



CITY OF VANCOUVER –
REPORT TO CITY COUNCIL, COMPLAINANT AND RESPONDENT

In this matter of

AD HOC INTEGRITY COMMISSIONER
ALLEGATIONS, FINDINGS AND CONCLUSION

Submitted by Lisa Southern,
Southern Butler Price LLP (the “Investigator”)

June 7, 2021



Background

On March 11, 2021, by way of letter from Mr. Paul Mochrie, City Manager, City of Vancouver (the “City”), I was appointed as an ad hoc Integrity Commissioner to exercise the powers provided in the *Code of Conduct By-Law No. 12886* (the “Current Code”), which is attached at **Tab 1**.

I was appointed in this role to consider a complaint brought by a member of public (the “Complainant”) in relation to a tweet posted on the Twitter account of Mayor Kennedy Stewart on January 28, 2021 titled “Statement from Mayor Stewart on extremism within Board of Non-Partisan Association” (the “Communication”). The Communication is attached at **Tab 2**. In an email, the Complainant raised allegations that Mayor Stewart, in posting the Communication, was acting in his own interest and using the City’s letterhead and staff to do so, which constituted an abuse of office and/or a conflict of interest (the “Complaint”). The Complainant’s email also attached at **Tab 2**.

On the date the Communication was posted, a former *Code of Conduct By-Law* was in effect (the “Former Code”), attached at **Tab 3**. The parties agreed that the process for this investigation would be governed by the Current Code, but that the issues raised would be examined under the provisions of the Former Code.

I have also examined the allegations under the relevant provisions of the *Vancouver Charter* (the “Charter”).

Process

As per section 6.15 of the Current Code, as the ad hoc Integrity Commissioner, I was tasked with conducting a preliminary assessment of the Complaint and, pursuant to section 6.17, establishing whether the Complaint required a formal investigation or whether it could be resolved informally.

An interview with the Complainant was held on March 24, 2021, and an interview with Mayor Stewart was held on March 29, 2021. After these interviews, I determined that an informal resolve was not possible. I determined it was necessary to proceed with a formal investigation in order to investigate staff involvement in the Communication. Accordingly, on March 29, 2021, I determined it was necessary to exercise my powers pursuant to section 6.27 of the Current Code and interview employees and request disclosure of documents relevant to the Complaint.

Under section 6.27, the Integrity Commissioner may:

- a) *speak to anyone relevant to the complaint;*
- b) *request disclosure of documents relevant to the complaint; or*
- c) *access any record in the possession of control of the city, except a record that is subject to privilege.*



Mayor Stewart was given an opportunity to provide a written submission in response to the Complaint consistent with section 6.25 of the Current Code. In addition, I provided the Complainant with an opportunity to provide any further information he considered relevant to his Complaint, beyond his initial email and the information he provided during his interview.

Interviews with employee Witnesses were conducted virtually on April 8, 20, 23 and 29, 2021.

At the beginning of each interview, the participants were advised of the need for honesty and their obligation to maintain confidentiality of both the information that was shared and the fact that the investigation process was occurring. Each participant acknowledged understanding both obligations.

Mayor Stewart's name has been used in this report. Consistent with section 6.33 of the Current Code, names have not been used for employee Witnesses, and they are referred to throughout this report as "Witness 1," "Witness 2," etc. Names and personal information have been redacted from the attachments to this report.

Consistent with section 6.29 of the Current Code, I am making my decision "within 90 days of making a decision to proceed with a formal investigation."

Summary of the Complaint

The Complainant's allegations relate to a tweet posted by Mayor Stewart which criticized a political group for its extremist views and support for hate groups (the Communication). The Complainant alleged that Mayor Stewart was acting in his own interest and used the City's platform (consisting of City letterhead and resources), and that this constituted an abuse of office and/or a conflict of interest.

Summary of Evidence

Communication

It is not disputed that the Communication was published and that it used the letterhead of the Office of the Mayor (the "Mayor's Office").

In the Communication, Mayor Stewart did not indicate, directly or indirectly, that he was issuing a statement on behalf of the City or that the statement was an official City communication.

Complainant

The Complainant said Mayor Stewart normally tweeted content from his Twitter account (@kennedystewart) that was appropriate within the realm of his mayorship. However, he said he immediately took issue with Mayor Stewart's Communication from January 28, 2021, as it was inappropriate to use his office in order to attack his political opposition and influence an outside group.



The Complainant described that there were two aspects to this allegation: first, that the Communication consisted of Mayor Stewart’s statement on the City’s letterhead; and second, that Mayor Stewart used City employees, who were compensated with tax-payer money, to write his Communication.

The Complainant said the Communication was an “egregious abuse of office,” and it had upset him. He said he raised his concerns about the Communication as he did not want this type of message to become a “precedent of appropriate communications coming out of the Mayor’s Office.”

Respondent – Mayor Stewart

NPA Statement

Mayor Stewart provided background information relevant to the Communication. He said on January 27, 2021, the Non-Partisan Association (“NPA”) issued a statement criticizing *The Tyee* and the *Vancouver Sun* for making false and defamatory accusations against a newly appointed NPA board member (the “NPA Statement”). He said that he was named directly in the NPA Statement.

The NPA Statement cited “the poor governance of the City of Vancouver under Mayor Kennedy Stewart” as a contributor to the “smear campaign” against NPA’s new board member. (Copies of both news articles and the NPA Statement are attached at **Tab 4**).

Mayor Stewart explained that the NPA Statement prompted the Communication.

The Communication

Mayor Stewart clarified that no employees in the City’s Communication Department were involved in creating or publishing the Communication. He explained that the Mayor’s Office had political employees (the “Political Employees”) and its own letterhead (distinct from the City’s letterhead), and that it was this platform that was used, not the City’s platform, to publish the Communication in response to the NPA Statement.

He confirmed that he consulted with his Political Employees, Witness 1 and Witness 2, to determine what course of action to take in response to the NPA Statement, and that collectively they decided they would issue a statement of their own.

He said he was “doing his job” in distributing the Communication as the NPA Statement was “not just an attack on [him].” He added that the issues in the NPA Statement involved “hate and racism,” which were issues he had worked hard to address during his mayorship.



Approach to Communications

Mayor Stewart explained that there was a distinction between publications distributed from the Mayor's Office, which had their own unique letterhead titled "City of Vancouver – Mayor Kennedy Stewart," and publications distributed from the "City of Vancouver."

He said the Mayor's Office operated independently from the City, and the Office had Political Employees who, although City employees, uniquely reported to him and not to the Chief Administrative Officer ("CAO"). Attached at **Tab 5** is a copy of the organizational chart for the Mayor's Office.

He said this arrangement (the Mayor's Office having Political Employees and its own unique communication platform distinct from the City's) had been in place for many years, for successive mayors of various political affiliations, and was not unique to his term as Mayor. (An example of the letterhead used when Mayor Gregor Robertson was in office is attached at **Tab 6**.)

He noted that official communications distributed by the Mayor's Office were prepared and reviewed by the Political Employees.

With respect to the Communication, Mayor Stewart identified the employees involved in its drafting and publication as two Political Employees (Witnesses 1 and 2).

Mayor Stewart explained that he used the Mayor's Office letterhead, distinct from the one used by the City, to communicate issues that were important to him, and he used Twitter for the same purpose.

I asked Mayor Stewart to provide examples of communications sent from the Mayor's Office and examples of communications sent from the City's Communications Department. Examples of communications using the Mayor's Office letterhead are found at **Tab 7**. Examples of City communications are found at **Tab 8**.

Examples of Mayor Stewart's past tweets on issues of importance to him are found at **Tab 9**. This includes an example when he referenced the NPA in a social media post related to a motion to reject a middle-income housing project he had proposed.

Mayor Stewart explained that he had "total independence" over communications distributed from the Mayor's Office. He said he wrote these communications in consultation with Witness 1, the Director of Communications for the Mayor's Office and confirmed no Communications Department employees were involved.

In addition to the information he shared during his interview and in the documentation, Mayor Stewart provided a written submission, through his counsel.



In his written submission, Mayor Stewart's counsel submitted that Mayor Stewart was not in a position of conflict of interest as he had not breached any provisions of the Charter. He wrote:

The cited provision [145.5(1)] does not prevent Mayor Stewart or other Council members from taking public positions or urging other persons or bodies to take public positions on matters. It is a conflict of interest only "if the member has a direct or indirect pecuniary interest in the matter." Without such a pecuniary interest, no possibility of a conflict of interest can arise.

In addition, his counsel wrote that Mayor Stewart had no pecuniary interest, direct or indirect, in the Communication. More particularly, he wrote that:

- a. Mayor Stewart received no financial payment or other compensation or benefit from or relating to the Mayor's Statement;*
- b. Mayor Stewart has no financial interest whatsoever in the NPA or the Board of the NPA;*
- c. Mayor Stewart was elected as an independent candidate running against an NPA mayoral candidate (and other candidates); and*
- d. Mayor Stewart has never been a member of the NPA's Board or the NPA.*

Finally, Mayor Stewart's counsel submitted that Mayor Stewart was not in breach of the City's Former Code as the Communication did not involve the use of the City's Communications Department:

The Mayor's Statement is political in nature, like many of Mayor Stewart's public positions and statements. It is a critique of reported extremist views amongst members of the Board of the NPA, a civic organization with a long history in Vancouver. In the past, Mayor Stewart has made public statements against racism generally, against anti-Asian racism specifically, and criticizing an "anti-2SLGBTQ+ preacher" ...

... the Mayor's Statement is not a partisan attack on current Council members or publicly announced mayoral or council candidates. Indeed, current NPA Council members have publicly distanced themselves from statements made by members of the Board of the NPA, as reported in Melanie Green's article in The Tyee entitled 'Worries Rise that NPA Board Could Run Extremist Candidates in 2022' (January 21, 2021, enclosed). Ms. Green wrote that in response to social media statements by NPA Board member Chris Wilson, "NPA councillors subsequently released a statement on Twitter which read, 'We categorically denounce statements made by Mr. Wilson. They do not reflect the values of the NPA caucus.'"

City employees are not prohibited by the Conduct Policy from engaging in political activity. Instead, they generally enjoy the freedom to do so. The Conduct Policy, which expressly applies to political staff as well as other City employees and Council officials, states at s. 5.1:

5.1 Staff members enjoy broad political freedoms and should be able to engage in democratic politics with few restrictions. However, such broad freedoms must be exercised so as not to call into question their ability to perform their employment duties in a professional and impartial manner.



Section 5.6 of the Conduct Policy refers to the principle of political impartiality in the public service in connection with employees' "Political Activity" (a term defined broadly at s. 5.2):

5.6 An employee may engage in any Political Activity so long as it does not impair, or is not perceived as impairing, the employee's ability to perform his or her duties in a politically impartial manner. This precludes employees from displaying slogans or symbols supporting a particular party or candidate while at work where their duties may reasonably require them to interact in person with the public or where their duties require them to supervise, schedule or assign work to others.

[Witness 1] and [Witness 2] are political staff. Though employed by contract with the City, they report directly to Mayor Stewart. Their employment terms expire shortly after the next City election in 2022. Their work duties are necessarily political in nature, as they assist Mayor Stewart in communicating his positions and views and achieving his objectives. For these reasons, [Witness 1] and [Witness 2]'s involvement in the Mayor's Statement was consistent with their employment duties and does not call into question their ability to perform those employment duties professionally or impartially.

Witness 1

Background

Witness 1 is the Director of Communications in the Mayor's Office (a Political Employee). He has worked with Mayor Stewart since his election campaign. He said that his role was to assist Mayor Stewart in reaching his communication objectives.

Communications

Witness 1 said Mayor Stewart's ability to influence City communications was limited. He stated, "He can't direct the City to issue a press release or post on social media." He explained that the City had no obligation to provide the Mayor's Office with information about its communications prior to their release.

Witness 1 explained that the City did not comment on political communications being distributed from the Mayor's Office. Similarly, he said Mayor Stewart did not speak publicly about City communications that had not been voted on by the Mayor's Office.

He added that the Mayor's Office was not to characterize its communications as speaking on behalf of the City. He said if Mayor Stewart was to speak on behalf of the City, his statement would be sent out by the City, not the Mayor's Office.

Social Media

Witness 1 explained that Mayor Stewart's social media accounts were managed by the Mayor's Office. He said the Mayor's Office posted content that related to Vancouver citizens. For instance, he described that



some of Mayor Stewart's posts addressed issues of racism and discrimination. He provided examples of these communications, which are attached at **Tab 10**.

One of these posts was about the Wet'suwet'en protests. Mayor Stewart spoke to the importance of reconciliation and urged the provincial government to resume respectful and constructive dialogue with Hereditary Chiefs. In another post, Mayor Stewart called out the attacks on Muslim people in Christchurch, New Zealand as being "islamophobia stoked by unchecked white supremacy." He offered his condolences, indicated that the City was working with the local Muslim community to ensure everyone felt safe and supported, and encouraged citizens to be the "best neighbours and friends possible." In another post, Mayor Stewart denounced acts of hatred against people of Indian, Jewish and Asian descent. He praised citizens who were fighting back against such acts and encouraged everyone to report offensive content to the City. He outlined what he would do to support minorities.

Witness 1 added that during the last federal election, Mayor Stewart also shared his view about one of the candidates, Andrew Scheer. A copy of this post is attached at **Tab 11**.

Conflict of Interest

Witness 1 said Mayor Stewart did not benefit financially from the Communication, and Mayor Stewart's employees were "political staff" and were distinct from City employees. He elaborated by saying, "Councillors have a budget with which they can hire political staff." Finally, he noted that Mayor Stewart's intention was not to attack a political opponent, but to respond to a comment the opponent had made about the Mayor's Office.

Witness 1 confirmed that the current letterhead for the Mayor's Office predated Mayor Stewart. He noted that former Mayor Robertson had created another form of the letterhead, and provided an example of this, which is attached at **Tab 6**.

Witness 2

Background

Witness 2 has lengthy experience working as a Political Employee in the Mayor's Office. He is Mayor Stewart's Chief of Staff. He has served in that role for two mayors.

City Staff versus Mayor Staff

Witness 2 said that in 2002, the former Mayor of Vancouver, Larry Campbell, started hiring his own Political Employees. He said this practice had continued consistently since former Mayor Campbell's term. He said this practice was also comparable to the ones used in Montreal and Toronto. He said Mayor



Stewart's Political Employees were responsible for work concerning governmental relations and stakeholders.

Witness 2 said the City and the Mayor's Office were independent of each other.

Witness 2 said he was not concerned by the contents of Mayor Stewart's Communication, but rather was concerned "that it took so long to get a post out" in response to the NPA Statement. He said it was "incumbent" on Mayor Stewart to demonstrate a response on issues of racism and marginalization, "where he needs to show that he is there to represent everyone."

He said his involvement in the Communication was in reviewing and providing feedback on it prior to it being released.

Witness 3

Background

Witness 3 is the internal Chief of Staff for the Mayor's Office (and as such a Political Employee), meaning she oversees Council operations and business.

She said Witness 2 was the external Chief of Staff, meaning he managed Mayor Stewart's relations with stakeholders.

City Staff versus Mayor Staff

Witness 3 said the Mayor's Office was composed of Political employees. She explained that Mayor Stewart had the ability to hire his own employees, and that his employees reported directly to him. She said Political Employees were bound by both the City's policies and the Charter.

She said Mayor Stewart had the ability to produce advertisements and videos under the auspices of the Mayor's Office.

Communications

Witness 3 said she was "very minimally involved" in the Mayor's Office's communications, although she was kept abreast of his public statements. She said Witness 1 and Witness 2 were the key employees producing these statements and/or their content.



Witness 4

Background

Witness 4 has worked at the City for five years. She is the Associate Director of Civic Engagement and Communications for the City. At the time of the Communication, she was the Acting Director of Civic Engagement and Communications.

Communications

Witness 4 said Mayor Stewart did not direct the City on its communications as the City operated completely separately. She said her office received instructions from City Council, which was distinct from the Mayor's Office. She said this model predated Mayor Stewart.

She explained that City communications primarily focused on the City's operations, projects and initiatives. She described that these communications ranged from art and culture to City planning and design. On the other hand, she said the Mayor's Office's communications were mostly social media posts and news releases.

Witness 4 said the City typically did not know when the Mayor's Office was issuing a communication. She stated, "The Mayor doesn't use the City's standard distribution methods."

Witness 4 also said that sometimes, the Mayor's Office would advise them of a communication being issued "as a courtesy." Witness 4 added that the City and the Mayor's Office sometimes collaborated for communication purposes for two reasons: first, when Mayor Stewart would make an announcement on behalf of the City; and second, when the City would require a quote from Mayor Stewart to incorporate into a news release.

Witness 4 said the Mayor's Office had a budget to hire its own employees. She said this was often misunderstood by the public, and she gave examples of when City employees were recipients of criticism for communications for which they were not responsible. She described an incident when the names of City employees had been listed in a Global News article that critiqued a Mayor's Office communication.

Witness 4 said she did not receive any "heads-up" from the Mayor's Office prior to the Communication. She said she found out about it on the same day it was published through an email from the City's Acting Media Manager. She said on February 5, 2021, she also received an email from the NPA threatening to commence legal action against the City because of the Communication. She recalled that one of the allegations was that the Communication Department's and the Mayor's Office's employees had conspired in writing the statement issued in the Communication. She explained that neither she, nor the City's new



Communications Director (who had just been hired), had involvement in it, nor did any of her Communication Department employees.

Witness 5

Background

Witness 5 is the Director of Civic Engagement for the City and has been in that role since February 1, 2021. She was not involved in the Communication.

Communications

Witness 5 said the City and the Mayor’s Office operated separately. She stated, “They aren’t attached to the work that we do,” and similarly, “We would not be supporting them in any way.” She described that the Mayor’s Office had its own Communications Director who was responsible for their own social media posts. As for City communications, she said they were strictly limited to City business, such as program funding and engineering initiatives. She added that City communications were often based on City Council decisions.

Policies

As noted above, I was asked to examine the Complaint in the context of the City’s Former Code, found at **Tab 3**. The relevant sections have been set out below for reference.

The purpose of the Former Code is to “set minimum expectations for the behaviour of Council officials, staff and advisory body members in carrying out their functions” and applies to “all City Staff, including political staff, Council Officials and Advisory Body Members.”

The Former Code sets out the following in Part 1, “Key Principles”:

1.1 Integrity: Council officials, staff and advisory body members are keepers of the public trust and must uphold the highest standards of ethical behaviour. Council officials, staff and advisory body members are expected to:

- *make decisions that benefit the community;*
- *act lawfully and within the authorities of the Vancouver Charter; and*
- *be free from undue influence and not act, or appear to act, in order to gain financial or other benefits for themselves, family, friends or business interests.*

The City’s Former Code sets out the following in Part 2, “General Conduct”:



2.4 Council officials, staff and advisory body members must avoid behaviour that could constitute an act of disorder or misbehaviour. Specifically, Council officials, staff and advisory body members must avoid conduct that:

.....

- *Is an abuse of power or otherwise amounts to discrimination, intimidation, harassment, verbal abuse, or the adverse treatment of others;*

With regard to conflict of interests, the Former Code provides:

4.1 Council officials, staff and advisory body members are expected to make decisions that benefit the community. They are to be free from undue influence and not act or appear to act in order to gain financial or other benefits for themselves, family, friends, or business interests.

4.2 A conflict exists when an individual is, or could be, influenced, or appear to be influenced, by a personal interest, financial (pecuniary) or otherwise, when carrying out their public duty. Personal interest can include direct or indirect pecuniary interest, bias, pre-judgment, close mindedness or undue influence.

The Former Code does not prohibit City or political employees from engaging in political activity. Instead, they generally enjoy the freedom to do so:

5.1 Staff members enjoy broad political freedoms and should be able to engage in democratic politics with few restrictions. However, such broad freedoms must be exercised so as not to call into question their ability to perform their employment duties in a professional and impartial manner.

The Former Code also refers to the principle of political impartiality in the public service in connection with employees' "Political Activity":

5.6 An employee may engage in any Political Activity so long as it does not impair, or is not perceived as impairing, the employee's ability to perform his or her duties in a politically impartial manner. This precludes employees from displaying slogans or symbols supporting a particular party or candidate while at work where their duties may reasonably require them to interact in person with the public or where their duties require them to supervise, schedule or assign work to others.

The Charter sets out that:

145.4 (1) A Council member must not use his or her office to attempt to influence in any way a decision, recommendation or other action to be made or taken

...

if the member has a direct or indirect pecuniary interest in the matter to which the decision, recommendation or other action relates.



(2) A person who contravenes this section is disqualified from holding office as described in section 145.911 [disqualification for contravening conflict rules] unless the contravention was done inadvertently or because of an error in judgment made in good faith.

145.5 (1) In addition to the restriction under section 145.4, a Council member must not use his or her office to attempt to influence in any way a decision, recommendation or action to be made or taken by any other person or body, if the member has a direct or indirect pecuniary interest in the matter to which the decision, recommendation or other action relates.

(2) A person who contravenes this section is disqualified from holding office as described in section 145.911 [disqualification for contravening conflict rules] unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Analysis

The Complainant's Complaint was that Mayor Stewart's Communication was made on the City's letterhead and that he used City employees, who were compensated with tax-payer money, to write and distribute his Communication.

Based on the consistent evidence of Mayor Stewart, the Political Employees who work in the Mayor's Office, and the employees who lead the City's Communications Department, I find that Mayor Stewart did not use City letterhead or the City's Communications Department to write and distribute the Communication.

The Witnesses and Mayor Stewart consistently reported that the Mayor's Office operated independently from the City. They confirmed that official communications coming out of the City were not reviewed or approved by Mayor Stewart, and vice versa. However, they noted the City and the Mayor's Office would collaborate on occasion for press releases, where Mayor Stewart might speak on behalf of the City as its lead spokesperson.

The Witnesses and Mayor Stewart explained that the Mayor's Office used a unique letterhead for its communications. This was supported by documentary evidence. They also explained that Mayor Stewart was provided a budget from the City to hire his own Political Employees (who report to him), who were distinct from City employees (who report to the CAO). This arrangement has been in place through successive mayors and is not unique to Mayor Stewart. In short, I find that he did not use City letterhead or City employees, save for those Political Employees who are engaged in the Mayor's Office, to distribute the Communication.

The case law considering the conflict-of-interest provisions of the Charter has made it clear that a substantial pecuniary benefit is required for a violation of those provisions.



Helten v Robertson, 2015 BCSC 599 was a petition to disqualify Mr. Robertson and Mr. Meggs from the civic election on November 15, 2014, as it was alleged they were in a conflict of interest with Local 1004 of the Canadian Union of Public Employees (the “Local”). The conflict-of-interest concerns stemmed from the respondents receiving a financial contribution of \$34,000 from the Local to the respondents’ political party, Vision Vancouver. The petition was dismissed as the Court deemed it did not have jurisdiction to address this matter under section 115 of the Charter. Regardless, the Court made an important determination that a “pecuniary interest” in the context of section 145.5 and similar provisions of the Charter was a “financial interest”:

[23] These sections do not deal with conflicts in the abstract. They do not prohibit a Council member from having a financial interest in a matter that may be considered by Vancouver. Rather, in parallel with similar sections in corporate statutes dealing with boards of directors, the thrust of the conflict provisions is that if such a matter comes up for consideration, the councillor must disclose his interest and refrain from participating in the decision-making or attempting to influence the decision. A councillor only becomes disqualified if he breaches those obligations.

...

[25] As an alternative to declaring that the respondents are disqualified from holding office, the petitioners ask for a declaration that the respondents are in a conflict of interest and that they cannot deal with or vote on any proposed collective agreement with Local 1004. However, the Vancouver Charter does not provide for that remedy. Moreover, the sections refer to councillors having a direct or indirect financial interest or conflict in "a matter" being considered. It would be imprudent to make any ruling in advance of the "matter" crystallising.

Chernen v Robertson, 2014 BCSC 1358 was a petition to remove former Mayor Robertson from office and to disqualify him from the 2011 re-election for conflict of interest. In this case, a local company provided promotional kits, technical assistance, a venue and free software support for a townhall meeting to former Mayor Robertson during his re-election campaign. The Court rejected the petition as it found that the benefits allegedly received by former Mayor Robertson were not in and of themselves sufficient to establish a pecuniary interest. The Court elaborated that even if a pecuniary interest existed, it must be a “substantial interest” which served the Council member’s personal ends, and not merely interests that were remote or of little consequence, or which were held in common with other members of the community.

I find that Mayor Stewart had no substantial pecuniary interest related to the Communication. I find no conflict of interest in the circumstances either under the Charter or the Former Code. Similarly, as Mayor Stewart used the Mayor’s Office’s letterhead and his Political Employees (and not the City’s letterhead or City Communications Department employees), I also find no abuse of office or breach of the Former Code.



In reaching my conclusions, I have considered *Magder v Ford*, 2012 ONSC 5615 and its subsequent appeal (*Magder v Ford*, 2013 ONSC 263) wherein the Superior Court declared Rob Ford's seat on City Council vacant for violating the *Municipal Conflict of Interest Act*. This decision was overturned on appeal. The case includes the findings of the Integrity Commissioner with respect to concerns that Mr. Ford used the City of Toronto's logo, seal and other items, and also employed City of Toronto employees to solicit donations from citizens. The case is distinguishable on several bases.

At the time, Mr. Ford was a City Councillor. He was soliciting donations for an arm's length non-profit sports fund that was founded in his name. It was found that he used some City resources to solicit the donations.

The initial complaint came from a Toronto resident who received a letter from (then) Councillor Ford seeking donations to the Rob Ford Football Foundation. The Report of the Integrity Commissioner, dated August 12, 2010, described the letter as follows at page 2:

The City of Toronto logo was on the envelope and the letter. The letter was printed on Councillor Ford's letterhead and included a watermarked drawing of Etobicoke North, Ward 2, the area represented by Councillor Ford. On the back of the envelope there was an embossed gold seal with the City of Toronto logo and "Rob Ford Etobicoke North Councillor" stamped into the seal ...

Mr. Ford indicated that he saw no cause for concern using his "employment letterhead" to raise funds for an arm's length charity. He had previously been warned by the Integrity Commissioner, in December 2009 and February 2010, not to use City of Toronto letterhead to fundraise. The two previous warnings came after complaints of similar fundraising efforts were resolved informally by the Integrity Commissioner. The Integrity Commissioner determined that Mr. Ford violated the *Code of Conduct for Members of Council* when he used his status as a (then) City Councillor and used City of Toronto resources to solicit funds for a football foundation created in his name. This breached Article IV (Gifts and Benefits), Article VI (Use of City Property, Services and Other Resources) and Article VIII (Improper Use of Influence) of the *Code of Conduct for Members of Council*. These facts are clearly distinguishable from the facts in this investigation.

Summary Conclusions

The Complainant stated Mayor Stewart was acting in his own interest and used the City's platform for this purpose, which he alleged was an abuse of office and/or a conflict of interest.

However, the Mayor's Office operates independently from the City. The Mayor's Office has Political Employees who, although City employees, uniquely report to Mayor Stewart and not to the City's CAO. The Mayor's Office also has its own letterhead that is distinct from the City's letterhead.



This arrangement (the Mayor's Office having Political Employees and its own unique communication platform distinct from the City's) has been in place for many years, for successive mayors of various political affiliations, and is not unique to Mayor Stewart. The Communication and the employees involved in its drafting and publication do not represent the City as they work in the Mayor's Office, which is distinct from the City.

In these circumstances, there is no conflict of interest as the Communication does not give rise to a substantial pecuniary benefit, nor is there an abuse of office. Accordingly, I find there is no violation of the Former Code or the Charter.

A handwritten signature in black ink, appearing to read "Southern", with a long horizontal flourish extending to the right.

Lisa Southern
ad hoc Integrity Commissioner

Dated: June 7, 2021

Attachments:

Tab 1: 2021 Code of Conduct By-law No. 12866, Tab 2: Complaint email and the Communication, Tab 3: Former Code of Conduct (Policy # AE-028-01), Tab 4: NPA Statement and related news articles, Tab 5: Mayor's Office organizational chart, Tab 6: Former Mayor's letterhead, Tab 7: Communications on Mayor Stewart's letterhead, Tab 8: Communications on City of Vancouver letterhead, Tab 9: Mayor Stewart's Twitter posts, Tab 10: Mayor Stewart's communications re: racism and discrimination, Tab 11: Mayor Stewart's communication re: Federal Election candidate