of insider information (s. 145.91). For clarity, legal expenses incurred with respect to an existing action, prosecution, inquiry or a proceeding would not be an eligible expense and would continue to be dealt with by way of a request for indemnification by Council in accordance with the Vancouver Charter.
- The Code of Conduct By-law should be clarified to explicitly allow the Integrity Commissioner to provide their opinion or make recommendations regarding indemnification of legal fees of a Council member.
- The B.C. Government has established foundational principles for responsible conduct for B.C.'s local governments. These include: integrity, accountability, respect, leadership and collaboration. The Code of Conduct By-law includes a number of obligations that support a collaborative environment,

such as the obligation to engage in respectful communications. To further highlight the importance of collaboration in the Code of Conduct By-law, we recommend the definition of “leadership in the public interest” be amended to add the italicized language: a Member must act *personally, and jointly with other Members*, in the best interests of the city as a whole, and without regard to the Member’s personal interests.

- There are parallel processes that could apply in the event that an employee of the City of Vancouver makes a complaint about the conduct of a Council member. The employee could bring the complaint under the City’s *Harassment and Discrimination Policy* or its *Respectful Workplace Policy* as well as the Code of Conduct By-law. This could result in an overlap of two investigations taking place involving the same subject matter. We suggest the following amendments be made to the Code of Conduct By-law:

Under Application, s. 1.6 should be amended to read: *This policy does not apply to city employees, except where a city employee makes a confidential request, or submits a complaint, against a Council Member or Advisory Board Member alleging a breach of this By-law. For clarity, all Complaints by city employees against a Council Member or Advisory Board Member alleging a breach of this By-law will be subject to the complaint and resolution procedures set out in Part 6 of this By-law.*

Under Adjudication and Reporting, add a new s. 6.30(e): *the Integrity Commissioner must disclose the notice to the City Manager, where the complaint is made by a city employee and the subject of the complaint may be subject to City employment policies or applicable employment related legislation, including the Human Rights Code, and the Workers Compensation Act.*

In addition, we suggest that the City’s *Harassment and Discrimination Policy* and its *Respectful Workplace Policy* both clarify that complaints against a Council Member are investigated by the Integrity Commissioner.

- Given the similarity of branding, confusion arises regarding a distinction between communications from the Mayor’s Office, and those from or on behalf of the City. This confusion was identified in our decision as ad hoc Integrity Commissioner in 2021 (“[City of Vancouver – Report to City Council, Complainant and Respondent](#)” (June 7, 2021)) and was also referenced by a member of the public in a complaint filed in 2022. We recommend that the Mayor’s Office develop a more distinct brand and clearly distinguishable identity to assist the public in understanding that communications from the Mayor’s Office are not made on behalf of or originating from the City.
- Mediation is often an excellent avenue to resolve complaints. As currently drafted, once a complaint is moved to a formal investigation, timelines are prescriptive for conclusion of that process, and do not allow for timelines to be paused to explore if mediation is a viable option at that stage. We recommend that the Code of Conduct By-law be amended to clearly allow the Integrity Commissioner to pause the formal investigation timeline in the event that either the Integrity Commissioner, or the parties, identify that mediation may be an option for resolution.
- We recommend that the Code of Conduct By-law be amended to include reference to when the Integrity Commissioner’s Annual Report is to be made public and recommend that this be no later than December 1 for planning, budgetary and transitional reasons.

- As we enter the final year of our two-year appointment, we encourage consideration of amending the Code of Conduct By-law to include transitional provisions. Currently, the Code of Conduct By-law is silent on the transition between a new Integrity Commissioner and the outgoing Integrity Commissioner. Including language that allows the outgoing Integrity Commissioner to complete investigations that have already commenced, for example, would be practical and efficient (we note that a similar model applies provincially for certain Order In Council appointees whose appointments can be extended to allow for completion of active files). In addition, Council may wish to consider the option of a “Deputy” Commissioner, or similar mechanism of interim coverage, to ensure continuity in services in instances when or if the Integrity Commissioner is unavailable during their term.

Closing Comments

The Office is grateful for the opportunities we have been given to develop policies, processes, template tools, and educational presentations to build both the capacity and sustainability of the Office, and the enhanced knowledge and common understandings of Council. We look forward to building on the work we accomplished in 2022.

We invite commentary and questions from City residents, employees, appointed Advisory Board members, and City Council on topics related to the Office.

With our thanks, appreciation, and endless optimism, we look forward to continuing our service in 2023.