



OFFICE OF THE  
INTEGRITY COMMISSIONER  
FOR THE VANCOUVER PARK BOARD

REPORT TO  
VANCOUVER PARK BOARD, COMPLAINANT AND RESPONDENTS

In this matter of

AN INTEGRITY COMMISSIONER INVESTIGATION  
ALLEGATIONS, FINDINGS, AND DECISION

Submitted by Lisa Southern  
Integrity Commissioner  
Vancouver Park Board

February 21, 2025



## Introduction

At the heart of this complaint (the “Complaint”) is the requirement that meetings of local governments in British Columbia (in this case, the Vancouver Park Board) be “open,” meaning open to the public. This obligation is referred to as the “open meeting requirement” or “open meeting principle.”

The open meeting principle requires that the business of local government be conducted in an open, transparent way, and not behind closed doors. The obligation is not unique to BC. Indeed, all provinces and territories have some kind of an open meeting requirement for their local governments.

In BC, the requirement has existed since 1881.

So why are provincial and federal government elected officials permitted to meet, caucus, and discuss the business of government in ways that locally elected officials are not?

The reason lies in the way those governments are created. Local governments (such as municipalities or regional districts) differ from the provincial and federal governments in that they are creatures of statute. As such, they *do not pass legislation after debate in a legislature*. Without statutory requirements for transparency, municipal governments could “rule” without any need to keep the public informed about what they are doing. In effect, municipal governments act like an executive and legislative branch in one, so if they were not required to be transparent in their governance, and openly debate decisions, democracy would suffer.

The BC Ombudsperson explains the open meeting principle in these terms:

*Local governments across Canada are moving towards more open and transparent decision-making. The open meeting provisions in the Community Charter support open government by guaranteeing, with specified exceptions, that the public can attend meetings of local governments. 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. They facilitate citizen participation in the policy development and decision-making processes and serve to build public trust and confidence in local government.<sup>1</sup>*

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<sup>1</sup> BC Ombudsperson, *Open Meetings: Best Practices Guide for Local Governments*, Special Report No. 34 to the Legislative Assembly of BC (September 2012) at p 23.



The *Vancouver Charter*, SBC 1953, c. 55 (“Vancouver Charter”), which applies to the City of Vancouver and to the Park Board, has essentially the same open meeting provisions as the *Community Charter*, SBC 2003, c. 26, which applies to other municipalities in BC.<sup>2</sup>

As noted, BC is not unique in requiring its local governments to keep meetings open, as all provinces and territories have open meeting requirements for their local governments. For example, in Ontario the open meeting requirement (first adopted in the 1990s) is now found in [s. 239](#) of the *Municipal Act, 2001*. The open meeting requirement was intended to increase public confidence in the integrity of local government: requiring open debate and the opportunity for meaningful public input ensured the open and transparent exercise of municipal power.<sup>3</sup>

In this Complaint, certain respondents (introduced below) say that restricting caucusing is unconstitutional and undemocratic. As explained in this report, I disagree. The open meeting requirement is intended to protect and preserve democracy at the local government level.

Those same respondents also argue that what happened in this case was just “party politics.” That is not an answer. It is a worthwhile inquiry to consider how party politics can be conducted in a way legally compliant with the constraints on municipal or regional district governance – but however that inquiry resolves, it is not an answer to say that because these activities happen in the provincial and federal spheres, they are also acceptable within local government. This answer ignores the law and policy behind the open meeting requirement, specifically entrenched in legislation (in this case the Vancouver Charter), for meetings to be held in an open and transparent way.

Some may say “this happens all the time,” or “other parties have done this.” That is not for me to determine. My job as Integrity Commissioner is to assess the Complaint in light of the evidence before me and make a determination within my jurisdiction under the *Park Board Code of Conduct Policy* (the “Policy”) as to whether the complaint is well-founded.

## Summary of the Complaint

On August 5, 2024, Vancouver City Councillor Pete Fry (the “Complainant” or “Councillor Fry”) brought the Complaint against current and former ABC Party Park Board Commissioners Brennan Bastyovanszky, Laura Christensen, Angela Haer, Marie-Clare Howard, Scott Jensen, and Jas Viridi (the “Respondents”). He complained that they had breached their obligations under the Policy and the open meeting requirement

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<sup>2</sup> The Vancouver Charter (s. 165.1) and the *Community Charter* (s. 89) both require that a meeting of council “must be open to the public,” subject to the exceptions provided for in the respective legislation.

<sup>3</sup> Legislative Assembly of Ontario, *Official Report of Debates (Hansard)*, No. 162, November 28, 1994, at p. 7978 (Pat Hayes).



in the Vancouver Charter by discussing Park Board business at several private meetings held in 2022 and 2023 where a quorum of Commissioners was present.

The Complainant alleged that the Respondents “have been caucusing and making decisions that ought to be made in the public realm, including but not exclusively that there was a meeting at the Mayor’s home to make decisions related to the bike lanes in Stanley Park, with the Mayor and a quorum of park commissioners present.” The Complainant said he was “concerned public business may have been done in private without public oversight, as would happen in an open meeting.”

The Complainant cited the requirement under section 165.1 of the Vancouver Charter for Park Board Commissioners to conduct meetings in public unless they meet the criteria for meeting *in camera* (i.e., in a meeting closed to the public). As noted above, the statutory principle is that the public must have an opportunity to observe and provide input on decisions made by the Park Board.

The Complainant said the Respondents breached the Policy when they did not comply with the Vancouver Charter’s open meeting requirement because section 1.1f) of the Policy required Park Board Commissioners to “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 Park Board governance.”

The Respondents were all members of the political party ABC Vancouver (“ABC”) during the period covered by this Complaint (Commissioners Bastyovanszky, Christensen, and Jensen resigned from ABC in December 2023). Together they made up six of the seven Park Board Commissioners.

Because a meeting at any time of at least four Park Board Commissioners would involve a majority of Commissioners, it would constitute quorum for Park Board decision making.

The Complainant explained that after Commissioner Christensen posted on X comments about her experience in ABC, he spoke with her in early August 2024. He said Commissioner Christensen told him she and the other Respondents were subject to rules set by ABC about how they could vote and were directed how to vote on various matters. He said she described occasions on which they had met privately with quorum, deliberated about motions, and decided how to vote. The Complainant said Commissioner Christensen told him the voting rules were reinforced at an ABC retreat held in September 2023 (the “ABC Retreat”). Based on his understanding of the open meeting requirement, he felt that these meetings and an ABC policy about how Commissioners should vote may be breaches of the Vancouver Charter, and therefore the Policy, so he brought his Complaint.

As set out below, the various Respondents answered the Complaint differently.



Commissioners Christensen and Jensen did not dispute that they may have violated their obligations, but they provided context, including the advice they said they were receiving in relation to the open meeting requirement and evidence of the nature of their participation in the discussions detailed below.

Commissioner Bastyovanszky said he did not voluntarily participate in or condone the conduct in question and was not responsible for the practices of certain ABC party members and their efforts to interfere with public meetings and votes. He cited his efforts to try to deal with matters transparently, including reporting the behaviour when it became “apparent it was not inadvertent, was not going to stop nor be corrected voluntarily.”

Commissioners Haer, Howard, and Viridi raised a number of objections to the Complaint. As set out in more detail in the *Process* section below, they did not provide documents in response to my requests, and each delayed in providing a substantive answer to the Complaint. Ultimately, they largely did not dispute the facts alleged in the Complaint, but argued that those facts did not give rise to a breach of the Policy and said that the Complaint lacked merit.

## **Process**

After receiving the Complaint, I met with the Complainant and determined the allegations set out in the Complaint, if true, may constitute a violation of the Policy and there was no basis under section 5.15 of the Policy to dismiss the Complaint upon 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 5.25 of the Policy, they had 10 days to provide me with a written response and submissions. I advised each of them that I could arrange an interview to receive their responses if they would prefer.

### *Commissioners Bastyovanszky, Christensen, and Jensen*

Commissioners Bastyovanszky, Christensen, and Jensen all responded in a timely way. By mid-September 2024, these three Commissioners had provided substantive responses to the Complaint, including relevant documents.

### *Commissioners Haer, Howard, and Viridi*

Commissioners Haer, Howard, and Viridi did not respond to our letters or request an extension for providing their responses. I was advised on September 16, 2024, that they had retained legal counsel.



On September 23, 2024, I received submissions from legal counsel for Commissioners Haer, Howard, and Virdi, requesting additional particulars of the allegations in the Complaint and raising several preliminary issues (addressed further below), including that the Complaint was out of time. I provided a response to this correspondence on October 2, 2024, in which I also asked to interview Commissioners Haer, Howard, and Virdi and asked them to produce various documents relevant to the Complaint under section 5.27 of the Policy.

On October 16, 2024, I received another letter from legal counsel for Commissioners Haer, Howard, and Virdi, reiterating the objections raised in their September 23 letter and refusing to provide a response to the Complaint until further particulars were provided. They also declined to provide the documents requested on the basis that section 5.27 of the Policy granted me authority only to “request” and not “compel” production of documents and said the documents requested were confidential.

On October 24, 2024, I responded, by indicating that my letter of October 2, 2024 had comprehensively addressed the issues raised. I also reiterated I had not received a response to the Complaint from Commissioners Haer, Howard, and Virdi – a response originally requested on August 22, 2024. I provided them with a further opportunity to respond to the Complaint. I also repeated my request for relevant documents and to interview all three, offering to provide a list of questions and copies of relevant documents in advance.

On October 31, 2024, Commissioners Haer, Howard, and Virdi agreed to attend an interview. Their legal counsel said they did not have documents responsive to my requests as the majority related to communications they had not retained because they either had set automatic delete functions on their devices or had new devices and had not transferred data over from their prior devices. They asserted further that documents I sought were not compellable as section 5.27 of the Policy did not apply to documents in the possession of individual Commissioners (as opposed to those in the possession of the Park Board) and confidentiality obligations did not permit them to share information related to ABC.

Interviews were scheduled for December 2 and 3, 2024.

I provided copies of questions and related documents in advance of the interviews. However, on November 28, 2024, Commissioners Haer, Howard, and Virdi, through their legal counsel, unilaterally cancelled their interviews and did not provide alternate dates to reschedule.

On December 9, 2024, I wrote to their legal counsel reiterating that under the Policy Commissioners must cooperate with investigations and highlighting the fact Commissioners Haer, Howard, and Virdi had provided no documents in response to my request, had not made themselves available for an interview,



or provided any substantive response to the Complaint almost four months since receiving notice of it. I offered four additional dates for interviews between December 11, 2024 and January 16, 2025.

On December 20, 2024, legal counsel for Commissioners Haer, Howard, and Virdi advised the January 2025 dates did not work, inquired about an alternate process to oral interviews (such as providing written answers), and described the facts as not “highly contentious.” On December 23, 2024, I gave an extension until January 31, 2025, for any materials they wished me to consider (such as affidavits), and reiterated that I would be moving forward with the investigation without further delay.

On January 10, 2025, legal counsel for Commissioners Haer, Howard, and Virdi advised that, given the facts were not largely in dispute, they would be providing a written submission, which would include factual admissions that would narrow the issues in contention and, in their view, result in dismissal of the Complaint.

On January 31, 2025, Commissioners Haer, Howard, and Virdi provided their written submission through legal counsel. No documents were ever produced by Commissioners Haer, Howard, and Virdi.

## **Preliminary Issues**

As referenced above, Commissioners Haer, Howard, and Virdi raised several objections to the investigation. The following is a summary of those objections, and my decisions about them.

### *Timeliness*

Commissioners Haer, Howard, and Virdi said the alleged breaches of the Policy occurred more than 180 days before the Complaint was brought and therefore the Complaint should be dismissed. Specifically, they asserted the events occurred more than 180 days before the Complaint was made. They also asserted that because the Complaint was based on information Councillor Fry received from others, he was not the “true complainant.” Further they said the “true complainant” likely had the information close to the time the alleged events took place in 2023 and therefore the Complaint was out of time.

Section 5.9 of the Policy states:

*The Integrity Commissioner must reject a Complaint received more than 180 days after the Complainant knew or reasonably ought to have known of the alleged breach of this policy.*

I have considered the objections and determined that the allegations about the Respondents were not discovered by Councillor Fry until August 2024. He therefore brought the Complaint within the required timeline under the Policy. I am satisfied he is a legitimate complainant and is not barred under section 5.9 of the Policy from bringing the Complaint.



### *Procedural Fairness*

Commissioners Haer, Howard, and Virdi raised a number of procedural fairness concerns. In sum, they said they were entitled to:

- Further and more detailed particulars of the Complaint; and
- Details of all evidence and documents I had collected in the investigation thus far, including summaries of witness evidence.

Commissioners Haer, Howard, and Virdi submitted that an investigation process under the Policy was akin to a judicial process and therefore procedural fairness required this information be provided to them before they submitted a response to the Complaint.

I find these submissions without merit. The Policy is clear that my role as Integrity Commissioner is to investigate complaints and report my findings to the Park Board; I am not a decision maker in a judicial or quasi-judicial process. I am not required to provide all evidence collected to the Respondents. I provided reasonable notice and sufficient details of the Complaint to all Respondents to give them a fair opportunity to respond to the allegations against them.

I also note that in addition to the particulars, I provided Commissioners Haer, Howard, and Virdi with copies of relevant documents and written questions before their scheduled interview.

## **Summary of the Respondents' Submissions and Evidence**

### *Commissioner Christensen*

Commissioner Christensen told me she met with the other Respondents to discuss Park Board business on several occasions, and they communicated as a group by electronic messaging to discuss Park Board business.

#### Bike Lane Motion

Commissioner Christensen said she attended sessions where Park Board business was discussed related to removal of the temporary bike lane in Stanley Park (the "Bike Lane Motion"). She described sessions on February 11, 2023, at the home of an ABC representative, and on February 12, 2023, at Mayor Sim's home, to discuss options for retaining or removing the bike lane in Stanley Park. She provided a copy of the invitation for the February 11, 2023 session which was sent to all the Respondents. The invitation states as follows:





Invitation:

*Description: You are expected to read the staff report “Stanley Park Temporary Bike Lane Options – Report Back” before this meeting and be able to state the reason you support 1 of 3 options, if you so choose, is to propose an amendment(s) to any of the options with rationale. We will aim to wrap up in 60-90 minutes. Planning for 2 hours to ensure we are not rushed.*

[Emphasis added]

Commissioner Christensen said the Respondents were not in agreement about which option to support because they had differing understandings of what ABC had promised during the election campaign. She said Commissioners Haer, Howard, and Viridi were in favour of removing the temporary bike lane and she, Commissioner Bastyovanszky, and Commissioner Jensen were against this. She said there was “lots of yelling” amongst the Respondents at the February 11 session (except for Commissioner Jensen who was not in attendance) but nothing was settled so they were told to meet again the next day at Mayor Sim’s home, which all the Respondents attended.

She said during the February 12 session, ABC representatives were clear about their expectations that the Respondents would vote as a “united front” and that it was not acceptable to have dissenting votes or abstentions. According to Commissioner Christensen, one ABC representative promised that if she and Commissioners Bastyovanszky and Jensen voted for removal of the temporary bike lane, they would “personally guarantee” funding would be provided to partially reinstate the bike lane in some form as a permanent solution. Based on this promise, she said she agreed to vote in favour of removal of the bike lane, as did Commissioners Bastyovanszky and Jensen.

Commissioner Christensen said she was personally questioning whether it was proper for her and the other Respondents to caucus in this way given what she had learned from City of Vancouver and Park Board staff during her orientation as a new Commissioner and the fact that the Park Board General Manager had insisted on meeting with the Respondents in groups of no more than three when they were first elected so as not to have a quorum. She provided the following excerpt from a group message hosted on the platform Signal (the “Signal Chat”) called “ABC Park Board” that captured discussion between the Respondents, an ABC City Councillor, and a member of the Mayor’s political staff, on this issue:

**[Political Staff]:** *Also, [Park Board General Manager] is on deck to meet with you in groups of 3 on Friday to say hello and shake hands etc. This is what legal advised her. She can meet as early as 7:00 AM or you can stick with the tentative plan with one group of 3 from 9:00 AM to 9:30 AM, and then a second group of 3 from 9:30 AM to 10:00 AM ...*

...

**Commissioner Bastyovanszky:** *There’s only four of us going. Can we meet [Park Board General Manager] as a single group?*



**[Political Staff]:** *I will ask.*

...

**[Councillor]:** *4 is quorum out of 7. So given her 'legal' advice you would still need no more than three in one group. But again for a meet and greet, I really question the need to split.*

**[Political Staff]:** *I agree. I will run this past [Park Board General Manager] and see what she says. The fact you are not sworn in Commissioners means you can't be a quorum of the Park Board because you aren't the Park Board yet. [Thumbs up emoji]*

**Commissioner Howard:** *[Political Staff], what is the legal decision that is creating all this kerfuffle? Just curious*

**[Political Staff]:** *A lawyer named Raymond Young came out with an opinion in 2015 at UBCM in which he opined that if a quorum of an elected body was present at the same time & place it constituted a meeting of that board of electeds. The main issue was the question of caucusing. For example, if a Council Caucus had enough members at a private Caucus meeting, and the number present was sufficient to make quorum, then it would be an illegal meeting of Council; Because all Council business has to be conducted in public except for legitimate in camera meetings. I disagree with opinion and I don't think anyone has really adopted it in practice. Caucusing is a ancient democratic practice that is probably supported I the common law and parliamentary practice.*

**[Political Staff]:** *Here's an article Dan Fumano wrote about the question in 2015 [finger pointing emoji and link to Vancouver Sun article titled "Councillors who meet privately likely breaking the rules says lawyer"].*

**[Political Staff]:** *FYI – I've been able to run circles around the City's lawyers numerous times. [Thumbs up emoji]*

Commissioner Christensen said she was told by an ABC representative that caucusing with quorum and "whipping votes" was normal practice, consistent with how federal and provincial parties operated.

Commissioner Christensen voted in favour of removing the temporary bike lanes at the February 13, 2023 Park Board Meeting (the "February Park Board Meeting").

Commissioner Christensen told me that the Respondents' coordination and work on the Bike Lane Motion was unknown to Commissioner Digby until the Bike Lane Motion was introduced at the February Park Board Meeting. At the February Park Board Meeting, Commissioner Digby noted both the Respondents' lack of debate on the Bike Lane Motion and questioned whether they had been making decisions outside of open Park Board meetings. This can be heard on the recording of the February Park Board Meeting posted on YouTube, where Commissioner Digby says:

**Commissioner Digby:** *I am- uh- with all respect to my colleagues, I seem to sense there's a lot of previous agreement that this motion is gonna come forward in this way and uh, I don't think that that is legitimate in the public court that we should be proceeding this way on this*



*important motion without going to committee and hearing from the public and then having six commissioners who are somehow ready to agree to a substantial amendment to a controversial motion that we- that I have been exposed to for the past 6 minutes. Um, I think it's extraordinary that we would, uh, even be considering this now—and I point out, above all, option C does not solve any legitimate problem. There is no problem that it solves. The access to Park is fully viable, all the way through the park. And uh, this is something that we are seriously going to regret, my colleagues, if we vote in favour of this particular motion.*

...

**Commissioner Digby:** *... And I'm- I don't know if the commissioners know this, but there is going to be a tremendous cost if this—if your organization, the political group that you're affiliated with, has been making decisions that are not in the public realm. I am more than happy to take the time to sort out the bike lane, and to do all the consultations. The only part would be removing the temporary bike lane that's there now. That would be outrageous, to push forward under your driving terms. ... Anyways, I am shocked, and I'm gonna, there's gonna be real consequences to this. You have a huge opportunity here to do this right thing, and it looks like it's slipping away.*

### Moberly Park Motion

On May 8, 2023, Commissioner Virdi submitted a motion about turf fields at Moberly Park (the “Moberly Park Motion”) to the Park Board, which was intended to be heard at the next Park Board meeting set for May 29, 2023 (the “May Park Board Meeting”). Commissioner Christensen said he did this without consulting her or the other Respondents, which was contrary to the ABC process whereby the Respondents would discuss and come to agreement before a motion was submitted.

Commissioner Christensen said she emailed an ABC representative to flag that she had some concerns about the Moberly Park Motion and did not agree with it. She said they responded that amendments could be made at the May Park Board Meeting, although they noted it was not ideal for ABC if this was done in a public meeting and there was urgency to passing the Moberly Park Motion. Commissioner Christensen said although she made inquiries to ascertain the reason, she had no idea why the Park Board needed to pass the Moberly Park Motion urgently given it was not an official campaign promise.

Commissioner Christensen said she attended a session at the Mayor's office on May 25, 2023 at which the Moberly Park Motion was discussed (the “May 25 Session”). Commissioner Christensen said the Respondents as well as the Mayor's political staff were at the session and an agenda was circulated by an ABC representative in advance. She provided me with a copy of the agenda. It reads in part:

*Hi everyone,*

*I propose for the following agenda for tonite's meeting.*

...



### *3. Park Board meeting (water fountain motion and turf field motion)*

Commissioner Christensen said during the May 25 Session she expressed her concerns about building a turf field with stadium lighting in a residential neighbourhood without first doing appropriate public engagement. Her position was that the Park Board should go through the proper process and do public consultations to find out what residents wanted in terms of new recreational amenities and not assume it was a turf field. Commissioner Christensen said she made it clear during the session that until consultation occurred, and there was evidence of public support for the proposed turf field, she would not support the Moberly Park Motion.

Commissioner Christensen said that during the session she presented a redraft of Commissioner Virdi's motion that was prepared in consultation with Commissioners Bastyovanszky and Jensen. She said that this revised version of the Moberly Park Motion asked staff to do public engagement on several options for recreational amenities in the neighbourhood where Moberly Park was located, including a turf field, a splash pad, and a walking track.

She said in the May 25 Session the Mayor's political staff expressed displeasure with her rewriting another ABC member's motion. After heated words, she said the session concluded with agreement that public engagement would occur, and as a result, she worked to write an amendment to the Moberly Park Motion originally drafted by Commissioner Virdi.

Commissioner Christensen described how she, an ABC representative, and the other Respondents went back and forth a few times but eventually landed on an amendment that included broader public consultation. She said that at the May Park Board Meeting, she and most of the other Respondents voted in support of the amended Moberly Park Motion. Commissioner Virdi abstained.

#### ABC Retreat

Commissioner Christensen provided a copy of the agenda for the ABC Retreat, which included two, one-hour items titled "caucus voting" to be delivered by a member of the Mayor's political staff and a member of ABC's political staff. She said the Respondents (except for Commissioner Bastyovanszky who was not present) were told that on budget matters, campaign promises, and directives from the Mayor, they were required to vote as instructed by ABC.

Commissioner Christensen said that about two months later, she received an email from a senior leader of ABC reinforcing the voting rules outlined at the ABC Retreat. She gave me a copy of the email, which included the other Respondents as well as ABC School Board Trustees, and reads as follows:

*Good evening school trustees and park board commissioners,*



*This week two important meetings have been arranged to facilitate caucus alignment. It is clear, from the fractures we have seen in both groups over the past year, that this workshop is badly needed. I believe ample effort and notice have been given to allow you to work this into your schedules, but I am aware that some of you are indifferent about attending.*

*[REDACTED], a highly skilled politico, has been hired to lead these sessions. Unless you have a valid reason which has been agreed to by [ABC Leadership] you are expected to attend. If you do not, you will not be considered for any leadership role in the coming year.*

*You are expected to work and vote in alignment with your ABC caucus, maintaining party values. If you do not, you can explain yourself at the next ABC Board meeting. The Board reserves the right to decide on appropriate disciplinary action.*

*I will attend both meetings and will be available to discuss.*

*Sincerely,*

*[Senior ABC Leader]*

### Signal and Email Communications

Commissioner Christensen explained that the Signal Chat was renamed “ABC PB Caucus” and the City Councillor and a member of the Mayor’s political staff who were on the ABC Park Board thread were removed and a different ABC representative added. She said the Signal Chat was used by the Respondents and ABC to communicate about Park Board business, and this occurred both outside and during public Park Board meetings to coordinate or discuss issues without involving Commissioner Digby or allowing the public to see. She provided examples from the Signal Chat, which included discussions about the Bike Lane Motion and the Moberly Park Motion. There is quorum on the Signal Chat.

#### *Bike Lane Motion*

The Signal Chat shows the following exchange on February 13, 2023, the day of the February Park Board Meeting, starting at 9:02 a.m. when the Respondents and the ABC representative discussed the specific language of the Bike Lane Motion that all six of the Respondents had agreed on and who would bring the motion and second it:

**Commissioner Haer:** [Commissioner Jensen] *are you submitting the motion for [Park Board staff member]?*

**Commissioner Jensen:** *If that is the direction, yes. I will submit at 5:30 pm with [Commissioner Digby]’s knowledge. This needs to be a surprise.*

**Commissioner Haer:** *is that enough time?? You know we would rather start from scratch and take out the entire temporary bike lane as was suggested by the mayor, but we have agreed to [Option] C with some exceptions.*

**[ABC Representative]:** *Yes you can view it without the suggested changes.*



**Commissioner Bastyovanszky:** *Where do we find the document? Will that be shared with us?*

**[ABC Representative]:** *Yes it was sent out yesterday afternoon to everyone's personal email. I will find the link and post it there*

**Commissioner Howard:** *Will we also get some messaging regarding the traffic flow in the west end?*

**Commissioner Bastyovanszky:** *We worked tirelessly with staff to ensure the park is accessible for everyone, the businesses will thrive again, traffic flow return to pre covid and safety improved for cyclists with permanent infrastructure.*

**[ABC Representative]:** [Shared link to document hosted on Google Docs]

**Commissioner Bastyovanszky:** *Option c clarity. Needs to refer to the two sections or street parking past lumberman's arch rather than just vehicle parking which could be interpreted by staff as the parking lot there.*

**Commissioner Haer:** *Whose motions? Whose seconding? We should be mixing this up to have a united front*

**Commissioner Jensen:** *Let us wait for the final wording to be confirmed and our talking points are confirmed. Patience.*

**Commissioner Howard:** *Why do we need to inform [Park Board staff member] ahead of the meeting? Are we not supposed to come up with our decision and recommendation during the meeting?*

**Commissioner Jensen:** *Just so it can be added to the screen. I will give it to her just before we present.*

Following the passing of the Bike Lane Motion, there were further exchanges regarding the Respondents caucusing as a group to discuss Park Board business on the Signal Chat beginning at 8:59 p.m. on February 13, 2023, and carrying over to the following days:

**Commissioner Haer:** *Congratulations [Hands clapping emoji]*

**[ABC Representative]:** *Yes congratulations everyone. I appreciate how everyone worked together in the past few days. It wasn't easy. I am to build a regular meeting schedule with the group. The goal is to minimize the meetings you have and getting information back to you and discuss any issues ahead of PB meetings. I see the next PB meeting is Feb 27. Should we aim for a in person meeting next Monday Feb 20/21 (or sooner)?*

[Discussion regarding availability]

**[ABC Representative]:** [Commissioner Jensen] *there's a heightened scrutiny on caucusing, from external and amongst ourselves. Instead of an agenda, I am going to list some talking points here.*

*First, is everyone ok to meet at City Square on Friday ([Commissioner Christensen] will connect online)?*



*Talking points (planning for 1 hour):*

- *what to expect from ED of ABC*
- *review the PB published agenda, there will be talking point related to what will be published*
- *thoughts on individual inquiries sent to PBGM*
- *related items that align with campaign promise and future PB agenda items*
- *other*

### *Moberly Park Motion*

The Signal Chat also contains discussion related to the Moberly Park Motion. For example, on March 14, 2023, Commissioner Virdi shared a document on the thread titled “Draft PB Motion – Prioritization of Sport and Recreation Fields and Facilities in South-East Vancouver” and the following messages were exchanged:

***Commissioner Virdi:*** *Hi everyone. I have been working on this motion with [Commissioner Howard] and [Commissioner Haer] with direction from [Political Staff] and [Mayor Sim] to get it done and submitted before Vasakhi so we can make an announcement. Any comments?*

***Commissioner Haer:*** *Good team work*

***Commissioner Jensen:*** *Why haven't [Commissioners Bastovanszky, Christensen] nor I been included in the evolution of this from idea to motion? Are there any other working groups that I am unaware of? Why simply comment and not input?*

***Commissioner Virdi:*** *Input is welcome. Its still rough. I asked MC for help.*

***Commissioner Jensen:*** *As I stated before, I cannot support without understanding neighborhood support. This does not need to be a motion.*

***Commissioner Virdi:*** *When r u free. We can go down anytime. [Political Staff] reached out telling me they want to make announcement on Vasakhi. That gives us a little bit of time.*

***Commissioner Jensen:*** *I am not a community engagement strategy*

***Commissioner Haer:*** *Everything is being taken care of. Stakeholders are sending letters and are being engaged. Check your pb email as well. Thanks*

***Commissioner Virdi:*** *People in that community have been asking for a field since the early 90's. Its long overdue. Stakeholders are tired of getting nothing.*

Commissioner Christensen provided screen shots of the Signal Chat that show the Respondents' discussion about the Moberly Park Motion continued into May 2023.



Commissioner Christensen also provided a copy of an email exchange between the Respondents, using their personal emails, and an ABC representative in which the wording of the Moberly Park Motion was discussed. The email exchange contains the subject line: “field motion for review by group,” and included members of Mayor Sim’s political staff. Beginning on May 26, 2023 (three days before the May Park Board Meeting), it read as follows:

**[Political Staff]:** *Hi everyone,*

*This is online here for comments: [link to Google Docs file]*

*Action items from last nite’s meeting:*

*[Commissioner Virdi] to request PB staff for historical diamond booking data*

*You can leave comments or changes to the online document. Let everyone know via our group chat (excl [Mayor’s Political Staff]) if you are offering a change. For a commissioner making a change, please connect 1-1 with [Commissioner Virdi] and let me know what has been agreed upon. From there I will update the document.*

*No changes accepted beyond Sunday May 28 at noon. This is so the group is aware of the final version being submitted to the meeting for voting.*

*We are close here on agreement and the aim is to have a “strike and replace” motion at the May 29 meeting.*

*Thanks!*

**[Political Staff]:** *This is what I received from [Commissioner Christensen]. We started editing the document during the meeting. It got messy and was abandoned. During the discussion, it was summarized keeping resolution A captured the essence of what the group wanted. The remainder of the resolutions are to be stricken.*

*[link to Google Docs file]*

**Commissioner Virdi:** *Im sorry. I do not agree to the resolution. The motion has lost its essence. This is not how Churchill was approved. Why is it this field is being subject to extra hoops to go through. Is it because of the area it is in?*

**Commissioner Haer:** *Chair Jensen can u pls chime in. It’s important to work with Jas, so everyone is happy. Pls keep this motion true to its goals as promised. The motion looks a lot more different then what we were working on.*

*Can you pls call one another*

*Sincerely [Commissioner Haer]*

**[Political Staff]:** *[link to Google Docs file]*

*This is the motion being discussed (track changes are on). Based on the discussion on Thursday evening, we seem to have agreement by removing the resolutions B to F.*

*The other file was a work in progress that was abandoned. Also, we are not re-writing a colleague’s motion.*





**Commissioner Virdi:** *Im sorry, but you cannot go back on your word. There is a reason [Political Staff members, and ABC representative] were involved in the discussion on April 19, 2023. They are witness to the alignment we had on that day. It was settled and I clearly said at the end of the meeting that this was a turf field motion. The engagement will ask residents if they would like a turf field or not. The second part of the survey would ask what else they would prefer to see in the community. This was a very clear compromise that [Political Staff members, and ABC representative] were witnesses too. You cannot agree on something and then change your mind last minute. And quite frankly I found it very insulting when my motion was completely re-written to the point where there wasn't even a sentence left of the original motion and now it's being completely re-written again. You cannot agree to something with witnesses in the room and then at the last minute do a complete 180 and change everything. [Commissioner Jensen], I feel you are not being an objective chair and are not supporting all of us equally. You could have picked up the phone and called me if you were deciding to re-write my motion. And why is it that only [Commissioners Christensen and Bastovovszky] were involved in re-writing my motion.*

**Commissioner Christensen:** *Hi [Commissioner Virdi] & All,*

*I've added comments to the document. In summary:*

- *The preamble needs to be fact focused and not support a pre-determined outcome. This is the best way we can have an objective public engagement that, if faced with resistance in the future, we can defend ourselves with. This was discussed at length on Thursday.*
- *The resolution uses the phrase "this proposal," which is entirely undefined. What exactly is the public engagement about? We need some wordsmithing here.*
- *We agreed that we would also ask residents about what other park amenities they might want to see. That is currently not reflected in the resolution so far.*

*Please make revision based on these comments. I'm available on/off this afternoon and most of tomorrow if anyone wants to discuss/work on this. As discussed Thursday night, I would like to have consensus on the amendments prior to Sunday evening since I will be working all day Monday and don't have time to review things that day.*

*Thank you,*

[Commissioner Christensen]

**Commissioner Jensen:** [Commissioner Virdi],

*Can you add your input to the document for the other Commissioner to consider? As stated at the initial meeting, there is a consensus for working on a compromised motion. We cannot proceed further without seeing how you interpreted the compromise.*

*She said she supported and voted in favour of the amended version of the Moberly Park Motion at the May Park Board Meeting and the motion passed. We cannot proceed further without seeing how you interpreted the compromise.*

*Did you request the historical data from the Park Board yesterday?*



*Have you spoken to each Commissioner to ensure they support your motion?*

*I can be reached at [phone number]. I am busy tonight and tomorrow evening, but have some time this afternoon.*

*In our discussions, I am not Chair nor do I need to be objective. I am to offer my opinion. The Caucus Chair is the Chair of our meetings and it is their responsibility to ensure all voices are heard and that consensus is met in advance of our Board Meetings.*

[Commissioner Jensen]

**Commissioner Virdi:** *Yes I have requested the historical data. There was no room for misinterpretation. I was very clear in summarizing at the end of our meeting when consensus was reached. I deliberately summarized the consensus reached that day to avoid going back through the same arguments we got past. I don't understand how you went back to a Master Plan idea. Again, [Political Staff members, and ABC representative] were witnesses to this. If you would like to change my motion in any way. You can reach me at [phone number]. I encourage every commissioner to call me if they would like to make any changes. I am available all day today and tomorrow. Call me at any time.*

*Thanks,*

[Commissioner Virdi]

**Commissioner Howard:** *Hi everyone,*

*Just catching up to prep for Monday's meeting. Very surprised, and somewhat shocked, that we are still discussing the field motion. We had come to an agreement prior to presenting the notice of motion at our last PB meeting. I don't understand why we need to change any of it and fully support [Commissioner Virdi] as the lead on this.*

*Also, I don't understand why we are amending a motion presented without knowledge by staff instead of striking and replacing it with our very own.*

...

*Cheers,*

[Commissioner Howard]

**[ABC Representative]:** *I have addressed comments made to the motion. Some of the comments are polishing a statement that is otherwise accurate. Opinions in the preamble should be allowed and provide context on the intent of the motion, it does not determine the outcome.*

*I also adjusted the text in the resolution so it makes more sense.*

*Please review for Sunday.*

*I understand [Commissioner Virdi] has reached out to many today. Any comments can be sent or discussed with [Commissioner Virdi] (or myself).*

**Commissioner Christensen:** [Commissioner Virdi]/[ABC Representative],

*I am satisfied that the resolution now meets the intent we agreed upon.*



*I will continue to disagree with your point regarding the preamble – the preamble sets the intent of the motion. It's clear from the preamble that the intent is for syn turf field hockey field. While we know that this is the direction we are going – we should let that come out naturally from the engagement. If we do not, we risk being accused of pushing something through without due process. Further, since many of the preamble points are opinion, not fact, we open ourselves up to more criticism (i.e. making uninformed decisions, etc.)*

*While I will support this amended resolution as a compromise, I would encourage [Commissioner Viridi] and others to consider the risks we are opinion ourselves up to.*

[Commissioner Christensen]

### *Commissioner Bastyovanszky*

Commissioner Bastyovanszky also said there were a number of times when the Respondents met as a group to discuss matters that were before the Park Board. He said the purpose of these meetings was to discuss the Respondents' perspectives and positions so they could come to a consensus on how to vote on certain motions in public meetings. He said this included meetings related to the Bike Lane Motion and the Moberly Park Motion.

### Bike Lane Motion

Commissioner Bastyovanszky said that, in advance of voting on the Bike Lane Motion, the Respondents held several sessions to discuss the proposed motion, what form it should take, and how each would vote at the public meeting.

He said the first session was in December 2022 and included all the other Respondents. He described raising concerns about the fact they were meeting without Commissioner Digby but said he was told that it was fine. Commissioner Bastyovanszky described the Respondents as at an impasse on what to do about the bike lane issue. He said there was an expectation that the Respondents, as ABC members, would vote unanimously on the Bike Lane Motion and agree on how they would vote ahead of time. Commissioner Bastyovanszky explained that the Respondents had received a staff report with three options for changing the bike lane in Stanley Park, one of which was to keep 30% of the bike lane.

Commissioner Bastyovanszky said that because the Respondents were still not in agreement on how they would vote on the Bike Lane Motion, they had a session on February 12, 2023, at the Mayor's home. He said in addition to the ABC Commissioners and the Mayor, the Mayor's political staff and an ABC representative were present.

He described the attendees engaging in debate, and said the meeting lasted for approximately two hours. According to Commissioner Bastyovanszky, they were told no one could leave until all the Respondents



agreed they would vote in favour of removing the temporary bike lane. Commissioner Bastyovanszky said he expressed that he was undecided but was considering the 30% option.

He confirmed he voted for the 30% option, but said he kept an open mind, and did not agree to do so in advance, or to accord with ABC's wishes.

### Moberly Park Motion

Commissioner Bastyovanszky said he attended the May 25, 2023 session held in the Mayor's office with the other Respondents to discuss the Moberly Park Motion. He said the Respondents had not been able to agree on the Moberly Park Motion, which was initially prepared by Commissioner Virdi. Commissioner Bastyovanszky said he had concerns that no public consultation had occurred. He said Commissioner Christensen prepared an alternate draft motion, which directed City staff to look at a Master Plan for Moberly and Ross Parks.

Commissioner Bastyovanszky said the Mayor's political staff and an ABC representative were also at the May 25 Session in the Mayor's office. He said that the purpose of the session was described in a manner similar to at other meetings, as "under the guise of aligning values and generic discussions," but that an ABC representative would direct and transition into specific votes once the meeting was underway. He said the meeting happened in advance of the May Park Board Meeting when the Moberly Park Motion would be voted on. Commissioner Bastyovanszky described the session as heated, including with one participant banging their fists on the table.

Commissioner Bastyovanszky said he refused to agree to Commissioner Virdi's motion and considered himself free to vote with his conscience. At the May Park Board Meeting, he introduced the amendment (that Commissioner Christensen had drafted) and the Respondents (except for Commissioner Virdi who abstained) voted in favour.

### ABC Retreat

Commissioner Bastyovanszky did not attend the ABC Retreat.

### *Commissioner Jensen*

Commissioner Jensen said that at the request of ABC representatives, he attended several sessions with the other Respondents to discuss Park Board business.

He recalled attending the February 12, 2023 session at Mayor Sim's home to discuss the Bike Lane Motion. He said that in addition to himself and the other Respondents, political staff from the Mayor's office, an



ABC representative, and the Mayor were there. He did not recall Commissioner Howard attending. He said that in advance of the meeting, he was advised they would be talking broadly about issues relating to ABC, which had been the case in meetings with ABC Commissioners and ABC representatives he had attended in the past.

However, Commissioner Jensen said once the session started, the focus of the discussion became about how “to get a consensus on where we were [individually as Park Board Commissioners], and to find compromise, with the bike lane issue.” He said that each of the Respondents stated their preferred option with respect to the bike lane, and that they were encouraged “to find a compromise” that they could carry into the February Park Board Meeting where the Bike Lane Motion would be voted on publicly.

He said the fact they had quorum and discussed a matter within the purview of the Park Board concerned him and he expressed his concerns to an ABC representative saying this made him “uncomfortable” and he believed put the Respondents “in a compromising situation.” He said he was advised by the ABC representative that such meetings were consistent with ABC caucus rules and were okay, saying things such as, “Parties meet all the time.”

Commissioner Jensen said he felt pressure to attend sessions such as the one on February 12, 2023, as he felt there would be consequences if he did not, such as being kicked out of ABC.

Commissioner Jensen attended the May 25, 2023 session. He said the Respondents were called into the Mayor’s office to discuss the Moberly Park Motion. He said the session was led by the Mayor’s political staff and focused on gaining support for the Moberly Park Motion prepared by Commissioner Viridi.

He said there was dissent among the Respondents about building a turf field at Moberly Park. He said some of the Respondents did not agree with the decision, in part because they felt more community engagement was needed, citing a presentation from Park Board staff which indicated residents of the Sunset neighbourhood had previously communicated a variety of needs regarding new recreational amenities and a sports field was only one. Commissioner Jensen said despite the pressure he felt, he still insisted the Park Board follow proper processes and review the results of community engagement before proceeding with funding a turf field at Moberly Park.

### ABC Retreat

Commissioner Jensen attended the ABC Retreat and confirmed that voting rules for ABC Park Board Commissioners were discussed. Specifically, he said the Respondents were directed to vote in line with campaign promises and any direction provided by the Mayor, and as a group on budget issues.



### *Commissioners Haer, Howard, and Virdi*

As noted above, Commissioners Haer, Howard, and Virdi did not attend any interviews. Their legal counsel provided a written submission. In it, they provided information that included the following details relevant to the Complaint:

1. Between November 7, 2022 and December 2023, the Respondents met in person to discuss party politics. These were ABC, not Park Board, gatherings.
2. On February 11 and 12, 2023:
  - a. The Respondents met informally with the Mayor and various advisors. Commissioners Haer, Howard, and Virdi did not remember whether Commissioner Jensen was present on both days. On at least one of February 11 or 12, the gathering took place at the Mayor's home. In addition to the Respondents, members of the Mayor's political staff and an ABC representative were present.
  - b. During these gatherings, the attendees informally discussed ABC's party goals, strategy, and campaign promise to remove the Stanley Park bike lane. The bike lane was discussed, and as an example, only because it was a key ABC campaign promise. At this time, there was considerable disagreement and unrest amongst the Respondents. A third party was brought in to facilitate this internal conflict.
  - c. The point of these gatherings was not to determine or decide the issue of the bike lane, but rather to attempt to resolve internal party conflict, and understand where the Respondents stood on upholding their campaign promises generally and their commitment to ABC. No vote took place at these gatherings, nor was any sort of formal procedure followed.
3. On May 25, 2023:
  - a. In the evening, the Respondents, along with other ABC-related individuals, gathered in Mayor Sim's office. Commissioners Haer, Howard, and Virdi did not remember specifics of what was discussed.
  - b. The main purpose of this gathering was to address the ongoing in-fighting amongst the Respondents and have an informal preliminary discussion about ABC party policies. The discussion also referenced an ongoing issue about internal disagreements regarding a motion to build a turf field. The turf field was brought up, not as a Park Board matter to be discussed, but as an example about the issue of ABC Commissioner in-fighting. No determination was reached or vote taken on any Park Board matter.
4. At the ABC Retreat in September 2023:



- a. A large group of ABC-associated individuals were invited to a private team bonding retreat on Bowen Island. Attendees included ABC City Councillors, the Respondents (minus Commissioner Bastyovanszky), and other ABC members and volunteers.
  - b. This retreat was primarily a social gathering and a team-building exercise designed to foster collaboration among members. Activities included a scavenger hunt and a team race. The evening ended with a social gathering featuring wine and cheese, reinforcing the event's informal and collaborative nature.
  - c. Later in the day, attendees engaged in casual discussions about party goals, but no formal decisions or votes took place.
  - d. "Caucus voting" was a session topic but elected ABC officials were not required to vote a certain way. This was a general session that covered the importance of internal unity and honouring campaign promises. Attendees were reminded to keep in mind ABC's ideology and political platform to facilitate internal consistency across the party. Voting in line with ABC policies and promises was generally addressed but no specific motion or issue, Park Board or otherwise, was discussed.
5. The above gatherings included discussion of issues, including the Stanley Park bike lane and the Moberly turf field. However, these discussions were framed as informal internal political party conversations and were very different than regularly scheduled Park Board meetings where Commissioners reviewed information presented by staff, listened to the public, tabled motions, made decisions, and voted according to their personal conscience. Further, the gatherings were not held on City or Park Board property, except for the gathering at the Mayor's office, and attendance was based on availability and willingness to attend, included other ABC members and representatives and did not include all Commissioners.
  6. The above gatherings were necessary in part because Commissioners Bastyovanszky, Christensen, and Jensen were unwilling to follow through on campaign promises they relied on to be elected.
  7. The Bike Lane Motion and the Moberly Park Motion were the subject of multiple public Park Board meetings.
  8. Public discussion about the removal of the bike lane and building a turf field at Moberly Park was ongoing at this time and thorough public debate and discussion occurred before any Park Board motion being voted on.
  9. Since December 2023, the Commissioners Bastyovanszky, Christensen, and Jensen have filed multiple complaints with my Office as a way of gaining political leverage.



10. No formal decisions or votes on Park Board matters ever took place outside of public meetings. It is common practice for Commissioners to draft motions in advance of Park Board meetings for efficiency, but all decisions were ultimately made in public Park Board meetings. No motion was finalized, approved, or pre-determined outside of public Park Board meetings.

Commissioners Haer, Howard, and Virdi did not dispute the authenticity of the Signal Chat messages, but said they were selective and did not show the complete history of the depicted conversations. They further said they were unable to provide additional screenshots of these conversations because they no longer had access to the messages (and had not since before receiving the Complaint).

Commissioners Haer, Howard, and Virdi said I should dismiss the Complaint because:

1. The *Charter of Rights and Freedoms* protects party caucusing;
2. The Complaint falls outside the scope of the Policy;
3. They did not breach the open meeting principle; and
4. It would be a waste of taxpayer funds if I did not dismiss the Complaint.

### The *Charter* Protects Party Caucusing

Commissioners Haer, Howard, and Virdi submitted that party caucusing falls squarely within the freedom of association guaranteed by section 2(d) of the *Charter*. Therefore, caucusing cannot be limited unless such limitation is demonstrably justified, and the open meeting requirement must be interpreted in a manner that accords with the *Charter*. They said the open meeting requirement does not mean a political party majority cannot discuss proposed laws privately during party discussions.

They said the gatherings were protected activity under section 2(d) because they reflected the Respondents' status as ABC members exercising both their individual right to join a political party and the collective right of ABC to gather and discuss political ideas.

They also submitted that discussions regarding party voting were to remind ABC members of ABC's campaign promises and ideology. There was no attempt to dictate political outcomes or circumvent the democratic process. The gatherings were fundamentally discussions of policy amongst a political party rather than an exercise of municipal power. ABC's ability to caucus to ensure that its members contribute to its policy goals and maintain internal consistency is *Charter*-protected and a practical reality of a functioning democracy. Party caucusing creates government efficiency and voter transparency. It is reasonable to presume that those who voted ABC did so because they supported what ABC stood for and





were expecting that once elected, ABC would act in accordance with the party's mandate and election promises.

The written submission also says that if I make a finding that the gatherings violate the open meeting principle, this would "chill" the ability of political parties to discuss and enforce what they publicly promised when campaigning.

### The Complaint Does Not Fall Under the Policy

Commissioners Haer, Howard and Virdi's argument here is two-fold.

First, they say that the open meeting requirement in the Vancouver Charter is an obligation of the Park Board and not of individual commissioners. As the Policy allows complaints only against individual Commissioners, not the Park Board as a whole, there can be no complaint under the Policy against the Respondents and I have no jurisdiction to hear the Complaint.

Second, they say that even if a complaint about the open meeting requirement can be brought against individual Commissioners under the Policy, the Policy does not apply because section 1.1f) is not a standalone ground of a complaint. It is merely an interpretative aid for actual obligations set out later in the Policy with specific requirements for Commissioners (communications and confidentiality in Part 2 and conflicts of interest in Part 3). It cannot be interpreted as incorporating the entire Vancouver Charter and all other laws such that a breach of any law could result in a complaint against a Commissioner under the Policy.

The written submission says that my authority as Integrity Commissioner is restricted to what has been delegated to me and this does not include the power to interpret and apply statutes. Adjudication of a breach of the Vancouver Charter can only be done by the Supreme Court of BC, the BC Ombudsperson, or City Council.

### The Open Meeting Principle Was Not Violated

Commissioners Haer, Howard, and Virdi say their private ABC discussions did not breach the open meeting principle.

They say a gathering is in fact a "meeting" in violation of the open meeting requirement if it deprives the public of the opportunity to observe a material part of the decision-making process. I should dismiss the Complaint because at no time did the gatherings substitute for public meetings. All expected public meetings were held and all matters to be discussed at those meetings were discussed.



They further say the gatherings always revolved around ABC party policy and campaign promises. Discussions that touched on Park Board matters were informal and done so for the purpose of internal party politics. The public was not deprived of the ability to witness discussion on the heart of any Park Board issue, including the Bike Lane Motion and the Moberly Park Motion.

The written submission also notes that the following considerations have been used by courts to determine whether a gathering is in fact a meeting in violation of the open meeting requirement:

1. Nature of the group: this includes the number of attendees and whether they have decision-making authority. In *Southam Inc. v Regional Municipality of Hamilton-Wentworth (Economic Development Committee)*, the Court of Appeal for Ontario held that the term ‘meeting’ “should be interpreted as any gathering to which all members of the committee are invited to discuss matters within their jurisdiction.”<sup>4</sup>
2. Nature of the discussion: this includes the topics discussed. In *Southam Inc. v Ottawa (City) Council*, the Superior Court of Ontario noted that discussing “matters [that] ordinarily [constitute] the Council’s business” indicate that a gathering is a meeting.<sup>5</sup>
3. Nature of the gathering: this includes whether the gatherings were regularly held, whether the gatherings included formal procedure (such as motions or a vote – with voting being particularly indicative that a gathering was a meeting), and whether the gatherings occurred at regular meeting locations. The statutory duty to hold open meetings does not preclude informal discussions among elected officials.
4. Revisiting discussions: it is relevant whether the matters discussed at private gatherings are revisited in open meetings.

Commissioners Haer, Howard, and Viridi say that when the above factors are considered, the conclusion is that the gatherings were not “meetings” within the meaning of the open meeting principle.

First, no gathering was attended by all Commissioners and all gatherings were attended by individuals who were not Commissioners. Thus, those in attendance did not exercise decision-making authority as a group.

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<sup>4</sup> *Southam Inc. v Regional Municipality of Hamilton-Wentworth (Economic Development Committee)*, 1988 CanLII 4709 (ON CA), at p 7.

<sup>5</sup> *Southam Inc. v Ottawa (City) Council*, 1991 CanLII 7044 (ON SC), at p 4.



Second, while the Bike Lane Motion and Moberly Park Motion were discussed, it was only an exchange of information and opinions. Discussions were focused on internal unity, group bonding, and in many cases included presentations by third parties.

Third, there were no formal meeting procedures, gatherings did not occur at a regular Park Board meeting place or time, and most importantly, did not result in a vote.

Fourth, the Bike Lane and Moberly Park Motions were discussed as a matter of party policy and examples of disagreement among the Respondents. This was mainly necessary because Commissioners Bastyovanszky, Christensen, and Jensen did not want to stick to ABC election promises.

Fifth, any discussion that occurred was furthered in the public process. The Bike Lane and the Moberly Park Motions were revisited at multiple public Park Board meetings, subject to public debate, and ultimately decided at public Park Board meetings. Thus, the public had ample opportunity to engage in and observe the decision-making process.

### Waste of Taxpayer Funds

Finally, Commissioners Haer, Howard, and Viridi say there was a “massive increase” in complaints to me as Integrity Commissioner in 2024 and it is clear many complaints are politically motivated. Thus, failure to dismiss complaints that ought to be dismissed is a waste of taxpayer funds.

### **Issue**

The issue I must decide is whether the Respondents breached section 1.1f) of the Policy when they discussed Park Board business in person and electronically outside of duly constituted Park Board meetings.

### **Assessment of Credibility and Findings of Fact**

As can be seen from the above summaries of information from the Respondents, there was no disagreement about many of the relevant events.

To the extent there were some differences between what Commissioners Bastyovanszky, Christensen, and Jensen, and Commissioners Haer, Howard, and Viridi said occurred at the various caucus events in issue, these were generally not different versions so much as an absence of information from the latter Commissioners.

Commissioners Bastyovanszky, Christensen, and Jensen provided comprehensive and specific information. Their oral and documentary information was internally consistent and each’s description of



events was also generally consistent. Any distinction between them was on the point of whether a final decision was made, as in the case of Commissioner Bastyovanszky who maintained that he kept an open mind and had not agreed to vote a certain way. On this point, I prefer the evidence of Commissioners Christensen and Jensen, as their evidence aligns with the documentary evidence, and the evidence of what actually happened during the public meeting. As will be explained further, however, even if I accept that no final decision was made in the sessions, that is not the question I must answer. The question is whether a quorum of Commissioners met and materially moved Park Board decision making forward outside of public view.

Commissioners Haer, Howard, and Viridi said they could not recall specifics about what was said at the various caucus events in relation to the Bike Lane Motion, the Moberly Park Motion, and ABC voting rules, although they also insisted there was only an exchange of information and opinions. They cancelled their scheduled interviews, provided limited information in a written submission, and refused document production requests. In other words, they had an opportunity to provide more details about what occurred but chose not to.

Thus, where there is a material difference in the information from Commissioners Bastyovanszky, Christensen, and Jensen and the information provided in the written submission of Commissioners Haer, Howard, and Viridi, I accept the information of the former. In addition, the documents are clear and no Respondent took issue with their authenticity. Accordingly, I also relied on the contents of the documents in making my findings.

I make the following findings of fact:

1. The Respondents, except for Commissioner Jensen, and an ABC representative met on February 11, 2023, and discussed the Bike Lane Motion. The purpose of the session was, in part, to discuss how the Respondents intended to vote at the February Park Board Meeting on proposed options for the Stanley Park bike lane. The five Respondents present discussed how they intended to vote on the options and tried to reach consensus on which option they would support. They were not able to agree on one option.
2. Because consensus was not reached on February 11 about voting on the Bike Lane Motion, the Respondents met again on February 12, 2023, and discussed the motion further. The focus of the discussion was how to get consensus on the Bike Lane Motion. The Respondents eventually came to a compromise about the text of the motion and agreed to vote in favour of the same option at the February Park Board Meeting, which was scheduled for the next day.



3. The Bike Lane Motion came before the Park Board at the February Park Board Meeting. As noted by Commissioner Digby, and evident from the recording of the meeting, there was little debate on the motion by the Respondents and they all voted in favour of it.
4. The Respondents met on May 25, 2023, and discussed the Moberly Park Motion. The May 25 Session was intended to ensure the Respondents were aligned on the Moberly Park Motion before the May Park Board Meeting. It concluded with agreement by the Respondents that they would support funding a turf field at Moberly Park if the motion asked City staff to do public engagement first. As a result, Commissioner Christensen worked with an ABC representative to draft an amendment to the original Moberly Park Motion drafted by Commissioner Viridi.
5. Beginning on May 26, 2023, the Respondents and an ABC representative discussed by email the wording of the Moberly Park Motion that was to be put forward at the May Park Board Meeting. The email discussion shows the Respondents working towards agreement on the text of the motion so that there would be consensus to vote in favour of it. While ultimately Commissioner Viridi did not agree, the rest of the Respondents did. The email thread also refers to how caucus meetings with ABC commissioners were to ensure all voices were heard and consensus was met before Park Board meetings.
6. At the May Park Board Meeting on May 29, 2023, all Respondents, except for Commissioner Viridi who abstained, voted in favour of the amended Moberly Park Motion.
7. The Respondents and an ABC representative used the Signal Chat to discuss Park Board business outside of and during Park Board meetings, including the Bike Lane and Moberly Park Motions. Messages beginning on February 13, 2023, and continuing for a few days after, referred to scheduling regular sessions about a week before public Park Board meetings to “discuss any issues ahead of [Park Board] meetings.” The items for discussion the week before the March Park Board meeting included those that aligned with ABC campaign promises and future Park Board agenda items.
8. In September 2023, the Respondents, except for Commissioner Bastyovanszky, attended the ABC Retreat with ABC leadership and other staff as well as ABC City Councillors. Voting in line with ABC policies and campaign promises was generally addressed.
9. In the fall of 2023, a senior leader of ABC sent the Respondents an email stating they were expected to work and vote in alignment with their ABC caucus and may be disciplined if they did not.



10. The February 11 and 12 sessions and the May 25 session were focused on ensuring unity amongst the Respondents and turning ABC campaign promises into reality by getting them to agree on Park Board motions relating to those promises.
11. Respondents who questioned the propriety of ABC Commissioners caucusing to reach agreement on how they would vote at Park Board meetings were told by ABC-associated individuals that this was a normal, democratic practice and consistent with ABC caucus rules.
12. The in-person sessions on February 11 and 12, and May 25 were not held on Park Board property and only the May 25 Session was held on City of Vancouver property. These were not regularly scheduled events and did not involve formal Park Board or other meeting procedures.

## **Park Board Code of Conduct Policy**

The Complaint alleges the Respondents breached section 1.1f) of the Policy, which states:

### *PART 1 - STANDARDS AND VALUES*

*1.1 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 Park Board governance.*

## **Analysis**

For the reasons that follow, I conclude the Respondents breached section 1.1f) of the Policy. They engaged in conduct that reasonably undermined or had the potential to undermine public confidence in Park Board governance when they did not comply with the open meeting requirement of the Vancouver Charter (section 165.1).

### *Rationale Behind the Open Meeting Requirement*

Section 165.1 of the Vancouver Charter states:

#### ***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.***



As set out at the beginning of this report, 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.<sup>6</sup>

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. They facilitate citizen participation in the policy development and decision-making processes and serve to build public trust and confidence in local government.<sup>7</sup>*

In *London (City) v RSJ Holdings Inc.*, the Supreme Court of Canada explained why the open meeting requirement was enacted in Ontario:

### *3.1 The Open Meeting Requirement*

*17 As we shall see, s. 239 of the Municipal Act, 2001 requires that all municipal meetings be open to the public, except where the subject matter being considered at the meeting falls within one of seven categories expressly set out in the statute. However, before reviewing the relevant statutory provisions, it may be useful to recall the state of affairs that existed in Ontario prior to the enactment of s. 239.*

*18 ... It is particularly noteworthy that one recurring problem mentioned in the 1984 Ontario Report of the Provincial/Municipal Working Committee on Open Meetings and Access to Information was that “some municipal councils employ lengthy, in-camera special and committee meetings to discuss matters under debate and then ratify their decision in full council in a few minutes, with minimal discussion” (p. 2). See also, the report of the Ontario Commission on Freedom of Information and Individual Privacy (“Williams Commission”), Public Government for Private People (1980). In the hope of thereby fostering democratic values, and responding to the public’s demand for more accountable municipal government, these reports recommended compulsory open meetings of municipal councils and committees, subject to narrow exceptions.<sup>19</sup> These recommendations were acted upon by*

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<sup>6</sup> BC Ombudsperson, *Open Meetings: Best Practices Guide for Local Governments*, Special Report No. 34 to the Legislative Assembly of BC (September 2012) at pp 6-7.

<sup>7</sup> BC Ombudsperson, *Open Meetings: Best Practices Guide for Local Governments*, Special Report No. 34 to the Legislative Assembly of BC (September 2012) at p 22.



*the Government of Ontario in the early 1990s...The open meeting requirement was intended to increase public confidence in the integrity of local government, by ensuring the open and transparent exercise of municipal power (Legislative Assembly of Ontario, Official Report of Debates (Hansard), No. 162, November 28, 1994, at p. 7978 (Pat Hayes)).*

...

*38 ... Municipal law was changed to require that municipal governments hold meetings that are open to the public, in order to imbue municipal governments with a robust democratic legitimacy. The democratic legitimacy of municipal decisions does not spring solely from periodic elections, but also from a decision-making process that is transparent, accessible to the public, and mandated by law. When a municipal government improperly acts with secrecy, this undermines the democratic legitimacy of its decision, and such decisions, even when *intra vires*, are less worthy of deference.*<sup>8</sup>

[Emphasis added]

### *What is a Meeting?*

The Vancouver Charter does not define a “meeting” for the purposes of the open meeting requirement.

However, case law considering whether municipal gatherings are meetings subject to the statutory open meeting requirement indicates the fundamental question is whether elected officials have met and discussed matters within a local government’s jurisdiction<sup>9</sup> in a way that deprived the public of the opportunity to observe a material part of the decision-making process.<sup>10</sup> This approach is consistent with the Supreme Court of Canada’s explanation in *London (City) v RSJ Holdings Inc.* that the open meeting requirement is intended to give municipal governments democratic legitimacy through a decision-making process that is transparent and accessible.<sup>11</sup>

I therefore take from this authority that the open meeting requirement requires Commissioners to not materially advance Park Board decision making in private (assuming the statutory exceptions to section 165.1 do not apply).

I note that the Ontario *Municipal Act’s* definition of ‘meeting’ was amended in 2018 to expressly require a quorum of members and a discussion of (or otherwise dealing with) any matter in a way that materially advances the business or decision making of a council, local board, or committee. But even before

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<sup>8</sup> *London (City) v RSJ Holdings Inc.*, 2007 SCC 29 at paras 17-19, 38.

<sup>9</sup> *Southam Inc v Hamilton-Wentworth (Regional Municipality) Economic Development Committee* (1988), 66 OR (2d) 213, 54 DLR (4th) 131 (CA).

<sup>10</sup> *Southam Inc. v Ottawa (City) Council (Div Ct)*, 1991 CanLII 7044 (ON SC); *City of Yellowknife Property Owners Assn. v Yellowknife (City)*, 1998 CanLII 6961 (NWT SC) at paras 24-25.

<sup>11</sup> *London (City) v RSJ Holdings Inc.*, 2007 SCC 29 at para 38.





legislative change, the Ontario Ombudsman, who reviews complaints about non-compliance with the open meeting requirement in the *Municipal Act*, used the following definition of ‘meeting’:

*Members of council (or a committee) must come together for the purpose of exercising the power or authority of the council (or committee), or for the purpose of doing the groundwork necessary to exercise that power or authority.*<sup>12</sup>

As pointed out by legal counsel for Commissioners Haer, Howard, and Virdi, there are two other considerations some decision makers have used to determine whether a meeting has occurred, including:

1. The nature of the gathering (where and how the gathering has been conducted); and
2. Whether discussion is revisited at open meetings.<sup>13</sup>

While I consider these factors as well, I agree with the BC Ombudsperson that they are less significant factors.<sup>14</sup> They do not relate as directly as the nature of the group and discussion do to whether Park Board decision making has been materially advanced in private.

In summary, based on the above, I conclude that in determining whether there has been a meeting in the context of the section 165.1 requirement for open meetings, I must consider whether Park Board Commissioners attended a function (the nature of the group) at which Park Board business was dealt with in such a way as to move it materially forward in the overall spectrum of a Park Board decision (the nature of the discussion).

Some of the alleged meetings in the Complaint were over electronic media (email and Signal messaging). For the purpose of my decision about the Policy, I conclude that “meetings” required by section 165.1 of the Vancouver Charter include electronic meetings occurring over Zoom or Teams, as well as email, and electronic messaging. I agree with the reasoning of the BC Ombudsperson’s special report, which says:

#### *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.*

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<sup>12</sup> Ombudsman Ontario, *Investigation into Council of the Township of Nipissing Special Meeting of April 25, 2008*, (February 6, 2009) at para 29; *Leeds and the Thousand Islands (Township of) (Re)*, 2016 ONOMBUD 15 at paras 26-33. The definition of “meeting” in the *Municipal Act*, 2001 was “any regular, special or other meeting of a council, of a local board or of a committee of either of them.”

<sup>13</sup> BC Ombudsperson, *Open Meetings: Best Practices Guide for Local Governments*, Special Report No. 34 to the Legislative Assembly of BC (September 2012) at pp 8-9; *City of Yellowknife Property Owners Assn. v Yellowknife (City)*, 1998 CanLII 6961 (NWT SC); *3714683 Canada Inc. v Parry Sound (Town)*, [2004] OJ No. 5061 at para 66 (SCJ).

<sup>14</sup> BC Ombudsperson, *Open Meetings: Best Practices Guide for Local Governments*, Special Report No. 34 to the Legislative Assembly of BC (September 2012) at p 9.



*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.*<sup>15</sup>

[Emphasis added]

This statement was made in 2012. With the COVID-19 pandemic and technological advancements, electronic methods of communication are now even more frequently used and accepted as a means of communicating, particularly as a group.

I note that the Ontario Ombudsman has also concluded that emails and telephone discussions can be meetings.<sup>16</sup>

### *Were the Respondents' Discussions "Meetings"?*

I find that the February 11 and 12 sessions were Park Board meetings that should have been held in public in compliance with section 165.1 of the Vancouver Charter. I also find that the May 25 Session and the Signal Chat thread beginning on May 26, 2023, were meetings that should have similarly been held in public.

### February 11 and 12 Sessions

At the February 11 and 12 sessions, the Respondents (except for Commissioner Jensen on February 11) represented a quorum of Park Board Commissioners and discussed the Bike Lane Motion, which was Park Board business. They dealt with the motion in such a way as to move it materially forward in the overall spectrum of a Park Board decision and did so in private.

At the February 11 session, the Respondents, except for Commissioner Jensen, discussed the Bike Lane Motion. The purpose was to reach agreement on the Motion, specifically to agree on how the Respondents would vote when one of them brought the Motion to the scheduled February Park Board Meeting.

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<sup>15</sup> BC Ombudsperson, *Open Meetings: Best Practices Guide for Local Governments*, Special Report No. 34 to the Legislative Assembly of BC (September 2012) at p 11.

<sup>16</sup> Ombudsman Ontario, *Investigation into Council of the Township of Nipissing Special Meeting of April 25, 2008*, (February 6, 2009) at para 29; *Leeds and the Thousand Islands (Township of) (Re)*, 2016 ONOMBUD 15 at paras 26-33.



At the February 12 session, the Respondents continued the discussion to try to reach consensus on how they would vote when the Bike Lane Motion was brought to the Park Board the next day.

With little debate, the Respondents passed the Bike Lane Motion at the February Park Board Meeting. As set out at the outset, the absence of meaningful discussion or debate in the public process was noticed and commented on by Commissioner Digby, who stated, in part:

*with all respect to my colleagues, I seem to sense there's a lot of previous agreement that this motion is gonna come forward in this way and uh, I don't think that that is legitimate in the public court that we should be proceeding this way on this important motion without going to committee and hearing from the public and then having six commissioners who are somehow ready to agree to a substantial amendment to a controversial motion that we—that I have been exposed to for the past 6 minutes.*

Discussions, debates, or decisions intended to lead to specific outcomes or to persuade decision makers one way or another materially advance the business or decision-making process.<sup>17</sup> This is what occurred on February 11 and 12, 2023 with respect to the Bike Lane Motion. The discussions were not merely an informal exchange of information.<sup>18</sup> Rather, they laid the groundwork for the Respondents' subsequent voting on the Bike Lane Motion. The oral and documentary information from Commissioners Bastovanszky, Christensen, and Jensen show this was the case, as does the fact that the Bike Lane Motion was introduced and then passed by the Respondents with little debate.

As the Ontario Ombudsman has repeatedly found, actions like voting, reaching an agreement, providing direction or input to staff, and discussing or debating a proposal, course of action, or strategy are factual indicators that business or decision making has materially advanced.<sup>19</sup>

What occurred at the February 11 and 12 sessions was not unlike the facts in *Southam v Ottawa (City) Council* where councillors attended a retreat at a resort, which the Divisional Court found was a meeting contrary to the open meeting requirement. Councillors discussed, in a structured way, matters that would ordinarily be the subject of council business, in part at least to make action-taking decisions, and materially move along a number of council matters. The fact that the retreat was informal and did not include the ritual trappings of a formal council meeting was irrelevant given the nature of the group and the discussion.

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<sup>17</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.

<sup>18</sup> *Vanderkloet et al. v Leeds & Granville County Board of Education*, 1985 CanLII 1976 (ON CA).

<sup>19</sup> *Casselman (Village of) (Re)*, 2018 ONOMBUD 11 at para 31; *Hamilton (City of) (Re)*, 2019 ONOMBUD 7 at para 70. See also *Casselman (Municipality of) (Re)*, 2022 ONOMBUD 13.



Commissioners Haer, Howard, and Virdi agreed that the Bike Lane Motion was discussed at the February 11 and 12 sessions but said these gatherings were merely informal exchanges of information and opinion and did not prevent the public from observing the Park Board’s decision-making process.

As set out above, the oral and documentary information indicates this was not the case. The discussions went beyond members sharing information informally. Instead, at the February 11 and 12 sessions, the Respondents effectively organized a voting bloc of Commissioners who strategically agreed ahead of time on how to deal with a specific matter. This denied Commissioner Digby, who was not invited to the meetings, and the public, the opportunity to participate in the discussion—or at least observe it. It also meant that meeting minutes and other records did not record it.

Further, the written submission of Commissioners Haer, Howard, and Virdi somewhat contradicted their assertion that there was only an informal exchange of information and opinions. They said the gatherings were necessary, in part, only because Commissioners Bastiovanszky, Christensen, and Jensen were unwilling to follow through on campaign promises, and discussions at the gatherings were focused on “turning ABC Campaign promises into reality” despite the disagreements among the Respondents. They also said the Respondents made campaign promises, there was an expectation that officials would adhere to campaign promises, and there was a need to ensure political parties were able to carry out these promises. They acknowledged this was all part of the Respondents’ discussion around the Bike Lane and Moberly Park Motions. All of this supports a conclusion that the focus of the February 11 and 12 sessions was to have Commissioners reach consensus on how to vote on those Motions.

Commissioners Haer, Howard, and Virdi said there were no formal decisions, votes, or procedures followed at the February 11 and 12 sessions, these were not regularly scheduled gatherings, and were, with one exception, not held on City of Vancouver or Park Board property. However, like the Divisional Court in *Southam v Ottawa (City) Council*, given the other information about what occurred at these gatherings, I find the when and where of the gatherings irrelevant to my conclusion about the February 11 and 12 sessions.

Finally, I reject their submission that because the Bike Lane and Moberly Park Motions were later discussed in public, including at public Park Board meetings, the February 11 and 12 sessions did not prevent the public from observing the Park Board decision-making process. The Respondents discussed the motions at length and reached agreement in private about how they would vote on them. The public did not have the opportunity to observe this decision-making work by the Respondents. A subsequent public vote on the issue does not change the fact that the Respondents moved Park Board decision making materially forward out of a duly constituted meeting, where notice has been given and the public has an opportunity to attend. In fact, the practice of coming to decisions in private only to vote in public was denounced by the Supreme Court of Canada in *London (City) v RSJ Holdings Inc.*, [2007 SCC 29](#).



### May 25 Session and Signal Chat Messaging Beginning on May 26, 2023

The Respondents represented a quorum of Park Board Commissioners at the May 25 session and on Signal Chat messaging beginning on May 26, 2023. In both forums, they discussed the Moberly Park Motion in such a way as to move it materially forward in the overall spectrum of a Park Board decision.

The May 25 session was intended to ensure the Respondents were aligned on the Moberly Park Motion before the May Park Board Meeting (on May 29, 2023). By its end, the Respondents had agreed to the substance of the Motion and to vote in favour of it if it included the elements they had agreed on.

The email thread beginning on May 26, 2023 involved continued discussion on the specific wording of the Moberly Park Motion and shows the Respondents working towards agreement on the text of the Motion and to vote in favour of it. The Respondents, except for Commissioner Virdi, ultimately achieved agreement on the text, which, in turn, would allow them to vote in favour of it at the May Park Board Meeting. The Respondents, minus Commissioner Virdi who abstained, then voted in favour of the Moberly Park Motion at the open meeting.

As with the Bike Lane Motion, the May 25 session and the Signal Chat message thread were deliberately held in advance of an open Park Board meeting and involved discussions, debates, and decisions intended to lead to a specific outcome on Park Board business. This materially advanced Park Board decision making out of view of the public.<sup>20</sup> The discussions laid the groundwork for the Respondents' subsequent voting on the Moberly Park Motion.

### ABC Retreat and Voting Policy

I find that the ABC Retreat was not a meeting in the context of section 165.1 of the Vancouver Charter. The information I have indicates the discussions did not materially move Park Board decision making forward. Communication of the ABC policy that the Respondents must vote as instructed by ABC on budget matters, campaign promises, and mayoral directives or else face discipline was not Park Board business. The same applies to the subsequent email to the Respondents from the ABC senior leader who reiterated this policy.

Nevertheless, I note that the ABC voting policy appears to have played a role in the Respondents' failure to comply with the Vancouver Charter's open meeting requirement, and I am troubled by the fact that this policy may have led to regular ABC Commissioner meetings before public Park Board meetings to

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<sup>20</sup> *Hamilton (City of) (Re)*, 2019 ONOMBUD 7 at para 69.



discuss and debate Park Board business. However, I do not have enough information about these events to make a finding about whether there have been additional breaches of the open meeting requirement.

### Party Caucusing and the Charter

Commissioners Haer, Howard, and Viridi submitted that party caucusing is protected by freedom of association guaranteed by section 2(d) of the *Charter*. Therefore, the open meeting requirement must be interpreted in a manner that accords with the *Charter*. They say the open meeting principle does not mean a political party majority cannot discuss proposed laws privately during party discussions.

I agree that section 165.1 should be interpreted in accordance with section 2(d) but I do not find any inconsistency between the open meeting requirement and section 2(d).

Section 2(d) guarantees individuals the freedom to associate. This means Commissioners can come together as a political group, have political relationships, and discuss political ideas, party platforms, and policies. This furthers the democratic process. The open meeting requirement does not interfere with this right. What it does is restrict the ability of Commissioners to materially move Park Board decision making forward outside of a duly constituted meeting. Commissioners cannot avoid the Vancouver Charter's mechanism for enhancing democratic legitimacy by requiring transparency and accountability in decision making merely by characterizing it as a "party caucus."

### Was Section 1.1f) of the Policy Breached?

I conclude that the Respondents breached section 1.1f) of the Policy when they attended the February 11 and 12 and the May 25 sessions and engaged in the Signal Chat thread beginning on May 26, 2023.

Section 1.1f) indicates that public confidence in Park Board governance is undermined or is potentially undermined when a Commissioner does not respect or comply with federal and provincial laws, City by-laws, and City policies. On four occasions, the Respondents held Park Board meetings that did not comply with the open meeting requirement set out in section 165.1 of the Vancouver Charter. By doing so, they undermined public confidence in Park Board governance.

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.<sup>21</sup> The law aims to imbue municipal governments with a robust democratic legitimacy, which in addition to periodic elections, comes from a decision-

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<sup>21</sup> *London (City) v RSJ Holdings Inc.*, 2007 SCC 29 at para 19.



making process that is transparent, accessible to the public, and mandated by law.<sup>22</sup> When a municipal government improperly acts with secrecy, this undermines the democratic legitimacy of its decision.

Open meetings advance the democratic process because they give the public an understanding of the considerations for local government actions and allow the public to observe the performance of their elected officials.<sup>23</sup> The open meeting requirement facilitates citizen participation in policy development and decision-making processes and serves to build public trust and confidence in local government.

Further, while not determinative, I note that Commissioners Bastyovanszky, Christensen, and Jensen expressed concern that what was happening with respect to the Bike Lane and Moberly Park Motions was off side of the open meeting requirement. Section 165.1 is intended to ensure public confidence in good governance at the local level, but if Park Board Commissioners themselves do not have confidence in the process, how can the public be expected to possess that confidence?

A failure to comply with the Vancouver Charter's open meeting requirement thus undermines, or has the potential to undermine, public confidence in Park Board governance.

Commissioners Haer, Howard, and Viridi argue that section 1.1f) was merely an interpretative aid and so it cannot support a standalone breach of the Policy. They said that I have stated this in my recommendations to the City of Vancouver and the Park Board.

Section 1.1f) imposes a substantive obligation on Park Board Commissioners. A breach of section 1.1f) is a breach of the Policy. I made this clear in Recommendation 2 in my 2024 Annual Report to the Park Board:

*In 2023 for the Code of Conduct By-law, we recommended that the provisions in Part 1: Standards and Values be clarified as interpretative principles and non-substantive obligations. As noted above, we recommend the Park Board consider these recommendations. However, in further clarification about the Standards and Values, we also recommend that section 1f), which discusses responsibility, be dealt with separately from the other Standards and Values listed in Part 1, given that it gives rise to specific, substantive obligations for compliance.<sup>24</sup>*

I also made this clear in the 2024 Annual Report for the City of Vancouver, which has the same provision (see section 2f) of the City of Vancouver's Code of Conduct By-Law No. 12886). I wrote:

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<sup>22</sup> *London (City) v RSJ Holdings Inc.*, 2007 SCC 29 at para 38.

<sup>23</sup> BC Ombudsperson, *Open Meetings: Best Practices Guide for Local Governments*, Special Report No. 34 to the Legislative Assembly of BC (September 2012) at p 22.

<sup>24</sup> Office of the Integrity Commissioner for the Vancouver Park Board, Annual Report, submitted December 2024, at p 11.



*In addition, we reiterate the recommendations we made in our 2023 Annual Report, including our first recommendation to clarify which provisions in Part 2: Standards and Values are interpretative principles and non-substantive obligations. We recommend that section 2f), which discusses responsibility, should be dealt with separately from the other standards and values listed in Part 2, given that it gives rise to specific, substantive obligations for compliance.<sup>25</sup>*

I had previously noted in the 2023 Annual Report that the Standards and Values in section 2 of the Code of Conduct By-Law No. 12886 (which are the same as in section 1.1 of the Policy) were a mix of value statements and substantive obligations, and therefore I recommended the substantive obligations be moved out of section 2 (section 1.1 in the Policy) and set out in the body of the Code of Conduct By-Law No. 12886. This had been done for the substantive obligation to avoid conflicts of interest (although it is also still listed in section 2 of the Code of Conduct By-Law No. 12886 and in section 1.1 of the Policy). However, it had not (and still has not) been done for other substantive obligations like those in sections 2e) and 2f) in the Policy.

The issue with respect to section 1.1f) is whether the Commissioners engaged in conduct that reasonably undermined or had the potential to undermine public confidence in Park Board governance by not complying with provincial law about open meetings. I have the jurisdiction to determine this question. I am not adjudicating whether the Respondents breached the Vancouver Charter per se, which would be a matter to be heard in a different forum. My conclusions about the open meeting requirement are only to inform my determination about whether the Respondents undermined or potentially undermined public confidence in Park Board governance.

Finally, I reject the argument that the open meeting requirement in the Vancouver Charter is a collective Park Board requirement that is not covered by the Policy since the Policy applies only to individual Commissioners.

Individual Commissioners have an obligation to avoid conduct that reasonably, undermines or has the potential to undermine, public confidence in Park Board governance. If one of the purposes of section 165.1 is to promote public confidence in Park Board governance, then conduct that undermines, or potentially undermines, the fulfillment of section 165.1 is contrary to a Commissioner's individual obligation.

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<sup>25</sup> City of Vancouver Office of the Integrity Commissioner, Annual Report, submitted December 1, 2024 at p 14.





Also, section 165.1 of the Vancouver Charter says a meeting of the “Council,” which includes the Park Board,<sup>26</sup> must be open to the public (except in specific circumstances).<sup>27</sup> To have a meeting, a quorum of Commissioners must be present. There can be no meeting without these individuals getting together as a collective to move Park Board decision making materially forward. Therefore, the requirement in section 165.1 is on individual Commissioners to not gather in quorum and engage in this conduct.<sup>28</sup>

An analogy can be made to civil and criminal conspiracies. A conspiracy can exist only if there are two or more individuals involved, but liability or culpability rests with each individual. The *Charter*, s 2(d) freedom to associate, is another example of collective action that is put into effect only through individual action. The *Charter* protects the ability of individuals to come together. Although exercised collectively, the freedom applies to each individual who wishes to associate.

### Waste of Taxpayer Funds

Finally, Commissioners Haer, Howard, and Viridi say there was a “massive increase” in complaints to me as the Integrity Commissioner in 2024 and it is clear many complaints are politically motivated. Thus, they say, failure to dismiss complaints that ought to be dismissed is a waste of taxpayer funds.

As reported in my Annual Report for 2024, the Office received 23 complaints from December 1, 2023 to November 30, 2024. At the time of the 2024 Annual Report, this investigation was the only matter open. Twenty-two complaints were either dismissed or closed after the initial assessment. Eight complaints moved through the preliminary assessment process, where six were considered not a breach due to insufficient grounds and two were investigated (only one was found to involve a breach of the Policy).

Section 5.15 of the Policy states that the Integrity Commissioner can close a complaint if the Integrity Commissioner is of the opinion that:

*(1) the complaint is frivolous, vexatious, or not made in good faith; or (2) an investigation of the complaint would not be in the public interest*

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<sup>26</sup> *Vancouver Charter*, section 165.7(d).

<sup>27</sup> See *Vancouver Charter*, sections 165.2 to 165.8.

<sup>28</sup> In a decision of the Integrity Commissioner for the Town of Fort Frances, the Integrity Commissioner found an individual councillor to have breached the open meeting principle: *Council Complaint re: Councillor David Kircher (Re)*, 2024 ONMIC 8



There was no evidence to support an inference that this Complaint was made vexatiously or in bad faith by the Complainant, or that it was frivolous. To the contrary, as expressed throughout this report, the Complaint raised issues that squarely engaged the public interest.

## **Conclusion and Discussion on Recommendations**

For the reasons set out, I find that the Complaint is well-founded and that the Respondents breached their obligations under the Policy.

Six of seven Commissioners are named in this Complaint and found to be in breach. Under the Policy, it is the Park Board that determines sanctions of its members, but no quorum can be reached in these unique circumstances.

The Policy requires that this report be made available to the public. In my view, publication ensures transparency to the public of both my findings, and the differing responses of the Respondents to the allegations. As publication sufficiently serves the public interest, I make no additional recommendations for sanctions.

All of which is respectfully submitted.

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Lisa Southern\*, Barrister & Solicitor  
Integrity Commissioner, Vancouver Park Board

Dated: February 21, 2025

\*Lisa Southern Law Corporation