

Integrity Commissioner Bulletin 2022-02: Freedom of Speech and Defamation

Three members of the public each complained about a Tweet sent by a member of City Council. In the Tweet, the Councillor attached a news article about members of the public who pled guilty of vandalism. The Councillor made comments about these members of the public speaking at Vancouver City Council and compared the vandalism with racism experienced in Vancouver's Chinatown.

The members of the public alleged that the Tweet breached sections 3.4 and 3.6 of the Code of Conduct and said that the Tweet was defamatory.

The Integrity Commissioner closed the Complaint after finding that the allegations did not contain grounds for concluding that a Code of Conduct violation occurred.

The Integrity Commissioner gave the following reasons for finding that the Tweet was not a Code of Conduct breach.

- 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).
- The comments in the Tweet were a matter of opinion which could be accepted, challenged, or rejected by those who chose to engage with it. 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. For example, one such limitation is “hate speech” as defined by the Supreme Court of Canada in decisions such as *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11. There is no reasonable basis in the law that would justify limiting the Councillor's freedom of expression in this case.
- On a review of the applicable law, the Tweet falls within subject matter of “controversial and/or highly visible topics” which a “Council member is entitled to communicate” (see *Monforts v Brown*, 2021 ONMIC 10).
- The Supreme Court of Canada in *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 sets out the test for when “fair comment” in the expression of an opinion should be accepted as a defense to allegations of “defamation”. After reviewing the comments in the Tweet considering the “fair comment” test, it was determined that the Tweet was protected as “fair comment”.
- The Tweet is an expression of the Councillor's opinion, and although there may be disagreement with their opinion, the content of the Tweet does not “discriminate, harass, or defame any person” as those terms are legally interpreted.