



## Special City Council - Agenda

Date: Wednesday, September 2, 2020  
Time: 1:30 p.m. - 5:30 p.m.  
Location: Council Chamber, 2nd floor, City Hall

Call to Order: 1:30 p.m.  
Recess: 3:30 p.m. - 3:45 p.m.  
Adjournment: 5:30 p.m.

Deputy Mayor: B. Esslinger  
Acting Mayor: A. Knack

If you have a direct interest in this matter and wish to address City Council please contact the City Clerk at 780-496-8178 or [city.clerk@edmonton.ca](mailto:city.clerk@edmonton.ca).

Please note: To adhere to the recommended physical distancing practices outlined by the Chief Medical Officer of Health, City Hall is closed to the public. The public is invited to view meetings online via <http://councilontheweb.edmonton.ca/> and on our YouTube Channel at [www.edmonton.ca/meetings](http://www.edmonton.ca/meetings).

---

Pages

1. **Call to Order and Related Business**
  - 1.1 Call to Order
  - 1.2 Roll Call
  - 1.3 Adoption of Agenda

## 2. Sanction Hearing

- Integrity Commissioner Investigation Reports
  - Summary of Investigation
  - Sanction Recommendation Memo
  - Investigation Report 2001
  - Investigation Report 2002
  - Investigation Report 2003
  - Investigation Report 2004
  - Investigation Report 2005
  - Investigation Report 2006
  - Investigation Report 2007
  - Investigation Report 2008
  - Investigation Report 2009
  - Investigation Report 2010
- Respondent Councillor's Submission
- Sanction Process Report

## 3. Sanction Decision

## 4. Adjournment

# Office of the Integrity Commissioner

integrity.commissioner@edmonton.ca

## **INVESTIGATION REPORT 2001 to 2010**

**BY JAMIE PYTEL**

**INTEGRITY COMMISSIONER for**

**THE CITY OF EDMONTON**

Report Date: July 19, 2020

To: City Council for The City of Edmonton

Re: *Council Code of Conduct Bylaw 18483*  
Complaints 2001 to 2010

Respondent: Councillor Mike Nickel

Dates of Complaints: April 19, 20 and 21 and May 20, 2020

## TABLE OF CONTENTS

SUMMARY.....	3
BACKGROUND.....	10
SUMMARY OF COMPLAINTS.....	10
CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION .....	11
PROCESS and JURISDICTIONAL ISSUES .....	13
THE LEGAL and CODE OF CONDUCT BACKDROP .....	15
SUMMARY OF RESPONDENT’S SUBMISSIONS .....	20
APRIL 17 POST.....	21
April 18 POST.....	24
MAY 20 POST .....	30
DELETING AND BLOCKING ON SOCIAL MEDIA.....	31
FINDINGS.....	34
RECOMMENDATIONS .....	35
APPENDIX A – APRIL 17 POST .....	35
APPENDIX B – APRIL 18 POST.....	38
APPENDIX C – MAY 20 POST .....	40

## SUMMARY

This report addresses complaints 2001 to 2010 inclusive (the “Complaints”) against City of Edmonton Councillor Mike Nickel (the “Respondent”) under City of Edmonton *Bylaw 18483 Council Code of Conduct* (the “Code of Conduct” or “Code”). I have also prepared individual reports for each Complaint, which reports follow this report.

The Complaints arose out of Social Media Posts and activity by the Respondent from April 17 to May 20, 2020, including Social Media Posts on April 17, 2020 (**Appendix A**), April 18, 2020 (**Appendix B**) and May 20, 2020 (**Appendix C**).

This investigation is centred around the right to freedom of expression and how it interacts with the *Code of Conduct*. The Respondent asserts that throughout the Social Media Posts he was simply asserting his freedom of expression rights and he should not be censored or censured for doing this.

It is not my role to interfere with political debate and commentary. It is not my role to decide whether views expressed by Members of Council are meritorious or properly held. However, I am of the view that the right to freedom of expression has limits. In this case, the limits have been self-imposed by Council with the issuance of the *Code of Conduct*. The *Code* allows fair comment and Members of Council to hold a position on an issue. This is balanced with *Code* requirements, such as, to accurately represent Council’s decisions, be respectful and act with decorum.

The parts of the Respondent’s Social Media Posts that are mere political commentary and expressing an opinion do not offend the *Code*. Interfering with this would be a very serious threat to the democratic process and to freedom of expression. Those opinions can be expressed strongly, with vigour, passion and obvious exaggeration. However, here I have found the manner of the communication at times was disrespectful, lacked decorum, contained personal attacks and misleading information, all of which is contrary to the *Code*.

The Code requires Members of Council to accurately represent the decisions of Council. In the Social Media Posts, the Respondent suggests that Members of Council are responsible for the installation of more bike lanes in Edmonton. This is misleading. In fact, the decision was made by City Administration (not Council) under a State of Local Emergency to temporarily expand spaces for multimodal use (not just for cycling) for physical distancing during the COVID-19 pandemic.

The publishing on social media of misleading information by a Member of Council about bike lanes can come across as potentially minor and even trivial. However, the introduction of bike lanes is an issue of public interest and debate in Edmonton, as confirmed by the Respondent who says it is of concern for many of his constituents. In my view, it is acceptable for the Respondent to strongly express his views and carry out his duties to his constituents, but his communications must be based on accurate and not misleading information about the decisions of Council. Misleading information quickly becomes fact for anyone who has seen it, the impact of which is not easily reversed or undone. It is particularly concerning when it is on social media, given the power and impact of that medium.

I also found the manner in which the Respondent communicated in the April 17 and April 18 posts to be disrespectful and lacking in decorum. Again, the Respondent is entitled to express his views, but the *Code of Conduct* puts limits on how they are expressed. Here, I found that the Respondent chose a manner of communicating that was at times derisive, demeaning and a personal attack. In my view, to give meaning to the *Code*, this manner of communicating about Members of Council should not be condoned by Council.

Some of the Complainants allege that the Respondent was disrespectful when he deleted comments on his social media pages that disagreed with the April 17 and April 18 posts, and blocked some commentators from making comments. I did not delve into an extensive review of the Respondent’s and the commentators’ social media activity. The Respondent provided me with the guidelines he uses for deleting or blocking, which were not unreasonable. I am of the view that on Members of Council social media pages they should sparingly delete comments and block commentators, and not simply if someone respectfully expresses a differing opinion. However, there is nothing currently in the law or the *Code* that prohibits Members of Council from deleting comments or blocking. Council may choose to pass a social media policy to address these scenarios. In the interim, Members of Council are left to use their judgement. I can imagine situations where blocking is done in a way that violates the *Code* (i.e. in violation of protected grounds under Human Rights legislation), but I did not find that was the case here.

<b>COMPLAINT</b>	<b>ALLEGATIONS</b>	<b>FINDINGS</b>	<b>CODE VIOLATIONS</b>
2001	The April 18 post was disrespectful of a Member of Council and contained misinformation. The Complainant’s posts about the April 18 post were deleted and the Complainant was blocked on Respondent’s social media page.	The April 18 post was disrespectful, lacked decorum, contained misleading information, and did not accurately reflect the facts of Council’s decisions. Deleting or blocking on social media should be done thoughtfully and sparingly, but in these circumstances is not a breach of the <i>Code of Conduct</i> .	Part B, Section 1 d) Part E, Section 1 Part B, Sections 1 a) and 1 e) Part E, Section 1
2002	The April 18 post was disrespectful of a Member of Council and was conduct unbecoming of an elected official. The Respondent removed any negative commentary from his social media site regarding the April 18 post.	The April 18 post was disrespectful and lacked decorum. Deleting or blocking on social media should be done thoughtfully and sparingly, but in these circumstances is not a breach of the <i>Code of Conduct</i> .	Part B, Section 1 d) Part E, Section 1

2003	In the April 18 post, the Respondent mocked a Councillor, was rude, unprofessional and harassing in nature.	The April 18 post was disrespectful and lacked decorum. This was not harassment under the <i>Code</i> .	Part B, Section 1 d) Part E, Section 1
2004	In the April 18 post, the Respondent mocked a Councillor, spread misinformation in an unprofessional and immature manner that is inappropriate for a City Councillor. The cartoon suggests taxpayer money was being thrown on a fire for bike lanes, when the City widened paths to encourage social distancing in high density areas and to create more space for pedestrians to walk safely during the pandemic. The Respondent spread misinformation about a Councillor being dedicated to creating bike lanes during the pandemic, which suggested added infrastructure like dedicated grade separation when the Councillor was actually referring to pedestrian paths for safety during a pandemic in order to flatten the curve and prevent the spread of COVID-19. (The Complainant includes the April 17 post in this complaint in which the Respondent attributes more bike and walk lanes to Mayor Iveson and some of the Councillors.) The Respondent blocked many comments and accounts if there was any pushback, if individuals were defending the Councillor or if there was a difference of opinion.	The April 18 post was disrespectful, lacked decorum and contained misleading information, and did not accurately reflect the facts of Council's decisions. Deleting or blocking on social media should be done thoughtfully and sparingly, but in these circumstances is not a breach of the <i>Code of Conduct</i> .	Part B, Section 1 d) Part E, Section 1 Part B, Sections 1 a) and 1 e) Part E, Section 1
2005	The April 18 post contained a derisive caricature of a	The April 18 post was disrespectful, lacked	Part B, Section 1 d) Part E, Section 1

	Councillor, misrepresented information (i.e. no new bike lanes are being built); and employed divisive and harassing tactics. This was conduct unbecoming of a City Councillor.	decorum, contained misleading information and did not accurately reflect the facts of Council's decisions. This was not harassment under the <i>Code</i> .	Part B, Sections 1 a) and 1 e) Part E, Section 1
2006	April 18 post specifically targeted and was disrespectful to of a Councillor, lacked decorum, contained false information that the Councillor was advocating for increased spending on temporary bike lanes; failed to say that this was a public health measure; failed to properly represent Council's decisions. Respondent deleted multiple comments from citizens on social media, seemingly keeping only the ones that agreed with his post.	The April 18 post was disrespectful, lacked decorum and contained misleading information and did not accurately reflect the facts of Council's decisions. Deleting or blocking on social media should be done thoughtfully and sparingly, but in these circumstances is not a breach of the <i>Code of Conduct</i> .	Part B, Section 1 d) Part E, Section 1 Part B, Sections 1 a) and 1 e) Part E, Section 1
2007	In the April 17 post, the Respondent was disrespectful and misrepresented facts about City of Edmonton spending and Council discussions regarding City expenditures. This irreversibly harms the trust the community can place in Council. A difference of opinion was not respected. The Respondent misrepresents the facts when he makes statements such as there is "NO approach on how to deal with hundreds of business who will be unable to rehire workers or be able to pay their property taxes". The Respondent was disrespectful when he actively blocked private citizens from his social media pages.	While some of the comments are fair comment and not a violation of the Code, other aspects of the April 17 post were disrespectful of Council and lacked decorum. The Respondent did not accurately reflect the facts of Council's decisions and was misleading when he attributed to Council the installation of bike lanes or temporary bike lanes during a pandemic. Deleting or blocking on social media should be done thoughtfully and sparingly, but in these circumstances is not a breach of the <i>Code of Conduct</i> .	Part B, Section 1 d), Part E, Section 1 Part B, Section 1 a) Part B, Section 1 e)
2008	April 17 post contains inaccurate information about	While some of the comments are fair	Part B, Section 1 d), Part E, Section 1



	<p>Council and Administration’s activities.</p> <p>Statements such as there are no plans and have taken no action – except for demarcating temporary activity spaces - are false.</p> <p>The Respondent removed respectful but unfavorable comments from his social media page, and banned those making them, particularly with respect to the April 17 post.</p>	<p>comment and not a violation of the Code, the April 17 post was disrespectful of Council, lacked decorum, did not accurately reflect the facts of Council’s decisions and was misleading when he attributed the installation of bike lanes or temporary bike lanes during a pandemic to Council. Deleting or blocking on social media should be done thoughtfully and sparingly, but in these circumstances is not a breach of the <i>Code of Conduct</i>.</p>	<p>Part B, Section 1 a) Part B, Section 1 e)</p>
2009	<p>The Respondent blocked the Complainant on Twitter for disagreeing with him with respect to comments about temporary active transport lanes.</p>	<p>Deleting or blocking on social media should be done thoughtfully and sparingly, but in these circumstances is not a breach of the <i>Code of Conduct</i>.</p>	
2010	<p>The cartoon image in the April 18 post was defamatory and not respectful communication. The May 20 post was disrespectful and contained misinformation about the decisions of Council.</p>	<p>The cartoon image in the April 18 post was disrespectful, lacked decorum and was misleading. While some of the comments are fair comment and not a violation of the Code, the May 20 post was misleading regarding the decisions of Council.</p>	<p>Part B, Sections 1 a) and 1 e)</p>

## Findings

1. While some of the views expressed in the **April 17 post** are fair comment, on balance, I find that the Respondent violated the *Code of Conduct* as follows:
  - (a) The manner of communicating was disrespectful of Council in violation of Part B Section 1d) of the *Code*;
  - (b) The Respondent's conduct lacked decorum, in violation of Part E Section 1 of the *Code*;
  - (c) The Respondent did not accurately reflect the facts of Council's decisions when he attributed the installation of "bike lanes" or "temporary bike lanes" during a pandemic to Council in violation of Part B, Section 1a) of the *Code*; and
  - (d) The Respondent was misleading, when he attributed the installation of "bike lanes" or "temporary bike lanes" during a pandemic to Council in violation of Part B, Section 1e) of the *Code*.
  
2. On balance, I find that the comments and cartoon image posted by the Respondent in the **April 18 post** violated the *Code of Conduct* as follows:
  - (a) The personal attack on Councillor Knack and the manner of communicating was disrespectful, in violation of Part B, section 1 d) of the *Code of Conduct* that says Councillors must ensure that all communications issued by Councillors, including on social media, are respectful.
  
  - (b) The personal attack on another Councillor and the manner of communicating lacked decorum, in violation of Part E, section 1 of the *Code of Conduct* that requires Councillors to act with decorum at all times.
  
  - (c) Communicating misleading information that left the impression that Councillor Knack approved the installation of bike lanes during a pandemic, when the decision was to temporarily use public space to expand spaces for multimodal use for physical distancing during the COVID-19 pandemic. This was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the *Code of Conduct* that say Councillors must ensure that their communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter.
  
3. On balance, I find that the comments and image posted by the Respondent in the May 20 post violated the *Code of Conduct* as follows:
  - (a) Communicating misleading information that left the impression that Mayor Iveson was responsible for approving the addition of dozens of emergency bike lanes was misleading, when this was a decision to temporarily use public space to expand spaces for multimodal use for physical distancing during the COVID-19 pandemic and was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the *Code of Conduct* that say Councillors must ensure that their communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter.

## Recommendations

### **I recommend that Council:**

1. Accept this report.
2. Direct that Mayor Iveson on behalf of Council issue a letter of reprimand addressed to the Respondent with respect to *Code of Conduct* violations found in this report.
3. Consider implementing a social media policy.

## BACKGROUND

This report addresses complaints 2001 to 2010 inclusive (the “Complaints”) against City of Edmonton Councillor Mike Nickel (the “Respondent”) under City of Edmonton *Bylaw 18483 Council Code of Conduct* (the “Code of Conduct” or “Code”).

The Complaints arose out of social media posts and activity by the Respondent from April 17 to May 20, 2020, including:

- (1) April 17, 2020 social media post by the Respondent about Mayor Iveson and some unnamed City of Edmonton Councillors [the “April 17 post” – **Appendix A**].
- (2) April 18, 2020 social media post by the Respondent that included comments about City of Edmonton Councillor Andrew Knack and a cartoon image with stop animation of Councillor Knack throwing money into a fire, with the captions “more bike lanes” and “property tax increases” [the “April 18 post”- **Appendix B**].
- (3) May 20, 2020 social media post and image by the Respondent regarding Mayor Iveson [the “May 20 post” –**Appendix C**].

Sometimes these posts will be collectively referred to as the “Social Media Posts” in this report.

## SUMMARY OF COMPLAINTS

Generally, the Complainants allege that the Respondent violated the *Code of Conduct* by:

- (1) In the April 17 post, communicating misinformation or misleading information, disrespecting decisions made by Council, being disrespectful and lacking in decorum;
- (2) In the April 18 post, communicating misinformation or misleading information, being harassing, disrespectful and lacking in decorum;
- (3) In the May 20 post, being disrespectful of Council and not accurately representing decisions of Council; and
- (4) Being disrespectful when he deleted and/or blocked social media commentators from his social media pages when the commentators:
  - (a) posted contrary views to the April 18 post; and/or
  - (b) encouraged others to make a *Code of Conduct* complaint against the Respondent with respect to the April 18 post.

## CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION

The applicable sections of the *Code of Conduct* say:

**Part A: Representing the Municipality, section 1 d):**

While carrying out their duties, Councillors must accurately represent and respect decisions made by Council while preserving the value of fair comment and differences of opinion.

**Part A: Representing the Municipality, section 1 e):**

While carrying out their duties, Councillors must communicate respectfully with members of the public, Councillors, City employees, and Councillor’s employees.

**Part B: Communications, section 1 a):**

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure their communications accurately reflect the facts of Council’s decisions.

**Part B: Communications, section 1 c):**

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications are accurate and not issue any communication that the Councillor knows, or ought to have known, to be false.

**Part B: Communications, section 1 d):**

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications issued by, or on behalf of, the Councillor, including social media, are respectful and do not discriminate, harass, or demonstrate disrespect toward any person.

**Part B: Communications, section 1 e):**

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will not issue any communications that mislead the public about any matter.

**Part E: Respectful Interactions, section 1:**

Councillors will conduct themselves with decorum at all times, including while attending meetings, interacting with City employees and Councillor’s employees, and engaging with the public.

**Part E: Respectful Interactions, section 3:**

Councillors must not use any harassing or disrespectful language about Council, a Councillor or the public.

Some of the Complainants allege harassment by the Respondent in the April 18 post. As the *Code* does not define harassment, I use as guidance the following definition of harassment from the Province of Alberta's *Occupational Health and Safety Act*:

“harassment” means any single incident or repeated incidents of objectionable or unwelcome conduct, comment, bullying or action by a person that the person knows or ought reasonably to know will or would cause offence or humiliation...

I also reference the City of Edmonton's *Respectful Workplace Policy* for their employees, which says:

“harassment” (also described as bullying) is conduct including comments, actions and/or gestures that a reasonable person would find unwelcome, cannot be objectively justified as reasonable conduct, would likely create a hostile or intimidating work environment, is one-time or repeated; and

- is demeaning, offensive, intimidating, threatening, abusive,
- is an action by a person that the person knows or should reasonably know will or would cause humiliation to another individual, or
- adversely or negatively impacts that individual.

Generally, *Mirriam-Webster.com* defines harassment as:

(1) to annoy persistently;

(2) to create an unpleasant or hostile situation especially by uninvited and unwelcome verbal or physical conduct.

*Oxford English Dictionary* ([oxfordlearnersdictionaries.com](http://oxfordlearnersdictionaries.com)) defines the harassment as:

The act of annoying or worrying somebody by putting pressure on them or saying or doing unpleasant things to them.

Complainants 2004 and 2006 allege that the Respondent failed to act with “decorum” in the April 18 post. Complainants 2001 and 2005 use the word “unbecoming” to describe the Respondent’s conduct. The *Code* does not use the word “unbecoming” but does say: “Councillors will act with decorum at all times”. There is no definition of decorum. I suggest that Members of Council would generally have an understanding of what this means short of a definition within the *Code*. In any event:

*Oxford English Dictionary* ([oed.com](http://oed.com)) defines decorum as:

That which is proper, suitable, seemly, befitting, becoming; fitness, propriety, congruity.

*Mirriam-Webster.com* defines decorum as:

Correct or proper behaviour that shows respect and good manners.

## PROCESS and JURISDICTIONAL ISSUES

All of the Complaints were in writing, were within the time limits set out in the *Code*, and included the sections of the *Code* the Complainants felt were violated.

As part of the public interest function of my role, at times I may need to identify which sections of the *Code* I feel are applicable based on the information presented. This applies whether a complainant or respondent raises certain information or sections of the *Code*. I can also make a finding with respect to a section of the *Code* even if a complainant, or respondent in his or her defence, does not identify the correct sections of the *Code*. However, the allegations and information presented must relate to a section of the *Code*.

I have included in this report those sections of the *Code* that I found potentially apply to the issues raised in the Complaints. I have not included those sections that were identified by some of the Complainants that I did not find to be relevant. For instance, some Complainants said all of section E of the *Code* applies. In my view, only the sections identified in this report apply.

During the investigation, when I had questions or needed more detail about the Complaints, I contacted the Complainants via email using the contact information provided by them. All information they provided was considered for this investigation. I determined that there were no Complainants I needed to personally interview or have swear a statutory declaration.

I provided the Respondent with all of the information and allegations provided to me by the Complainants. I interviewed the Respondent and he provided his written statement in response to the Complaints. The content of the Respondent's statement is contained within this report under the applicable headings. I also provided the Respondent with the sections of the *Code* I felt were relevant to this investigation and a list of the issues I felt were raised in this investigation. I invited the Respondent to raise any concerns around process or arguments at any time during this process. I reviewed and considered all of the information provided to me by the Respondent.

I did not find it to be in the public interest to identify the Complainants by name in this report. However, the Respondent was given the written Complaints, including names of the Complainants (except their contact information), in case the identity of the Complainants raised any issues or defences for the Respondent. Note that although the content of the Social Media Posts are about some Members of Council, none of the Complainants are Members of Council.

I considered whether the Social Media Posts were done as part of the Respondent's role as a City of Edmonton Councillor, or were purely personal. Complainant 2001 says that on April 20, 2020 (after the April 18 post), the Respondent changed his Facebook page name from "Councillor Mike Nickel" to "Mike Nickel". Complainant 2001 alleges that this is:

...an attempt to say that he [the Respondent] was speaking as an individual, and not as a councillor, in order to avoid taking responsibility for breaking the code of conduct. Although,...he posted the original disrespectful communication on the page while it was called "Councillor Mike Nickel". I believe this is a thinly veiled attempt to find a loophole in the code of conduct, which is not in the spirit of the bylaw.

Complainant 2004 says:

Councillor Nickel has switched all of his social media platforms from MikeNickelClr to MikeNickelYEG as a way to avoid scrutiny for his behaviour as a councillor. As a result, he can express the derogatory things he has said as personal opinion rather than the opinion of a member of council when they are one of the same.

The Respondent says:

My social media accounts are my own property. The costs associated with them I pay out of my own pocket....I changed the name on my Facebook page because I do not want there to be any confusion that this is my political opinion. I changed it to say Mike Nickel, not Councillor Mike Nickel. I wanted it to be crystal clear that the opinions expressed are my personal opinions. Even though I am Councillor Nickel, Mike Nickel has rights to express his opinion. I believe using my title as Councillor is no different than a doctor using a "Dr." prefix in their personal life. Members of Council express their personal opinion on their personal pages frequently. All Councillors post blogs, use social media etc. as an unofficial method to communicate with the public. Any official platforms to engage with constituents are owned by the City. The April 18 post was on a privately operated platform where I communicate with the public regarding activities both related and unrelated to Council.

In my view, whether the Respondent pays for his social media accounts himself is irrelevant. What matters is the content of those communications. Whether he communicates his views on social media or uses some other medium, I find that the *Code* applies if those communications are about Council, his role as a Councillor, Members of Council, or the business of the City.

Fellow Integrity Commissioner Melinda Munro for the County of Brant in Ontario likened these situations to the employment law cases in which employees can be terminated for their outside of Council chambers social media activity. I agree with her analogy, as set out in *Bartscher v. Cardy*, 2018 ONMIC 28:

While [the Code of Conduct] refers to 'official duties', it cannot be the case that the Council intended that its members would be free to behave in an outrageous manner outside the Council chambers such as to undermine public confidence in the office...the law of employment has long established that 'off-duty' conduct can be cause for discipline and dismissal where it is done in such a way as to damage the reputation or work environment of the employer....It can reasonably be suggested that once elected as a public official, all public activities are 'official duties' for the purpose of behaving in a manner consistent with the Code.

It is also worth noting that Part E section 1 of the *Code* says: "Councillors will act with decorum at all times...while engaging with the public." This requirement is not limited to conduct in Council or Committee meetings or at official Council functions. I also note that some of the sections of the Code (i.e. Part A, Sections 1d and 1e) when referring to Members of Council's duties include the phrase "while carrying out their official duties". Part B, Section 1d which deals with respectful communications while on social media does not include this phrase.

In this case, the Social Media Posts were clearly posted about Council, decisions allegedly made by other Members of Council and about City of Edmonton business. Given the subject matter of the Social Media



Posts and the fact that the Respondent says he was advocating on behalf of some of his constituents, I find that the *Code* applies.

The Respondent says he would react differently to this investigation if Councillor Knack (who is the subject of the Respondent's comments in the April 18 post) had made a complaint. However, the *Code* says:

If any person believes that a Councillor has contravened this code of conduct, that person may make a written complaint to the Integrity Commissioner.

In my view, it is perfectly acceptable for members of the public to question the conduct of Members of Council. The *Code* provides a way for them to do this. Based on the language of the *Code*, it is not a requirement that the alleged "victim" be the complainant.

The impugned conduct also needs to be sufficiently egregious to warrant investigation, and not a minor or trivial issue. Here, I decided to investigate, in part, because the language and images depicted in the Social Media Posts came across, at first blush, as potential breaches of the *Code*. However, more investigation, thought and analysis were needed to determine if, in context, the Social Media Posts violate the *Code*.

Some Complainants also allege a *Code* breach when their comments were deleted or they were blocked from the Respondent's social media page. Without some investigation and analysis, it was not clear if these allegations would be found to be a breach of the *Code*. While I did not undergo a complete review of social media activity by the Respondent and the Complainants with respect to these allegations, I did consider whether deleting or blocking on social media is a potential breach of the *Code*.

At least one Complainant alleges defamation by the Respondent. I have previously commented on issues of defamation and specifically requested that defamation be removed from the *Code*, which it was well before these Complaints. In my view, matters of defamation are more properly dealt with in a court of law and not determined by an Integrity Commissioner. Accordingly, whether the Social Media Posts were defamatory is not considered in this investigation.

With the consent of the Respondent, I prepared this overall report and commentary on the various overlapping issues in the Complaints. In addition, a report was issued for each Complaint and given to the Respondent and the individual Complainants.

While typically I would not issue a report to Council unless there were findings of a *Code* breach, here there were mixed findings and the issues overlapped. Therefore, aspects of the Complaints that are both dismissed and accepted are found in this report.

## THE LEGAL and CODE OF CONDUCT BACKDROP

This investigation is centred around the right to freedom of expression and how it interacts with the *Code of Conduct*. The Respondent asserts that throughout the Social Media Posts he was simply asserting his freedom of expression rights and he should not be censored or censured for doing this.

The role of a Municipal Councillors is complex and includes being both a politician and a legislator. This is sometimes referred to as a “hybrid function”. As stated in *Geatrix v. Williams*<sup>1</sup>:

The Courts have confirmed that municipal councillors have hybrid political and legislative functions<sup>2</sup>. That they are representatives of the communities that elect them,<sup>3</sup> and that members of the public have the right to address their municipal representatives on issues of concern<sup>4</sup>...

It is part of the role of a Council Member to communicate with members of the public about municipal issues. This includes both initiating communication and responding to communication initiated by members of the public. In doing so, a Council Member is not limited to explaining and defending what the municipality is already doing. As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give effect to those views.<sup>5</sup> Some of those views may involve a change in law or a change in direction. **Provided that a Council Member proceeds lawfully and in a manner consistent with the *Municipal Act*, the Code and other legislation and by-laws**, nothing prevents a Council Member from taking, defending and seeking to implement a position that advocates change. Indeed, the Courts have clearly stated that as an elected representative of the public a municipal councillor is entitled to take “an open leadership role” on an issue.<sup>6</sup> **[emphasis added]**

As well, as stated in *Jeffrey v. Sprovier*<sup>7</sup>:

Political commentary must comply with the Code, but otherwise an Integrity Commissioner has no jurisdiction over it. As Integrity Commissioner Cameron noted in the 2012 case:

I cannot and will not be a referee for free speech in a political arena provided it stays within the bounds of...the Code.

Subsequently, Mr. Randy Pepper, the delegate of Integrity Commissioner Cameron, expanded on the same principle in Investigation Report No. BIC-33-1112:

Freedom of expression is a fundamental right in Canada so the Code must be interpreted in a manner consistent with this fundamental right. Based on the law set out below, I cannot find that the Code should be interpreted to appoint the Integrity Commissioner as a speech referee in the political arena.

As the Supreme Court of Canada noted in the *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139:

---

<sup>1</sup> By Integrity Commissioner Guy Giorno for the Town of Orangeville in Ontario, 2018 ONMIC 6 at para 132.

<sup>2</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1179 at 1196.

<sup>3</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc.* note 13, at 1193.

<sup>4</sup> *Re McGill and City of Brantford* (1980), 111 D.L.R. (3d) 405 (Ont. Dist. Ct.) at 411, cited with approval by *Old St. Boniface Residents Assn. Inc.*, note 13, at 1193-4.

<sup>5</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20.

<sup>6</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, (1989), 58 Man. R. (2d) 255 (C.A.) at 264, affirmed [1990] 3 S.C.R. 1170.

<sup>7</sup> 2018 ONMIC 21, Guy Giorno, as Integrity Commissioner for the City of Brampton, at para 86.

Freedom of expression, like freedom of religion, serves to anchor the very essence of our democratic political and societal structure...Hence, the justification for the widest freedom of political speech stems not only from some abstract search for truth, but also from the tangible goal of preserving democracy...I find that the Integrity Commissioner has a very limited role in relation to the “freewheeling debate on matters of public interest...

Some of the Complainants allege that the Respondent has included misleading or misinformation in the April 17 and April 18 posts. The *Code of Conduct* provides that while preserving the value of fair comment and differences of opinion, Councillors must ensure their communications accurately reflect the facts of Council’s decisions, that all communications are accurate and not issue any communications that mislead the public about any matter.

On this issue, the Ontario Supreme Court stated in *Buck v. Morris et al.*, 2015 ONSC 5632, at paragraphs 189-193:

There can be no doubt that politics, whether it be federal, provincial or municipal, is not for the faint of heart. Some might say a thick skin is a prerequisite for any politician.

A thick skin, however, does not mean that a politician is fair game for those intent on damaging their reputation with false, malicious, and defamatory statements. Freedom of speech, whether in the political forum or not, does not extend to statements that are untrue and have as their sole purpose an intent to damage someone else’s reputation.

The right to freedom of speech in our society is not an absolute right. While freedom of speech is a cherished right in a free and democratic society, there are reasonable limitations. The Town of Aurora, like many other towns and cities in the Province of Ontario, has a Code of Conduct that purports to codify parameters of reasonable conduct for elected Town officials...

The plaintiff clearly has a perception that she has an unfettered right to freedom of expression and freedom of speech. That freedom, however, is circumscribed by the Code.

The Supreme Court of Canada in *Prud’homme v. Prud’homme*, 2002 SCC 85, stated at paras 42-45:

...while elected municipal officials must be quite free to discuss matters of public interest, they must act as would the reasonable person. The reasonableness of their conduct will often be demonstrated by their good faith and the prior checking they did to satisfy themselves as to the truth of their allegations. These are guidelines for exercising the right to comment, which has been repeatedly reaffirmed by the courts.

I am of the view that it is not the role of the Integrity Commissioner to censor or interfere with political debate and commentary. It is not my role to decide whether views expressed by Members of Council are meritorious or properly held.

It is also not my role to interpret whether the *Code* is contrary to the freedom of expression rights found in the *Canadian Charter of Rights*, which is an issue for the courts to decide. However, I am of the view that the right to freedom of expression found in the *Charter* has limits. In this case, the limits have been self-imposed by City Council with the issuance of the *Code of Conduct*. The *Code* allows fair comment

and Members of Council to hold a position on an issue. This is balanced with *Code* requirements, such as, to accurately represent Council's activities, be respectful and act with decorum.

No code of conduct can list all of the possible ways individuals can disrespect one another. Some codes provide non-exhaustive lists of what is considered disrespectful conduct to give those who are governed by the code a sense of what is contrary to the code. However, it is left to those who are governed by those codes to use their judgement. When a complaint is made, those who administer the code and investigate alleged breaches (in this case, me as the Integrity Commissioner), must determine if the impugned conduct is disrespectful. As part of that review, consideration is given to the context and facts around the impugned conduct.

The *Code of Conduct* requires Members of Council to respect the decisions made by Council while preserving the value of fair comment and differences of opinion. Some Integrity Commissioners in Canada have commented on this requirement. For instance, Bruce Elman, Integrity Commissioner for the City of Windsor says<sup>8</sup>:

City or Municipal Councils occupy a unique role in our society. They are, at one time, both deliberative legislative bodies for the geographical entity known as their city, town, county, or municipal district, and at the same time, they are, effectively, a corporate board of directors for the commercial entity known as the Municipal Corporation of (in this case) the City of Windsor....

In other words, in the lead up to a specific decision, Council is a deliberative governmental body wherein almost unfettered freedom of speech reigns but once that decision is made, Council becomes a corporate board and, as with vast majority of corporate boards, public dissent is discouraged or even prohibited. The reason is rational and sensible: Decisions made by Council become the official policy of the City of Windsor. When Members of Council speak out or engage in conduct indicating opposition to official City policy outside the deliberative confines of the legislative process, their comments or conduct can diminish the integrity of Council decisions in the public eye, damage public confidence in Council itself, or even undermine the City's reputation, domestically or internationally. One can only imagine how [the Councillor's statement] – perhaps taken as hyperbole here in Windsor – might be viewed in California or Calgary or Copenhagen or Cairo.

It should be noted that Councillors have plenty of opportunities prior to a decision being made by Council to express their views on the merits of a proposal and they can provide as much context as they wish and use as much hyperbole as they believe is necessary. If a Councillor has particular concerns regarding an item on the Council Agenda, the Councillor can call a press conference to express those concerns. Councillors can post their concerns on their webpages or on social media to express those concerns. Councillors can go to community groups or BIAs to rally support for their position. The Councillor can even encourage citizens to become delegates to Council when the matter is debated. Finally, Councillors may express all of their concerns during the debate on the matter when it comes before Council.

---

<sup>8</sup> Re Complaint brought pursuant to the Code of Conduct of the City of Windsor against Councillor Rino Berolin, Integrity Commissioner Bruce Elman's report dated April 20, 2018.

Even then, after the decision is made, Councillors are free to explain why they voted as they did during the Council deliberations. They should, however, acknowledge the legitimacy of Council's decision as resulting from the deliberative and democratic processes of Council. **They should not be disrespectful and their comments should not be disparaging or inaccurate.** [emphasis added]

At the centre of this investigation are decisions made by Council during the COVID-19 pandemic and historically with respect to the construction of bike lanes in the City of Edmonton. A review of the history reveals:

- The construction of bike lanes was a decision made by Council going back to 2009 when the Council of the day carried a motion to approve the policy that: “The City of Edmonton strives to be pedestrian and bicycle friendly”.
- On June 11, 2014 Council passed a motion that “enhanced public engagement strategies” outlined in a report by Transportation Services that included a bicycle infrastructure plan be approved. The Respondent voted in favour of this motion.
- During Council Meetings in November and December 2014, Council passed the 2015-2018 Capital Budget, including a motion for a \$8.8 Million bikeway for the 102 Avenue area. The Respondent voted in favour of this motion.
- In 2016, the Respondent voted in favour of a motion for capital funding of \$7.5 Million and an annual operating cost of \$625,000 for physically separated bike lane infrastructure.
- With respect to the 2019-2022 Capital Budget discussed at the November and December 2018 Council meetings, the Respondent voted against a motion seeking increased funding of \$2.17 Million for bike infrastructure expenditures, but the motion was passed. The Respondent also voted against a motion on the \$5.7 Billion Capital and Operating Budget that included design and construction of a minimum grade bike grid in various areas in Edmonton, but the motion was passed.
- In response to this investigation, the Respondent referred me to the March 26, 2020 Emergency Advisory Committee of Council. A review of that meeting revealed that Councillor Knack brought forward concerns from some of his constituents that they were struggling with physical distancing outdoors during the pandemic. City Administration said that they would review options in this regard. It was clear at this meeting that this was delegated to City Administration. No Council motions were passed in this regard.
- City Administration made expanded spaces available on some City of Edmonton roads and paths during the COVID-19 pandemic starting in April 2020. This was done to facilitate physical distancing during the pandemic. These were multimodal spaces for active transportation for:
  - Biking
  - Running

- Walking
- Rollerblading
- Wheelchair use
- Etc.

The decision to do this was made by Administration under the State of Local Emergency, but Administration normally has the authority to make these sorts of decisions. Regular updates were given to Council about these measures and Councillors could raise any concerns they had with them.

## SUMMARY OF RESPONDENT'S SUBMISSIONS

The Respondent provided some submissions regarding this investigation all of which were reviewed and considered by me. The following is a summary of the Respondent's submissions that were relevant to the issues<sup>9</sup>:

- By passing the *Code of Conduct*, Council did not agree to contract out of the *Canadian Charter of Rights and Freedoms*;
- Terms used in the *Code of Conduct*, like "disrespectful" have no objective criteria against which words can be measured;
- As "respectfully" is not defined in the *Code of Conduct*, the Integrity Commissioner is discouraged from inserting her own "personal subjective standards into that void";
- Members of Council should not be punished for acts that were never intended to cause harm;
- If victimless speech is to be censored there will be a chilling effect on free expression;
- Non-defamatory speech that may be offensive but falls short of inciting hatred to an identifiable group is constitutionally protected;
- There is no objective standard that exists regarding social media posts that could result in the posts being deemed offensive or disrespectful, especially by norms established in the political arena;
- The Respondent does not attack another Councillor, he simply questions Council and certain Members of Council spending priorities. He merely questions and sometimes attacks another Councillor's spending priorities for the City of Edmonton;
- There is no personal attack. There is no disrespect. There is only a fundamental difference on an important fiscal matter. Far from disrespecting an adversary, the Respondent respects a fellow Councillor by essentially challenging him to a social media debate and giving him an opportunity to defend his position;
- The cartoon image of Councillor Knack is not offensive. It does not portray the Councillor in an unflattering light or distort his appearance in any negative way. It is simply a visual depiction to graphically demonstrate the thesis that Council's spending priorities are askew;
- There is no need to censure social media. The internet is self-policing. When someone posts something offensive, they are immediately 'outed' and/or castigated for their viewpoints;
- Members of Council should be allowed to participate unfettered in political debate regarding difficult fiscal choices. The Respondent should not be censured for doing his job – attempting to

---

<sup>9</sup> The Respondent can also make further written submissions to Council before the Council meeting to consider this report and will have time at the meeting to make oral submissions.

convince Members of Council and those who “follow” and support those Members, that the City of Edmonton needs to reprioritize its spending.

#### APRIL 17 POST

The April 17 post includes, in part, the following statements by the Respondent:

“More bike lanes during a pandemic!?! I wish this was a joke, but it isn’t.

There is NO leadership on how we rebuild Edmonton after this crisis.

There is NO considering for the tens of thousands of Edmontonians who will slip into poverty.

There is NO approach on how to deal with hundreds of businesses who will be unable to rehire workers or be able to pay their property taxes.

Our mayor and some on Edmonton city council have completely lost grip on what is important right now....

You think we would be taking things seriously right now and use vital city resources and the power of our office properly.

Instead I go to a recent council meeting where we discuss closing down roads and opening up temporary bike lanes and walking lanes on the roads.

With pylons! That will do the trick, right?

I taught my kids their entire life not to walk on the streets.

Right now people are fatigued and stressed. We don’t need to be experimenting with our roadways.”

Complainants 2007 and 2008 allege that the April 17 post violates the *Code of Conduct*.<sup>10</sup> They say:

- Councillor Nickel misrepresented facts about City of Edmonton spending and council discussions regarding city expenditures. This irreversibly harms the trust the community can place in council, ultimately undermining efforts to help Edmontonians. In Councillor Nickel's post, he says: "There is NO considering for the tens of thousands of Edmontonians who will slip into poverty", despite the City of Edmonton providing a media update two days prior on the City's request to prevent a deficit and their lobbying the provincial government for immediate work on infrastructure jobs. Further, Councillor Nickel says: "There is NO approach on how to deal with hundreds of businesses who will be unable to rehire workers or be able to pay their property taxes", despite Mayor Iveson's April 9th announcement regarding his support and lobbying for the Small Business Revitalization Enhancement Program, and his lobbying for property tax deferral on March 24th.<sup>11</sup> [Complainant 2007]

---

<sup>10</sup> Complainant 2004 also includes the April 17 post in her complaint, but the details of her concerns are about the April 18 post.

<sup>11</sup> Complainant 2007 provided a link to Mayor Iveson’s post in this regard.

- The [April 17] post contains inaccurate information about Council and Administration’s current activities. Councillor Nickel's posts suggest that City Administration and Council have no plans and have taken no action - aside from demarcating the temporary activity spaces - with regards to health, safety, and financial security of Edmontonians during this crisis. This is provably false even after a cursory glance over Council meeting minutes over the last two months which include discussions and votes on property tax deferrals, utility bill deferrals, eliminating transit fares, budget amendments, etc. This is on top of other actions that included temporary layoffs and service reductions at the City of Edmonton to curb spending. [Complainant 2008]

Complainant 2004 alleges about the April 17 and April 18 post that the Respondent is spreading misinformation about the construction of bike lanes and not acting in a way that is appropriate for a City Councillor.

With respect to the April 17 post, the Respondent says:

- I shared on social media the message on April 17, 2020. This post reflects how strongly I feel about the issues. Saying the Mayor and Councillors have checked out on reality is a fair comment by me and is shared by many members of the public at large. I have not apologized for posting this message and I will not apologize. This is me exercising my freedom of personal expression.

### Discussion and Analysis

The April 17 post appears to contain political statements about Council, including these statements:

There is NO leadership on how we rebuild Edmonton after this crisis.

There is NO considering for the tens of thousands of Edmontonians who will slip into poverty.

There is NO approach on how to deal with hundreds of businesses who will be unable to rehire workers or be able to pay their property taxes.

In my view, the very language used, such as: “NO approach’ and “NO leadership”, are statements of opinion and political commentary. It is obvious from reading the April 17 post that the Respondent disagrees with the decisions of Council to the point of saying there is no approach. The question is whether this is fair comment on a political issue or whether the Respondent is misrepresenting the facts and not respecting decisions of Council.

It is doubtful that anyone reading these statements would take them literally, but would see them as statements of opinion. A cursory review will find support for an alternative view. I expect that most people reading this post would not read it literally and would likely be aware of steps taken by Council that support an alternate view than the one expressed by the Respondent. I find that these statements are less about disrespecting decisions of Council and more about challenging Council’s overall approach and strategy.

However, I do find that these statements push the limits on Part A, 1d and Part B 1a of the *Code* that require Members of Council to accurately respect and represent decisions made by Council and ensure their communications accurately reflect the facts of Council’s decisions. While troubled by how the Respondent pushes the limits on the *Code*, I err on the side of freedom of expression with respect to these statements. The comments were made by the Respondent using his political judgement and it is



for the electorate, not me, to judge. I find that these comments are protected by the fair comment provisions in the *Code*.

In the April 17 post the Respondent includes a photograph of pilons on the road with the words “Closing down roads. Adding temporary bike & walk lanes. During a pandemic! Have the mayor & some councillors completely checked out on reality?” This is a misleading statement. In fact, the decision was to allow for multimodal use (not just for cycling) to accommodate physical distancing during the COVID-19 pandemic. This was a decision of City Administration, not Council. The Respondent attributes this decision to Council when it was not a Council decision. This comes across as stretching the facts around the issue of bike lanes to suit the Respondent’s political agenda. It is well understood that the installation of bike lanes on Edmonton streets is a matter of public interest and some disagreement.

To rely on the fair comment protection, the Respondent must ensure the truth of his statements before expressing his opinion. Some may say that this post just reflects Mayor Iveson’s and some Councillors’ historical and current support of bike lanes and is not a stretch. But the context matters. These are decisions made by City Administration (not Council) to temporarily expand spaces for a multitude of outdoor uses to accommodate physical distancing during the pandemic. While I accept that Administration is accountable to Council and some on Council expressed support for the measure to expand space for physical distancing outdoors, this was done by the Administration during a pandemic. The Respondent goes too far in either attributing this to Council and creating the impression that the construction of more bike lanes has been approved by Council. This is not mere hyperbole. It is misleading and does not accurately reflect the decisions of Council.

The choice of language and manner of communicating used in the April 17 post (which I have underlined) I find to be disrespectful. For instance, when the Respondent says:

“More bike lanes during a pandemic!?! I wish this was a joke but it isn’t...

Our mayor and some on Edmonton city council have completely lost grip on what is important right now...

You think we would be taking things seriously right now and use vital city resources and the power of our office properly...

And over an image of the temporary road expansions:

“have the mayor & some councillors completely checked out on reality?”

I find that this derogatory and derisive manner of communication is disrespectful of Council and lacks decorum. The Respondent is free to express his opinions, but how he does this must be in compliance with the *Code*.

### Findings – April 17 Post

On balance, I find that while some of the views expressed in the April 17 post are fair comment, the Respondent violated the *Code of Conduct* as follows:

- (1) The manner of communicating was disrespectful of Council in violation of Part B Section 1d) of the *Code*;
- (2) The Respondent's conduct lacked decorum, in violation of Part E Section 1 of the *Code*;
- (3) The Respondent did not accurately reflect the facts of Council's decisions when he attributed the installation of "bike lanes" or "temporary bike lanes" during a pandemic to Council in violation of Part B, Section 1a) of the *Code*; and
- (4) The Respondent was misleading, when he attributed the installation of "bike lanes" or "temporary bike lanes" during a pandemic to Council in violation of Part B, Section 1e) of the *Code*.

## April 18 POST

Complainants 2001, 2002, 2003, 2004, 2005, 2006 and 2010 submitted complaints about the April 18 post. Complainant 2010 also complained about the May 20 post.

The allegations about the April 18 include:

- The Respondent posted unprofessional and unaccepting imagery of a fellow councillor. The April 18 post promotes misinformation. Claiming that the City of Edmonton spent lots of money on bike lanes during the pandemic is incorrect....Councillor Nickel has publicly communicated in a disrespectful way; [Complainant 2001]
- Councillor Nickel has taken to social media to attack fellow councillors. He has failed to communicate respectfully. He has failed to ensure that all communications issued by, or on behalf of, the Councillor, including social media, are respectful and do not harass or demonstrate disrespect toward any person. [This Complainant asks that steps be taken to "rectify this behaviour and place appropriate sanctions on Councillor Nickel, until such time as he can conduct himself in a manner becoming of a public elected official". [Complainant 2002]
- Councillor Nickel published a post on Facebook that mocked Councillor Andrew Knack. The post was incredibly rude, unprofessional, and harassing in nature. This behaviour should not be tolerated. [Complainant 2003]
- Councillor Nickel published a post on Facebook that mocked Councillor Andrew Knack, spreading misinformation in an unprofessional and immature manner that is inappropriate for a city councillor. The post consisted of a cartoon throwing money into a fire with Councillor Knack's face on it, expressing that the money being thrown was taxpayer money and said that that money was being specifically allocated towards bike lanes. With COVID-19 the City of Edmonton has widened paths to encourage social distancing in areas of high density. First, that is not the same as creating more bike lanes with dedicated grade separation, this is simply creating more space for pedestrians to walk safely during this pandemic. The "argument" he brought to light was only to bring down Councillor Knack. With regards to spreading misinformation, Councillor Nickel said that Councillor Knack specifically was dedicated to creating bike lanes during this pandemic. Bike lanes suggests added infrastructure like

dedicated grade separation which is not the case as the "bike lanes" Councillor Nickel is referring to is in fact paths for pedestrians to walk safely during this time in order to flatten the curve and prevent the spread of COVID-19. [Complainant 2004]

- Councillor Nickel posted a derisive caricature of Councillor Andrew Knack in the form of an online video clip. In the video clip, Councillor Knack is shown as a caricatured figure who fans dollar bills, labelled "Property Tax Increases", into a fire, labelled "More Bike Lanes." Not only is this bullying and disrespectful behaviour, but Councillor Nickel also actively misrepresents information in this post (no new bike lanes are being built)...This behaviour is absolutely unbecoming of a City Councillor, and I would hope that the relevant bodies will decide on appropriate sanctions to prevent Councillor Nickel from further using his divisive, harassing tactics. [Complainant 2005]
- Councillor Nickel made a lengthy post that specifically targeted Councillor Knack, falsely claiming Knack was advocating for increased "frivolous spending on temporary bike lanes". Overall, the post failed to share the facts in relation to the use of car lanes for pedestrian traffic, a public health measure that was not enacted purely to encourage active transport. The post also failed to properly represent the decisions made by Council on this matter. Most concerning, Nickel attached an image that was a caricature of Andrew Knack burning money. This image was very disrespectful and demonstrated a Councillor not acting with the decorum expected of them. [Complainant 2006]
- Councillor Nickel posted a defamatory image of Councillor Knack on Facebook. This is not respectful communication with members of the public, councillors, city employees, and councillors employees. The post included a cartoon style image of an individual burning dollar bills, with a photo of Councillor Knack's face superimposed over top. [Complainant 2010]

With respect to the April 18 post, the Respondent says:

- This post was in response to Councillor Knack making a comment on Twitter regarding my April 17, 2020 social media post(s). This post did not name any Councillors and contained a description of an idea suggested by Councillor Knack at the March 26, 2020 Emergency Advisory Committee meeting, then enacted by the Administration without consultation of Council, with a picture of one site. The post also brought forward my opinion of actions that we should be taking to minimize the negative impacts of COVID. In Councillor Knack's April 17, 2020 post, he made implications that I sit in Council meetings, vote no to everything, and do not offer solutions. I believed this to be an inaccurate interpretation of my work and responded with a comparable interpretation of his work.
- The cartoon image of Councillor Knack in my April 18, 2020 post had some stop animation showing Councillor Knack throwing money into a fire. Councillor Knack has since released a blog breaking down his disagreement with my April 17 and 18, 2020 posts, then stated in a radio interview on April 21, 2020 that he did not find the post offensive.
- Mayor Iveson sent me a text message April 19, 2020, asking me to take down the April 18, 2020 post. As a professional courtesy to Councillor Knack, I asked my social media staff to remove it.

The April 18, 2020 post has been taken down on all sources, while the April 17, 2020 post remains active. In hindsight, I wish I would not have taken it down.

- I do not think the April 18, 2020 post is disrespectful. I am expressing my opinion, as other Councillors do. It was in response to Councillor Knack's expression of his opinion. To me, this is just another form of expression about this type of behavior on Council. It was about Councillor Knack because Councillor Knack initiated the situation. In the public square, sitting Councillors retain freedom of expression.
- It strikes me as political bigotry. They don't have to like my opinion. Before any complaints came in, [Complainant 2001 and another member of the public] put out a call to action to file a complaint against me....On the April 18, 2020 post, someone made a comment that shared a link to a cycling special interest group calling for more people to file complaints against me. I deleted my post and I cannot find the cycling group post. Since the complaints have been filed, someone made a parody account of me that is similar to the cartoon I made of Councillor Knack. This account has followers that include the Mayor, sitting Councillors, Council staff, and City staff. Due to the anonymous nature of Twitter, I do not know how many of these followers are those that filed complaints against me. While I do not intend to silence the right to freedom of expression of others, I do find it ironic that they are not only not offended by this, but effectively endorsing it. Their application of offensive standards is inconsistent.
- The issues around bike lanes go back for years. I have always questioned whether this is a wise financial decision. However, they have always been part of larger infrastructure budgets which I have supported. If they were presented as individual items, my support would be based on the merits of the individual project. It is my political opinion that bike lanes are inappropriate, based on the fact that the Downtown Bike Network failed to meet 3 out of 4 of the targets they set for themselves, as shown in a report to Council/Committee. I have always been an advocate of value for taxes, and I do not see an equitable value proposition for bike lanes.
- The cartoon is about spending money wisely. I have many constituents who are vehemently opposed to spending money on bike lanes. And for those who were on the fence before the pandemic, they are definitely against now when we've spent money on bike lanes, but can't cut the lawns.
- The City opened more "emergency bike lanes" recently. I have not seen evidence they are being used as intended, therefore I believe the City is wasting resources. Most of Council has endorsed this project on numerous occasions. The April 18, 2020 post was intended to outline the spending priorities of some of my colleagues on Council.
- If the complainant says I have accused Councillor Knack of approving bike lanes during a pandemic that is their interpretation. They have to practice their own due diligence, too. There has to be a reasonable limit on what I need to respond. I cannot manage everyone's possible interpretations.
- I deny that the April 17, 2020 [sic April 18, 2020] post contained misinformation about the implementation of bike lanes during a pandemic.

- I'm a politician. Councillor Knack is a politician. I exercised my freedom of expression and opinion. I understand there are limits to freedom of expression. The April 18, 2020 post is not derogatory, hateful or disrespectful. It's not a personal attack, it was a response to a post from Councillor Knack. I challenge other politicians on what they have done. This is just a different way of challenging them.
- The decision to install bike lanes during the pandemic was made by the Covid-19 Task Team who decided to expand the network. It was not the decision of Council. But, at every turn, Councillor Knack has been an advocate of bike lanes through the budget process, including Councillor Knack making the suggestion for this action at the March 26, 2020 Emergency Advisory Committee. The April 18, 2020 post is my interpretation. It's a metaphor for the spending habits by Council and in particular Councillor Knack. It's not just about pylons. It's a grander theme of what's being spent.
- I consider the April 18, 2020 post to be relatively tame. Complainants get to speak on their agenda. Anyone who speaks against their agenda is accused of unfair comment. It's like they want to shout you down. There is a political bigotry that exists where you cannot seem to have a legitimate discussion or comment without someone being offended. They have the right to be offended, but not the right to censor me.
- The Code of Conduct cannot be used to inhibit my individual freedoms. The cartoon of Councillor Knack was just another form of expression.
- I have never apologized for the April 18, 2020 post and I'm not going to apologize. There is a principle here with what is a fair and open expression of personal opinion. I do not think I have violated the Code of Conduct.

### Discussion and Analysis

The Respondent says his April 18 post was in response to prior negative comments by Councillor Knack. However, the Respondent did not provide any evidence of this and did not identify what post he was referring to, despite being told that if he wants me to consider this argument he must provide the information necessary to support the argument. The Respondent has also not made his own complaint (or counter-complaint). Simply saying the April 18 post was a response to a post by Councillor Knack is not an answer.

The Respondent also refers to other alleged activity on social media involving Mayor Iveson and other Councillors, but provides nothing to support these suggestions. I have not been given anything to conclude that the Respondent's allegations of other Members of Council's conduct should be taken as mitigating factors when determining the outcome of this investigation.

I find the following comments in the April 18 post (which I have underlined) concerning:

*Right now, every resident in Edmonton is watching their spending carefully.*

*Andrew Knack, why can't you?*

*Every dollar we spend wisely might mean another worker getting their job back at the City of Edmonton very soon. Does that mean anything to you?*

*I get it, you have no idea what to do in this situation so you are reverting to what you know.*

*I'm sure when you suggest more tax increases shortly it will be no big deal...*

*Your most recent flavour of the week is more bike lanes.*

*At some point, we will need every dollar at our disposal to bring this city back to life. To re-hire those people I mentioned above.*

*I hope you haven't forgotten about them already.*

*My solution to the current problem is to be very careful with spending right now. We should only spend what we absolutely must.*

*Somehow this isn't a solution for you. I get it. It's not flashy. It's not exciting.*

*Well I'm sorry saving money and spending wisely isn't your current priority.*

I find the manner of communicating in these comments is disrespectful. The comments come across as demeaning, derisive, and personal. Complainants 2003 and 2004 refer to the comments as mocking Councillor Knack. I agree with that description. Despite the Respondent saying this is not a personal attack, I find there is no doubt it is a personal attack publicly directed at Councillor Knack. Here, the Respondent says, in part, that he is fulfilling his duty to his constituents when he speaks on issues such as bike lanes. I completely agree that part of his role as Councillor is to raise issues on behalf of his constituents. However, this does not extend to making personal attacks on another Councillor with whom he has a difference of opinion.

The Respondent says that it is a stretch for anyone to say that the comments and image in the April 18 post are suggesting that Councillor Knack approved the construction of bike lanes during a pandemic. He says this post is a metaphor for wasteful spending. In my view, if the Respondent is going to make a metaphor on social media, it ought to be obvious that it is a metaphor. Clearly, it was seen as misleading by some of the Complainants. It was not clearly about Councillor Knack's decisions regarding spending, but was about the current installation of what the Respondent referred to as Councillor Knack's "most recent flavour of the week more bike lanes".

The issue of bike lanes and the specific temperature of the electorate for spending money during a pandemic makes this all the more of a hot button issue. This therefore requires the Respondent to not be reckless in how he presents the information. In fact, as discussed above, the recent introduction of temporary spaces for physical distancing was for a multiple of purposes (not just cycling) during the COVID-19 pandemic. This was a decision made by the City Administration and not by Council. In the April 18 post the Respondent suggests that Councillor Knack is responsible for this decision which, by the Respondent's own admission, is not true as he reports that Administration made this decision without Council approval.

I agree with the Respondent that he cannot be responsible for every interpretation that might be made by others of his communications. I also fully support and will not interfere with Members of Council expressing their views on matters of public interest and engaging in vigorous political debate. This gives

the electorate an opportunity to hear the elected official's views and decide for themselves if they support those views. However, those communications must, objectively, not be misleading. I find, on balance, that the comments and image in the April 18 post are misleading as they leave the impression that Councillor Knack was responsible for approving more bike lanes during a pandemic, which he was not.

With respect to the cartoon image of Councillor Knack in the April 18 post, the Respondent argues that this image is not disrespectful and not offensive. He argues that this is simply another form of expression. However, I see the Councillor's oversized head superimposed on a smaller body, as he broadly smiles while burning (presumably) taxpayers' money as a derisive, demeaning, personal attack, and not fair comment as between politicians on a political issue.

The cartoon image of the Councillor throwing money for "bike lanes" on a fire was capable of being viewed by many people. It reasonably left the impression that during a time of pandemic, when many were suffering financially, the Councillor was willing to burn money on the construction of bike lanes. The cartoon image does not say temporary bike lanes. I suggest that social media users often engage on social media by scrolling and seeing images without necessarily reading the accompanying commentary. Therefore, the cartoon image was likely to also have been viewed in isolation by some viewers while they scrolled the feed. Complainant 2010 only provides the cartoon image from the April 18 post and not the accompanying commentary. I find that the cartoon image of the Councillor burning money on "bike lanes" was misleading.

Some of the Complainants allege that the Respondent's comments in the April 18 post are harassing. When we think of the Councillor's hybrid role as a legislator and as a politician, we cannot ignore the fact that they function in a type of work environment and not just the political environment. For years, that environment was not protected. Elected officials were typically not subject to any form of a code of conduct, especially at the municipal level where there is no political party to help keep their conduct in check. The Government of Alberta then introduced amendments to the *Municipal Government Act* to require councils to have codes of conduct, and Council passed Bylaw 18483 bringing into force the *Code of Conduct*. The *Code* says that Members of Council must not use any harassing language about another Councillor and must ensure their communications do not harass any person.

Typically, when harassment is alleged, an individual is harmed by a pattern of harassing behaviour. Harassment can create a hostile and sometimes intimidating environment. Harassment is discouraged as organizations want to protect their environment from this sort of conduct, not only as against individuals, but for the collective. Others who witness this sort of conduct may be less inclined to disagree with the alleged harasser in the future, for fear of experiencing the same harassing conduct. It can shut down people from freely expressing their opinion, which has a negative impact on the democratic process. When someone witnesses others being harassed, it diminishes the environment within which Members of Council function.

In my view, the *Code of Conduct* can be viewed in the context of providing a safe environment for Members of Council to fulfill their hybrid role. Just as an employee in an organization must feel protected from harassment when they come to work each day, while elected officials must absolutely have a thicker skin for their role, they are still entitled to carry out their role somewhat free from harassment. Council can look at conduct towards others and how they expect their members to behave, and can consider how this behaviour impacts the office and the environment.

The spreading of false information about someone is a form of harassment. It forces the person who is misspoken about to have to dispel the misinformation or risk leaving it unaddressed. It is nearly impossible to erase misinformation once it is published and the impression will be left hanging over that person's head, even if retracted by the person who originally communicated it. Therefore, it is important that Members of Council are careful to publish, especially on social media, accurate information. The *Code of Conduct* requires this.

The above-referenced definitions say harassment is an incident or incidents of objectionable or unwelcome conduct, that the person knows or ought reasonably to know would cause offence or humiliation, and creates a hostile or negative situation. In this instance, no Member of Council has come forward to say they were offended by the April 18 post, and it would be inappropriate for me to elicit those reactions. In some circumstances of this kind I may still find harassment, but, here I do not find, on balance, that the circumstances warrant such a finding. While I am concerned about the dissemination of misleading information and the manner of communicating of the April 18 post, I do not find there to be harassment.

### Findings – April 18 Post

On balance, I find that the comments and cartoon image posted by the Respondent in the April 18 post violated the *Code of Conduct* as follows:

- (1) The personal attack on Councillor Knack and the manner of communicating was disrespectful, in violation of Part B, section 1 d) of the *Code of Conduct* that says Councillors must ensure that all communications issued by Councillors, including on social media, are respectful.
- (2) The personal attack on another Councillor and the manner of communicating lacked decorum, in violation of Part E, section 1 of the *Code of Conduct* that requires Councillors to act with decorum at all times.
- (3) Communicating misleading information that left the impression that Councillor Knack approved the installation of bike lanes during a pandemic, when the decision was to temporarily use public space to expand spaces for multimodal use for physical distancing during the COVID-19 pandemic. This was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the *Code of Conduct* that say Councillors must ensure that their communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter.

### MAY 20 POST

With respect to the May 20 post, Complainant 2010 says:

- [The May 20 post contains] two screen shots of an image depicting Kermit the Frog and text describing free transit and spending on bike lanes. The second image shows how Councillor Nickel has tagged Don Iveson as being in the photo, i.e. Don Iveson is Kermit the Frog. The text



in the image represents that Don Iveson has decided to make transit free independent of COVID-19 health concerns, and that he is somehow scheming to expand bike lanes, and "add a gondola". The decisions are made jointly by council and councillor Nickel has an opportunity to participate in those decisions. Representing these decisions as pet projects by Don Iveson alone does not accurately represent the role or function of council. I do not believe Mike Nickel should spend his time, or time of his assistants or staff, creating disrespectful images such as the attached.

The Respondent did not provide specific responses to the allegations raised about the May 20, 2020 post. I will assume that his submissions asserting freedom of expression are also his response to this post.

In the May 20 post, the Respondent suggests that Mayor Iveson is responsible for the decision to "add dozens of emergency bike lanes". This is misleading as this was a decision to temporarily use public space to expand spaces for multimodal use (not just for cycling) for physical distancing during the COVID-19 pandemic and was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the Code of Conduct that say Councillors must ensure that their communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter. While I have some concerns and acknowledge the Complainant's allegation that the image in the post is disrespectful, I make no findings of a breach in terms of the Respondent's manner of communicating in this post.

#### Findings – May 20 post

On balance, I find that the comments and image posted by the Respondent in the May 20 post violated the *Code of Conduct* as follows:

- (1) Communicating misleading information that left the impression that Mayor Iveson was responsible for approving the addition of dozens of emergency bike lanes was misleading, when this was a decision to temporarily use public space to expand spaces for multimodal use for physical distancing during the COVID-19 pandemic and was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the Code of Conduct that say Councillors must ensure that their communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter.

#### DELETING AND BLOCKING ON SOCIAL MEDIA

Several of the Complainants complain about having their comments on the Respondent's social media pages deleted or they were blocked from commenting (or both). This arose specifically with respect to reactions to the April 18 post. Some merely witnessed the Respondent deleting or blocking other commentators. Some of the Complainants allege that deleting contrary views or blocking someone from making comments is disrespectful and therefore a violation of the *Code of Conduct*. Complainant

2001 produced the commentary that was deleted and then blocked. Complainant 2001 suggested that the Respondent is in the habit of deleting or blocking those who disagree with him. Other Complainants allege they have been blocked or seen others blocked.

For the reasons explained below, I did not seek out and do an exhaustive review of the social media activity by the Respondent or the Complainants. Of the information I had, there was no obvious breach of the *Code* based on the analysis that follows.

The Respondent says his unwritten social media policy is to use a common-sense approach based on the following principles:

- Mike Nickel's social media pages are the property of Mike Nickel.
- We reserve the right to remove anyone acting inappropriately, degrading, or offensive from our social media pages.
- We do not tolerate bots or anonymous accounts from interacting with our page.
- Individuals using "fake names" or "pseudonyms" while interacting with our pages will be removed and/or blocked.
- Anyone spamming or mass copying / pasting underneath comments in an attempt to intimidate or skew engagement in the conversation will be removed.

The Respondent says:

- I allow contrary views on my social media pages as long as they are not abusive, profane or inappropriate activity such as spamming, taking over the site with too many posts that are copied and pasted, etc. I tell my staff to block or delete posts if the language in them is abusive, uses profanity or they are spamming to take over the conversation. There are limits. When it becomes abusive, then the limits kick in. As a principle, I don't involve myself and don't want to be talking about personalities. Complainant 2001...was deleted and blocked because she made a comment, then copied and pasted it as a reply to several other comments, and stopped when my staff blocked her. She is entitled to her opinion, but I am familiar with the tactic she used, that sends a notification to each person replied to, as an effort to get more people to see the comment. My staff made a judgement call on my behalf, based on the principles I have given them. I fully support my staff in this decision.

## Discussion and Analysis

The understanding of the intersection of municipal codes of conduct and the use of social media is somewhat in its infancy. Many municipal councils are looking at bringing in social media policies to govern these issues. While Council has not specifically enacted a social media policy, Edmonton's City Council chose to explicitly include in the *Code of Conduct* the requirement that their communications on social media must be respectful. Many codes are not this explicit.

However, the *Code of Conduct* does not require Members of Council to engage the public on social media or to participate in debate with members of the public. In my view, when Councillors use social media platforms as a method to communicate to the public on issues of public interest, they need to tread carefully when limiting participation by the public. These platforms are used by the public to raise

their concerns. It is part of the Council member's role to initiate communications and respond to communications by the public.

The role of municipal councillors is somewhat different from other politicians who may find themselves subject to their own political party's policies on social media use. Many such parties have brought into effect policies that permit members to block or delete commentators if, for instance, they use threatening or discriminatory language, or troll the politician's site. Blocking happens at all political levels in Canada, although some commentators see it as an affront to democracy and possibly off-side the elected official's obligations to their constituents. The preponderance of commentary on this issue is politicians' public accounts should remain public, unless blocking is necessary and justified.<sup>12</sup>

To my knowledge, the Canadian Courts have not ruled on whether elected officials can block members of the public, in particular, their constituents. In the United States, some courts have ruled that politicians who block constituents are violating the First Amendment of the U.S. Constitution which protects freedom of speech. The Southern District Court of New York found that President Trump should not be permitted to block people on his Twitter account as Twitter is a "public forum" under the First Amendment.<sup>13</sup> However, the freedom of expression protections under the *Canadian Charter of Rights* are different from the U.S. First Amendment, and the Canadian courts have not ruled on how our *Charter* will respond to such actions by politicians.

This is an important issue, as social media platforms are used extensively not only by politicians, but also by constituents for a number of reasons, including knowing their politicians' views on particular topics, to express their own views and to get updates on what is happening within their municipality. By blocking someone, an elected official is singling out that person who is no longer being allowed, as others are, to weigh in on the issues. That person is also prevented from immediately and easily seeing posts by that elected official. The member of the public can search for this information, but it is not readily available when they are blocked.

Many elected officials argue that constituents can still contact them after they are blocked through other means such as email. This helps the elected official verify the author of the communication and engage in more private discussions. The Respondent also says that he is just blocking people from this form of communication, not all communication.

I am of the view that it is entirely reasonable for elected officials to place some parameters on acceptable conduct on their social media pages. This is particularly so if the page is being hijacked by people trolling, spamming, using bots, using discriminatory or harassing language, etc.

Whether the Respondent violated the *Code* when he deleted and blocked some of the Complainants is not an issue that is clearly covered by the *Code*. In this circumstance, the Respondent says some members of the public were blocked because of their behaviour which was contrary to the guidelines he

---

<sup>12</sup> For instance, the former Integrity Commissioner for the City of Toronto, Val Jepsen, in her 2016 *Annual Report* commented that "...social media is a way to communicate with constituents and blocking them could be seen as a refusal of service". See also "Can a politician block you on Twitter?" by Cara Zwibel of the Canadian Civil Liberties Association, June 7, 2019, [ccla.org](http://ccla.org), who says online spaces have become the public square and unless being subjected to repeated harassment, blocking by elected officials is "terrible for democracy".

<sup>13</sup> See: National Observer, July 4, 2019, by Emma McIntosh and Fatima Syed.

put in place. The only blocked commentary that was provided was that of Complainant 2001, who comments in her complaint that it is the Respondent's right to delete comments.

I suggest that blocking would be a breach of the *Code*, for instance, if it was proven, on a balance of probabilities, that a Member of Council was deleting or blocking someone based on grounds that are protected by Human Rights legislation. But that is not the case here.

The Respondent has some guidelines with respect to the behaviour he will tolerate on his social media pages. Such guidelines always require an element of judgment and it is not for me to question that judgement. However, in my view, to encourage democratic debate on a site that is meant to serve the public, I suggest that blocking should be done sparingly, with other methods such as muting being considered only when justified. Comments, if said respectfully, should not be deleted or blocked even if they express a contrary view. But, this is currently within the Member of Council's discretion. There are no specific rules in the *Code of Conduct* or Council policies that apply to this issue.

### Findings – Deleting and Blocking Social Media

I find on balance that the *Code of Conduct* was not violated when the Respondent blocked Complainant 2001 and others from his social media pages. While I think this sort of blocking should be done sparingly and based on justifiable and defensible guidelines, there is nothing currently in the *Code* that prevents this. There is no legal guidance on this issue. Council may choose to pass a social media policy to address this situation. In the interim, this is left to Members of Council to use their judgment.

## FINDINGS

On balance I find:

1. In the **April 17 post**, the Respondent violated the *Code of Conduct* as follows:
  - (a) The manner of communicating was disrespectful of Council in violation of Part B Section 1d);
  - (b) The conduct lacked decorum, in violation of Part E Section 1 of the *Code*;
  - (c) The Respondent did not accurately reflect the facts of Council's decisions when he attributed the installation of "bike lanes" or "temporary bike lanes" during a pandemic to Council in violation of Part B, Section 1a) of the *Code*; and
  - (d) The Respondent was misleading, when he attributed the installation of "bike lanes" or "temporary bike lanes" during a pandemic to Council in violation of Part B, Section 1e) of the *Code*.
2. The comments and cartoon image posted by the Respondent in the **April 18 post** violated the *Code of Conduct* as follows:
  - (a) The personal attack on another Councillor and the manner of communicating was disrespectful, in violation of Part B, section 1 (d) of the *Code of Conduct* that says Councillors must ensure that all communications issued by Councillors, including on social media, are respectful.

- (b) The personal attack on another Councillor and the manner of communicating lacked decorum, in violation of Part E, section 1 of the *Code of Conduct* that requires Councillors to act with decorum.
  - (c) Communicating misleading information that left the impression that Councillor Knack approved the installation of bike lanes during a pandemic, when the decision was to temporarily use public space to expand spaces for multimodal use for physical distancing during the COVID-19 pandemic and was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the *Code of Conduct* that say Councillors must ensure that their communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter.
3. The comments and image posted by the Respondent in the **May 20 post** violated the *Code of Conduct* as follows:
- (a) Communicating misleading information that left the impression that Mayor Iveson was responsible for approving the addition of dozens of emergency bike lanes was misleading, when the decision was to temporarily use public space to expand spaces for multimodal use for physical distancing during the COVID-19 pandemic and was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the *Code of Conduct* that say Councillors must ensure that their communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter.

## RECOMMENDATIONS

Section 153 (e.1) of the *Municipal Government Act* requires Councillors to adhere to the *Code of Conduct*. I have found that the Respondent did not adhere to the *Code*.

### **I recommend that Council:**

1. Accept this report.
2. Direct that Mayor Iveson on behalf of Council issue a letter of reprimand addressed to the Respondent with respect to *Code of Conduct* violations found in this report
3. Consider implementing a social media policy.

## APPENDIX A – APRIL 17 POST



**Mike Nickel**

April 17 at 2:58 PM · 🌐



😞 I'm fed up. Enough is enough.

More bike lanes during a pandemic?! I wish this was a joke but it isn't..

✘ There is NO leadership on how we rebuild Edmonton after this crisis.

✘ There is NO consideration for the tens of thousands of Edmontonians who will slip into poverty.

✘ There is NO approach on how to deal with hundreds of businesses who will be unable to rehire workers or be able to pay their property taxes.

Our mayor and some on Edmonton city council have completely lost grip on what is important right now.

Our neighbours at the City of Vancouver are on the brink of bankruptcy.

People are fighting for their careers, their life's work, and their families.

They are fighting for everything that makes them whole.

Some are even fighting this infection in hospitals. My thoughts are on them as well.

People are relying on us right now to make decisions that will minimize the damage of this virus.

You think we would be taking things seriously right now and use vital city resources and the power of our office properly.

Instead I go to a recent council meeting where we discuss closing down roads and opening up temporary bike lanes and walking lanes on the roads.

With pylons! That will do the trick, right? 👍

I taught my kids their entire life not to walk on the streets.

Right now people are fatigued and stressed. We don't need to be experimenting with our roadways.

Also if there are emergencies, don't we want our roads open for emergency vehicles?

Democracy WILL continue during this pandemic.

Please don't remain silent. Speak up.



**Closing down roads.  
Adding temporary bike & walk lanes.  
During a pandemic!**

**Have the mayor & some councillors  
completely checked out on reality?**

**ENOUGH  
IS  
ENOUGH !**

APPENDIX B – APRIL 18 POST



**Councillor Mike Nickel**

19 hrs · 🌐



Right now, every resident in Edmonton is watching their spending carefully.

**Andrew Knack**, why can't you? 🙄

Every dollar we spend wisely might mean another worker getting their job back at the City of Edmonton very soon. Does that mean anything to you?

I get it, you have no idea what to do in this situation so you are reverting to what you know.

I'm sure when you suggest more tax increases shortly it will be no big deal...

Your most recent flavour of the week is more bike lanes.

At some point, we will need every dollar at our disposal to bring this city back to life. To re-hire those people I mentioned above.

I hope you haven't forgotten about them already.

My solution to the current problem is to be very careful with spending right now. We should only spend what we absolutely must.

Somehow this isn't a solution for you. I get it, it's not flashy. It's not exciting.

Well I'm sorry saving money and spending wisely isn't your current priority.

With the reduced traffic on the roads there is now a great opportunity for cyclists to enjoy the roadways.

I truly mean it. To everyone in this city enjoy the outdoors and get some fresh air.

Edmonton is one of the least dense of all the major cities on the planet. There are so many places to walk and be outside and have a 2 metre buffer.

Spending money frivolously on temporary bike lanes and orange pylons won't cut it.

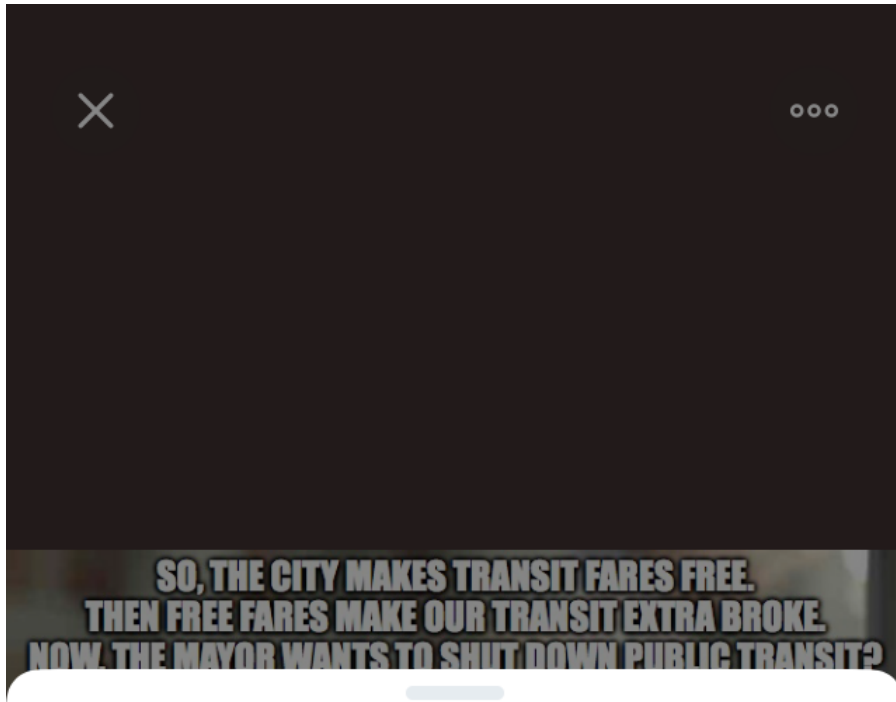


I'm really sorry, but this is the fundamental difference between us I guess...  
C'mon Andrew, now is your time to show some fiscal restraint.



👍😂❤️ 119 55 comments 51 shares

👍 Like      💬 Comment      ➦ Share



**In this photo**

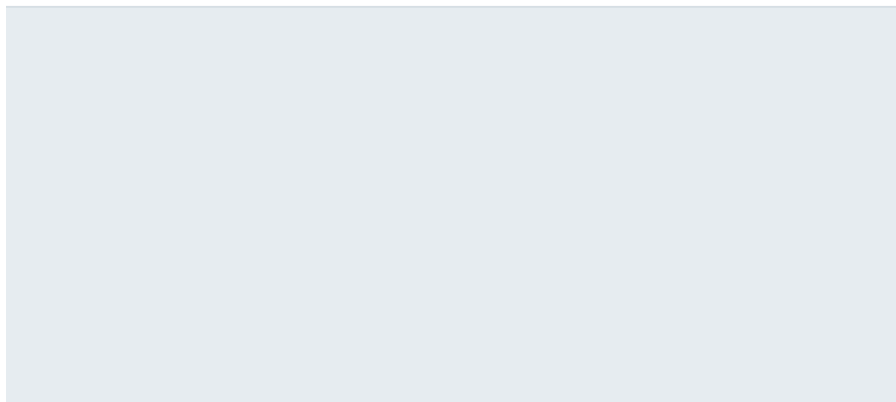


**Don Iveson**

@doniveson

Following

Mayor of #Edmonton, . City building for the next generation in the heart of #Treaty6 territory. #YEGcc #YEGmetro #CDNmuni



♥ Twin Parks Community liked



**Mike Nickel** @ClrMikeNickel · 3h ✓

What a strange day in Edmonton...

#yeg #yegcc



Don Iveson

# Office of the Integrity Commissioner

integrity.commissioner@edmonton.ca

## INVESTIGATIONS 2001 to 2010

### RE: RECOMMENDED SANCTION

Date: August 13, 2020  
To: City Council for The City of Edmonton  
From: Jamie Pytel, Integrity Commissioner for the City of Edmonton  
Respondent: Councillor Mike Nickel (the “Respondent”)

With respect to the Investigation Reports dated July 19, 2020 for these Complaints, when considering the appropriate sanction available under the *Council Code of Conduct Bylaw 18483*, the following was considered:

1. The Respondent has not removed the April 17 post from his social media page. The Respondent says he has not apologized for the April 17 post and will not apologize.
2. Mayor Iveson asked the Respondent to take down the April 18 post which the Respondent says he did as a professional courtesy to Councillor Knack. The Respondent says he has never apologized for the April 18 post and he is not going to apologize. He says in hindsight he wishes he would not have taken it down.
3. The Respondent repeated the conduct during this investigation when he posted the May 20 post suggesting that Mayor Iveson is responsible for the decision to add dozens of temporary emergency bike lanes. This was after the Respondent had already received the *Code of Conduct* complaints alleging these sorts of statements are misleading. This was also within a few hours of being interviewed for this investigation and being told of the concerns that this is misleading and that, in my view, freedom of expression is limited by the *Code* requirement to not be misleading about decisions made by Council.
4. The Respondent has not previously been found in violation of the *Code of Conduct*.

# Office of the Integrity Commissioner

integrity.commissioner@edmonton.ca

**INVESTIGATION REPORT 2001**  
**BY JAMIE PYTEL**  
**INTEGRITY COMMISSIONER for**  
**THE CITY OF EDMONTON**

Report Date: July 19, 2020

To: City Council for The City of Edmonton

Re: *Council Code of Conduct Bylaw 18483*  
(the “Code of Conduct” or “Code”)  
Complaint 2001

Complainant: Complainant 2001

Date of Complaint: April 19, 2020

Respondent: Councillor Mike Nickel

## TABLE OF CONTENTS

<b>COMPLAINT .....</b>	<b>3</b>
<b>CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION .....</b>	<b>4</b>
<b>PROCESS and JURISDICTIONAL ISSUES .....</b>	<b>5</b>
<b>THE LEGAL and CODE OF CONDUCT BACKDROP .....</b>	<b>8</b>
<b>SUMMARY OF RESPONDENT’S SUBMISSIONS .....</b>	<b>12</b>
<b>RESPONDENT’S INFORMATION - APRIL 18 POST.....</b>	<b>13</b>
<b>DELETING AND BLOCKING ON SOCIAL MEDIA .....</b>	<b>17</b>
<b>FINDINGS .....</b>	<b>20</b>
<b>RECOMMENDATIONS.....</b>	<b>20</b>
<b>APPENDIX A – April 18 Post .....</b>	<b>21</b>

## COMPLAINT

The Complainant alleges that on April 18, 2020 at around 10:00 a.m. and April 20 and 21, 2020:

Mike Nickel posted unprofessional and unaccepting imagery of a fellow councillor. His post promotes misinformation. Although it is his right to do so, he is deleting the comments of those challenging him.

On April 20, 2020 he changed his Facebook page name from 'Councillor Mike Nickel' to 'Mike Nickel'. I believe this is an attempt to say that he was speaking as an individual, and not as a councillor, in order to avoid taking responsibility for breaking the code of conduct. Although, simple screen shots show that he posted the original disrespectful communication on the page while it was called "Councillor Mike Nickel". I believe this to be a thinly veiled attempt to find a loop hole in the code of conduct, which is not in the spirit of the bylaw.

Councillor Nickel on April 21, 2020 changed his pages description to state it is a personal page. I will reiterate it was advertised as a Councillor page when he made the post in question.

When I asked the Complainant what was meant by "promoted misinformation" the Complainant replied:

It is my understanding that claiming the City of Edmonton spent lots of money on bike lanes during the pandemic is incorrect. This blog post also highlights other points where the information Councillor Nickel provided was misleading.

I understand that the way it is written allows for some degree of subjectivity (i.e. what "spending money frivolously" means) in analyzing this.

More importantly, I think that Councillor Nickel has publicly communicated in a disrespectful way which is in violation of the code of conduct.

The Complainant provided the Respondent's social posts on April 18 [attached as **Appendix A**] and the Complainant's posts that were deleted by Councillor Nickel, which said:

"The fact that you have devolved to spreading misinformation and petty bullying to attack your colleagues makes me question if you are stable enough to help lead this city.

There is a respectful way to disagree Councillor Nickel, and this isn't it. Please reflect on your actions and the message it sends. Trust me when I say this reflects poorly on you.

If anyone else agrees that this behaviour is unbecoming of an elected official, I found this official complaint form online. [links to Code of Conduct complaint form for City of Edmonton Integrity Office].

I will be making a complaint about this behaviour and I encourage others to as well.

I've already screen shot this response because I know you are notorious for deleting negative comments and blocking people that disagree with you.

I almost never engage on social media anymore, but I can't stand by and say nothing when I see blatant misinformation and bullying like this.

FYI, I posted my comment on Mike Nickel's original post. It was deleted within 10 seconds of posting. I reposted it. It was deleted again and now I have been blocked from commenting all together. I am familiar with Councillor Mike Nickel's tactics so I took screenshots of everything immediately. (Screen shots will be posted in the comm...[information cut off here]).

My original comment was deleted in under 30 seconds of posting so I am reposting here. As mentioned, I predicted he would delete my comment so I screen shot it as an initial precaution. I see that you can't post pictures in this comment section, likely because he doesn't want people to post screen shots. "The fact that you have devolved to spreading misinformation and petty bullying to attack your colleagues makes me question if you are stable enough to help lead this city.

There is a respectful way to disagree Councillor Nickel, and this isn't it. Please reflect on your actions and the message it sends. Trust me when I say this reflects poorly on you.

If anyone else agrees that this behaviour is unbecoming of an elected official, I found this official complaint form online. [links to Code of Conduct complaint form for City of Edmonton Integrity Office].

I will be making a complaint about this behaviour and I encourage others to as well.

I've already screen shot this response because I know you are notorious for deleting negative comments and blocking people that disagree with you.

## CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION

The applicable sections of the *Code of Conduct* say:

### **Part A: Representing the Municipality, section 1 d):**

While carrying out their duties, Councillors must accurately represent and respect decisions made by Council while preserving the value of fair comment and differences of opinion.

### **Part A: Representing the Municipality, section 1 e):**

While carrying out their duties, Councillors must communicate respectfully with members of the public, Councillors, City employees, and Councillor's employees.

### **Part B: Communications, section 1 a):**

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure their communications accurately reflect the facts of Council's decisions.

### **Part B: Communications, section 1 c):**



Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications are accurate and not issue any communication that the Councillor knows, or ought to have known, to be false.

**Part B: Communications, section 1 d):**

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications issued by, or on behalf of, the Councillor, including social media, are respectful and do not discriminate, harass, or demonstrate disrespect toward any person.

**Part B: Communications, section 1 e):**

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will not issue any communications that mislead the public about any matter.

**Part E: Respectful Interactions, section 1:**

Councillors will conduct themselves with decorum at all times, including while attending meetings, interacting with City employees and Councillor's employees, and engaging with the public.

**Part E: Respectful Interactions, section 3:**

Councillors must not use any harassing or disrespectful language about Council, a Councillor or the public.

There is no definition in the *Code* for decorum. I suggest that Members of Councillor would generally have an understanding of what this means short of a definition within the *Code*. In any event:

*Oxford English Dictionary* (oed.com) defines decorum as:

That which is proper, suitable, seemly, befitting, becoming; fitness, propriety, congruity.

*Miriam-Webster.com* defines decorum as:

Correct or proper behaviour that shows respect and good manners.

## PROCESS and JURISDICTIONAL ISSUES

The Complaint was in writing, was within the time limits set out in the *Code*, and included the sections of the *Code* the Complainant felt were violated [Part A Sections 1 d) and 1 e)].

As part of the public interest function of my role, at times I may need to identify which sections of the *Code* I feel are applicable based on the information presented. This applies whether a complainant or respondent raises certain information or sections of the *Code*. I can also make a finding with respect to a section of the *Code* even if a complainant, or respondent in his or her defence, does not identify the correct sections of the *Code*. However, the allegations and information presented must relate to a section of the *Code*.

I have included in this report those sections of the *Code* that I found potentially apply to the issues raised in this Complaint.

During the investigation, when I had questions or needed more detail about this Complaint, I contacted the Complainant via email using the contact information provided by the Complainant. All information provided was considered for this investigation. I determined that it was not necessary to personally interview or have the Complainant swear a statutory declaration.

I provided the Respondent with all of the information and allegations provided to me by the Complainant. I interviewed the Respondent and he provided his written statement in response to this Complaint. The content of the Respondent's statement is contained within this report under the applicable headings. I also provided the Respondent with the sections of the *Code* I felt were relevant to this investigation and a list of the issues I felt were raised in this investigation. I invited the Respondent to raise any concerns around process or arguments at any time during this process. I reviewed and considered all of the information provided to me by the Respondent.

I did not find it to be in the public interest to identify the Complainant by name in this report. However, the Respondent was given the written Complaint, including name of the Complainant (except contact information), in case the identity of the Complainant raised any issues or defences for the Respondent.

I considered whether the April 18 post was done as part of the Respondent's role as a City of Edmonton Councillor, or was purely personal. The Complainant says that on April 20, 2020 (after the April 18 post), the Respondent changed his Facebook page name from "Councillor Mike Nickel" to "Mike Nickel". The Complainant alleges that this is:

...an attempt to say that he [the Respondent] was speaking as an individual, and not as a councillor, in order to avoid taking responsibility for breaking the code of conduct. Although,...he posted the original disrespectful communication on the page while it was called "Councillor Mike Nickel". I believe this is a thinly veiled attempt to find a loophole in the code of conduct, which is not in the spirit of the bylaw.

The Respondent says:

My social media accounts are my own property. The costs associated with them I pay out of my own pocket....I changed the name on my Facebook page because I do not want there to be any confusion that this is my political opinion. I changed it to say Mike Nickel, not Councillor Mike Nickel. I wanted it to be crystal clear that the opinions expressed are my personal opinions. Even though I am Councillor Nickel, Mike Nickel has rights to express his opinion. I believe using my title as Councillor is no different than a doctor using a "Dr." prefix in their personal life. Members of Council express their personal opinion on their personal pages frequently. All Councillors post blogs, use social media etc. as an unofficial method to communicate with the public. Any official platforms to engage with constituents are owned by the City. The April 18 post was on a privately operated platform where I communicate with the public regarding activities both related and unrelated to Council.

In my view, whether the Respondent pays for his social media accounts himself is irrelevant. What matters is the content of those communications. Whether he communicates his views on social media

or uses some other medium, I find that the *Code* applies if those communications are about Council, his role as a Councillor, Members of Council, or the business of the City.

Fellow Integrity Commissioner Melinda Munro for the County of Brant in Ontario likened these situations to the employment law cases in which employees can be terminated for their outside of Council chambers social media activity. I agree with her analogy, as set out in *Bartscher v. Cardy*, 2018 ONMIC 28:

While [the Code of Conduct] refers to ‘official duties’, it cannot be the case that the Council intended that its members would be free to behave in an outrageous manner outside the Council chambers such as to undermine public confidence in the office...the law of employment has long established that ‘off-duty’ conduct can be cause for discipline and dismissal where it is done in such a way as to damage the reputation or work environment of the employer....It can reasonably be suggested that once elected as a public official, all public activities are ‘official duties’ for the purpose of behaving in a manner consistent with the Code.

It is also worth noting that Part E section 1 of the *Code* says: “Councillors will act with decorum at all times...while engaging with the public.” This requirement is not limited to conduct in Council or Committee meetings or at official Council functions. I also note that some of the sections of the Code (i.e. Part A, Sections 1d and 1e) when referring to Members of Council’s duties include the phrase “while carrying out their official duties”. Part B, Section 1d which deals with respectful communications while on social media does not include this phrase.

In this case, the April 18 post was clearly posted about Councillor Andrew Knack and about City of Edmonton business. Given the subject matter of the April 18 post and the fact that the Respondent says he was advocating on behalf of some of his constituents, I find that the *Code* applies.

The Respondent says he would react differently to this investigation if Councillor Knack had made a complaint. However, the *Code* says:

If any person believes that a Councillor has contravened this code of conduct, that person may make a written complaint to the Integrity Commissioner.

In my view, it is perfectly acceptable for members of the public to question the conduct of Members of Council. The *Code* provides a way for them to do this. Based on the language of the *Code*, it is not a requirement that the alleged “victim” be the complainant.

The impugned conduct also needs to be sufficiently egregious to warrant investigation, and not a minor or trivial issue. Here, I decided to investigate, in part, because the language and images depicted in the April 18 post came across, at first blush, as potential breaches of the *Code*. However, more investigation, thought and analysis were needed to determine if, in context, the April 18 post violated the *Code*.

The Complainant is also concerned that comments posted by the Complainant were deleted or were blocked from the Respondent’s social media page. Without some investigation and analysis, it was not clear if this would be found to be a breach of the *Code*. I did not undergo a complete review of social media activity by the Respondent and the Complainant, but I did consider whether deleting or blocking on social media is a potential breach of the *Code*.

While typically I would not issue a report to Council unless there were findings of a Code breach, here there were mixed findings and the issues overlapped. Therefore, aspects of the Complaint that are both dismissed and accepted are found in this report.

## THE LEGAL and CODE OF CONDUCT BACKDROP

This investigation is centred around the right to freedom of expression and how it interacts with the *Code of Conduct*. The Respondent asserts that in the April 18 post he was simply asserting his freedom of expression rights and he should not be censored or censured for doing this.

The role of a Municipal Councillors is complex and includes being both a politician and a legislator. This is sometimes referred to as a “hybrid function”. As stated in *Geatrix v. Williams*<sup>1</sup>:

The Courts have confirmed that municipal councillors have hybrid political and legislative functions<sup>2</sup>. That they are representatives of the communities that elect them,<sup>3</sup> and that members of the public have the right to address their municipal representatives on issues of concern<sup>4</sup>...

It is part of the role of a Council Member to communicate with members of the public about municipal issues. This includes both initiating communication and responding to communication initiated by members of the public. In doing so, a Council Member is not limited to explaining and defending what the municipality is already doing. As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give effect to those views.<sup>5</sup> Some of those views may involve a change in law or a change in direction. **Provided that a Council Member proceeds lawfully and in a manner consistent with the *Municipal Act*, the Code and other legislation and by-laws**, nothing prevents a Council Member from taking, defending and seeking to implement a position that advocates change. Indeed, the Courts have clearly stated that as an elected representative of the public a municipal councillor is entitled to take “an open leadership role” on an issue.<sup>6</sup> **[emphasis added]**

As well, as stated in *Jeffrey v. Sprovieri*<sup>7</sup>:

Political commentary must comply with the Code, but otherwise an Integrity Commissioner has no jurisdiction over it. As Integrity Commissioner Cameron noted in the 2012 case:

I cannot and will not be a referee for free speech in a political arena provided it stays within the bounds of...the Code.

---

<sup>1</sup> By Integrity Commissioner Guy Giorno for the Town of Orangeville in Ontario, 2018 ONMIC 6 at para 132.

<sup>2</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1179 at 1196.

<sup>3</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc.* note 13, at 1193.

<sup>4</sup> *Re McGill and City of Brantford* (1980), 111 D.L.R. (3d) 405 (Ont. Dist. Ct.) at 411, cited with approval by *Old St. Boniface Residents Assn. Inc.*, note 13, at 1193-4.

<sup>5</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20.

<sup>6</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, (1989), 58 Man. R. (2d) 255 (C.A.) at 264, affirmed [1990] 3 S.C.R. 1170.

<sup>7</sup> 2018 ONMIC 21, Guy Giorno, as Integrity Commissioner for the City of Brampton, at para 86.

Subsequently, Mr. Randy Pepper, the delegate of Integrity Commissioner Cameron, expanded on the same principle in Investigation Report No. BIC-33-1112:

Freedom of expression is a fundamental right in Canada so the Code must be interpreted in a manner consistent with this fundamental right. Based on the law set out below, I cannot find that the Code should be interpreted to appoint the Integrity Commissioner as a speech referee in the political arena.

As the Supreme Court of Canada noted in the *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139:

Freedom of expression, like freedom of religion, serves to anchor the very essence of our democratic political and societal structure...Hence, the justification for the widest freedom of political speech stems not only from some abstract search for truth, but also from the tangible goal of preserving democracy...I find that the Integrity Commissioner has a very limited role in relation to the "freewheeling debate on matters of public interest..."

The Complainant alleges that the Respondent has publicly communicated in a disrespectful way in the April 18 post. The Complainant also alleges that the Respondent has promoted misinformation in the April 18 post. The *Code of Conduct* provides that while preserving the value of fair comment and differences of opinion, Councillors must ensure their communications accurately reflect the facts of Council's decisions, that all communications are accurate and not issue any communications that mislead the public about any matter.

On this issue, the Ontario Supreme Court stated in *Buck v. Morris et al.*, 2015 ONSC 5632, at paragraphs 189-193:

There can be no doubt that politics, whether it be federal, provincial or municipal, is not for the faint of heart. Some might say a thick skin is a prerequisite for any politician.

A thick skin, however, does not mean that a politician is fair game for those intent on damaging their reputation with false, malicious, and defamatory statements. Freedom of speech, whether in the political forum or not, does not extend to statements that are untrue and have as their sole purpose an intent to damage someone else's reputation.

The right to freedom of speech in our society is not an absolute right. While freedom of speech is a cherished right in a free and democratic society, there are reasonable limitations. The Town of Aurora, like many other towns and cities in the Province of Ontario, has a Code of Conduct that purports to codify parameters of reasonable conduct for elected Town officials...

The plaintiff clearly has a perception that she has an unfettered right to freedom of expression and freedom of speech. That freedom, however, is circumscribed by the Code.

The Supreme Court of Canada in *Prud'homme v. Prud'homme*, 2002 SCC 85, stated at paras 42-45:

...while elected municipal officials must be quite free to discuss matters of public interest, they must act as would the reasonable person. The reasonableness of their conduct will often be demonstrated by their good faith and the prior checking they did to satisfy themselves as to the

truth of their allegations. These are guidelines for exercising the right to comment, which has been repeatedly reaffirmed by the courts.

I am of the view that it is not the role of the Integrity Commissioner to censor or interfere with political debate and commentary. It is not my role to decide whether views expressed by Members of Council are meritorious or properly held.

It is also not my role to interpret whether the *Code* is contrary to the freedom of expression rights found in the *Canadian Charter of Rights*, which is an issue for the courts to decide. However, I am of the view that the right to freedom of expression found in the *Charter* has limits. In this case, the limits have been self-imposed by City Council with the issuance of the *Code of Conduct*. The *Code* allows fair comment and Members of Council to hold a position on an issue. This is balanced with *Code* requirements, such as, to accurately represent Council's activities, be respectful and act with decorum.

No code of conduct can list all of the possible ways individuals can disrespect one another. Some codes provide non-exhaustive lists of what is considered disrespectful conduct to give those who are governed by the code a sense of what is contrary to the code. However, it is left to those who are governed by those codes to use their judgement. When a complaint is made, those who administer the code and investigate alleged breaches (in this case, me as the Integrity Commissioner), must determine if the impugned conduct is disrespectful. As part of that review, consideration is given to the context and facts around the impugned conduct.

The *Code of Conduct* requires Members of Council to respect the decisions made by Council while preserving the value of fair comment and differences of opinion. Some Integrity Commissioners in Canada have commented on this requirement. For instance, Bruce Elman, Integrity Commissioner for the City of Windsor says<sup>8</sup>:

City or Municipal Councils occupy a unique role in our society. They are, at one time, both deliberative legislative bodies for the geographical entity known as their city, town, county, or municipal district, and at the same time, they are, effectively, a corporate board of directors for the commercial entity known as the Municipal Corporation of (in this case) the City of Windsor....

In other words, in the lead up to a specific decision, Council is a deliberative governmental body wherein almost unfettered freedom of speech reigns but once that decision is made, Council becomes a corporate board and, as with vast majority of corporate boards, public dissent is discouraged or even prohibited. The reason is rational and sensible: Decisions made by Council become the official policy of the City of Windsor. When Members of Council speak out or engage in conduct indicating opposition to official City policy outside the deliberative confines of the legislative process, their comments or conduct can diminish the integrity of Council decisions in the public eye, damage public confidence in Council itself, or even undermine the City's reputation, domestically or internationally. One can only imagine how [the Councillor's statement] – perhaps taken as hyperbole here in Windsor – might be viewed in California or Calgary or Copenhagen or Cairo.

---

<sup>8</sup> Re Complaint brought pursuant to the Code of Conduct of the City of Windsor against Councillor Rino Berolin, Integrity Commissioner Bruce Elman's report dated April 20, 2018.

It should be noted that Councillors have plenty of opportunities prior to a decision being made by Council to express their views on the merits of a proposal and they can provide as much context as they wish and use as much hyperbole as they believe is necessary. If a Councillor has particular concerns regarding an item on the Council Agenda, the Councillor can call a press conference to express those concerns. Councillors can post their concerns on their webpages or on social media to express those concerns. Councillors can go to community groups or BIAs to rally support for their position. The Councillor can even encourage citizens to become delegates to Council when the matter is debated. Finally, Councillors may express all of their concerns during the debate on the matter when it comes before Council.

Even then, after the decision is made, Councillors are free to explain why they voted as they did during the Council deliberations. They should, however, acknowledge the legitimacy of Council's decision as resulting from the deliberative and democratic processes of Council. **They should not be disrespectful and their comments should not be disparaging or inaccurate.** [emphasis added]

At the centre of this investigation are decisions made by Council during the COVID-19 pandemic and historically with respect to the construction of bike lanes in the City of Edmonton. A review of the history reveals:

- The construction of bike lanes was a decision made by Council going back to 2009 when the Council of the day carried a motion to approve the policy that: "The City of Edmonton strives to be pedestrian and bicycle friendly".
- On June 11, 2014 Council passed a motion that "enhanced public engagement strategies" outlined in a report by Transportation Services that included a bicycle infrastructure plan be approved. The Respondent voted in favour of this motion.
- During Council Meetings in November and December 2014, Council passed the 2015-2018 Capital Budget, including a motion for a \$8.8 Million bikeway for the 102 Avenue area. The Respondent voted in favour of this motion.
- In 2016, the Respondent voted in favour of a motion for capital funding of \$7.5 Million and an annual operating cost of \$625,000 for physically separated bike lane infrastructure.
- With respect to the 2019-2022 Capital Budget discussed at the November and December 2018 Council meetings, the Respondent voted against a motion seeking increased funding of \$2.17 Million for bike infrastructure expenditures, but the motion was passed. The Respondent also voted against a motion on the \$5.7 Billion Capital and Operating Budget that included design and construction of a minimum grade bike grid in various areas in Edmonton, but the motion was passed.
- In response to this investigation, the Respondent referred me to the March 26, 2020 Emergency Advisory Committee of Council. A review of that meeting revealed that Councillor Knack brought forward concerns from some of his constituents that they were struggling with physical

distancing outdoors during the pandemic. City Administration said that they would review options in this regard. It was clear at this meeting that this was delegated to City Administration. No Council motions were passed in this regard.

- City Administration made expanded spaces available on some City of Edmonton roads and paths during the COVID-19 pandemic in April 2020. This was done to facilitate physical distancing during the pandemic. These were multimodal spaces for active transportation for:
  - Biking
  - Running
  - Walking
  - Rollerblading
  - Wheelchair use
  - Etc.

The decision to do this was made by Administration under the State of Local Emergency, but Administration normally has the authority to make these sorts of decisions. Regular updates were given to Council about these measures and Councillors could raise any concerns they had with them.

## SUMMARY OF RESPONDENT'S SUBMISSIONS

The Respondent provided some submissions regarding this investigation all of which were reviewed and considered by me. The following is a summary of the Respondent's submissions that were relevant to the issues<sup>9</sup>:

- By passing the *Code of Conduct*, Council did not agree to contract out of the *Canadian Charter of Rights and Freedoms*;
- Terms used in the *Code of Conduct*, like "disrespectful" have no objective criteria against which words can be measured;
- As "respectfully" is not defined in the *Code of Conduct*, the Integrity Commissioner is discouraged from inserting her own "personal subjective standards into that void";
- Members of Council should not be punished for acts that were never intended to cause harm;
- If victimless speech is to be censored there will be a chilling effect on free expression;
- Non-defamatory speech that may be offensive but falls short of inciting hatred to an identifiable group is constitutionally protected;
- There is no objective standard that exists regarding social media posts that could result in the posts being deemed offensive or disrespectful, especially by norms established in the political arena;
- The Respondent does not attack another Councillor, he simply questions Council and certain Members of Council spending priorities. He merely questions and sometimes attacks another Councillor's spending priorities for the City of Edmonton;

---

<sup>9</sup> The Respondent can also make further written submissions to Council before the Council meeting to consider this report and will have time at the meeting to make oral submissions.



- There is no personal attack. There is no disrespect. There is only a fundamental difference on an important fiscal matter. Far from disrespecting an adversary, the Respondent respects a fellow Councillor by essentially challenging him to a social media debate and giving him an opportunity to defend his position;
- The cartoon image of Councillor Knack is not offensive. It does not portray the Councillor in an unflattering light or distort his appearance in any negative way. It is simply a visual depiction to graphically demonstrate the thesis that Council's spending priorities are askew;
- There is no need to censure social media. The internet is self-policing. When someone posts something offensive, they are immediately 'outed' and/or castigated for their viewpoints;
- Members of Council should be allowed to participate unfettered in political debate regarding difficult fiscal choices. The Respondent should not be censured for doing his job – attempting to convince Members of Council and those who "follow" and support those Members, that the City of Edmonton needs to reprioritize its spending.

#### RESPONDENT'S INFORMATION - APRIL 18 POST

With respect to the April 18 post, the Respondent says:

- This post was in response to Councillor Knack making a comment on Twitter regarding my April 17, 2020 social media post(s). This post did not name any Councillors and contained a description of an idea suggested by Councillor Knack at the March 26, 2020 Emergency Advisory Committee meeting, then enacted by the Administration without consultation of Council, with a picture of one site. The post also brought forward my opinion of actions that we should be taking to minimize the negative impacts of COVID. In Councillor Knack's April 17, 2020 post, he made implications that I sit in Council meetings, vote no to everything, and do not offer solutions. I believed this to be an inaccurate interpretation of my work and responded with a comparable interpretation of his work.
- The cartoon image of Councillor Knack in my April 18, 2020 post had some stop animation showing Councillor Knack throwing money into a fire. Councillor Knack has since released a blog breaking down his disagreement with my April 18, 2020 post, then stated in a radio interview on April 21, 2020 that he did not find the post offensive.
- Mayor Iveson sent me a text message April 19, 2020, asking me to take down the April 18, 2020 post. As a professional courtesy to Councillor Knack, I asked my social media staff to remove it. The April 18, 2020 post has been taken down on all sources, while the April 17, 2020 post remains active. In hindsight, I wish I would not have taken it down.
- I do not think the April 18, 2020 post is disrespectful. I am expressing my opinion, as other Councillors do. It was in response to Councillor Knack's expression of his opinion. To me, this is just another form of expression about this type of behavior on Council. It was about Councillor Knack because Councillor Knack initiated the situation. In the public square, sitting Councillors retain freedom of expression.
- It strikes me as political bigotry. They don't have to like my opinion. Before [the] complaint came in, [the Complainant and another member of the public] put out a call to action to file a

complaint against me....On the April 18, 2020 post, someone made a comment that shared a link to a cycling special interest group calling for more people to file complaints against me. I deleted my post and I cannot find the cycling group post. Since this complaint has been filed, someone made a parody account of me that is similar to the cartoon I made of Councillor Knack. This account has followers that include the Mayor, sitting Councillors, Council staff, and City staff. Due to the anonymous nature of Twitter, I do not know how many of these followers filed complaints against me. While I do not intend to silence the right to freedom of expression of others, I do find it ironic that they are not only not offended by this, but effectively endorsing it. Their application of offensive standards is inconsistent.

- The issues around bike lanes go back for years. I have always questioned whether this is a wise financial decision. However, they have always been part of larger infrastructure budgets which I have supported. If they were presented as individual items, my support would be based on the merits of the individual project. It is my political opinion that bike lanes are inappropriate, based on the fact that the Downtown Bike Network failed to meet 3 out of 4 of the targets they set for themselves, as shown in a report to Council/Committee. I have always been an advocate of value for taxes, and I do not see an equitable value proposition for bike lanes.
- The cartoon is about spending money wisely. I have many constituents who are vehemently opposed to spending money on bike lanes. And for those who were on the fence before the pandemic, they are definitely against now when we've spent money on bike lanes, but can't cut the lawns.
- The City opened more "emergency bike lanes" recently. I have not seen evidence they are being used as intended, therefore I believe the City is wasting resources. Most of Council has endorsed this project on numerous occasions. The April 18, 2020 post was intended to outline the spending priorities of some of my colleagues on Council.
- If the Complainant says I have accused Councillor Knack of approving bike lanes during a pandemic that is their interpretation. They have to practice their own due diligence, too. There has to be a reasonable limit on what I need to respond. I cannot manage everyone's possible interpretations.
- I deny that the April 17, 2020 [sic April 18, 2020] post contained misinformation about the implementation of bike lanes during a pandemic.
- I'm a politician. Councillor Knack is a politician. I exercised my freedom of expression and opinion. I understand there are limits to freedom of expression. The April 18, 2020 post is not derogatory, hateful or disrespectful. It's not a personal attack, it was a response to a post from Councillor Knack. I challenge other politicians on what they have done. This is just a different way of challenging them.
- The decision to install bike lanes during the pandemic was made by the Covid-19 Task Team who decided to expand the network. It was not the decision of Council. But, at every turn, Councillor Knack has been an advocate of bike lanes through the budget process, including Councillor Knack making the suggestion for this action at the March 26, 2020 Emergency

Advisory Committee. The April 18, 2020 post is my interpretation. It's a metaphor for the spending habits by Council and in particular Councillor Knack. It's not just about pylons. It's a grander theme of what's being spent.

- I consider the April 18, 2020 post to be relatively tame. Complainants get to speak on their agenda. Anyone who speaks against their agenda is accused of unfair comment. It's like they want to shout you down. There is a political bigotry that exists where you cannot seem to have a legitimate discussion or comment without someone being offended. They have the right to be offended, but not the right to censor me.
- The Code of Conduct cannot be used to inhibit my individual freedoms. The cartoon of Councillor Knack was just another form of expression.
- I have never apologized for the April 18, 2020 post and I'm not going to apologize. There is a principle here with what is a fair and open expression of personal opinion. I do not think I have violated the Code of Conduct.

### Discussion and Analysis

The Respondent says his April 18 post was in response to prior negative comments by Councillor Knack. However, the Respondent did not provide any evidence of this and did not identify what post he was referring to, despite being told that if he wants me to consider this argument he must provide the information necessary to support the argument. Simply saying the April 18 post was a response to a post by Councillor Knack is not an answer.

The Respondent also refers to other alleged activity on social media involving Mayor Iveson and other Councillors, but provides nothing to support these suggestions. I have not been given anything to conclude that the Respondent's allegations of other Members of Council's conduct should be taken as mitigating factors when determining the outcome of this investigation.

I find the following comments in the April 18 post (which I have underlined) concerning:

*Right now, every resident in Edmonton is watching their spending carefully.*

*Andrew Knack, why can't you?*

*Every dollar we spend wisely might mean another worker getting their job back at the City of Edmonton very soon. Does that mean anything to you?*

*I get it, you have no idea what to do in this situation so you are reverting to what you know.*

*I'm sure when you suggest more tax increases shortly it will be no big deal...*

*Your most recent flavour of the week is more bike lanes.*

*At some point, we will need every dollar at our disposal to bring this city back to life. To re-hire those people I mentioned above.*

*I hope you haven't forgotten about them already.*

*My solution to the current problem is to be very careful with spending right now. We should only spend what we absolutely must.*

*Somehow this isn't a solution for you. I get it. It's not flashy. It's not exciting.*

*Well I'm sorry saving money and spending wisely isn't your current priority.*

I find the choice of language and manner of communicating in these comments is disrespectful. The comments come across as sometimes demeaning, derisive, and personal. Despite the Respondent saying this is not a personal attack, I find there is no doubt it is a personal attack publicly directed at Councillor Knack. Here, the Respondent says, in part, that he is fulfilling his duty to his constituents when he speaks on issues such as bike lanes. I completely agree that part of his role as Councillor is to raise issues on behalf of his constituents. However, this does not extend to making personal attacks on another Councillor with whom he has a difference of opinion.

The Respondent says that it is a stretch for anyone to say that the comments and image in the April 18 post are suggesting that Councillor Knack approved the construction of bike lanes during a pandemic. He says this post is a metaphor for wasteful spending. In my view, if the Respondent is going to make a metaphor on social media, it ought to be obvious that it is a metaphor. Clearly, it was seen as misleading by the Complainant. It was not clearly about Councillor Knack's decisions regarding spending, but was about the current installation of what the Respondent referred to as Councillor Knack's "most recent flavour of the week more bike lanes".

The issue of bike lanes and the specific temperature of the electorate for spending money during a pandemic makes this all the more of a hot button issue. This therefore requires the Respondent to not be reckless in how he presents the information. In fact, as discussed above, the recent introduction of temporary spaces for physical distancing was for a multiple of purposes (not just cycling) during the COVID-19 pandemic. This was a decision made by the City Administration and not by Council. In the April 18 post the Respondent suggests that Councillor Knack is responsible for this decision which, by the Respondent's own admission, is not true as he reports that Administration made this decision without Council approval.

I agree with the Respondent that he cannot be responsible for every interpretation that might be made by others of his communications. I also fully support and will not interfere with Members of Council expressing their views on matters of public interest and engaging in vigorous political debate. This gives the electorate an opportunity to hear the elected official's views and decide for themselves if they support those views. However, those communications must, objectively, not be misleading. I find, on balance, that the comments and image in the April 18 post are misleading as they leave the impression that Councillor Knack was responsible for approving more bikes lanes during a pandemic, which he was not.

With respect the cartoon image of Councillor Knack in the April 18 post, the Respondent argues that this image is not disrespectful and not offensive. He argues that this is simply another form of expression. However, I see the Councillor's oversized head superimposed on a smaller body, as he broadly smiles while burning (presumably) taxpayers' money as a belittling, personal attack, and not fair comment as between politicians on a political issue.

The cartoon image of the Councillor throwing money for “bike lanes” on a fire was capable of being viewed by many people. It reasonably left the impression that during a time of pandemic, when many were suffering financially, the Councillor was willing to burn money on the construction of bike lanes. The cartoon image does not say temporary bike lanes. I suggest that social media users often engage on social media by scrolling and seeing images without necessarily reading the accompanying commentary. Therefore, the cartoon image was likely to also have been viewed in isolation by some viewers while they scrolled the feed. I find that the cartoon image of the Councillor burning money on “bike lanes” was misleading.

### Findings – April 18 Post

On balance, I find that the comments and cartoon image posted by the Respondent in the April 18 post violated the *Code of Conduct* as follows:

- (1) The personal attack on Councillor Knack and the manner of communicating was disrespectful, in violation of Part B, section 1 d) of the *Code of Conduct* that says Councillors must ensure that all communications issued by Councillors, including on social media, are respectful.
- (2) The personal attack on another Councillor and the manner of communicating lacked decorum, in violation of Part E, section 1 of the *Code of Conduct* that requires Councillors to act with decorum at all times.
- (3) Communicating misleading information that left the impression that Councillor Knack approved the installation of bike lanes during a pandemic, when the decision was to temporarily use public space to expand spaces for multimodal use for physical distancing during the COVID-19 pandemic. This was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the *Code of Conduct* that say Councillors must ensure that their communications accurately reflect the facts of Council’s decisions and do not mislead the public about any matter.

### DELETING AND BLOCKING ON SOCIAL MEDIA

The Complainant raises concerns about having comments on the Respondent’s social media pages deleted or blocked from commenting (or both). Complainant 2001 produced the commentary that was deleted and then blocked. Complainant 2001 suggested that the Respondent is in the habit of deleting or blocking those who disagree with him.

For the reasons explained below, I did not seek out and do an exhaustive review of the social media activity by the Respondent or the Complainant. Of the scant information I had, there was no obvious breach of the *Code* based on the analysis that follows.

The Respondent says his unwritten social media policy is to use a common-sense approach based on the following principles:

- Mike Nickel’s social media pages are the property of Mike Nickel.
- We reserve the right to remove anyone acting inappropriately, degrading, or offensive from our social media pages.
- We do not tolerate bots or anonymous accounts from interacting with our page.
- Individuals using “fake names” or “pseudonyms” while interacting with our pages will be removed and/or blocked.
- Anyone spamming or mass copying / pasting underneath comments in an attempt to intimidate or skew engagement in the conversation will be removed.

The Respondent says:

- I allow contrary views on my social media pages as long as they are not abusive, profane or inappropriate activity such as spamming, taking over the site with too many posts that are copied and pasted, etc. I tell my staff to block or delete posts if the language in them is abusive, uses profanity or they are spamming to take over the conversation. There are limits. When it becomes abusive, then the limits kick in. As a principle, I don’t involve myself and don’t want to be talking about personalities. The Complainant...was deleted and blocked because she made a comment, then copied and pasted it as a reply to several other comments, and stopped when my staff blocked her. She is entitled to her opinion, but I am familiar with the tactic she used, that sends a notification to each person replied to, as an effort to get more people to see the comment. My staff made a judgement call on my behalf, based on the principles I have given them. I fully support my staff in this decision.

### Discussion and Analysis

The understanding of the intersection of municipal codes of conduct and the use of social media is somewhat in its infancy. Many municipal councils are looking at bringing in social media policies to govern these issues. While Council has not specifically enacted a social media policy, Edmonton’s City Council chose to explicitly include in the *Code of Conduct* the requirement that their communications on social media must be respectful. Many codes are not this explicit.

However, the *Code of Conduct* does not require Members of Council to engage the public on social media or to participate in debate with members of the public. In my view, when Councillors use social media platforms as a method to communicate to the public on issues of public interest, they need to tread carefully when limiting participation by the public. These platforms are used by the public to raise their concerns. It is part of the Council member’s role to initiate communications and respond to communications by the public.

The role of municipal councillors is somewhat different from other politicians who may find themselves subject to their own political party’s policies on social media use. Many such parties have brought into effect policies that permit members to block or delete commentators if, for instance, they use threatening or discriminatory language, or troll the politician’s site. Blocking happens at all political levels in Canada, although some commentators see it as an affront to democracy and possibly off-side

the elected official's obligations to their constituents. The preponderance of commentary on this issue is politicians' public accounts should remain public, unless blocking is necessary and justified.<sup>10</sup>

To my knowledge, the Canadian Courts have not ruled on whether elected officials can block members of the public, in particular, their constituents. In the United States, some courts have ruled that politicians who block constituents are violating the First Amendment of the U.S. Constitution which protects freedom of speech. The Southern District Court of New York found that President Trump should not be permitted to block people on his Twitter account as Twitter is a "public forum" under the First Amendment.<sup>11</sup> However, the freedom of expression protections under the *Canadian Charter of Rights* are different from the U.S. First Amendment, and the Canadian courts have not ruled on how our *Charter* will respond to such actions by politicians.

This is an important issue, as social media platforms are used extensively not only by politicians, but also by constituents for a number of reasons, including knowing their politicians' views on particular topics, to express their own views and to get updates on what is happening within their municipality. By blocking someone, an elected official is singling out that person who is no longer being allowed, as others are, to weigh in on the issues. That person is also prevented from immediately and easily seeing posts by that elected official. The member of the public can search for this information, but it is not readily available when they are blocked.

Some elected officials argue that constituents can still contact them after they are blocked through other means, such as email. This helps the elected official verify the author of the communication and engage in more private discussions. The Respondent also says that he is just blocking people from this form of communication, not all communication.

I am of the view that it is entirely reasonable for elected officials to place some parameters on acceptable conduct on their social media pages. This is particularly so if the page is being hijacked by people trolling, spamming, using bots, using discriminatory or harassing language, etc.

Whether the Respondent violated the *Code* when he deleted and blocked the Complainant is not an issue that is clearly covered by the *Code*. The Complainant comments in her complaint that it is the Respondent's right to delete comments. I suggest that blocking would be a breach of the *Code*, for instance, if it was proven, on a balance of probabilities, that a Member of Council was deleting or blocking someone based on grounds that are protected by Human Rights legislation. But that is not the case here.

The Respondent has some guidelines with respect to the behaviour he will tolerate on his social media pages. Such guidelines always require an element of judgment and it is not for me to question that judgement. However, in my view, to encourage democratic debate on a site that is meant to serve the public, I suggest that blocking should be done sparingly, with other methods such as muting being

---

<sup>10</sup> For instance, the former Integrity Commissioner for the City of Toronto, Val Jepsen, in her 2016 *Annual Report* commented that "...social media is a way to communicate with constituents and blocking them could be seen as a refusal of service". See also "Can a politician block you on Twitter?" by Cara Zwibel of the Canadian Civil Liberties Association, June 7, 2019, [ccla.org](http://ccla.org), who says online spaces have become the public square and unless being subjected to repeated harassment, blocking by elected officials is "terrible for democracy".

<sup>11</sup> See: National Observer, July 4, 2019, by Emma McIntosh and Fatima Syed.

considered only when justified. Comments, if said respectfully, should not be deleted or blocked even if they express a contrary view. But, this is currently within the Member of Council's discretion. There are no specific rules in the *Code of Conduct* or Council policies that apply to this issue.

### Findings – Deleting and Blocking Social Media

I find on balance that the *Code of Conduct* was not violated when the Respondent blocked the Complainant from his social media page. While I think this sort of blocking should be done sparingly and based on justifiable and defensible guidelines, there is nothing currently in the *Code* that prevents this. There is no legal guidance on this issue. Council may choose to pass a social media policy to address this situation. In the interim, this is left to Members of Council to use their judgment.

### FINDINGS

1. The comments and cartoon image posted by the Respondent in the **April 18 post** violated the *Code of Conduct* as follows:
  - (a) The personal attack on another Councillor and the manner of communicating was disrespectful, in violation of Part B, section 1 d) of the *Code of Conduct* that says Councillors must ensure that all communications issued by Councillors, including on social media, are respectful.
  - (b) The personal attack on another Councillor and the manner of communicating lacked decorum, in violation of Part E, section 1 of the *Code of Conduct* that requires Councillors to act with decorum.
  - (c) Communicating misleading information that left the impression that Councillor Knack approved the installation of bike lanes during a pandemic, when the decision was to temporarily use public space to expand spaces for multimodal use for physical distancing during the COVID-19 pandemic and was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the *Code of Conduct* that say Councillors must ensure that their communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter.

### RECOMMENDATIONS

Section 153 (e.1) of the *Municipal Government Act* requires Councillors to adhere to the *Code of Conduct*. I have found that the Respondent did not adhere to the *Code*.

#### **I recommend that Council:**

1. Accept this report.
2. Direct that Mayor Iveson on behalf of Council issue a letter of reprimand addressed to the Respondent with respect to *Code of Conduct* violations found in this report.





**Councillor Mike Nickel**

19 hrs · 🌐



Right now, every resident in Edmonton is watching their spending carefully.

**Andrew Knack**, why can't you? 🙄

Every dollar we spend wisely might mean another worker getting their job back at the City of Edmonton very soon. Does that mean anything to you?

I get it, you have no idea what to do in this situation so you are reverting to what you know.

I'm sure when you suggest more tax increases shortly it will be no big deal...

Your most recent flavour of the week is more bike lanes.

At some point, we will need every dollar at our disposal to bring this city back to life. To re-hire those people I mentioned above.

I hope you haven't forgotten about them already.

My solution to the current problem is to be very careful with spending right now. We should only spend what we absolutely must.

Somehow this isn't a solution for you. I get it, it's not flashy. It's not exciting.

Well I'm sorry saving money and spending wisely isn't your current priority.

With the reduced traffic on the roads there is now a great opportunity for cyclists to enjoy the roadways.

I truly mean it. To everyone in this city enjoy the outdoors and get some fresh air.

Edmonton is one of the least dense of all the major cities on the planet. There are so many places to walk and be outside and have a 2 metre buffer.

Spending money frivolously on temporary bike lanes and orange pylons won't cut it.

I'm really sorry, but this is the fundamental difference between us I guess...

C'mon Andrew, now is your time to show some fiscal restraint.



119

55 comments 51 shares

Like

Comment

Share

# Office of the Integrity Commissioner

integrity.commissioner@edmonton.ca

**INVESTIGATION REPORT 2002**  
**BY JAMIE PYTEL**  
**INTEGRITY COMMISSIONER for**  
**THE CITY OF EDMONTON**

Report Date: July 19, 2020

To: City Council for The City of Edmonton

Re: *Council Code of Conduct Bylaw 18483*  
Complaint 2002

Complainant: Complainant 2002

Date of Complaint: April 19, 2020

Respondent: Councillor Mike Nickel

## TABLE OF CONTENTS

COMPLAINT.....	3
CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION .....	3
PROCESS and JURISDICTIONAL ISSUES .....	4
THE LEGAL and CODE OF CONDUCT BACKDROP .....	6
SUMMARY OF RESPONDENT’S SUBMISSIONS.....	9
RESPONDENT’S INFORMATION - APRIL 18 POST.....	10
DELETING AND BLOCKING ON SOCIAL MEDIA.....	14
FINDINGS.....	16
RECOMMENDATIONS .....	16
APPENDIX A.....	18

## COMPLAINT

The Complainant alleges that on April 18, 2020:

Councillor Nickel has taken to social media to attack and defame fellow councillors, while immediately removing any negative commentary from the public. In his actions, he has contravened Bylaw 18483 on numerous accounts. He has failed to "

communicate respectfully with members of the public, Councillors, City employees, and Councillor's employees" (Schedule A, section A.1.e), failed to "ensure that all

communications issued by, or on behalf of, the Councillor, including social media, are respectful and do not discriminate, harass, or demonstrate disrespect toward any person" (Schedule A, section B.1.d), as well as failing to meet, almost in its entirety, Schedule A, section E, titled "Respectful Interactions." I am asking that the appropriate bodies take steps to rectify this behaviour and place appropriate sanctions on Councillor Nickel, until such time when he can conduct himself in a manner becoming of a public elected official.

Attached as **Appendix A** is the Respondent's April 18 social media post that was provided by the Complainant and is the subject of this Complaint (the "April 18 post").

## CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION

The applicable sections of the *Code of Conduct* say:

Part A: Representing the Municipality, section 1 e):

While carrying out their duties, Councillors must communicate respectfully with members of the public, Councillors, City employees, and Councillor's employees.

Part B: Communications, section 1 d):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications issued by, or on behalf of, the Councillor, including social media, are respectful and do not discriminate, harass, or demonstrate disrespect toward any person.

Part E: Respectful Interactions, section 1:

Councillors will conduct themselves with decorum at all times, including while attending meetings, interacting with City employees and Councillor's employees, and engaging with the public.

Part E: Respectful Interactions, section 3:

Councillors must not use any harassing or disrespectful language about Council, a Councillor or the public.

There is no definition in the *Code* for decorum. I suggest that Members of Councilor would generally have an understanding of what this means short of a definition within the *Code*. In any event:

*Oxford English Dictionary* (oed.com) defines decorum as:

That which is proper, suitable, seemly, befitting, becoming; fitness, propriety, congruity.

*Miriam-Webster.com* defines decorum as:

Correct or proper behaviour that shows respect and good manners.

## PROCESS and JURISDICTIONAL ISSUES

The Complaint was in writing, was within the time limits set out in the *Code*, and included the sections of the *Code* the Complainant felt were violated [Part A Section 1 e), Part B Section 1 d) and Section E].

As part of the public interest function of my role, at times I may need to identify which sections of the *Code* I feel are applicable based on the information presented. This applies whether a complainant or respondent raises certain information or sections of the *Code*. I can also make a finding with respect to a section of the *Code* even if a complainant, or respondent in his or her defence, does not identify the correct sections of the *Code*. However, the allegations and information presented must relate to a section of the *Code*.

I have included in this report those sections of the *Code* that I found potentially apply to the issues raised in this Complaint. I have not included those sections that were identified by the Complainant that I did not find to be relevant. For instance, the Complainant said all of section E of the *Code* applies. In my view, only the sections identified in this report apply.

During the investigation, when I had questions or needed more detail about this Complaint, I contacted the Complainant via email using the contact information provided by the Complainant. I invited the Complainant to provide more details with respect to the subject matter of the Complaint, but other than pointing out an error in the date on the Complaint, no further details were offered. I determined that it was not necessary to personally interview or have the Complainant swear a statutory declaration.

I provided the Respondent with all of the information and allegations provided to me by the Complainant. I interviewed the Respondent and he provided his written statement in response to this Complaint. The content of the Respondent's statement is contained within this report under the applicable headings. I also provided the Respondent with the sections of the *Code* I felt were relevant to this investigation and a list of the issues I felt were raised in this investigation. I invited the Respondent to raise any concerns around process or arguments at any time during this process. I reviewed and considered all of the information provided to me by the Respondent.

I did not find it to be in the public interest to identify the Complainant by name in this report. However, the Respondent was given the written Complaint, including name of the Complainant (except contact information), in case the identity of the Complainant raised any issues or defences for the Respondent.

I considered whether the April 18 post was done as part of the Respondent's role as a City of Edmonton Councillor, or was purely personal. The Respondent says:

My social media accounts are my own property. The costs associated with them I pay out of my own pocket....I changed the name on my Facebook page because I do not want there to be any confusion that this is my political opinion. I changed it to say Mike Nickel, not Councillor Mike Nickel. I wanted it to be crystal clear that the opinions expressed are my personal opinions. Even though I am Councillor Nickel, Mike Nickel has rights to express his opinion. I believe using my title as Councillor is no different than a doctor using a "Dr." prefix in their personal life. Members of Council express their personal opinion on their personal pages frequently. All Councillors post blogs, use social media etc. as an unofficial method to communicate with the public. Any official platforms to engage with constituents are owned by the City. The April 18 post was on a privately operated platform where I communicate with the public regarding activities both related and unrelated to Council.

In my view, whether the Respondent pays for his social media accounts himself is irrelevant. What matters is the content of those communications. Whether he communicates his views on social media or uses some other medium, I find that the *Code* applies if those communications are about Council, his role as a Councillor, Members of Council, or the business of the City.

Fellow Integrity Commissioner Melinda Munro for the County of Brant in Ontario likened these situations to the employment law cases in which employees can be terminated for their outside of Council chambers social media activity. I agree with her analogy, as set out in *Bartscher v. Cardy*, 2018 ONMIC 28:

While [the Code of Conduct] refers to 'official duties', it cannot be the case that the Council intended that its members would be free to behave in an outrageous manner outside the Council chambers such as to undermine public confidence in the office...the law of employment has long established that 'off-duty' conduct can be cause for discipline and dismissal where it is done in such a way as to damage the reputation or work environment of the employer....It can reasonably be suggested that once elected as a public official, all public activities are 'official duties' for the purpose of behaving in a manner consistent with the Code.

It is also worth noting that Part E section 1 of the *Code* says: "Councillors will act with decorum at all times...while engaging with the public." This requirement is not limited to conduct in Council or Committee meetings or at official Council functions. I also note that some of the sections of the Code (i.e. Part A, Sections 1d and 1e) when referring to Members of Council's duties include the phrase "while carrying out their official duties". Part B, Section 1d which deals with respectful communications while on social media does not include this phrase.

In this case, the April 18 post was clearly posted about Councillor Andrew Knack and about City of Edmonton business. Given the subject matter of the April 18 post and the fact that the Respondent says he was advocating on behalf of some of his constituents, I find that the *Code* applies.

The Respondent says he would react differently to this investigation if Councillor Knack had made a complaint. However, the *Code* says:

If any person believes that a Councillor has contravened this code of conduct, that person may make a written complaint to the Integrity Commissioner.

In my view, it is perfectly acceptable for members of the public to question the conduct of Members of Council. The *Code* provides a way for them to do this. Based on the language of the *Code*, it is not a requirement that the alleged “victim” be the complainant.

The impugned conduct also needs to be sufficiently egregious to warrant investigation, and not a minor or trivial issue. Here, I decided to investigate, in part, because the language and images depicted in the April 18 post came across, at first blush, as potential breaches of the *Code*. However, more investigation, thought and analysis were needed to determine if, in context, the April 18 post violated the *Code*.

The Complainant is also concerned that comments posted about the April 18 post were deleted from the Respondent’s social media page. Without some investigation and analysis, it was not clear if this would be found to be a breach of the *Code*. I did not undergo a complete review of social media activity by the Respondent, but I did consider whether deleting or blocking on social media is a potential breach of the *Code*.

The Complainant alleges defamation by the Respondent. I have previously commented on issues of defamation and specifically requested that defamation be removed from the *Code*, which it was well before this Complaint. In my view, matters of defamation are more properly dealt with in a court of law and not determined by an Integrity Commissioner. Accordingly, whether the April 18 post was defamatory is not considered in this investigation.

While typically I would not issue a report to Council unless there were findings of a Code breach, here there were mixed findings and the issues overlapped. Therefore, aspects of the Complaint that are both dismissed and accepted are found in this report.

## THE LEGAL and CODE OF CONDUCT BACKDROP

This investigation is centred around the right to freedom of expression and how it interacts with the *Code of Conduct*. The Respondent asserts that in the April 18 post he was simply asserting his freedom of expression rights and he should not be censored or censured for doing this.

The role of a Municipal Councillors is complex and includes being both a politician and a legislator. This is sometimes referred to as a “hybrid function”. As stated in *Geatrix v. Williams*<sup>1</sup>:

The Courts have confirmed that municipal councillors have hybrid political and legislative functions<sup>2</sup>. That they are representatives of the communities that elect them,<sup>3</sup> and that

---

<sup>1</sup> By Integrity Commissioner Guy Giorno for the Town of Orangeville in Ontario, 2018 ONMIC 6 at para 132.

<sup>2</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1179 at 1196.

<sup>3</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc.* note 13, at 1193.



members of the public have the right to address their municipal representatives on issues of concern<sup>4</sup>...

It is part of the role of a Council Member to communicate with members of the public about municipal issues. This includes both initiating communication and responding to communication initiated by members of the public. In doing so, a Council Member is not limited to explaining and defending what the municipality is already doing. As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give effect to those views.<sup>5</sup> Some of those views may involve a change in law or a change in direction. **Provided that a Council Member proceeds lawfully and in a manner consistent with the *Municipal Act*, the Code and other legislation and by-laws**, nothing prevents a Council Member from taking, defending and seeking to implement a position that advocates change. Indeed, the Courts have clearly stated that as an elected representative of the public a municipal councillor is entitled to take “an open leadership role” on an issue.<sup>6</sup> **[emphasis added]**

As well, as stated in *Jeffrey v. Sprovier*<sup>7</sup>:

Political commentary must comply with the Code, but otherwise an Integrity Commissioner has no jurisdiction over it. As Integrity Commissioner Cameron noted in the 2012 case:

I cannot and will not be a referee for free speech in a political arena provided it stays within the bounds of...the Code.

Subsequently, Mr. Randy Pepper, the delegate of Integrity Commissioner Cameron, expanded on the same principle in Investigation Report No. BIC-33-1112:

Freedom of expression is a fundamental right in Canada so the Code must be interpreted in a manner consistent with this fundamental right. Based on the law set out below, I cannot find that the Code should be interpreted to appoint the Integrity Commissioner as a speech referee in the political arena.

As the Supreme Court of Canada noted in the *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139:

Freedom of expression, like freedom of religion, serves to anchor the very essence of our democratic political and societal structure...Hence, the justification for the widest freedom of political speech stems not only from some abstract search for truth, but also from the tangible goal of preserving democracy...I find that the Integrity Commissioner has a very limited role in relation to the “freewheeling debate on matters of public interest...

---

<sup>4</sup> *Re McGill and City of Brantford* (1980), 111 D.L.R. (3d) 405 (Ont. Dist. Ct.) at 411, cited with approval by *Old St. Boniface Residents Assn. Inc.*, note 13, at 1193-4.

<sup>5</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20.

<sup>6</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, (1989), 58 Man. R. (2d) 255 (C.A.) at 264, affirmed [1990] 3 S.C.R. 1170.

<sup>7</sup> 2018 ONMIC 21, Guy Giorno, as Integrity Commissioner for the City of Brampton, at para 86.

The Complainant alleges that the Respondent has taken to social media to attack another Member of Council and has contravened the *Code* by failing to communicate respectfully with members of the public and failing to ensure that his communications were respectful. The Complainant alleges the Respondent violated Part E of the *Code* which includes the requirement for Councillors to act with decorum. The Complainant says the Respondent did not conduct himself in a manner becoming of an elected official.

On this issue of a Member of Council's freedom of expression rights, the Ontario Supreme Court stated in *Buck v. Morris et al.*, 2015 ONSC 5632, at paragraphs 189-193:

There can be no doubt that politics, whether it be federal, provincial or municipal, is not for the faint of heart. Some might say a thick skin is a prerequisite for any politician.

A thick skin, however, does not mean that a politician is fair game for those intent on damaging their reputation with false, malicious, and defamatory statements. Freedom of speech, whether in the political forum or not, does not extend to statements that are untrue and have as their sole purpose an intent to damage someone else's reputation.

The right to freedom of speech in our society is not an absolute right. While freedom of speech is a cherished right in a free and democratic society, there are reasonable limitations. The Town of Aurora, like many other towns and cities in the Province of Ontario, has a Code of Conduct that purports to codify parameters of reasonable conduct for elected Town officials...

The plaintiff clearly has a perception that she has an unfettered right to freedom of expression and freedom of speech. That freedom, however, is circumscribed by the Code.

I am of the view that it is not the role of the Integrity Commissioner to censor or interfere with political debate and commentary. It is not my role to decide whether views expressed by Members of Council are meritorious or properly held.

It is also not my role to interpret whether the *Code* is contrary to the freedom of expression rights found in the *Canadian Charter of Rights*, which is an issue for the courts to decide. However, I am of the view that the right to freedom of expression found in the *Charter* has limits. In this case, the limits have been self-imposed by City Council with the issuance of the *Code of Conduct*. The *Code* allows fair comment and Members of Council to hold a position on an issue. This is balanced with *Code* requirements, such as, to be respectful and act with decorum.

No code of conduct can list all of the possible ways individuals can disrespect one another. Some codes provide non-exhaustive lists of what is considered disrespectful conduct to give those who are governed by the code a sense of what is contrary to the code. However, it is left to those who are governed by those codes to use their judgement. When a complaint is made, those who administer the code and investigate alleged breaches (in this case, me as the Integrity Commissioner), must determine if the impugned conduct is disrespectful. As part of that review, consideration is given to the context and facts around the impugned conduct.

The *Code of Conduct* requires Members of Council to respect the decisions made by Council while preserving the value of fair comment and differences of opinion. Some Integrity Commissioners in

Canada have commented on this requirement. For instance, Bruce Elman, Integrity Commissioner for the City of Windsor says<sup>8</sup>:

City or Municipal Councils occupy a unique role in our society. They are, at one time, both deliberative legislative bodies for the geographical entity known as their city, town, county, or municipal district, and at the same time, they are, effectively, a corporate board of directors for the commercial entity known as the Municipal Corporation of (in this case) the City of Windsor....

In other words, in the lead up to a specific decision, Council is a deliberative governmental body wherein almost unfettered freedom of speech reigns but once that decision is made, Council becomes a corporate board and, as with vast majority of corporate boards, public dissent is discouraged or even prohibited. The reason is rational and sensible: Decisions made by Council become the official policy of the City of Windsor. When Members of Council speak out or engage in conduct indicating opposition to official City policy outside the deliberative confines of the legislative process, their comments or conduct can diminish the integrity of Council decisions in the public eye, damage public confidence in Council itself, or even undermine the City's reputation, domestically or internationally. One can only imagine how [the Councillor's statement] – perhaps taken as hyperbole here in Windsor – might be viewed in California or Calgary or Copenhagen or Cairo.

It should be noted that Councillors have plenty of opportunities prior to a decision being made by Council to express their views on the merits of a proposal and they can provide as much context as they wish and use as much hyperbole as they believe is necessary. If a Councillor has particular concerns regarding an item on the Council Agenda, the Councillor can call a press conference to express those concerns. Councillors can post their concerns on their webpages or on social media to express those concerns. Councillors can go to community groups or BIAs to rally support for their position. The Councillor can even encourage citizens to become delegates to Council when the matter is debated. Finally, Councillors may express all of their concerns during the debate on the matter when it comes before Council.

Even then, after the decision is made, Councillors are free to explain why they voted as they did during the Council deliberations. They should, however, acknowledge the legitimacy of Council's decision as resulting from the deliberative and democratic processes of Council. **They should not be disrespectful and their comments should not be disparaging or inaccurate.” [emphasis added]**

## SUMMARY OF RESPONDENT'S SUBMISSIONS

The Respondent provided some submissions regarding this investigation all of which were reviewed and considered by me. The following is a summary of the Respondent's submissions that were relevant to the issues<sup>9</sup>:

---

<sup>8</sup> Re Complaint brought pursuant to the Code of Conduct of the City of Windsor against Councillor Rino Berolin, Integrity Commissioner Bruce Elman's report dated April 20, 2018.

- By passing the *Code of Conduct*, Council did not agree to contract out of the *Canadian Charter of Rights and Freedoms*;
- Terms used in the *Code of Conduct*, like “disrespectful” have no objective criteria against which words can be measured;
- As “respectfully” is not defined in the *Code of Conduct*, the Integrity Commissioner is discouraged from inserting her own “personal subjective standards into that void”;
- Members of Council should not be punished for acts that were never intended to cause harm;
- If victimless speech is to be censored there will be a chilling effect on free expression;
- Non-defamatory speech that may be offensive but falls short of inciting hatred to an identifiable group is constitutionally protected;
- There is no objective standard that exists regarding social media posts that could result in the posts being deemed offensive or disrespectful, especially by norms established in the political arena;
- The Respondent does not attack another Councillor, he simply questions Council and certain Members of Council spending priorities. He merely questions and sometimes attacks another Councillor’s spending priorities for the City of Edmonton;
- There is no personal attack. There is no disrespect. There is only a fundamental difference on an important fiscal matter. Far from disrespecting an adversary, the Respondent respects a fellow Councillor by essentially challenging him to a social media debate and giving him an opportunity to defend his position;
- The cartoon image of Councillor Knack is not offensive. It does not portray the Councillor in an unflattering light or distort his appearance in any negative way. It is simply a visual depiction to graphically demonstrate the thesis that Council’s spending priorities are askew;
- There is no need to censure social media. The internet is self-policing. When someone posts something offensive, they are immediately ‘outed’ and/or castigated for their viewpoints;
- Members of Council should be allowed to participate unfettered in political debate regarding difficult fiscal choices. The Respondent should not be censured for doing his job – attempting to convince Members of Council and those who “follow” and support those Members, that the City of Edmonton needs to reprioritize its spending.

#### RESPONDENT’S INFORMATION - APRIL 18 POST

With respect to the April 18 post, the Respondent says:

- This post was in response to Councillor Knack making a comment on Twitter regarding my April 17, 2020 social media post(s). This post did not name any Councillors and contained a description of an idea suggested by Councillor Knack at the March 26, 2020 Emergency Advisory Committee meeting, then enacted by the Administration without consultation of Council, with a picture of one site. The post also brought forward my opinion of actions that we should be taking to minimize the negative impacts of COVID. In Councillor Knack’s April 17, 2020 post, he made implications that I sit in Council meetings, vote no to everything, and do not offer

---

<sup>9</sup> The Respondent can also make further written submissions to Council before the Council meeting to consider this report and will have time at the meeting to make oral submissions.

solutions. I believed this to be an inaccurate interpretation of my work and responded with a comparable interpretation of his work.

- The cartoon image of Councillor Knack in my April 18, 2020 post had some stop animation showing Councillor Knack throwing money into a fire. Councillor Knack has since released a blog breaking down his disagreement with my April 18, 2020 post, then stated in a radio interview on April 21, 2020 that he did not find the post offensive.
- Mayor Iveson sent me a text message April 19, 2020, asking me to take down the April 18, 2020 post. As a professional courtesy to Councillor Knack, I asked my social media staff to remove it. The April 18, 2020 post has been taken down on all sources, while the April 17, 2020 post remains active. In hindsight, I wish I would not have taken it down.
- I do not think the April 18, 2020 post is disrespectful. I am expressing my opinion, as other Councillors do. It was in response to Councillor Knack's expression of his opinion. To me, this is just another form of expression about this type of behavior on Council. It was about Councillor Knack because Councillor Knack initiated the situation. In the public square, sitting Councillors retain freedom of expression.
- It strikes me as political bigotry. They don't have to like my opinion. Before [the] complaint came in [another member of the public] put out a call to action to file a complaint against me...On the April 18, 2020 post, someone made a comment that shared a link to a cycling special interest group calling for more people to file complaints against me. I deleted my post and I cannot find the cycling group post. Since this complaint has been filed, someone made a parody account of me that is similar to the cartoon I made of Councillor Knack. This account has followers that include the Mayor, sitting Councillors, Council staff, and City staff. Due to the anonymous nature of Twitter, I do not know how many of these followers filed complaints against me. While I do not intend to silence the right to freedom of expression of others, I do find it ironic that they are not only not offended by this, but effectively endorsing it. Their application of offensive standards is inconsistent.
- The issues around bike lanes go back for years. I have always questioned whether this is a wise financial decision. However, they have always been part of larger infrastructure budgets which I have supported. If they were presented as individual items, my support would be based on the merits of the individual project. It is my political opinion that bike lanes are inappropriate, based on the fact that the Downtown Bike Network failed to meet 3 out of 4 of the targets they set for themselves, as shown in a report to Council/Committee. I have always been an advocate of value for taxes, and I do not see an equitable value proposition for bike lanes.
- The cartoon is about spending money wisely. I have many constituents who are vehemently opposed to spending money on bike lanes. And for those who were on the fence before the pandemic, they are definitely against now when we've spent money on bike lanes, but can't cut the lawns.
- The City opened more "emergency bike lanes" recently. I have not seen evidence they are being used as intended, therefore I believe the City is wasting resources. Most of Council has

endorsed this project on numerous occasions. The April 18, 2020 post was intended to outline the spending priorities of some of my colleagues on Council.

- I'm a politician. Councillor Knack is a politician. I exercised my freedom of expression and opinion. I understand there are limits to freedom of expression. The April 18, 2020 post is not derogatory, hateful or disrespectful. It's not a personal attack, it was a response to a post from Councillor Knack. I challenge other politicians on what they have done. This is just a different way of challenging them.
- The decision to install bike lanes during the pandemic was made by the Covid-19 Task Team who decided to expand the network. It was not the decision of Council. But, at every turn, Councillor Knack has been an advocate of bike lanes through the budget process, including Councillor Knack making the suggestion for this action at the March 26, 2020 Emergency Advisory Committee. The April 18, 2020 post is my interpretation. It's a metaphor for the spending habits by Council and in particular Councillor Knack. It's not just about pylons. It's a grander theme of what's being spent.
- I consider the April 18, 2020 post to be relatively tame. Complainants get to speak on their agenda. Anyone who speaks against their agenda is accused of unfair comment. It's like they want to shout you down. There is a political bigotry that exists where you cannot seem to have a legitimate discussion or comment without someone being offended. They have the right to be offended, but not the right to censor me.
- The Code of Conduct cannot be used to inhibit my individual freedoms. The cartoon of Councillor Knack was just another form of expression.
- I have never apologized for the April 18, 2020 post and I'm not going to apologize. There is a principle here with what is a fair and open expression of personal opinion. I do not think I have violated the Code of Conduct.

### Discussion and Analysis

The Respondent says his April 18 post was in response to prior negative comments by Councillor Knack. However, the Respondent did not provide any evidence of this and did not identify what post he was referring to, despite being told that if he wants me to consider this argument he must provide the information necessary to support the argument. Simply saying the April 18 post was a response to a post by Councillor Knack is not an answer.

The Respondent also refers to other alleged activity on social media involving Mayor Iveson and other Councillors, but provides nothing to support these suggestions. I have not been given anything to conclude that the Respondent's allegations of other Members of Council's conduct should be taken as mitigating factors when determining the outcome of this investigation.

I find the following comments in the April 18 post (which I have underlined) concerning:

*Right now, every resident in Edmonton is watching their spending carefully.*

Andrew Knack, why can't you?

*Every dollar we spend wisely might mean another worker getting their job back at the City of Edmonton very soon. Does that mean anything to you?*

*I get it, you have no idea what to do in this situation so you are reverting to what you know.*

*I'm sure when you suggest more tax increases shortly it will be no big deal...*

*Your most recent flavour of the week is more bike lanes.*

*At some point, we will need every dollar at our disposal to bring this city back to life. To re-hire those people I mentioned above.*

*I hope you haven't forgotten about them already.*

*My solution to the current problem is to be very careful with spending right now. We should only spend what we absolutely must.*

*Somehow this isn't a solution for you. I get it. It's not flashy. It's not exciting.*

*Well I'm sorry saving money and spending wisely isn't your current priority.*

I find the choice of language and manner of communicating in these comments is disrespectful. The comments come across as demeaning, derisive, belittling, and personal. Despite the Respondent saying this is not a personal attack, I find there is no doubt it is a personal attack publicly directed at Councillor Knack. Here, the Respondent says, in part, that he is fulfilling his duty to his constituents when he speaks on issues such as bike lanes. I completely agree that part of his role as Councillor is to raise issues on behalf of his constituents. However, this does not extend to making personal attacks on another Councillor with whom he has a difference of opinion.

With respect the cartoon image of Councillor Knack in the April 18 post, the Respondent argues that this image is not disrespectful and not offensive. He argues that this is simply another form of expression. However, I see the Councillor's oversized head superimposed on a smaller body, as he broadly smiles while burning (presumably) taxpayers' money as a belittling, personal attack, and not fair comment as between politicians on a political issue.

### **Findings – April 18 Post**

On balance, I find that the comments and cartoon image posted by the Respondent in the April 18 post violated the *Code of Conduct* as follows:

- (1) The personal attack on Councillor Knack and the manner of communicating was disrespectful, in violation of Part B, section 1 d) of the *Code of Conduct* that says Councillors must ensure that all communications issued by Councillors, including on social media, are respectful.
- (2) The personal attack on another Councillor and the manner of communicating lacked decorum, in violation of Part E, section 1 of the *Code of Conduct* that requires Councillors to act with decorum at all times.

## DELETING AND BLOCKING ON SOCIAL MEDIA

The Complainant raises concerns that the Respondent removed any negative commentary from his social media site regarding the April 18 post.

The Respondent says his unwritten social media policy is to use a common-sense approach based on the following principles:

- Mike Nickel's social media pages are the property of Mike Nickel.
- We reserve the right to remove anyone acting inappropriately, degrading, or offensive from our social media pages.
- We do not tolerate bots or anonymous accounts from interacting with our page.
- Individuals using "fake names" or "pseudonyms" while interacting with our pages will be removed and/or blocked.
- Anyone spamming or mass copying / pasting underneath comments in an attempt to intimidate or skew engagement in the conversation will be removed.

The Respondent says:

- I allow contrary views on my social media pages as long as they are not abusive, profane or inappropriate activity such as spamming, taking over the site with too many posts that are copied and pasted, etc. I tell my staff to block or delete posts if the language in them is abusive, uses profanity or they are spamming to take over the conversation. There are limits. When it becomes abusive, then the limits kick in. As a principle, I don't involve myself and don't want to be talking about personalities. [A commentator]...was deleted and blocked because she made a comment, then copied and pasted it as a reply to several other comments, and stopped when my staff blocked her. She is entitled to her opinion, but I am familiar with the tactic she used, that sends a notification to each person replied to, as an effort to get more people to see the comment. My staff made a judgement call on my behalf, based on the principles I have given them. I fully support my staff in this decision.

## Discussion and Analysis

The understanding of the intersection of municipal codes of conduct and the use of social media is somewhat in its infancy. Many municipal councils are looking at bringing in social media policies to govern these issues. While Council has not specifically enacted a social media policy, Edmonton's City Council chose to explicitly include in the *Code of Conduct* the requirement that their communications on social media must be respectful. Many codes are not this explicit.

However, the *Code of Conduct* does not require Members of Council to engage the public on social media or to participate in debate with members of the public. In my view, when Councillors use social media platforms as a method to communicate to the public on issues of public interest, they need to tread carefully when limiting participation by the public. These platforms are used by the public to raise



their concerns. It is part of the Council member's role to initiate communications and respond to communications by the public.

The role of municipal councillors is somewhat different from other politicians who may find themselves subject to their own political party's policies on social media use. Many such parties have brought into effect policies that permit members to block or delete commentators if, for instance, they use threatening or discriminatory language, or troll the politician's site. Blocking happens at all political levels in Canada, although some commentators see it as an affront to democracy and possibly off-side the elected official's obligations to their constituents. The preponderance of commentary on this issue is politicians' public accounts should remain public, unless blocking is necessary and justified.<sup>10</sup>

To my knowledge, the Canadian Courts have not ruled on whether elected officials can block members of the public, in particular, their constituents. In the United States, some courts have ruled that politicians who block constituents are violating the First Amendment of the U.S. Constitution which protects freedom of speech. The Southern District Court of New York found that President Trump should not be permitted to block people on his Twitter account as Twitter is a "public forum" under the First Amendment.<sup>11</sup> However, the freedom of expression protections under the *Canadian Charter of Rights* are different from the U.S. First Amendment, and the Canadian courts have not ruled on how our *Charter* will respond to such actions by politicians.

This is an important issue, as social media platforms are used extensively not only by politicians, but also by constituents for a number of reasons, including knowing their politicians' views on particular topics, to express their own views and to get updates on what is happening within their municipality. By blocking someone, an elected official is singling out that person who is no longer being allowed, as others are, to weigh in on the issues. That person is also prevented from immediately and easily seeing posts by that elected official. The member of the public can search for this information, but it is not readily available when they are blocked.

Many elected officials argue that constituents can still contact them after they are blocked through other means such as email. This helps the elected official verify the author of the communication and engage in more private discussions. The Respondent also says that he is just blocking people from this form of communication, not all communication.

I am of the view that it is entirely reasonable for elected officials to place some parameters on acceptable conduct on their social media pages. This is particularly so if the page is being hijacked by people trolling, spamming, using bots, using discriminatory or harassing language, etc.

Whether the Respondent violated the *Code* when he deleted and blocked those commenting on the April 18 post is not an issue that is clearly covered by the *Code*. I suggest that blocking would be a breach of the *Code*, for instance, if it was proven, on a balance of probabilities, that a Member of

---

<sup>10</sup> For instance, the former Integrity Commissioner for the City of Toronto, Val Jepsen, in her 2016 *Annual Report* commented that "...social media is a way to communicate with constituents and blocking them could be seen as a refusal of service". See also "Can a politician block you on Twitter?" by Cara Zwibel of the Canadian Civil Liberties Association, June 7, 2019, [ccla.org](http://ccla.org), who says online spaces have become the public square and unless being subjected to repeated harassment, blocking by elected officials is "terrible for democracy".

<sup>11</sup> See: National Observer, July 4, 2019, by Emma McIntosh and Fatima Syed.

Council was deleting or blocking someone based on grounds that are protected by Human Rights legislation. But that is not the case here.

The Respondent has some guidelines with respect to the behaviour he will tolerate on his social media pages. Such guidelines always require an element of judgment and it is not for me to question that judgement. However, in my view, to encourage democratic debate on a site that is meant to serve the public, I suggest that blocking should be done sparingly, with other methods such as muting being considered only when justified. Comments, if said respectfully, should not be deleted or blocked even if they express a contrary view. But, this is currently within the Member of Council's discretion. There are no specific rules in the *Code of Conduct* or Council policies that apply to this issue.

### Findings – Deleting and Blocking Social Media

I find on balance that the *Code of Conduct* was not violated when the Respondent blocked commentators on his social media page. While I think this sort of blocking should be done sparingly and based on justifiable and defensible guidelines, there is nothing currently in the *Code* that prevents this. There is no legal guidance on this issue. Council may choose to pass a social media policy to address this situation. In the interim, this is left to Members of Council to use their judgment.

## FINDINGS

1. The comments and cartoon image posted by the Respondent in the **April 18 post** violated the *Code of Conduct* as follows:
  - (a) The personal attack on another Councillor and the manner of communicating was disrespectful, in violation of Part B, section 1 (d) of the *Code of Conduct* that says Councillors must ensure that all communications issued by Councillors, including on social media, are respectful.
  - (b) The personal attack on another Councillor and the manner of communicating lacked decorum, in violation of Part E, section 1 of the *Code of Conduct* that requires Councillors to act with decorum.

## RECOMMENDATIONS

Section 153 (e.1) of the *Municipal Government Act* requires Councillors to adhere to the *Code of Conduct*. I have found that the Respondent did not adhere to the *Code*.

### I recommend that Council:

1. Accept this report.

2. Direct that Mayor Iveson on behalf of Council issue a letter of reprimand addressed to the Respondent with respect to *Code of Conduct* violations found in this report.

Separately, I am making recommendations to Council regarding best practices and guidelines around social media use. Council may also consider implementing a social media policy to mitigate these issues in the future.

APPENDIX A



**Councillor Mike Nickel**

19 hrs · 🌐



Right now, every resident in Edmonton is watching their spending carefully.

**Andrew Knack**, why can't you? 🙄

Every dollar we spend wisely might mean another worker getting their job back at the City of Edmonton very soon. Does that mean anything to you?

I get it, you have no idea what to do in this situation so you are reverting to what you know.

I'm sure when you suggest more tax increases shortly it will be no big deal...

Your most recent flavour of the week is more bike lanes.

At some point, we will need every dollar at our disposal to bring this city back to life. To re-hire those people I mentioned above.

I hope you haven't forgotten about them already.

My solution to the current problem is to be very careful with spending right now. We should only spend what we absolutely must.

Somehow this isn't a solution for you. I get it, it's not flashy. It's not exciting.

Well I'm sorry saving money and spending wisely isn't your current priority.

With the reduced traffic on the roads there is now a great opportunity for cyclists to enjoy the roadways.

I truly mean it. To everyone in this city enjoy the outdoors and get some fresh air.

Edmonton is one of the least dense of all the major cities on the planet. There are so many places to walk and be outside and have a 2 metre buffer.

Spending money frivolously on temporary bike lanes and orange pylons won't cut it.

I'm really sorry, but this is the fundamental difference between us I guess...

C'mon Andrew, now is your time to show some fiscal restraint.



   119

55 comments 51 shares

 Like

 Comment

 Share

# Office of the Integrity Commissioner

integrity.commissioner@edmonton.ca

**INVESTIGATION REPORT 2003**  
**BY JAMIE PYTEL**  
**INTEGRITY COMMISSIONER for**  
**THE CITY OF EDMONTON**

Report Date: July 18, 2020

To: City Council for The City of Edmonton

Re: *Council Code of Conduct Bylaw 18483*  
(the “Code of Conduct” or “Code”)  
Complaint 2003

Complainant: Complainant 2003

Date of Complaint: April 19, 2020

Respondent: Councillor Mike Nickel

## TABLE OF CONTENTS

COMPLAINT .....	3
CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION .....	3
PROCESS and JURISDICTIONAL ISSUES .....	4
THE LEGAL and CODE OF CONDUCT BACKDROP .....	6
SUMMARY OF RESPONDENT’S SUBMISSIONS .....	9
RESPONDENT’S INFORMATION - APRIL 18 POST .....	10
FINDINGS .....	14
RECOMMENDATIONS.....	15
APPENDIX A.....	16

## COMPLAINT

The Complainant alleges that on April 18, 2020:

Councillor Mike Nickel published a post on facebook that mocked Councillor Andrew Knack. The post was incredibly rude, unprofessional, and harassing in nature. This behaviour should not be tolerated therefore I am filing a formal complaint under by law 18483.

Attached as **Appendix A** is the Respondent's April 18 social media post that was provided by the Complainant and is the subject of this Complaint (the "April 18 post").

## CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION

The applicable sections of the *Code of Conduct* say:

Part A: Representing the Municipality, section 1 d):

While carrying out their duties, Councillors must accurately represent and respect decisions made by Council while preserving the value of fair comment and differences of opinion.

Part A: Representing the Municipality, section 1 e):

While carrying out their duties, Councillors must communicate respectfully with members of the public, Councillors, City employees, and Councillor's employees.

Part B: Communications, section 1 d):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications issued by, or on behalf of, the Councillor, including social media, are respectful and do not discriminate, harass, or demonstrate disrespect toward any person.

Part E: Respectful Interactions, section 1:

Councillors will conduct themselves with decorum at all times, including while attending meetings, interacting with City employees and Councillor's employees, and engaging with the public.

Part E: Respectful Interactions, section 3:

Councillors must not use any harassing or disrespectful language about Council, a Councillor or the public.

The Complainant alleges the Respondent's conduct was harassing in nature. As the *Code* does not define harassment, I use as guidance the following definition of harassment from the Province of Alberta's *Occupational Health and Safety Act*:

"harassment" means any single incident or repeated incidents of objectionable or unwelcome conduct, comment, bullying or action by a person that the person knows or ought reasonably to know will or would cause offence or humiliation...



I also reference the City of Edmonton's *Respectful Workplace Policy* for their employees, which says:

"harassment" (also described as bullying) is conduct including comments, actions and/or gestures that a reasonable person would find unwelcome, cannot be objectively justified as reasonable conduct, would likely create a hostile or intimidating work environment, is one-time or repeated; and

- is demeaning, offensive, intimidating, threatening, abusive,
- is an action by a person that the person knows or should reasonably know will or would cause humiliation to another individual, or
- adversely or negatively impacts that individual.

Generally, *Miriam-Webster.com* defines harassment as:

(1) to annoy persistently;

(2) to create an unpleasant or hostile situation especially by uninvited and unwelcome verbal or physical conduct.

*Oxford English Dictionary* ([oxfordlearnersdictionaries.com](http://oxfordlearnersdictionaries.com)) defines the harassment as:

The act of annoying or worrying somebody by putting pressure on them or saying or doing unpleasant things to them.

There is no definition in the *Code* for decorum. I suggest that Members of Council would generally have an understanding of what this means short of a definition within the *Code*. In any event:

*Oxford English Dictionary* ([oed.com](http://oed.com)) defines decorum as:

That which is proper, suitable, seemly, befitting, becoming; fitness, propriety, congruity.

*Miriam-Webster.com* defines decorum as:

Correct or proper behaviour that shows respect and good manners.

## PROCESS and JURISDICTIONAL ISSUES

The Complaint was in writing, was within the time limits set out in the *Code*, and included the sections of the *Code* the Complainant felt were violated [Part A Section 1 d), Part A Section 1 e) and Part B Section 1 d)].

As part of the public interest function of my role, at times I may need to identify which sections of the *Code* I feel are applicable based on the information presented. This applies whether a complainant or respondent raises certain information or sections of the *Code*. I can also make a finding with respect to a section of the *Code* even if a complainant, or respondent in his or her defence, does not identify the correct sections of the *Code*. However, the allegations and information presented must relate to a

section of the *Code*. I have included in this report those sections of the *Code* that I found potentially apply to the issues raised in this Complaint.

During the investigation, I determined that it was not necessary to personally interview or have the Complainant swear a statutory declaration.

I provided the Respondent with all of the information and allegations provided to me by the Complainant. I interviewed the Respondent and he provided his written statement in response to this Complaint. The content of the Respondent's statement is contained within this report under the applicable headings. I also provided the Respondent with the sections of the *Code* I felt were relevant to this investigation and a list of the issues I felt were raised in this investigation. I invited the Respondent to raise any concerns around process or arguments at any time during this process. I reviewed and considered all of the information provided to me by the Respondent.

I did not find it to be in the public interest to identify the Complainant by name in this report. However, the Respondent was given the written Complaint, including name of the Complainant (except contact information), in case the identity of the Complainant raised any issues or defences for the Respondent.

I considered whether the April 18 post was done as part of the Respondent's role as a City of Edmonton Councillor, or was purely personal. The Respondent says:

My social media accounts are my own property. The costs associated with them I pay out of my own pocket....I changed the name on my Facebook page because I do not want there to be any confusion that this is my political opinion. I changed it to say Mike Nickel, not Councillor Mike Nickel. I wanted it to be crystal clear that the opinions expressed are my personal opinions. Even though I am Councillor Nickel, Mike Nickel has rights to express his opinion. I believe using my title as Councillor is no different than a doctor using a "Dr." prefix in their personal life. Members of Council express their personal opinion on their personal pages frequently. All Councillors post blogs, use social media etc. as an unofficial method to communicate with the public. Any official platforms to engage with constituents are owned by the City. The April 18 post was on a privately operated platform where I communicate with the public regarding activities both related and unrelated to Council.

In my view, whether the Respondent pays for his social media accounts himself is irrelevant. What matters is the content of those communications. Whether he communicates his views on social media or uses some other medium, I find that the *Code* applies if those communications are about Council, his role as a Councillor, Members of Council, or the business of the City.

Fellow Integrity Commissioner Melinda Munro for the County of Brant in Ontario likened these situations to the employment law cases in which employees can be terminated for their outside of Council chambers social media activity. I agree with her analogy, as set out in *Bartscher v. Cardy*, 2018 ONMIC 28:

While [the Code of Conduct] refers to 'official duties', it cannot be the case that the Council intended that its members would be free to behave in an outrageous manner outside the Council chambers such as to undermine public confidence in the office...the law of employment has long established that 'off-duty' conduct can be cause for discipline and dismissal where it is

done in such a way as to damage the reputation or work environment of the employer....It can reasonably be suggested that once elected as a public official, all public activities are 'official duties' for the purpose of behaving in a manner consistent with the Code.

It is also worth noting that Part E section 1 of the *Code* says: "Councillors will act with decorum at all times...while engaging with the public." This requirement is not limited to conduct in Council or Committee meetings or at official Council functions. I also note that some of the sections of the Code (i.e. Part A, Sections 1d and 1e) when referring to Members of Council's duties include the phrase "while carrying out their official duties". Part B, Section 1d which deals with respectful communications while on social media does not include this phrase.

In this case, the April 18 post was clearly posted about Councillor Andrew Knack and about City of Edmonton business. Given the subject matter of the April 18 post and the fact that the Respondent says he was advocating on behalf of some of his constituents, I find that the *Code* applies.

The Respondent says he would react differently to this investigation if Councillor Knack had made a complaint. However, the *Code* says:

If any person believes that a Councillor has contravened this code of conduct, that person may make a written complaint to the Integrity Commissioner.

In my view, it is perfectly acceptable for members of the public to question the conduct of Members of Council. The *Code* provides a way for them to do this. Based on the language of the *Code*, it is not a requirement that the alleged "victim" be the complainant.

The impugned conduct also needs to be sufficiently egregious to warrant investigation, and not a minor or trivial issue. Here, I decided to investigate, in part, because the language and images depicted in the April 18 post came across, at first blush, as potential breaches of the *Code*. However, more investigation, thought and analysis were needed to determine if, in context, the April 18 post violated the *Code*.

While typically I would not issue a report to Council unless there were findings of a Code breach, here there were mixed findings and the issues overlapped. Therefore, aspects of the Complaint that are both dismissed and accepted are found in this report.

## THE LEGAL and CODE OF CONDUCT BACKDROP

This investigation is centred around the right to freedom of expression and how it interacts with the *Code of Conduct*. The Respondent asserts that in the April 18 post he was simply asserting his freedom of expression rights and he should not be censored or censured for doing this.

The role of a Municipal Councillors is complex and includes being both a politician and a legislator. This is sometimes referred to as a "hybrid function". As stated in *Geatrix v. Williams*<sup>1</sup>:

---

<sup>1</sup> By Integrity Commissioner Guy Giorno for the Town of Orangeville in Ontario, 2018 ONMIC 6 at para 132.

The Courts have confirmed that municipal councillors have hybrid political and legislative functions<sup>2</sup>. That they are representatives of the communities that elect them,<sup>3</sup> and that members of the public have the right to address their municipal representatives on issues of concern<sup>4</sup>...

It is part of the role of a Council Member to communicate with members of the public about municipal issues. This includes both initiating communication and responding to communication initiated by members of the public. In doing so, a Council Member is not limited to explaining and defending what the municipality is already doing. As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give effect to those views.<sup>5</sup> Some of those views may involve a change in law or a change in direction. **Provided that a Council Member proceeds lawfully and in a manner consistent with the *Municipal Act*, the Code and other legislation and by-laws**, nothing prevents a Council Member from taking, defending and seeking to implement a position that advocates change. Indeed, the Courts have clearly stated that as an elected representative of the public a municipal councillor is entitled to take “an open leadership role” on an issue.<sup>6</sup> **[emphasis added]**

As well, as stated in *Jeffrey v. Sprovieri*<sup>7</sup>:

Political commentary must comply with the Code, but otherwise an Integrity Commissioner has no jurisdiction over it. As Integrity Commissioner Cameron noted in the 2012 case:

I cannot and will not be a referee for free speech in a political arena provided it stays within the bounds of...the Code.

Subsequently, Mr. Randy Pepper, the delegate of Integrity Commissioner Cameron, expanded on the same principle in Investigation Report No. BIC-33-1112:

Freedom of expression is a fundamental right in Canada so the Code must be interpreted in a manner consistent with this fundamental right. Based on the law set out below, I cannot find that the Code should be interpreted to appoint the Integrity Commissioner as a speech referee in the political arena.

As the Supreme Court of Canada noted in the *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139:

Freedom of expression, like freedom of religion, serves to anchor the very essence of our democratic political and societal structure...Hence, the justification for the widest freedom of political speech stems not only from

<sup>2</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1179 at 1196.

<sup>3</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc.* note 13, at 1193.

<sup>4</sup> *Re McGill and City of Brantford* (1980), 111 D.L.R. (3d) 405 (Ont. Dist. Ct.) at 411, cited with approval by *Old St. Boniface Residents Assn. Inc.*, note 13, at 1193-4.

<sup>5</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20.

<sup>6</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, (1989), 58 Man. R. (2d) 255 (C.A.) at 264, affirmed [1990] 3 S.C.R. 1170.

<sup>7</sup> 2018 ONMIC 21, Guy Giorno, as Integrity Commissioner for the City of Brampton, at para 86.

some abstract search for truth, but also from the tangible goal of preserving democracy...I find that the Integrity Commissioner has a very limited role in relation to the “freewheeling debate on matters of public interest...

The Complainant alleges that the Respondent mocked Councillor Knack and that his conduct was rude, unprofessional and harassing in nature.

On this issue of a Member of Council’s freedom of expression rights, the Ontario Supreme Court stated in *Buck v. Morris et al.*, 2015 ONSC 5632, at paragraphs 189-193:

There can be no doubt that politics, whether it be federal, provincial or municipal, is not for the faint of heart. Some might say a thick skin is a prerequisite for any politician.

A thick skin, however, does not mean that a politician is fair game for those intent on damaging their reputation with false, malicious, and defamatory statements. Freedom of speech, whether in the political forum or not, does not extend to statements that are untrue and have as their sole purpose an intent to damage someone else’s reputation.

The right to freedom of speech in our society is not an absolute right. While freedom of speech is a cherished right in a free and democratic society, there are reasonable limitations. The Town of Aurora, like many other towns and cities in the Province of Ontario, has a Code of Conduct that purports to codify parameters of reasonable conduct for elected Town officials...

The plaintiff clearly has a perception that she has an unfettered right to freedom of expression and freedom of speech. That freedom, however, is circumscribed by the Code.

I am of the view that it is not the role of the Integrity Commissioner to censor or interfere with political debate and commentary. It is not my role to decide whether views expressed by Members of Council are meritorious or properly held.

It is also not my role to interpret whether the *Code* is contrary to the freedom of expression rights found in the *Canadian Charter of Rights*, which is an issue for the courts to decide. However, I am of the view that the right to freedom of expression found in the *Charter* has limits. In this case, the limits have been self-imposed by City Council with the issuance of the *Code of Conduct*. The *Code* allows fair comment and Members of Council to hold a position on an issue. This is balanced with *Code* requirements, such as, to be respectful and act with decorum.

No code of conduct can list all of the possible ways individuals can disrespect one another. Some codes provide non-exhaustive lists of what is considered disrespectful conduct to give those who are governed by the code a sense of what is contrary to the code. However, it is left to those who are governed by those codes to use their judgement. When a complaint is made, those who administer the code and investigate alleged breaches (in this case, me as the Integrity Commissioner), must determine if the impugned conduct is disrespectful. As part of that review, consideration is given to the context and facts around the impugned conduct.

The *Code of Conduct* requires Members of Council to respect the decisions made by Council while preserving the value of fair comment and differences of opinion. Some Integrity Commissioners in

Canada have commented on this requirement. For instance, Bruce Elman, Integrity Commissioner for the City of Windsor says<sup>8</sup>:

City or Municipal Councils occupy a unique role in our society. They are, at one time, both deliberative legislative bodies for the geographical entity known as their city, town, county, or municipal district, and at the same time, they are, effectively, a corporate board of directors for the commercial entity known as the Municipal Corporation of (in this case) the City of Windsor....

In other words, in the lead up to a specific decision, Council is a deliberative governmental body wherein almost unfettered freedom of speech reigns but once that decision is made, Council becomes a corporate board and, as with vast majority of corporate boards, public dissent is discouraged or even prohibited. The reason is rational and sensible: Decisions made by Council become the official policy of the City of Windsor. When Members of Council speak out or engage in conduct indicating opposition to official City policy outside the deliberative confines of the legislative process, their comments or conduct can diminish the integrity of Council decisions in the public eye, damage public confidence in Council itself, or even undermine the City's reputation, domestically or internationally. One can only imagine how [the Councillor's statement] – perhaps taken as hyperbole here in Windsor – might be viewed in California or Calgary or Copenhagen or Cairo.

It should be noted that Councillors have plenty of opportunities prior to a decision being made by Council to express their views on the merits of a proposal and they can provide as much context as they wish and use as much hyperbole as they believe is necessary. If a Councillor has particular concerns regarding an item on the Council Agenda, the Councillor can call a press conference to express those concerns. Councillors can post their concerns on their webpages or on social media to express those concerns. Councillors can go to community groups or BIAs to rally support for their position. The Councillor can even encourage citizens to become delegates to Council when the matter is debated. Finally, Councillors may express all of their concerns during the debate on the matter when it comes before Council.

Even then, after the decision is made, Councillors are free to explain why they voted as they did during the Council deliberations. They should, however, acknowledge the legitimacy of Council's decision as resulting from the deliberative and democratic processes of Council. **They should not be disrespectful and their comments should not be disparaging or inaccurate.” [emphasis added]**

## SUMMARY OF RESPONDENT'S SUBMISSIONS

The Respondent provided some submissions regarding this investigation all of which were reviewed and considered by me. The following is a summary of the Respondent's submissions that were relevant to the issues<sup>9</sup>:

---

<sup>8</sup> Re Complaint brought pursuant to the Code of Conduct of the City of Windsor against Councillor Rino Berolin, Integrity Commissioner Bruce Elman's report dated April 20, 2018.

- By passing the *Code of Conduct*, Council did not agree to contract out of the *Canadian Charter of Rights and Freedoms*;
- Terms used in the *Code of Conduct*, like “disrespectful” have no objective criteria against which words can be measured;
- As “respectfully” is not defined in the *Code of Conduct*, the Integrity Commissioner is discouraged from inserting her own “personal subjective standards into that void”;
- Members of Council should not be punished for acts that were never intended to cause harm;
- If victimless speech is to be censored there will be a chilling effect on free expression;
- Non-defamatory speech that may be offensive but falls short of inciting hatred to an identifiable group is constitutionally protected;
- There is no objective standard that exists regarding social media posts that could result in the posts being deemed offensive or disrespectful, especially by norms established in the political arena;
- The Respondent does not attack another Councillor, he simply questions Council and certain Members of Council spending priorities. He merely questions and sometimes attacks another Councillor’s spending priorities for the City of Edmonton;
- There is no personal attack. There is no disrespect. There is only a fundamental difference on an important fiscal matter. Far from disrespecting an adversary, the Respondent respects a fellow Councillor by essentially challenging him to a social media debate and giving him an opportunity to defend his position;
- The cartoon image of Councillor Knack is not offensive. It does not portray the Councillor in an unflattering light or distort his appearance in any negative way. It is simply a visual depiction to graphically demonstrate the thesis that Council’s spending priorities are askew;
- There is no need to censure social media. The internet is self-policing. When someone posts something offensive, they are immediately ‘outed’ and/or castigated for their viewpoints;
- Members of Council should be allowed to participate unfettered in political debate regarding difficult fiscal choices. The Respondent should not be censured for doing his job – attempting to convince Members of Council and those who “follow” and support those Members, that the City of Edmonton needs to reprioritize its spending.

#### RESPONDENT’S INFORMATION - APRIL 18 POST

With respect to the April 18 post, the Respondent says:

- This post was in response to Councillor Knack making a comment on Twitter regarding my April 17, 2020 social media post(s). This post did not name any Councillors and contained a description of an idea suggested by Councillor Knack at the March 26, 2020 Emergency Advisory Committee meeting, then enacted by the Administration without consultation of Council, with a picture of one site. The post also brought forward my opinion of actions that we should be taking to minimize the negative impacts of COVID. In Councillor Knack’s April 17, 2020 post, he made implications that I sit in Council meetings, vote no to everything, and do not offer

---

<sup>9</sup> The Respondent can also make further written submissions to Council before the Council meeting to consider this report and will have time at the meeting to make oral submissions.

solutions. I believed this to be an inaccurate interpretation of my work and responded with a comparable interpretation of his work.

- The cartoon image of Councillor Knack in my April 18, 2020 post had some stop animation showing Councillor Knack throwing money into a fire. Councillor Knack has since released a blog breaking down his disagreement with my April 18, 2020 post, then stated in a radio interview on April 21, 2020 that he did not find the post offensive.
- Mayor Iveson sent me a text message April 19, 2020, asking me to take down the April 18, 2020 post. As a professional courtesy to Councillor Knack, I asked my social media staff to remove it. The April 18, 2020 post has been taken down on all sources, while the April 17, 2020 post remains active. In hindsight, I wish I would not have taken it down.
- I do not think the April 18, 2020 post is disrespectful. I am expressing my opinion, as other Councillors do. It was in response to Councillor Knack's expression of his opinion. To me, this is just another form of expression about this type of behavior on Council. It was about Councillor Knack because Councillor Knack initiated the situation. In the public square, sitting Councillors retain freedom of expression.
- It strikes me as political bigotry. They don't have to like my opinion. Before [the] complaint came in [another member of the public] put out a call to action to file a complaint against me...On the April 18, 2020 post, someone made a comment that shared a link to a cycling special interest group calling for more people to file complaints against me. I deleted my post and I cannot find the cycling group post. Since this complaint has been filed, someone made a parody account of me that is similar to the cartoon I made of Councillor Knack. This account has followers that include the Mayor, sitting Councillors, Council staff, and City staff. Due to the anonymous nature of Twitter, I do not know how many of these followers filed complaints against me. While I do not intend to silence the right to freedom of expression of others, I do find it ironic that they are not only not offended by this, but effectively endorsing it. Their application of offensive standards is inconsistent.
- The issues around bike lanes go back for years. I have always questioned whether this is a wise financial decision. However, they have always been part of larger infrastructure budgets which I have supported. If they were presented as individual items, my support would be based on the merits of the individual project. It is my political opinion that bike lanes are inappropriate, based on the fact that the Downtown Bike Network failed to meet 3 out of 4 of the targets they set for themselves, as shown in a report to Council/Committee. I have always been an advocate of value for taxes, and I do not see an equitable value proposition for bike lanes.
- The cartoon is about spending money wisely. I have many constituents who are vehemently opposed to spending money on bike lanes. And for those who were on the fence before the pandemic, they are definitely against now when we've spent money on bike lanes, but can't cut the lawns.
- The City opened more "emergency bike lanes" recently. I have not seen evidence they are being used as intended, therefore I believe the City is wasting resources. Most of Council has



endorsed this project on numerous occasions. The April 18, 2020 post was intended to outline the spending priorities of some of my colleagues on Council.

- I'm a politician. Councillor Knack is a politician. I exercised my freedom of expression and opinion. I understand there are limits to freedom of expression. The April 18, 2020 post is not derogatory, hateful or disrespectful. It's not a personal attack, it was a response to a post from Councillor Knack. I challenge other politicians on what they have done. This is just a different way of challenging them.
- The decision to install bike lanes during the pandemic was made by the Covid-19 Task Team who decided to expand the network. It was not the decision of Council. But, at every turn, Councillor Knack has been an advocate of bike lanes through the budget process, including Councillor Knack making the suggestion for this action at the March 26, 2020 Emergency Advisory Committee. The April 18, 2020 post is my interpretation. It's a metaphor for the spending habits by Council and in particular Councillor Knack. It's not just about pylons. It's a grander theme of what's being spent.
- I consider the April 18, 2020 post to be relatively tame. Complainants get to speak on their agenda. Anyone who speaks against their agenda is accused of unfair comment. It's like they want to shout you down. There is a political bigotry that exists where you cannot seem to have a legitimate discussion or comment without someone being offended. They have the right to be offended, but not the right to censor me.
- The Code of Conduct cannot be used to inhibit my individual freedoms. The cartoon of Councillor Knack was just another form of expression.
- I have never apologized for the April 18, 2020 post and I'm not going to apologize. There is a principle here with what is a fair and open expression of personal opinion. I do not think I have violated the Code of Conduct.

### Discussion and Analysis

The Respondent says his April 18 post was in response to prior negative comments by Councillor Knack. However, the Respondent did not provide any evidence of this and did not identify what post he was referring to, despite being told that if he wants me to consider this argument he must provide the information necessary to support the argument. Simply saying the April 18 post was a response to a post by Councillor Knack is not an answer.

The Respondent also refers to other alleged activity on social media involving Mayor Iveson and other Councillors, but provides nothing to support these suggestions. I have not been given anything to conclude that the Respondent's allegations of other Members of Council's conduct should be taken as mitigating factors when determining the outcome of this investigation.

I find the following comments in the April 18 post (which I have underlined) concerning:

*Right now, every resident in Edmonton is watching their spending carefully.*

Andrew Knack, why can't you?

*Every dollar we spend wisely might mean another worker getting their job back at the City of Edmonton very soon. Does that mean anything to you?*

*I get it, you have no idea what to do in this situation so you are reverting to what you know.*

*I'm sure when you suggest more tax increases shortly it will be no big deal...*

*Your most recent flavour of the week is more bike lanes.*

*At some point, we will need every dollar at our disposal to bring this city back to life. To re-hire those people I mentioned above.*

*I hope you haven't forgotten about them already.*

*My solution to the current problem is to be very careful with spending right now. We should only spend what we absolutely must.*

*Somehow this isn't a solution for you. I get it. It's not flashy. It's not exciting.*

*Well I'm sorry saving money and spending wisely isn't your current priority.*

I find the choice of language and manner of communicating in these comments is disrespectful. The comments come across as demeaning, derisive, belittling, and personal. Despite the Respondent saying this is not a personal attack, I find there is no doubt it is a personal attack publicly directed at Councillor Knack. Here, the Respondent says, in part, that he is fulfilling his duty to his constituents when he speaks on issues such as bike lanes. I completely agree that part of his role as Councillor is to raise issues on behalf of his constituents. However, this does not extend to making personal attacks on another Councillor with whom he has a difference of opinion.

With respect the cartoon image of Councillor Knack in the April 18 post, the Respondent argues that this image is not disrespectful and not offensive. He argues that this is simply another form of expression. However, I see the Councillor's oversized head superimposed on a smaller body, as he broadly smiles while burning (presumably) taxpayers' money as a belittling, personal attack, and not fair comment as between politicians on a political issue.

The Complainant alleges that the Respondent's comments in the April 18 post are harassing. When we think of the Councillor's hybrid role as a legislator and as a politician, we cannot ignore the fact that they function in a type of work environment and not just the political environment. For years, that environment was not protected. Elected officials were typically not subject to any form of a code of conduct, especially at the municipal level where there is no political party to help keep their conduct in check. The Government of Alberta then introduced amendments to the *Municipal Government Act* to require councils to have codes of conduct, and Council passed Bylaw 18483 bringing into the force the *Code of Conduct*. The *Code* says that Members of Council must not use any harassing language about another Councillor and must ensure their communications do not harass any person.

Typically, when harassment is alleged, an individual is harmed by a pattern of harassing behaviour. Harassment can create a hostile and sometimes intimidating environment. Harassment is discouraged as organizations want to protect their environment from this sort of conduct, not only as against

individuals, but for the collective. Others who witness this sort of conduct may be less inclined to disagree with the alleged harasser in the future, for fear of experiencing the same harassing conduct. It can shut down people from freely expressing their opinion, which has a negative impact on the democratic process. When someone witnesses others being harassed, it diminishes the environment within which Members of Council function.

In my view, the *Code of Conduct* can be viewed in the context of providing a safe environment for Members of Council to fulfill their hybrid role. Just as an employee in an organization must feel protected from harassment when they come to work each day, while elected officials must absolutely have a thicker skin for their role, they are still entitled to carry out their role somewhat free from harassment. Council can look at conduct towards others and how they expect their members to behave, and can consider how this behaviour impacts the office and the environment.

The spreading of false information about someone is a form of harassment. It forces the person who is misspoken about to have to dispel the misinformation or risk leaving it unaddressed. It is nearly impossible to erase misinformation once it is published and the impression will be left hanging over that person's head, even if retracted by the person who originally communicated it. Therefore, it is important that Members of Council are careful to publish, especially on social media, accurate information. The *Code of Conduct* requires this.

The above-referenced definitions say harassment is an incident or incidents of objectionable or unwelcome conduct, that the person knows or ought reasonably to know would cause offence or humiliation, and creates a hostile or negative situation. In this instance, no Member of Council has come forward to say they were offended by the April 18 post, and it would be inappropriate for me to elicit those reactions. In some circumstances of this kind I may still find harassment, but, here I do not find, on balance, that the circumstances warrant such a finding. While I am concerned about the manner of communicating of the April 18 post, I do not find there to be harassment.

### Findings – April 18 Post

On balance, I find that the comments and cartoon image posted by the Respondent in the April 18 post violated the *Code of Conduct* as follows:

- (1) The personal attack on Councillor Knack and the manner of communicating was disrespectful, in violation of Part B, section 1 d) of the *Code of Conduct* that says Councillors must ensure that all communications issued by Councillors, including on social media, are respectful.
- (2) The personal attack on another Councillor and the manner of communicating lacked decorum, in violation of Part E, section 1 of the *Code of Conduct* that requires Councillors to act with decorum at all times.

### FINDINGS

1. The comments and cartoon image posted by the Respondent in the **April 18 post** violated the *Code of Conduct* as follows:

- (a) The personal attack on another Councillor and the manner of communicating was disrespectful, in violation of Part B, section 1 (d) of the *Code of Conduct* that says Councillors must ensure that all communications issued by Councillors, including on social media, are respectful.
- (b) The personal attack on another Councillor and the manner of communicating lacked decorum, in violation of Part E, section 1 of the *Code of Conduct* that requires Councillors to act with decorum.

## RECOMMENDATIONS

Section 153 (e.1) of the *Municipal Government Act* requires Councillors to adhere to the *Code of Conduct*. I have found that the Respondent did not adhere to the *Code*.

### **I recommend that Council:**

1. Accept this report.
2. Direct that Mayor Iveson on behalf of Council issue a letter of reprimand addressed to the Respondent with respect to *Code of Conduct* violations found in this report.

APPENDIX A



**Councillor Mike Nickel**

19 hrs · 🌐



Right now, every resident in Edmonton is watching their spending carefully.

**Andrew Knack**, why can't you? 🙄

Every dollar we spend wisely might mean another worker getting their job back at the City of Edmonton very soon. Does that mean anything to you?

I get it, you have no idea what to do in this situation so you are reverting to what you know.

I'm sure when you suggest more tax increases shortly it will be no big deal...

Your most recent flavour of the week is more bike lanes.

At some point, we will need every dollar at our disposal to bring this city back to life. To re-hire those people I mentioned above.

I hope you haven't forgotten about them already.

My solution to the current problem is to be very careful with spending right now. We should only spend what we absolutely must.

Somehow this isn't a solution for you. I get it, it's not flashy. It's not exciting.

Well I'm sorry saving money and spending wisely isn't your current priority.

With the reduced traffic on the roads there is now a great opportunity for cyclists to enjoy the roadways.

I truly mean it. To everyone in this city enjoy the outdoors and get some fresh air.

Edmonton is one of the least dense of all the major cities on the planet. There are so many places to walk and be outside and have a 2 metre buffer.

Spending money frivolously on temporary bike lanes and orange pylons won't cut it.

I'm really sorry, but this is the fundamental difference between us I guess...

C'mon Andrew, now is your time to show some fiscal restraint.



119

55 comments 51 shares

Like

Comment

Share

# Office of the Integrity Commissioner

integrity.commissioner@edmonton.ca

**INVESTIGATION REPORT 2004**  
**BY JAMIE PYTEL**  
**INTEGRITY COMMISSIONER for**  
**THE CITY OF EDMONTON**

Report Date: July 19, 2020

To: City Council for The City of Edmonton

Re: *Council Code of Conduct Bylaw 18483*  
(the “Code of Conduct” or “Code”)  
Complaint 2004

Complainant: Complainant 2004

Date of Complaint: April 19, 2020

Respondent: Councillor Mike Nickel

## TABLE OF CONTENTS

<b>COMPLAINT .....</b>	<b>3</b>
<b>CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION .....</b>	<b>4</b>
<b>PROCESS and JURISDICTIONAL ISSUES .....</b>	<b>5</b>
<b>THE LEGAL and CODE OF CONDUCT BACKDROP .....</b>	<b>7</b>
<b>SUMMARY OF RESPONDENT’S SUBMISSIONS .....</b>	<b>12</b>
<b>RESPONDENT’S INFORMATION - APRIL 18 POST.....</b>	<b>13</b>
<b>DELETING AND BLOCKING ON SOCIAL MEDIA .....</b>	<b>17</b>
<b>FINDINGS.....</b>	<b>20</b>
<b>RECOMMENDATIONS.....</b>	<b>20</b>
<b>APPENDIX A.....</b>	<b>21</b>
<b>APPENDIX B .....</b>	<b>23</b>



## COMPLAINT

The Complainant alleges that on April 18, 2020:

Councillor Mike Nickel published a post on facebook that mocked Councillor Andrew Knack, spreading misinformation in an unprofessional and immature manner that is inappropriate for a city councillor. In addition many comments and accounts were blocked by Councillor Nickel's account if there was any pushback, if individuals were defending Councillor Knack or if there was a difference of opinion.

The post consisted of a cartoon throwing money into a fire with Councillor Knack's face on it, expressing that the money being thrown was taxpayer money and said that that money was being specifically allocated towards bike lanes. With COVID-19 the city of Edmonton has widened paths to encourage social distancing in areas of high density. First, that is not the same as creating more bike lanes with dedicated grade separation, this is simply creating more space for pedestrians to walk safely during this pandemic. As well, this was an item that Councillor Nickel supported. Along with the widening of sidewalks to encourage social distancing, city council approved eliminating fares for transit and parking fees. If Councillor Nickel was truly concerned with the economics of what is spending and saving taxpayer money, he would target a number of other issues instead as these would ultimately cost more. This proves that the "argument" he brought to light was only to bring down Councillor Knack. However, he did so without a solid basis for doing so.

With regards to spreading misinformation, Councillor Nickel said that Councillor Knack specifically was dedicated to creating bike lanes during this pandemic as you can see within the screenshots that I have attached to this message. Bike lanes suggests added infrastructure like dedicated grade separation which is not the case as the "bike lanes" Councillor Nickel is referring to is in fact paths for pedestrians to walk safely during this time in order to flatten the curve and prevent the spread of COVID-19.

I would also like to add that Councillor Nickel has switched all of his social media platforms from MikeNickelClr to MikeNickelYEG as a way to avoid scrutiny for his behaviour as a councillor. As a result, he can express the derogatory things he has said as personal opinion rather than the opinion of a member of council when they are one of the same.

Attached as **Appendix A** is the Respondent's April 18 social media post that was provided by the Complainant and is the subject of this Complaint (the "April 18 post"). The Complainant also provides an April 17 social media post by the Respondent in which he refers to "More bike lanes during a pandemic!?!!" (the "April 17 post").

## CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION

The applicable sections of the *Code of Conduct* say:

Part A: Representing the Municipality, section 1 d):

While carrying out their duties, Councillors must accurately represent and respect decisions made by Council while preserving the value of fair comment and differences of opinion.

Part A: Representing the Municipality, section 1 e):

While carrying out their duties, Councillors must communicate respectfully with members of the public, Councillors, City employees, and Councillor's employees.

Part B: Communications, section 1 a):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure their communications accurately reflect the facts of Council's decisions.

Part B: Communications, section 1 c):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications are accurate and not issue any communication that the Councillor knows, or ought to have known, to be false.

Part B: Communications, section 1 d):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications issued by, or on behalf of, the Councillor, including social media, are respectful and do not discriminate, harass, or demonstrate disrespect toward any person.

Part B: Communications, section 1 e):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will not issue any communications that mislead the public about any matter.

Part E: Respectful Interactions, section 1:

Councillors will conduct themselves with decorum at all times, including while attending meetings, interacting with City employees and Councillor's employees, and engaging with the public.

Part E: Respectful Interactions, section 3:

Councillors must not use any harassing or disrespectful language about Council, a Councillor or the public.

There is no definition in the *Code* for decorum. I suggest that Members of Councillor would generally have an understanding of what this means short of a definition within the *Code*. In any event:

*Oxford English Dictionary* (oed.com) defines decorum as:

That which is proper, suitable, seemly, befitting, becoming; fitness, propriety, congruity.

*Miriam-Webster.com* defines decorum as:

Correct or proper behaviour that shows respect and good manners.

## PROCESS and JURISDICTIONAL ISSUES

The Complaint was in writing, was within the time limits set out in the *Code*, and included the sections of the *Code* the Complainant felt were violated [Part A Sections 1 d) and 1 e) and Part B, Section 1 d)].

As part of the public interest function of my role, at times I may need to identify which sections of the *Code* I feel are applicable based on the information presented. This applies whether a complainant or respondent raises certain information or sections of the *Code*. I can also make a finding with respect to a section of the *Code* even if a complainant, or respondent in his or her defence, does not identify the correct sections of the *Code*. However, the allegations and information presented must relate to a section of the *Code*.

I have included in this report those sections of the *Code* that I found potentially apply to the issues raised in this Complaint.

During the investigation, when I had questions or needed more detail about this Complaint, I contacted the Complainant via email using the contact information provided by the Complainant. All information provided was considered for this investigation. I determined that it was not necessary to personally interview or have the Complainant swear a statutory declaration.

I provided the Respondent with all of the information and allegations provided to me by the Complainant. I interviewed the Respondent and he provided his written statement in response to this Complaint. The content of the Respondent's statement is contained within this report under the applicable headings. I also provided the Respondent with the sections of the *Code* I felt were relevant to this investigation and a list of the issues I felt were raised in this investigation. I invited the Respondent to raise any concerns around process or arguments at any time during this process. I reviewed and considered all of the information provided to me by the Respondent.

I did not find it to be in the public interest to identify the Complainant by name in this report. However, the Respondent was given the written Complaint, including name of the Complainant (except contact information), in case the identity of the Complainant raised any issues or defences for the Respondent.

I considered whether the April 18 post was done as part of the Respondent's role as a City of Edmonton Councillor, or was purely personal. The Complainant says:

Councillor Nickel has switched all of his social media platforms from MikeNickelClr to MikeNickelYEG as a way to avoid scrutiny for his behaviour as a councillor. As a result, he can express the derogatory things he has said as personal opinion rather than the opinion of a member of council when they are one of the same.

The Respondent says:

My social media accounts are my own property. The costs associated with them I pay out of my own pocket....I changed the name on my Facebook page because I do not want there to be any confusion that this is my political opinion. I changed it to say Mike Nickel, not Councillor Mike Nickel. I wanted it to be crystal clear that the opinions expressed are my personal opinions. Even though I am Councillor Nickel, Mike Nickel has rights to express his opinion. I believe using my title as Councillor is no different than a doctor using a "Dr." prefix in their personal life. Members of Council express their personal opinion on their personal pages frequently. All Councillors post blogs, use social media etc. as an unofficial method to communicate with the public. Any official platforms to engage with constituents are owned by the City. The April 18 post was on a privately operated platform where I communicate with the public regarding activities both related and unrelated to Council.

In my view, whether the Respondent pays for his social media accounts himself is irrelevant. What matters is the content of those communications. Whether he communicates his views on social media or uses some other medium, I find that the *Code* applies if those communications are about Council, his role as a Councillor, Members of Council, or the business of the City.

Fellow Integrity Commissioner Melinda Munro for the County of Brant in Ontario likened these situations to the employment law cases in which employees can be terminated for their outside of Council chambers social media activity. I agree with her analogy, as set out in *Bartscher v. Cardy*, 2018 ONMIC 28:

While [the Code of Conduct] refers to 'official duties', it cannot be the case that the Council intended that its members would be free to behave in an outrageous manner outside the Council chambers such as to undermine public confidence in the office...the law of employment has long established that 'off-duty' conduct can be cause for discipline and dismissal where it is done in such a way as to damage the reputation or work environment of the employer....It can reasonably be suggested that once elected as a public official, all public activities are 'official duties' for the purpose of behaving in a manner consistent with the Code.

It is also worth noting that Part E section 1 of the *Code* says: "Councillors will act with decorum at all times...while engaging with the public." This requirement is not limited to conduct in Council or Committee meetings or at official Council functions. I also note that some of the sections of the Code (i.e. Part A, Sections 1d and 1e) when referring to Members of Council's duties include the phrase "while carrying out their official duties". Part B, Section 1d which deals with respectful communications while on social media does not include this phrase.

In this case, the April 18 post was clearly posted about Councillor Andrew Knack and about City of Edmonton business. Given the subject matter of the April 18 post and the fact that the Respondent says he was advocating on behalf of some of his constituents, I find that the *Code* applies.

The Respondent says he would react differently to this investigation if Councillor Knack had made a complaint. However, the *Code* says:

If any person believes that a Councillor has contravened this code of conduct, that person may make a written complaint to the Integrity Commissioner.

In my view, it is perfectly acceptable for members of the public to question the conduct of Members of Council. The *Code* provides a way for them to do this. Based on the language of the *Code*, it is not a requirement that the alleged “victim” be the complainant.

The impugned conduct also needs to be sufficiently egregious to warrant investigation, and not a minor or trivial issue. Here, I decided to investigate, in part, because the language and images depicted in the April 18 post came across, at first blush, as potential breaches of the *Code*. However, more investigation, thought and analysis were needed to determine if, in context, the April 18 post violated the *Code*.

The Complainant is also concerned that comments posted by others were deleted or were blocked from the Respondent’s social media page. Without some investigation and analysis, it was not clear if this would be found to be a breach of the *Code*. I did not undergo a complete review of social media activity by the Respondent, but I did consider whether deleting or blocking on social media is a potential breach of the *Code*.

While typically I would not issue a report to Council unless there were findings of a Code breach, here there were mixed findings and the issues overlapped. Therefore, aspects of the Complaint that are both dismissed and accepted are found in this report.

## THE LEGAL and CODE OF CONDUCT BACKDROP

This investigation is centred around the right to freedom of expression and how it interacts with the *Code of Conduct*. The Respondent asserts that in the April 18 post he was simply asserting his freedom of expression rights and he should not be censored or censured for doing this.

The role of a Municipal Councillors is complex and includes being both a politician and a legislator. This is sometimes referred to as a “hybrid function”. As stated in *Geatrix v. Williams*<sup>1</sup>:

The Courts have confirmed that municipal councillors have hybrid political and legislative functions<sup>2</sup>. That they are representatives of the communities that elect them,<sup>3</sup> and that

---

<sup>1</sup> By Integrity Commissioner Guy Giorno for the Town of Orangeville in Ontario, 2018 ONMIC 6 at para 132.

<sup>2</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1179 at 1196.

<sup>3</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc.* note 13, at 1193.

members of the public have the right to address their municipal representatives on issues of concern<sup>4</sup>...

It is part of the role of a Council Member to communicate with members of the public about municipal issues. This includes both initiating communication and responding to communication initiated by members of the public. In doing so, a Council Member is not limited to explaining and defending what the municipality is already doing. As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give effect to those views.<sup>5</sup> Some of those views may involve a change in law or a change in direction. **Provided that a Council Member proceeds lawfully and in a manner consistent with the *Municipal Act*, the Code and other legislation and by-laws**, nothing prevents a Council Member from taking, defending and seeking to implement a position that advocates change. Indeed, the Courts have clearly stated that as an elected representative of the public a municipal councillor is entitled to take “an open leadership role” on an issue.<sup>6</sup> **[emphasis added]**

As well, as stated in *Jeffrey v. Sprovier*<sup>7</sup>:

Political commentary must comply with the Code, but otherwise an Integrity Commissioner has no jurisdiction over it. As Integrity Commissioner Cameron noted in the 2012 case:

I cannot and will not be a referee for free speech in a political arena provided it stays within the bounds of...the Code.

Subsequently, Mr. Randy Pepper, the delegate of Integrity Commissioner Cameron, expanded on the same principle in Investigation Report No. BIC-33-1112:

Freedom of expression is a fundamental right in Canada so the Code must be interpreted in a manner consistent with this fundamental right. Based on the law set out below, I cannot find that the Code should be interpreted to appoint the Integrity Commissioner as a speech referee in the political arena.

As the Supreme Court of Canada noted in the *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139:

Freedom of expression, like freedom of religion, serves to anchor the very essence of our democratic political and societal structure...Hence, the justification for the widest freedom of political speech stems not only from some abstract search for truth, but also from the tangible goal of preserving democracy...I find that the Integrity Commissioner has a very limited role in relation to the “freewheeling debate on matters of public interest...

---

<sup>4</sup> *Re McGill and City of Brantford* (1980), 111 D.L.R. (3d) 405 (Ont. Dist. Ct.) at 411, cited with approval by *Old St. Boniface Residents Assn. Inc.*, note 13, at 1193-4.

<sup>5</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20.

<sup>6</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, (1989), 58 Man. R. (2d) 255 (C.A.) at 264, affirmed [1990] 3 S.C.R. 1170.

<sup>7</sup> 2018 ONMIC 21, Guy Giorno, as Integrity Commissioner for the City of Brampton, at para 86.

The Complainant alleges that the Respondent was mocking Councillor Knack and was spreading misinformation in the April 18 post. The *Code of Conduct* provides that while preserving the value of fair comment and differences of opinion, Councillors must ensure their communications accurately reflect the facts of Council's decisions, that all communications are accurate and not issue any communications that mislead the public about any matter.

On this issue, the Ontario Supreme Court stated in *Buck v. Morris et al.*, 2015 ONSC 5632, at paragraphs 189-193:

There can be no doubt that politics, whether it be federal, provincial or municipal, is not for the faint of heart. Some might say a thick skin is a prerequisite for any politician.

A thick skin, however, does not mean that a politician is fair game for those intent on damaging their reputation with false, malicious, and defamatory statements. Freedom of speech, whether in the political forum or not, does not extend to statements that are untrue and have as their sole purpose an intent to damage someone else's reputation.

The right to freedom of speech in our society is not an absolute right. While freedom of speech is a cherished right in a free and democratic society, there are reasonable limitations. The Town of Aurora, like many other towns and cities in the Province of Ontario, has a Code of Conduct that purports to codify parameters of reasonable conduct for elected Town officials...

The plaintiff clearly has a perception that she has an unfettered right to freedom of expression and freedom of speech. That freedom, however, is circumscribed by the Code.

The Supreme Court of Canada in *Prud'homme v. Prud'homme*, 2002 SCC 85, stated at paras 42-45:

...while elected municipal officials must be quite free to discuss matters of public interest, they must act as would the reasonable person. The reasonableness of their conduct will often be demonstrated by their good faith and the prior checking they did to satisfy themselves as to the truth of their allegations. These are guidelines for exercising the right to comment, which has been repeatedly reaffirmed by the courts.

I am of the view that it is not the role of the Integrity Commissioner to censor or interfere with political debate and commentary. It is not my role to decide whether views expressed by Members of Council are meritorious or properly held.

It is also not my role to interpret whether the *Code* is contrary to the freedom of expression rights found in the *Canadian Charter of Rights*, which is an issue for the courts to decide. However, I am of the view that the right to freedom of expression found in the *Charter* has limits. In this case, the limits have been self-imposed by City Council with the issuance of the *Code of Conduct*. The *Code* allows fair comment and Members of Council to hold a position on an issue. This is balanced with *Code* requirements, such as, to accurately represent Council's activities, be respectful and act with decorum.

No code of conduct can list all of the possible ways individuals can disrespect one another. Some codes provide non-exhaustive lists of what is considered disrespectful conduct to give those who are governed by the code a sense of what is contrary to the code. However, it is left to those who are governed by those codes to use their judgement. When a complaint is made, those who administer the code and investigate alleged breaches (in this case, me as the Integrity Commissioner), must determine if the

impugned conduct is disrespectful. As part of that review, consideration is given to the context and facts around the impugned conduct.

The *Code of Conduct* requires Members of Council to respect the decisions made by Council while preserving the value of fair comment and differences of opinion. Some Integrity Commissioners in Canada have commented on this requirement. For instance, Bruce Elman, Integrity Commissioner for the City of Windsor says<sup>8</sup>:

City or Municipal Councils occupy a unique role in our society. They are, at one time, both deliberative legislative bodies for the geographical entity known as their city, town, county, or municipal district, and at the same time, they are, effectively, a corporate board of directors for the commercial entity known as the Municipal Corporation of (in this case) the City of Windsor....

In other words, in the lead up to a specific decision, Council is a deliberative governmental body wherein almost unfettered freedom of speech reigns but once that decision is made, Council becomes a corporate board and, as with vast majority of corporate boards, public dissent is discouraged or even prohibited. The reason is rational and sensible: Decisions made by Council become the official policy of the City of Windsor. When Members of Council speak out or engage in conduct indicating opposition to official City policy outside the deliberative confines of the legislative process, their comments or conduct can diminish the integrity of Council decisions in the public eye, damage public confidence in Council itself, or even undermine the City's reputation, domestically or internationally. One can only imagine how [the Councillor's statement] – perhaps taken as hyperbole here in Windsor – might be viewed in California or Calgary or Copenhagen or Cairo.

It should be noted that Councillors have plenty of opportunities prior to a decision being made by Council to express their views on the merits of a proposal and they can provide as much context as they wish and use as much hyperbole as they believe is necessary. If a Councillor has particular concerns regarding an item on the Council Agenda, the Councillor can call a press conference to express those concerns. Councillors can post their concerns on their webpages or on social media to express those concerns. Councillors can go to community groups or BIAs to rally support for their position. The Councillor can even encourage citizens to become delegates to Council when the matter is debated. Finally, Councillors may express all of their concerns during the debate on the matter when it comes before Council.

Even then, after the decision is made, Councillors are free to explain why they voted as they did during the Council deliberations. They should, however, acknowledge the legitimacy of Council's decision as resulting from the deliberative and democratic processes of Council. **They should not be disrespectful and their comments should not be disparaging or inaccurate.” [emphasis added]**

---

<sup>8</sup> Re Complaint brought pursuant to the Code of Conduct of the City of Windsor against Councillor Rino Berolin, Integrity Commissioner Bruce Elman's report dated April 20, 2018.



At the centre of this investigation are decisions made by Council during the COVID-19 pandemic and historically with respect to the construction of bike lanes in the City of Edmonton. A review of the history reveals:

- The construction of bike lanes was a decision made by Council going back to 2009 when the Council of the day carried a motion to approve the policy that: “The City of Edmonton strives to be pedestrian and bicycle friendly”.
- On June 11, 2014 Council passed a motion that “enhanced public engagement strategies” outlined in a report by Transportation Services that included a bicycle infrastructure plan be approved. The Respondent voted in favour of this motion.
- During Council Meetings in November and December 2014, Council passed the 2015-2018 Capital Budget, including a motion for a \$8.8 Million bikeway for the 102 Avenue area. The Respondent voted in favour of this motion.
- In 2016, the Respondent voted in favour of a motion for capital funding of \$7.5 Million and an annual operating cost of \$625,000 for physically separated bike lane infrastructure.
- With respect to the 2019-2022 Capital Budget discussed at the November and December 2018 Council meetings, the Respondent voted against a motion seeking increased funding of \$2.17 Million for bike infrastructure expenditures, but the motion was passed. The Respondent also voted against a motion on the \$5.7 Billion Capital and Operating Budget that included design and construction of a minimum grade bike grid in various areas in Edmonton, but the motion was passed.
- In response to this investigation, the Respondent referred me to the March 26, 2020 Emergency Advisory Committee of Council. A review of that meeting revealed that Councillor Knack brought forward concerns from some of his constituents that they were struggling with physical distancing outdoors during the pandemic. City Administration said that they would review options in this regard. It was clear at this meeting that this was delegated to City Administration. No Council motions were passed in this regard.
- City Administration made expanded spaces available on some City of Edmonton roads and paths during the COVID-19 pandemic starting in April 2020. This was done to facilitate physical distancing during the pandemic. These were multimodal spaces for active transportation for:
  - Biking
  - Running
  - Walking
  - Rollerblading
  - Wheelchair use
  - Etc.

The decision to do this was made by Administration under the State of Local Emergency, but Administration normally has the authority to make these sorts of decisions. Regular updates were given to Council about these measures and Councillors could raise any concerns they had with them.

## SUMMARY OF RESPONDENT'S SUBMISSIONS

The Respondent provided some submissions regarding this investigation all of which were reviewed and considered by me. The following is a summary of the Respondent's submissions that were relevant to the issues<sup>9</sup>:

- By passing the *Code of Conduct*, Council did not agree to contract out of the *Canadian Charter of Rights and Freedoms*;
- Terms used in the *Code of Conduct*, like “disrespectful” have no objective criteria against which words can be measured;
- As “respectfully” is not defined in the *Code of Conduct*, the Integrity Commissioner is discouraged from inserting her own “personal subjective standards into that void”;
- Members of Council should not be punished for acts that were never intended to cause harm;
- If victimless speech is to be censored there will be a chilling effect on free expression;
- Non-defamatory speech that may be offensive but falls short of inciting hatred to an identifiable group is constitutionally protected;
- There is no objective standard that exists regarding social media posts that could result in the posts being deemed offensive or disrespectful, especially by norms established in the political arena;
- The Respondent does not attack another Councillor, he simply questions Council and certain Members of Council spending priorities. He merely questions and sometimes attacks another Councillor's spending priorities for the City of Edmonton;
- There is no personal attack. There is no disrespect. There is only a fundamental difference on an important fiscal matter. Far from disrespecting an adversary, the Respondent respects a fellow Councillor by essentially challenging him to a social media debate and giving him an opportunity to defend his position;
- The cartoon image of Councillor Knack is not offensive. It does not portray the Councillor in an unflattering light or distort his appearance in any negative way. It is simply a visual depiction to graphically demonstrate the thesis that Council's spending priorities are askew;
- There is no need to censure social media. The internet is self-policing. When someone posts something offensive, they are immediately ‘outed’ and/or castigated for their viewpoints;
- Members of Council should be allowed to participate unfettered in political debate regarding difficult fiscal choices. The Respondent should not be censored for doing his job – attempting to convince Members of Council and those who “follow” and support those Members, that the City of Edmonton needs to reprioritize its spending.

---

<sup>9</sup> The Respondent can also make further written submissions to Council before the Council meeting to consider this report and will have time at the meeting to make oral submissions.

## RESPONDENT'S INFORMATION - APRIL 18 POST

With respect to the April 18 post, the Respondent says:

- This post was in response to Councillor Knack making a comment on Twitter regarding my April 17, 2020 social media post(s). This post did not name any Councillors and contained a description of an idea suggested by Councillor Knack at the March 26, 2020 Emergency Advisory Committee meeting, then enacted by the Administration without consultation of Council, with a picture of one site. The post also brought forward my opinion of actions that we should be taking to minimize the negative impacts of COVID. In Councillor Knack's April 17, 2020 post, he made implications that I sit in Council meetings, vote no to everything, and do not offer solutions. I believed this to be an inaccurate interpretation of my work and responded with a comparable interpretation of his work.
- The cartoon image of Councillor Knack in my April 18, 2020 post had some stop animation showing Councillor Knack throwing money into a fire. Councillor Knack has since released a blog breaking down his disagreement with my April 18, 2020 post, then stated in a radio interview on April 21, 2020 that he did not find the post offensive.
- Mayor Iveson sent me a text message April 19, 2020, asking me to take down the April 18, 2020 post. As a professional courtesy to Councillor Knack, I asked my social media staff to remove it. The April 18, 2020 post has been taken down on all sources, while the April 17, 2020 post remains active. In hindsight, I wish I would not have taken it down.
- I do not think the April 18, 2020 post is disrespectful. I am expressing my opinion, as other Councillors do. It was in response to Councillor Knack's expression of his opinion. To me, this is just another form of expression about this type of behavior on Council. It was about Councillor Knack because Councillor Knack initiated the situation. In the public square, sitting Councillors retain freedom of expression.
- It strikes me as political bigotry. They don't have to like my opinion. Before [the] complaint came in, [another member of the public] put out a call to action to file a complaint against me....On the April 18, 2020 post, someone made a comment that shared a link to a cycling special interest group calling for more people to file complaints against me. I deleted my post and I cannot find the cycling group post. Since this complaint has been filed, someone made a parody account of me that is similar to the cartoon I made of Councillor Knack. This account has followers that include the Mayor, sitting Councillors, Council staff, and City staff. Due to the anonymous nature of Twitter, I do not know how many of these followers filed complaints against me. While I do not intend to silence the right to freedom of expression of others, I do find it ironic that they are not only not offended by this, but effectively endorsing it. Their application of offensive standards is inconsistent.
- The issues around bike lanes go back for years. I have always questioned whether this is a wise financial decision. However, they have always been part of larger infrastructure budgets which I have supported. If they were presented as individual items, my support would be based on the

merits of the individual project. It is my political opinion that bike lanes are inappropriate, based on the fact that the Downtown Bike Network failed to meet 3 out of 4 of the targets they set for themselves, as shown in a report to Council/Committee. I have always been an advocate of value for taxes, and I do not see an equitable value proposition for bike lanes.

- The cartoon is about spending money wisely. I have many constituents who are vehemently opposed to spending money on bike lanes. And for those who were on the fence before the pandemic, they are definitely against now when we've spent money on bike lanes, but can't cut the lawns.
- The City opened more "emergency bike lanes" recently. I have not seen evidence they are being used as intended, therefore I believe the City is wasting resources. Most of Council has endorsed this project on numerous occasions. The April 18, 2020 post was intended to outline the spending priorities of some of my colleagues on Council.
- If the Complainant says I have accused Councillor Knack of approving bike lanes during a pandemic that is their interpretation. They have to practice their own due diligence, too. There has to be a reasonable limit on what I need to respond. I cannot manage everyone's possible interpretations.
- I deny that the April 17, 2020 [sic April 18, 2020] post contained misinformation about the implementation of bike lanes during a pandemic.
- I'm a politician. Councillor Knack is a politician. I exercised my freedom of expression and opinion. I understand there are limits to freedom of expression. The April 18, 2020 post is not derogatory, hateful or disrespectful. It's not a personal attack, it was a response to a post from Councillor Knack. I challenge other politicians on what they have done. This is just a different way of challenging them.
- The decision to install bike lanes during the pandemic was made by the Covid-19 Task Team who decided to expand the network. It was not the decision of Council. But, at every turn, Councillor Knack has been an advocate of bike lanes through the budget process, including Councillor Knack making the suggestion for this action at the March 26, 2020 Emergency Advisory Committee. The April 18, 2020 post is my interpretation. It's a metaphor for the spending habits by Council and in particular Councillor Knack. It's not just about pylons. It's a grander theme of what's being spent.
- I consider the April 18, 2020 post to be relatively tame. Complainants get to speak on their agenda. Anyone who speaks against their agenda is accused of unfair comment. It's like they want to shout you down. There is a political bigotry that exists where you cannot seem to have a legitimate discussion or comment without someone being offended. They have the right to be offended, but not the right to censor me.
- The Code of Conduct cannot be used to inhibit my individual freedoms. The cartoon of Councillor Knack was just another form of expression.

- I have never apologized for the April 18, 2020 post and I'm not going to apologize. There is a principle here with what is a fair and open expression of personal opinion. I do not think I have violated the Code of Conduct.

## Discussion and Analysis

The Respondent says his April 18 post was in response to prior negative comments by Councillor Knack. However, the Respondent did not provide any evidence of this and did not identify what post he was referring to, despite being told that if he wants me to consider this argument he must provide the information necessary to support the argument. Simply saying the April 18 post was a response to a post by Councillor Knack is not an answer.

The Respondent also refers to other alleged activity on social media involving Mayor Iveson and other Councillors, but provides nothing to support these suggestions. I have not been given anything to conclude that the Respondent's allegations of other Members of Council's conduct should be taken as mitigating factors when determining the outcome of this investigation.

I find the following comments in the April 18 post (which I have underlined) concerning:

*Right now, every resident in Edmonton is watching their spending carefully.*

*Andrew Knack, why can't you?*

*Every dollar we spend wisely might mean another worker getting their job back at the City of Edmonton very soon. Does that mean anything to you?*

*I get it, you have no idea what to do in this situation so you are reverting to what you know.*

*I'm sure when you suggest more tax increases shortly it will be no big deal...*

*Your most recent flavour of the week is more bike lanes.*

*At some point, we will need every dollar at our disposal to bring this city back to life. To re-hire those people I mentioned above.*

*I hope you haven't forgotten about them already.*

*My solution to the current problem is to be very careful with spending right now. We should only spend what we absolutely must.*

*Somehow this isn't a solution for you. I get it. It's not flashy. It's not exciting.*

*Well I'm sorry saving money and spending wisely isn't your current priority.*

I find the manner of communicating in these comments is disrespectful. The comments come across as demeaning, derisive, and personal. Despite the Respondent saying this is not a personal attack, I find there is no doubt it is a personal attack publicly directed at Councillor Knack. Here, the Respondent says, in part, that he is fulfilling his duty to his constituents when he speaks on issues such as bike lanes. I completely agree that part of his role as Councillor is to raise issues on behalf of his constituents. However, this does not extend to making personal attacks on another Councillor with whom he has a difference of opinion.

The Respondent says that it is a stretch for anyone to say that the comments and image in the April 18 post are suggesting that Councillor Knack approved the construction of bike lanes during a pandemic. He says this post is a metaphor for wasteful spending. In my view, if the Respondent is going to make a metaphor on social media, it ought to be obvious that it is a metaphor. Clearly, it was seen as misleading by the Complainant. It was not clearly about Councillor Knack's decisions regarding spending, but was about the current installation of what the Respondent referred to as Councillor Knack's "most recent flavour of the week more bike lanes". The Complainant also provides the April 17 post by the Respondent, which includes the statement "More bike lanes during a pandemic!?" and an image of pilons on the street, with the words "Adding temporary bike and walk lanes. During a pandemic! Have the mayor & some councillors completely checked out on reality?".

The issue of bike lanes and the specific temperature of the electorate for spending money during a pandemic makes this all the more of a hot button issue. This therefore requires the Respondent to not be reckless in how he presents the information. In fact, as discussed above, the recent introduction of temporary spaces for physical distancing was for a multiple of purposes (not just cycling) during the COVID-19 pandemic. This was a decision made by the City Administration and not by Council. In the April 18 post the Respondent suggests that Councillor Knack is responsible for this decision which, by the Respondent's own admission, is not true as he reports that Administration made this decision without Council approval.

I agree with the Respondent that he cannot be responsible for every interpretation that might be made by others of his communications. I also fully support and will not interfere with Members of Council expressing their views on matters of public interest and engaging in vigorous political debate. This gives the electorate an opportunity to hear the elected official's views and decide for themselves if they support those views. However, those communications must, objectively, not be misleading. I find, on balance, that the comments and image in the April 18 post are misleading as they leave the impression that Councillor Knack was responsible for approving more bikes lanes during a pandemic, which he was not.

With respect the cartoon image of Councillor Knack in the April 18 post, the Respondent argues that this image is not disrespectful and not offensive. He argues that this is simply another form of expression. However, I see the Councillor's oversized head superimposed on a smaller body, as he broadly smiles while burning (presumably) taxpayers' money as a belittling, personal attack, and not fair comment as between politicians on a political issue.

The cartoon image of the Councillor throwing money for "bike lanes" on a fire was capable of being viewed by many people. It reasonably left the impression that during a time of pandemic, when many were suffering financially, the Councillor was willing to burn money on the construction of bike lanes. The cartoon image does not say temporary bike lanes. I suggest that social media users often engage on social media by scrolling and seeing images without necessarily reading the accompanying commentary. Therefore, the cartoon image was likely to also have been viewed in isolation by some viewers while they scrolled the feed. I find that the cartoon image of the Councillor burning money on "bike lanes" was misleading.

## Findings – April 18 Post

On balance, I find that the comments and cartoon image posted by the Respondent in the April 18 post violated the *Code of Conduct* as follows:

- (1) The personal attack on Councillor Knack and the manner of communicating was disrespectful, in violation of Part B, section 1 d) of the *Code of Conduct* that says Councillors must ensure that all communications issued by Councillors, including on social media, are respectful.
- (2) The personal attack on another Councillor and the manner of communicating lacked decorum, in violation of Part E, section 1 of the *Code of Conduct* that requires Councillors to act with decorum at all times.
- (3) Communicating misleading information that left the impression that Councillor Knack approved the installation of bike lanes during a pandemic, when the decision was to temporarily use public space to expand spaces for multimodal use for physical distancing during the COVID-19 pandemic. This was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the *Code of Conduct* that say Councillors must ensure that their communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter.

## DELETING AND BLOCKING ON SOCIAL MEDIA

The Complainant says many comments and accounts were blocked on Councillor Nickel's account if there was any pushback, if individuals were defending Councillor Knack or if there was a difference of opinion regarding the April 18, post. I did not seek out and do an exhaustive review of the social media activity by the Respondent, as there was no obvious breach of the *Code* based on the analysis that follows.

The Respondent says his unwritten social media policy is to use a common-sense approach based on the following principles:

- Mike Nickel's social media pages are the property of Mike Nickel.
- We reserve the right to remove anyone acting inappropriately, degrading, or offensive from our social media pages.
- We do not tolerate bots or anonymous accounts from interacting with our page.
- Individuals using "fake names" or "pseudonyms" while interacting with our pages will be removed and/or blocked.
- Anyone spamming or mass copying / pasting underneath comments in an attempt to intimidate or skew engagement in the conversation will be removed.

The Respondent says:

- I allow contrary views on my social media pages as long as they are not abusive, profane or inappropriate activity such as spamming, taking over the site with too many posts that are copied and pasted, etc. I tell my staff to block or delete posts if the language in them is abusive, uses profanity or they are spamming to take over the conversation. There are limits. When it becomes abusive, then the limits kick in. As a principle, I don't involve myself and don't want to be talking about personalities. [A commentator...] was deleted and blocked because she made a comment, then copied and pasted it as a reply to several other comments, and stopped when my staff blocked her. She is entitled to her opinion, but I am familiar with the tactic she used, that sends a notification to each person replied to, as an effort to get more people to see the comment. My staff made a judgement call on my behalf, based on the principles I have given them. I fully support my staff in this decision.

## Discussion and Analysis

The understanding of the intersection of municipal codes of conduct and the use of social media is somewhat in its infancy. Many municipal councils are looking at bringing in social media policies to govern these issues. While Council has not specifically enacted a social media policy, Edmonton's City Council chose to explicitly include in the *Code of Conduct* the requirement that their communications on social media must be respectful. Many codes are not this explicit.

However, the *Code of Conduct* does not require Members of Council to engage the public on social media or to participate in debate with members of the public. In my view, when Councillors use social media platforms as a method to communicate to the public on issues of public interest, they need to tread carefully when limiting participation by the public. These platforms are used by the public to raise their concerns. It is part of the Council member's role to initiate communications and respond to communications by the public.

The role of municipal councillors is somewhat different from other politicians who may find themselves subject to their own political party's policies on social media use. Many such parties have brought into effect policies that permit members to block or delete commentators if, for instance, they use threatening or discriminatory language, or troll the politician's site. Blocking happens at all political levels in Canada, although some commentators see it as an affront to democracy and possibly off-side the elected official's obligations to their constituents. The preponderance of commentary on this issue is politicians' public accounts should remain public, unless blocking is necessary and justified.<sup>10</sup>

To my knowledge, the Canadian Courts have not ruled on whether elected officials can block members of the public, in particular, their constituents. In the United States, some courts have ruled that politicians who block constituents are violating the First Amendment of the U.S. Constitution which protects freedom of speech. The Southern District Court of New York found that President Trump should not be permitted to block people on his Twitter account as Twitter is a "public forum" under the

---

<sup>10</sup> For instance, the former Integrity Commissioner for the City of Toronto, Val Jepsen, in her 2016 *Annual Report* commented that "...social media is a way to communicate with constituents and blocking them could be seen as a refusal of service". See also "Can a politician block you on Twitter?" by Cara Zwibel of the Canadian Civil Liberties Association, June 7, 2019, [ccla.org](http://ccla.org), who says online spaces have become the public square and unless being subjected to repeated harassment, blocking by elected officials is "terrible for democracy".



First Amendment.<sup>11</sup> However, the freedom of expression protections under the *Canadian Charter of Rights* are different from the U.S. First Amendment, and the Canadian courts have not ruled on how our *Charter* will respond to such actions by politicians.

This is an important issue, as social media platforms are used extensively not only by politicians, but also by constituents for a number of reasons, including knowing their politicians' views on particular topics, to express their own views and to get updates on what is happening within their municipality. By blocking someone, an elected official is singling out that person who is no longer being allowed, as others are, to weigh in on the issues. That person is also prevented from immediately and easily seeing posts by that elected official. The member of the public can search for this information, but it is not readily available when they are blocked.

Many elected officials argue that constituents can still contact them after they are blocked through other means such as email. This helps the elected official verify the author of the communication and engage in more private discussions. The Respondent also says that he is just blocking people from this form of communication, not all communication.

I am of the view that it is entirely reasonable for elected officials to place some parameters on acceptable conduct on their social media pages. This is particularly so if the page is being hijacked by people trolling, spamming, using bots, using discriminatory or harassing language, etc.

Whether the Respondent violated the *Code* when he deleted and blocked members of the public is not an issue that is clearly covered by the *Code*. I suggest that blocking would be a breach of the *Code*, for instance, if it was proven, on a balance of probabilities, that a Member of Council was deleting or blocking someone based on grounds that are protected by Human Rights legislation. But that is not the case here.

The Respondent has some guidelines with respect to the behaviour he will tolerate on his social media pages. Such guidelines always require an element of judgment and it is not for me to question that judgement. However, in my view, to encourage democratic debate on a site that is meant to serve the public, I suggest that blocking should be done sparingly, with other methods such as muting being considered only when justified. Comments, if said respectfully, should not be deleted or blocked even if they express a contrary view. But, this is currently within the Member of Council's discretion. There are no specific rules in the *Code of Conduct* or Council policies that apply to this issue.

### Findings – Deleting and Blocking Social Media

I find on balance that the *Code of Conduct* was not violated when the Respondent blocked people from using his social media page. While I think this sort of blocking should be done sparingly and based on justifiable and defensible guidelines, there is nothing currently in the *Code* that prevents this. There is no legal guidance on this issue. Council may choose to pass a social media policy to address this situation. In the interim, this is left to Members of Council to use their judgment.

---

<sup>11</sup> See: National Observer, July 4, 2019, by Emma McIntosh and Fatima Syed.

## FINDINGS

1. The comments and cartoon image posted by the Respondent in the **April 18 post** violated the *Code of Conduct* as follows:
  - (a) The personal attack on another Councillor and the manner of communicating was disrespectful, in violation of Part B, section 1 d) of the *Code of Conduct* that says Councillors must ensure that all communications issued by Councillors, including on social media, are respectful.
  - (b) The personal attack on another Councillor and the manner of communicating lacked decorum, in violation of Part E, section 1 of the *Code of Conduct* that requires Councillors to act with decorum.
  - (c) Communicating misleading information that left the impression that Councillor Knack approved the installation of bike lanes during a pandemic, when the decision was to temporarily use public space to expand spaces for multimodal use for physical distancing during the COVID-19 pandemic and was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the *Code of Conduct* that say Councillors must ensure that their communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter.

## RECOMMENDATIONS

Section 153 (e.1) of the *Municipal Government Act* requires Councillors to adhere to the *Code of Conduct*. I have found that the Respondent did not adhere to the *Code*.

### **I recommend that Council:**

1. Accept this report.
2. Direct that Mayor Iveson on behalf of Council issue a letter of reprimand addressed to the Respondent with respect to *Code of Conduct* violations found in this report.

## APPENDIX A



**Councillor Mike Nickel**

19 hrs · 🌐



Right now, every resident in Edmonton is watching their spending carefully.

**Andrew Knack**, why can't you? 🙄

Every dollar we spend wisely might mean another worker getting their job back at the City of Edmonton very soon. Does that mean anything to you?

I get it, you have no idea what to do in this situation so you are reverting to what you know.

I'm sure when you suggest more tax increases shortly it will be no big deal...

Your most recent flavour of the week is more bike lanes.

At some point, we will need every dollar at our disposal to bring this city back to life. To re-hire those people I mentioned above.

I hope you haven't forgotten about them already.

My solution to the current problem is to be very careful with spending right now. We should only spend what we absolutely must.

Somehow this isn't a solution for you. I get it, it's not flashy. It's not exciting.

Well I'm sorry saving money and spending wisely isn't your current priority.

With the reduced traffic on the roads there is now a great opportunity for cyclists to enjoy the roadways.

I truly mean it. To everyone in this city enjoy the outdoors and get some fresh air.

Edmonton is one of the least dense of all the major cities on the planet. There are so many places to walk and be outside and have a 2 metre buffer.

Spending money frivolously on temporary bike lanes and orange pylons won't cut it.

I'm really sorry, but this is the fundamental difference between us I guess...

C'mon Andrew, now is your time to show some fiscal restraint.



   119


55 comments 51 shares

 Like

 Comment

 Share

## APPENDIX B



**Mike Nickel**  
April 17 at 2:58 PM · 🌐

😞 I'm fed up. Enough is enough.

More bike lanes during a pandemic!?! I wish this was a joke but it isn't.

- ✘ There is NO leadership on how we rebuild Edmonton after this crisis.
- ✘ There is NO consideration for the tens of thousands of Edmontonians who will slip into poverty.
- ✘ There is NO approach on how to deal with hundreds of businesses who will be unable to rehire workers or be able to pay their property taxes.

Our mayor and some on Edmonton city council have completely lost grip on what is important right now.

Our neighbours at the City of Vancouver are on the brink of bankruptcy. People are fighting for their careers, their life's work, and their families. They are fighting for everything that makes them whole.

Some are even fighting this infection in hospitals. My thoughts are on them as well.

People are relying on us right now to make decisions that will minimize the damage of this virus.

You think we would be taking things seriously right now and use vital city resources and the power of our office properly.

Instead I go to a recent council meeting where we discuss closing down roads and opening up temporary bike lanes and walking lanes on the roads. With pylons! That will do the trick, right? 👍

I taught my kids their entire life not to walk on the streets.

Right now people are fatigued and stressed. We don't need to be experimenting with our roadways.

Also if there are emergencies, don't we want our roads open for emergency vehicles?

Democracy WILL continue during this pandemic.

Please don't remain silent. Speak up.



# Office of the Integrity Commissioner

integrity.commissioner@edmonton.ca

**INVESTIGATION REPORT 2005**  
**BY JAMIE PYTEL**  
**INTEGRITY COMMISSIONER for**  
**THE CITY OF EDMONTON**

Report Date: July 19, 2020

To: City Council for The City of Edmonton

Re: *Council Code of Conduct Bylaw 18483*  
(the “Code of Conduct” or “Code”)  
Complaint 2005

Complainant: Complainant 2005

Date of Complaint: April 19, 2020

Respondent: Councillor Mike Nickel

## TABLE OF CONTENTS

<b>COMPLAINT .....</b>	<b>3</b>
<b>CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION .....</b>	<b>3</b>
<b>PROCESS and JURISDICTIONAL ISSUES .....</b>	<b>5</b>
<b>THE LEGAL and CODE OF CONDUCT BACKDROP .....</b>	<b>7</b>
<b>SUMMARY OF RESPONDENT’S SUBMISSIONS .....</b>	<b>12</b>
<b>RESPONDENT’S INFORMATION - APRIL 18 POST.....</b>	<b>12</b>
<b>FINDINGS.....</b>	<b>18</b>
<b>RECOMMENDATIONS.....</b>	<b>18</b>
<b>APPENDIX A.....</b>	<b>19</b>



## COMPLAINT

The Complainant alleges that on April 18, 2020:

Councillor Nickel posted a derisive caricature of a fellow Councillor, Councillor Andrew Knack, in the form of an online video clip. In the video clip, Councillor Knack is shown as a caricatured figure who fans dollar bills, labelled "Property Tax Increases", into a fire, labelled "More Bike Lanes."

Not only is this bullying and disrespectful behaviour, but Councillor Nickel also actively misrepresents information in this post (no new bike lanes are being built).

This behaviour is absolutely unbecoming of a City Councillor, and I would hope that the relevant bodies will decide on appropriate sanctions so prevent Councillor Nickel from further using his devisive, harassing tactics.

Attached as **Appendix A** is the Respondent's April 18 social post that was provided by the Complainant and is the subject of this Complaint (the "April 18 post").

## CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION

The applicable sections of the *Code of Conduct* say:

Part A: Representing the Municipality, section 1 d):

While carrying out their duties, Councillors must accurately represent and respect decisions made by Council while preserving the value of fair comment and differences of opinion.

Part A: Representing the Municipality, section 1 e):

While carrying out their duties, Councillors must communicate respectfully with members of the public, Councillors, City employees, and Councillor's employees.

Part B: Communications, section 1 a):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure their communications accurately reflect the facts of Council's decisions.

Part B: Communications, section 1 c):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications are accurate and not issue any communication that the Councillor knows, or ought to have known, to be false.

Part B: Communications, section 1 d):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications issued by, or on behalf of, the Councillor, including social media, are respectful and do not discriminate, harass, or demonstrate disrespect toward any person.

Part B: Communications, section 1 e):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will not issue any communications that mislead the public about any matter.

Part E: Respectful Interactions, section 1:

Councillors will conduct themselves with decorum at all times, including while attending meetings, interacting with City employees and Councillor's employees, and engaging with the public.

Part E: Respectful Interactions, section 3:

Councillors must not use any harassing or disrespectful language about Council, a Councillor or the public.

The Complainant alleges harassment by the Respondent in the April 18 post. As the *Code* does not define harassment, I use as guidance the following definition of harassment from the Province of Alberta's *Occupational Health and Safety Act*:

"harassment" means any single incident or repeated incidents of objectionable or unwelcome conduct, comment, bullying or action by a person that the person knows or ought reasonably to know will or would cause offence or humiliation...

I also reference the City of Edmonton's *Respectful Workplace Policy* for their employees, which says:

"harassment" (also described as bullying) is conduct including comments, actions and/or gestures that a reasonable person would find unwelcome, cannot be objectively justified as reasonable conduct, would likely create a hostile or intimidating work environment, is one-time or repeated; and

- is demeaning, offensive, intimidating, threatening, abusive,
- is an action by a person that the person knows or should reasonably know will or would cause humiliation to another individual, or
- adversely or negatively impacts that individual.

Generally, *Mirriam-Webster.com* defines harassment as:

(1) to annoy persistently;

(2) to create an unpleasant or hostile situation especially by uninvited and unwelcome verbal or physical conduct.

*Oxford English Dictionary* ([oxfordlearnersdictionaries.com](http://oxfordlearnersdictionaries.com)) defines the harassment as:

The act of annoying or worrying somebody by putting pressure on them or saying or doing unpleasant things to them.

The Complainant uses the word “unbecoming” to describe the Respondent’s conduct. The *Code* does not use the word “unbecoming” but does say: “Councillors will act with decorum at all times”. There is no definition in the *Code* for decorum. I suggest that Members of Councillor would generally have an understanding of what this means short of a definition within the *Code*. In any event:

*Oxford English Dictionary* (oed.com) defines decorum as:

That which is proper, suitable, seemly, befitting, becoming; fitness, propriety, congruity.

*Miriam-Webster.com* defines decorum as:

Correct or proper behaviour that shows respect and good manners.

## PROCESS and JURISDICTIONAL ISSUES

The Complaint was in writing, was within the time limits set out in the *Code*, and included the sections of the *Code* the Complainant felt were violated [Part B Section 1 d) and Section E].

As part of the public interest function of my role, at times I may need to identify which sections of the *Code* I feel are applicable based on the information presented. This applies whether a complainant or respondent raises certain information or sections of the *Code*. I can also make a finding with respect to a section of the *Code* even if a complainant, or respondent in his or her defence, does not identify the correct sections of the *Code*. However, the allegations and information presented must relate to a section of the *Code*.

I have included in this report those sections of the *Code* that I found potentially apply to the issues raised in this Complaint. I have not included those sections that were identified by the Complainant that I did not find to be relevant. For instance, the Complainant said all of section E of the *Code* applies. In my view, only the sections identified in this report apply.

During the investigation, when I needed more detail about this Complaint, I contacted the Complainant via email using the contact information provided by the Complainant. All information provided was considered for this investigation. I determined that it was not necessary to personally interview or have the Complainant swear a statutory declaration.

I provided the Respondent with all of the information and allegations provided to me by the Complainant. I interviewed the Respondent and he provided his written statement in response to this Complaint. The content of the Respondent’s statement is contained within this report under the applicable headings. I also provided the Respondent with the sections of the *Code* I felt were relevant to this investigation and a list of the issues I felt were raised in this investigation. I invited the Respondent to raise any concerns around process or arguments at any time during this process. I reviewed and considered all of the information provided to me by the Respondent.

I did not find it to be in the public interest to identify the Complainant by name in this report. However, the Respondent was given the written Complaint, including name of the Complainant (except contact information), in case the identity of the Complainant raised any issues or defences for the Respondent.

I considered whether the April 18 post was done as part of the Respondent's role as a City of Edmonton Councillor, or was purely personal. The Respondent says:

My social media accounts are my own property. The costs associated with them I pay out of my own pocket....I changed the name on my Facebook page because I do not want there to be any confusion that this is my political opinion. I changed it to say Mike Nickel, not Councillor Mike Nickel. I wanted it to be crystal clear that the opinions expressed are my personal opinions. Even though I am Councillor Nickel, Mike Nickel has rights to express his opinion. I believe using my title as Councillor is no different than a doctor using a "Dr." prefix in their personal life. Members of Council express their personal opinion on their personal pages frequently. All Councillors post blogs, use social media etc. as an unofficial method to communicate with the public. Any official platforms to engage with constituents are owned by the City. The April 18 post was on a privately operated platform where I communicate with the public regarding activities both related and unrelated to Council.

In my view, whether the Respondent pays for his social media accounts himself is irrelevant. What matters is the content of those communications. Whether he communicates his views on social media or uses some other medium, I find that the *Code* applies if those communications are about Council, his role as a Councillor, Members of Council, or the business of the City.

Fellow Integrity Commissioner Melinda Munro for the County of Brant in Ontario likened these situations to the employment law cases in which employees can be terminated for their outside of Council chambers social media activity. I agree with her analogy, as set out in *Bartscher v. Cardy*, 2018 ONMIC 28:

While [the Code of Conduct] refers to 'official duties', it cannot be the case that the Council intended that its members would be free to behave in an outrageous manner outside the Council chambers such as to undermine public confidence in the office...the law of employment has long established that 'off-duty' conduct can be cause for discipline and dismissal where it is done in such a way as to damage the reputation or work environment of the employer....It can reasonably be suggested that once elected as a public official, all public activities are 'official duties' for the purpose of behaving in a manner consistent with the Code.

It is also worth noting that Part E section 1 of the *Code* says: "Councillors will act with decorum at all times...while engaging with the public." This requirement is not limited to conduct in Council or Committee meetings or at official Council functions. I also note that some of the sections of the Code (i.e. Part A, Sections 1d and 1e) when referring to Members of Council's duties include the phrase "while carrying out their official duties". Part B, Section 1d which deals with respectful communications while on social media does not include this phrase.

In this case, the April 18 post was clearly posted about Councillor Andrew Knack and about City of Edmonton business. Given the subject matter of the April 18 post and the fact that the Respondent says he was advocating on behalf of some of his constituents, I find that the *Code* applies.

The Respondent says he would react differently to this investigation if Councillor Knack had made a complaint. However, the *Code* says:

If any person believes that a Councillor has contravened this code of conduct, that person may make a written complaint to the Integrity Commissioner.

In my view, it is perfectly acceptable for members of the public to question the conduct of Members of Council. The *Code* provides a way for them to do this. Based on the language of the *Code*, it is not a requirement that the alleged “victim” be the complainant.

The impugned conduct also needs to be sufficiently egregious to warrant investigation, and not a minor or trivial issue. Here, I decided to investigate, in part, because the language and images depicted in the April 18 post came across, at first blush, as potential breaches of the *Code*. However, more investigation, thought and analysis were needed to determine if, in context, the April 18 post violated the *Code*.

While typically I would not issue a report to Council unless there were findings of a Code breach, here there were mixed findings and the issues overlapped. Therefore, aspects of the Complaint that are both dismissed and accepted are found in this report.

## THE LEGAL and CODE OF CONDUCT BACKDROP

This investigation is centred around the right to freedom of expression and how it interacts with the *Code of Conduct*. The Respondent asserts that in the April 18 post he was simply asserting his freedom of expression rights and he should not be censored or censured for doing this.

The role of a Municipal Councillors is complex and includes being both a politician and a legislator. This is sometimes referred to as a “hybrid function”. As stated in *Geatrix v. Williams*<sup>1</sup>:

The Courts have confirmed that municipal councillors have hybrid political and legislative functions<sup>2</sup>. That they are representatives of the communities that elect them,<sup>3</sup> and that members of the public have the right to address their municipal representatives on issues of concern<sup>4</sup>...

It is part of the role of a Council Member to communicate with members of the public about municipal issues. This includes both initiating communication and responding to communication initiated by members of the public. In doing so, a Council Member is not limited to explaining and defending what the municipality is already doing. As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give

---

<sup>1</sup> By Integrity Commissioner Guy Giorno for the Town of Orangeville in Ontario, 2018 ONMIC 6 at para 132.

<sup>2</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1179 at 1196.

<sup>3</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc.* note 13, at 1193.

<sup>4</sup> *Re McGill and City of Brantford* (1980), 111 D.L.R. (3d) 405 (Ont. Dist. Ct.) at 411, cited with approval by *Old St. Boniface Residents Assn. Inc.*, note 13, at 1193-4.

effect to those views.<sup>5</sup> Some of those views may involve a change in law or a change in direction. **Provided that a Council Member proceeds lawfully and in a manner consistent with the *Municipal Act*, the Code and other legislation and by-laws**, nothing prevents a Council Member from taking, defending and seeking to implement a position that advocates change. Indeed, the Courts have clearly stated that as an elected representative of the public a municipal councillor is entitled to take “an open leadership role” on an issue.<sup>6</sup> **[emphasis added]**

As well, as stated in *Jeffrey v. Spivieri*<sup>7</sup>:

Political commentary must comply with the Code, but otherwise an Integrity Commissioner has no jurisdiction over it. As Integrity Commissioner Cameron noted in the 2012 case:

I cannot and will not be a referee for free speech in a political arena provided it stays within the bounds of...the Code.

Subsequently, Mr. Randy Pepper, the delegate of Integrity Commissioner Cameron, expanded on the same principle in Investigation Report No. BIC-33-1112:

Freedom of expression is a fundamental right in Canada so the Code must be interpreted in a manner consistent with this fundamental right. Based on the law set out below, I cannot find that the Code should be interpreted to appoint the Integrity Commissioner as a speech referee in the political arena.

As the Supreme Court of Canada noted in the *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139:

Freedom of expression, like freedom of religion, serves to anchor the very essence of our democratic political and societal structure...Hence, the justification for the widest freedom of political speech stems not only from some abstract search for truth, but also from the tangible goal of preserving democracy...I find that the Integrity Commissioner has a very limited role in relation to the “freewheeling debate on matters of public interest...

The Complainant alleges that the Respondent actively misrepresents information in the April 18 post as not new bike lanes are being built. The *Code of Conduct* provides that while preserving the value of fair comment and differences of opinion, Councillors must ensure their communications accurately reflect the facts of Council’s decisions, that all communications are accurate and not issue any communications that mislead the public about any matter. The Complainant also alleges that the Respondent’s conduct is unbecoming and he employs tactics that are divisive and harassing. He says the cartoon image of Councillor Knack is derisive.

On this issue, the Ontario Supreme Court stated in *Buck v. Morris et al.*, 2015 ONSC 5632, at paragraphs 189-193:

---

<sup>5</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20.

<sup>6</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, (1989), 58 Man. R. (2d) 255 (C.A.) at 264, affirmed [1990] 3 S.C.R. 1170.

<sup>7</sup> 2018 ONMIC 21, Guy Giorno, as Integrity Commissioner for the City of Brampton, at para 86.

There can be no doubt that politics, whether it be federal, provincial or municipal, is not for the faint of heart. Some might say a thick skin is a prerequisite for any politician.

A thick skin, however, does not mean that a politician is fair game for those intent on damaging their reputation with false, malicious, and defamatory statements. Freedom of speech, whether in the political forum or not, does not extend to statements that are untrue and have as their sole purpose an intent to damage someone else's reputation.

The right to freedom of speech in our society is not an absolute right. While freedom of speech is a cherished right in a free and democratic society, there are reasonable limitations. The Town of Aurora, like many other towns and cities in the Province of Ontario, has a Code of Conduct that purports to codify parameters of reasonable conduct for elected Town officials...

The plaintiff clearly has a perception that she has an unfettered right to freedom of expression and freedom of speech. That freedom, however, is circumscribed by the Code.

The Supreme Court of Canada in *Prud'homme v. Prud'homme*, 2002 SCC 85, stated at paras 42-45:

...while elected municipal officials must be quite free to discuss matters of public interest, they must act as would the reasonable person. The reasonableness of their conduct will often be demonstrated by their good faith and the prior checking they did to satisfy themselves as to the truth of their allegations. These are guidelines for exercising the right to comment, which has been repeatedly reaffirmed by the courts.

I am of the view that it is not the role of the Integrity Commissioner to censor or interfere with political debate and commentary. It is not my role to decide whether views expressed by Members of Council are meritorious or properly held.

It is also not my role to interpret whether the *Code* is contrary to the freedom of expression rights found in the *Canadian Charter of Rights*, which is an issue for the courts to decide. However, I am of the view that the right to freedom of expression found in the *Charter* has limits. In this case, the limits have been self-imposed by City Council with the issuance of the *Code of Conduct*. The *Code* allows fair comment and Members of Council to hold a position on an issue. This is balanced with *Code* requirements, such as, to accurately represent Council's activities, be respectful and act with decorum.

No code of conduct can list all of the possible ways individuals can disrespect one another. Some codes provide non-exhaustive lists of what is considered disrespectful conduct to give those who are governed by the code a sense of what is contrary to the code. However, it is left to those who are governed by those codes to use their judgement. When a complaint is made, those who administer the code and investigate alleged breaches (in this case, me as the Integrity Commissioner), must determine if the impugned conduct is disrespectful. As part of that review, consideration is given to the context and facts around the impugned conduct.

The *Code of Conduct* requires Members of Council to respect the decisions made by Council while preserving the value of fair comment and differences of opinion. Some Integrity Commissioners in

Canada have commented on this requirement. For instance, Bruce Elman, Integrity Commissioner for the City of Windsor says<sup>8</sup>:

City or Municipal Councils occupy a unique role in our society. They are, at one time, both deliberative legislative bodies for the geographical entity known as their city, town, county, or municipal district, and at the same time, they are, effectively, a corporate board of directors for the commercial entity known as the Municipal Corporation of (in this case) the City of Windsor....

In other words, in the lead up to a specific decision, Council is a deliberative governmental body wherein almost unfettered freedom of speech reigns but once that decision is made, Council becomes a corporate board and, as with vast majority of corporate boards, public dissent is discouraged or even prohibited. The reason is rational and sensible: Decisions made by Council become the official policy of the City of Windsor. When Members of Council speak out or engage in conduct indicating opposition to official City policy outside the deliberative confines of the legislative process, their comments or conduct can diminish the integrity of Council decisions in the public eye, damage public confidence in Council itself, or even undermine the City's reputation, domestically or internationally. One can only imagine how [the Councillor's statement] – perhaps taken as hyperbole here in Windsor – might be viewed in California or Calgary or Copenhagen or Cairo.

It should be noted that Councillors have plenty of opportunities prior to a decision being made by Council to express their views on the merits of a proposal and they can provide as much context as they wish and use as much hyperbole as they believe is necessary. If a Councillor has particular concerns regarding an item on the Council Agenda, the Councillor can call a press conference to express those concerns. Councillors can post their concerns on their webpages or on social media to express those concerns. Councillors can go to community groups or BIAs to rally support for their position. The Councillor can even encourage citizens to become delegates to Council when the matter is debated. Finally, Councillors may express all of their concerns during the debate on the matter when it comes before Council.

Even then, after the decision is made, Councillors are free to explain why they voted as they did during the Council deliberations. They should, however, acknowledge the legitimacy of Council's decision as resulting from the deliberative and democratic processes of Council. **They should not be disrespectful and their comments should not be disparaging or inaccurate.** [emphasis added]

At the centre of this investigation are decisions made by Council during the COVID-19 pandemic and historically with respect to the construction of bike lanes in the City of Edmonton. A review of the history reveals:

- The construction of bike lanes was a decision made by Council going back to 2009 when the Council of the day carried a motion to approve the policy that: "The City of Edmonton strives to be pedestrian and bicycle friendly".

---

<sup>8</sup> Re Complaint brought pursuant to the Code of Conduct of the City of Windsor against Councillor Rino Berolin, Integrity Commissioner Bruce Elman's report dated April 20, 2018.



- On June 11, 2014 Council passed a motion that “enhanced public engagement strategies” outlined in a report by Transportation Services that included a bicycle infrastructure plan be approved. The Respondent voted in favour of this motion.
- During Council Meetings in November and December 2014, Council passed the 2015-2018 Capital Budget, including a motion for a \$8.8 Million bikeway for the 102 Avenue area. The Respondent voted in favour of this motion.
- In 2016, the Respondent voted in favour of a motion for capital funding of \$7.5 Million and an annual operating cost of \$625,000 for physically separated bike lane infrastructure.
- With respect to the 2019-2022 Capital Budget discussed at the November and December 2018 Council meetings, the Respondent voted against a motion seeking increased funding of \$2.17 Million for bike infrastructure expenditures, but the motion was passed. The Respondent also voted against a motion on the \$5.7 Billion Capital and Operating Budget that included design and construction of a minimum grade bike grid in various areas in Edmonton, but the motion was passed.
- In response to this investigation, the Respondent referred me to the March 26, 2020 Emergency Advisory Committee of Council. A review of that meeting revealed that Councillor Knack brought forward concerns from some of his constituents that they were struggling with physical distancing outdoors during the pandemic. City Administration said that they would review options in this regard. It was clear at this meeting that this was delegated to City Administration. No Council motions were passed in this regard.
- City Administration made expanded spaces available on some City of Edmonton roads and paths during the COVID-19 pandemic in April 2020. This was done to facilitate physical distancing during the pandemic. These were multimodal spaces for active transportation for:
  - Biking
  - Running
  - Walking
  - Rollerblading
  - Wheelchair use
  - Etc.

The decision to do this was made by Administration under the State of Local Emergency, but Administration normally has the authority to make these sorts of decisions. Regular updates were given to Council about these measures and Councillors could raise any concerns they had with them.

## SUMMARY OF RESPONDENT'S SUBMISSIONS

The Respondent provided some submissions regarding this investigation all of which were reviewed and considered by me. The following is a summary of the Respondent's submissions that were relevant to the issues<sup>9</sup>:

- By passing the *Code of Conduct*, Council did not agree to contract out of the *Canadian Charter of Rights and Freedoms*;
- Terms used in the *Code of Conduct*, like “disrespectful” have no objective criteria against which words can be measured;
- As “respectfully” is not defined in the *Code of Conduct*, the Integrity Commissioner is discouraged from inserting her own “personal subjective standards into that void”;
- Members of Council should not be punished for acts that were never intended to cause harm;
- If victimless speech is to be censored there will be a chilling effect on free expression;
- Non-defamatory speech that may be offensive but falls short of inciting hatred to an identifiable group is constitutionally protected;
- There is no objective standard that exists regarding social media posts that could result in the posts being deemed offensive or disrespectful, especially by norms established in the political arena;
- The Respondent does not attack another Councillor, he simply questions Council and certain Members of Council spending priorities. He merely questions and sometimes attacks another Councillor's spending priorities for the City of Edmonton;
- There is no personal attack. There is no disrespect. There is only a fundamental difference on an important fiscal matter. Far from disrespecting an adversary, the Respondent respects a fellow Councillor by essentially challenging him to a social media debate and giving him an opportunity to defend his position;
- The cartoon image of Councillor Knack is not offensive. It does not portray the Councillor in an unflattering light or distort his appearance in any negative way. It is simply a visual depiction to graphically demonstrate the thesis that Council's spending priorities are askew;
- There is no need to censure social media. The internet is self-policing. When someone posts something offensive, they are immediately ‘outed’ and/or castigated for their viewpoints;
- Members of Council should be allowed to participate unfettered in political debate regarding difficult fiscal choices. The Respondent should not be censored for doing his job – attempting to convince Members of Council and those who “follow” and support those Members, that the City of Edmonton needs to reprioritize its spending.

## RESPONDENT'S INFORMATION - APRIL 18 POST

With respect to the April 18 post, the Respondent says:

- This post was in response to Councillor Knack making a comment on Twitter regarding my April 17, 2020 social media post(s). This post did not name any Councillors and contained a description of an idea suggested by Councillor Knack at the March 26, 2020 Emergency Advisory

---

<sup>9</sup> The Respondent can also make further written submissions to Council before the Council meeting to consider this report and will have time at the meeting to make oral submissions.

Committee meeting, then enacted by the Administration without consultation of Council, with a picture of one site. The post also brought forward my opinion of actions that we should be taking to minimize the negative impacts of COVID. In Councillor Knack's April 17, 2020 post, he made implications that I sit in Council meetings, vote no to everything, and do not offer solutions. I believed this to be an inaccurate interpretation of my work and responded with a comparable interpretation of his work.

- The cartoon image of Councillor Knack in my April 18, 2020 post had some stop animation showing Councillor Knack throwing money into a fire. Councillor Knack has since released a blog breaking down his disagreement with my April 18, 2020 post, then stated in a radio interview on April 21, 2020 that he did not find the post offensive.
- Mayor Iveson sent me a text message April 19, 2020, asking me to take down the April 18, 2020 post. As a professional courtesy to Councillor Knack, I asked my social media staff to remove it. The April 18, 2020 post has been taken down on all sources, while the April 17, 2020 post remains active. In hindsight, I wish I would not have taken it down.
- I do not think the April 18, 2020 post is disrespectful. I am expressing my opinion, as other Councillors do. It was in response to Councillor Knack's expression of his opinion. To me, this is just another form of expression about this type of behavior on Council. It was about Councillor Knack because Councillor Knack initiated the situation. In the public square, sitting Councillors retain freedom of expression.
- It strikes me as political bigotry. They don't have to like my opinion. Before [the] complaint came in, [another member of the public] put out a call to action to file a complaint against me....On the April 18, 2020 post, someone made a comment that shared a link to a cycling special interest group calling for more people to file complaints against me. I deleted my post and I cannot find the cycling group post. Since this complaint has been filed, someone made a parody account of me that is similar to the cartoon I made of Councillor Knack. This account has followers that include the Mayor, sitting Councillors, Council staff, and City staff. Due to the anonymous nature of Twitter, I do not know how many of these followers filed complaints against me. While I do not intend to silence the right to freedom of expression of others, I do find it ironic that they are not only not offended by this, but effectively endorsing it. Their application of offensive standards is inconsistent.
- The issues around bike lanes go back for years. I have always questioned whether this is a wise financial decision. However, they have always been part of larger infrastructure budgets which I have supported. If they were presented as individual items, my support would be based on the merits of the individual project. It is my political opinion that bike lanes are inappropriate, based on the fact that the Downtown Bike Network failed to meet 3 out of 4 of the targets they set for themselves, as shown in a report to Council/Committee. I have always been an advocate of value for taxes, and I do not see an equitable value proposition for bike lanes.
- The cartoon is about spending money wisely. I have many constituents who are vehemently opposed to spending money on bike lanes. And for those who were on the fence before the pandemic, they are definitely against now when we've spent money on bike lanes, but can't cut the lawns.

- The City opened more “emergency bike lanes” recently. I have not seen evidence they are being used as intended, therefore I believe the City is wasting resources. Most of Council has endorsed this project on numerous occasions. The April 18, 2020 post was intended to outline the spending priorities of some of my colleagues on Council.
- If the Complainant says I have accused Councillor Knack of approving bike lanes during a pandemic that is their interpretation. They have to practice their own due diligence, too. There has to be a reasonable limit on what I need to respond. I cannot manage everyone’s possible interpretations.
- I deny that the April 17, 2020 [sic April 18, 2020] post contained misinformation about the implementation of bike lanes during a pandemic.
- I’m a politician. Councillor Knack is a politician. I exercised my freedom of expression and opinion. I understand there are limits to freedom of expression. The April 18, 2020 post is not derogatory, hateful or disrespectful. It’s not a personal attack, it was a response to a post from Councillor Knack. I challenge other politicians on what they have done. This is just a different way of challenging them.
- The decision to install bike lanes during the pandemic was made by the Covid-19 Task Team who decided to expand the network. It was not the decision of Council. But, at every turn, Councillor Knack has been an advocate of bike lanes through the budget process, including Councillor Knack making the suggestion for this action at the March 26, 2020 Emergency Advisory Committee. The April 18, 2020 post is my interpretation. It’s a metaphor for the spending habits by Council and in particular Councillor Knack. It’s not just about pylons. It’s a grander theme of what’s being spent.
- I consider the April 18, 2020 post to be relatively tame. Complainants get to speak on their agenda. Anyone who speaks against their agenda is accused of unfair comment. It’s like they want to shout you down. There is a political bigotry that exists where you cannot seem to have a legitimate discussion or comment without someone being offended. They have the right to be offended, but not the right to censor me.
- The Code of Conduct cannot be used to inhibit my individual freedoms. The cartoon of Councillor Knack was just another form of expression.
- I have never apologized for the April 18, 2020 post and I’m not going to apologize. There is a principle here with what is a fair and open expression of personal opinion. I do not think I have violated the Code of Conduct.

### Discussion and Analysis

The Respondent says his April 18 post was in response to prior negative comments by Councillor Knack. However, the Respondent did not provide any evidence of this and did not identify what post he was referring to, despite being told that if he wants me to consider this argument he must provide the

information necessary to support the argument. Simply saying the April 18 post was a response to a post by Councillor Knack is not an answer.

The Respondent also refers to other alleged activity on social media involving Mayor Iveson and other Councillors, but provides nothing to support these suggestions. I have not been given anything to conclude that the Respondent's allegations of other Members of Council's conduct should be taken as mitigating factors when determining the outcome of this investigation.

I find the following comments in the April 18 post (which I have underlined) concerning:

*Right now, every resident in Edmonton is watching their spending carefully.*

*Andrew Knack, why can't you?*

*Every dollar we spend wisely might mean another worker getting their job back at the City of Edmonton very soon. Does that mean anything to you?*

*I get it, you have no idea what to do in this situation so you are reverting to what you know.*

*I'm sure when you suggest more tax increases shortly it will be no big deal...*

*Your most recent flavour of the week is more bike lanes.*

*At some point, we will need every dollar at our disposal to bring this city back to life. To re-hire those people I mentioned above.*

*I hope you haven't forgotten about them already.*

*My solution to the current problem is to be very careful with spending right now. We should only spend what we absolutely must.*

*Somehow this isn't a solution for you. I get it. It's not flashy. It's not exciting.*

*Well I'm sorry saving money and spending wisely isn't your current priority.*

I find the choice of language and manner of communicating in these comments is disrespectful. The comments come across as demeaning, derisive, belittling, and personal. Despite the Respondent saying this is not a personal attack, I find there is no doubt it is a personal attack publicly directed at Councillor Knack. Here, the Respondent says, in part, that he is fulfilling his duty to his constituents when he speaks on issues such as bike lanes. I completely agree that part of his role as Councillor is to raise issues on behalf of his constituents. However, this does not extend to making personal attacks on another Councillor with whom he has a difference of opinion.

The Respondent says that it is a stretch for anyone to say that the comments and image in the April 18 post are suggesting that Councillor Knack approved the construction of bike lanes during a pandemic. He says this post is a metaphor for wasteful spending. In my view, if the Respondent is going to make a metaphor on social media, it ought to be obvious that it is a metaphor. Clearly, it was seen as misleading by the Complainant. It was not clearly about Councillor Knack's decisions regarding spending, but was about the current installation of what the Respondent referred to as Councillor Knack's "most recent flavour of the week more bike lanes".

The issue of bike lanes and the specific temperature of the electorate for spending money during a pandemic makes this all the more of a hot button issue. This therefore requires the Respondent to not be reckless in how he presents the information. In fact, as discussed above, the recent introduction of temporary spaces for physical distancing was for a multiple of purposes (not just cycling) during the COVID-19 pandemic. This was a decision made by the City Administration and not by Council. In the April 18 post the Respondent suggests that Councillor Knack is responsible for this decision which, by the Respondent's own admission, is not true as he reports that Administration made this decision without Council approval.

I agree with the Respondent that he cannot be responsible for every interpretation that might be made by others of his communications. I also fully support and will not interfere with Members of Council expressing their views on matters of public interest and engaging in vigorous political debate. This gives the electorate an opportunity to hear the elected official's views and decide for themselves if they support those views. However, those communications must, objectively, not be misleading. I find, on balance, that the comments and image in the April 18 post are misleading as they leave the impression that Councillor Knack was responsible for approving more bikes lanes during a pandemic, which he was not.

With respect the cartoon image of Councillor Knack in the April 18 post, the Respondent argues that this image is not disrespectful and not offensive. He argues that this is simply another form of expression. However, I see the Councillor's oversized head superimposed on a smaller body, as he broadly smiles while burning (presumably) taxpayers' money as a belittling, personal attack, and not fair comment as between politicians on a political issue. I agree with the Complainant who says this image is derisive.

The cartoon image of the Councillor throwing money for "bike lanes" on a fire was capable of being viewed by many people. It reasonably left the impression that during a time of pandemic, when many were suffering financially, the Councillor was willing to burn money on the construction of bike lanes. The cartoon image does not say temporary bike lanes. I suggest that social media users often engage on social media by scrolling and seeing images without necessarily reading the accompanying commentary. Therefore, the cartoon image was likely to also have been viewed in isolation by some viewers while they scrolled the feed. I find that the cartoon image of the Councillor burning money on "bike lanes" was misleading.

The Complainant alleges that the Respondent's comments in the April 18 post are harassing. When we think of the Councillor's hybrid role as a legislator and as a politician, we cannot ignore the fact that they function in a type of work environment and not just the political environment. For years, that environment was not protected. Elected officials were typically not subject to any form of a code of conduct, especially at the municipal level where there is no political party to help keep their conduct in check. The Government of Alberta then introduced amendments to the *Municipal Government Act* to require councils to have codes of conduct, and Council passed Bylaw 18483 bringing into the force the *Code of Conduct*. The *Code* says that Members of Council must not use any harassing language about another Councillor and must ensure their communications do not harass any person.

Typically, when harassment is alleged, an individual is harmed by a pattern of harassing behaviour. Harassment can create a hostile and sometimes intimidating environment. Harassment is discouraged as organizations want to protect their environment from this sort of conduct, not only as against individuals, but for the collective. Others who witness this sort of conduct may be less inclined to

disagree with the alleged harasser in the future, for fear of experiencing the same harassing conduct. It can shut down people from freely expressing their opinion, which has a negative impact on the democratic process. When someone witnesses others being harassed, it diminishes the environment within which Members of Council function.

In my view, the *Code of Conduct* can be viewed in the context of providing a safe environment for Members of Council to fulfill their hybrid role. Just as an employee in an organization must feel protected from harassment when they come to work each day, while elected officials must absolutely have a thicker skin for their role, they are still entitled to carry out their role somewhat free from harassment. Council can look at conduct towards others and how they expect their members to behave, and can consider how this behaviour impacts the office and the environment.

The spreading of false information about someone is a form of harassment. It forces the person who is misspoken about to have to dispel the misinformation or risk leaving it unaddressed. It is nearly impossible to erase misinformation once it is published and the impression will be left hanging over that person's head, even if retracted by the person who originally communicated it. Therefore, it is important that Members of Council are careful to publish, especially on social media, accurate information. The *Code of Conduct* requires this.

The above-referenced definitions say harassment is an incident or incidents of objectionable or unwelcome conduct, that the person knows or ought reasonably to know would cause offence or humiliation, and creates a hostile or negative situation. In this instance, no Member of Council has come forward to say they were offended by the April 18 post, and it would be inappropriate for me to elicit those reactions. In some circumstances of this kind I may still find harassment, but, here I do not find, on balance, that the circumstances warrant such a finding. While I am concerned about the manner of communicating of the April 18 post, I do not find there to be harassment.

### Findings – April 18 Post

On balance, I find that the comments and cartoon image posted by the Respondent in the April 18 post violated the *Code of Conduct* as follows:

- (1) The personal attack on Councillor Knack and the manner of communicating was disrespectful, in violation of Part B, section 1 d) of the *Code of Conduct* that says Councillors must ensure that all communications issued by Councillors, including on social media, are respectful.
- (2) The personal attack on another Councillor and the manner of communicating lacked decorum, in violation of Part E, section 1 of the *Code of Conduct* that requires Councillors to act with decorum at all times.
- (3) Communicating misleading information that left the impression that Councillor Knack approved the installation of bike lanes during a pandemic, when the decision was to temporarily use public space to expand spaces for multimodal use for physical distancing during the COVID-19 pandemic. This was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the *Code of Conduct* that say Councillors must ensure that their

communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter.

## FINDINGS

1. The comments and cartoon image posted by the Respondent in the **April 18 post** violated the *Code of Conduct* as follows:
  - (a) The personal attack on another Councillor and the manner of communicating was disrespectful, in violation of Part B, section 1 d) of the *Code of Conduct* that says Councillors must ensure that all communications issued by Councillors, including on social media, are respectful.
  - (b) The personal attack on another Councillor and the manner of communicating lacked decorum, in violation of Part E, section 1 of the *Code of Conduct* that requires Councillors to act with decorum.
  - (c) Communicating misleading information that left the impression that Councillor Knack approved the installation of bike lanes during a pandemic, when the decision was to temporarily use public space to expand spaces for multimodal use for physical distancing during the COVID-19 pandemic and was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the *Code of Conduct* that say Councillors must ensure that their communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter.

## RECOMMENDATIONS

Section 153 (e.1) of the *Municipal Government Act* requires Councillors to adhere to the *Code of Conduct*. I have found that the Respondent did not adhere to the *Code*.

### **I recommend that Council:**

1. Accept this report.
2. Direct that Mayor Iveson on behalf of Council issue a letter of reprimand addressed to the Respondent with respect to *Code of Conduct* violations found in this report.



APPENDIX A



**Councillor Mike Nickel**

19 hrs · 🌐



Right now, every resident in Edmonton is watching their spending carefully.

**Andrew Knack**, why can't you? 🙄

Every dollar we spend wisely might mean another worker getting their job back at the City of Edmonton very soon. Does that mean anything to you?

I get it, you have no idea what to do in this situation so you are reverting to what you know.

I'm sure when you suggest more tax increases shortly it will be no big deal...

Your most recent flavour of the week is more bike lanes.

At some point, we will need every dollar at our disposal to bring this city back to life. To re-hire those people I mentioned above.

I hope you haven't forgotten about them already.

My solution to the current problem is to be very careful with spending right now. We should only spend what we absolutely must.

Somehow this isn't a solution for you. I get it, it's not flashy. It's not exciting.

Well I'm sorry saving money and spending wisely isn't your current priority.

With the reduced traffic on the roads there is now a great opportunity for cyclists to enjoy the roadways.

I truly mean it. To everyone in this city enjoy the outdoors and get some fresh air.

Edmonton is one of the least dense of all the major cities on the planet. There are so many places to walk and be outside and have a 2 metre buffer.

Spending money frivolously on temporary bike lanes and orange pylons won't cut it.

I'm really sorry, but this is the fundamental difference between us I guess...

C'mon Andrew, now is your time to show some fiscal restraint.



   119

55 comments 51 shares

 Like

 Comment

 Share

# Office of the Integrity Commissioner

integrity.commissioner@edmonton.ca

**INVESTIGATION REPORT 2006**  
**BY JAMIE PYTEL**  
**INTEGRITY COMMISSIONER for**  
**THE CITY OF EDMONTON**

Report Date: July 19, 2020

To: City Council for The City of Edmonton

Re: *Council Code of Conduct Bylaw 18483*  
(the “Code of Conduct” or “Code”)  
Complaint 2006

Complainant: Complainant 2006

Date of Complaint: April 20, 2020

Respondent: Councillor Mike Nickel

## TABLE OF CONTENTS

<b>COMPLAINT .....</b>	<b>3</b>
<b>CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION .....</b>	<b>3</b>
<b>PROCESS and JURISDICTIONAL ISSUES .....</b>	<b>4</b>
<b>THE LEGAL and CODE OF CONDUCT BACKDROP .....</b>	<b>6</b>
<b>SUMMARY OF RESPONDENT’S SUBMISSIONS .....</b>	<b>11</b>
<b>RESPONDENT’S INFORMATION - APRIL 18 POST.....</b>	<b>12</b>
<b>DELETING AND BLOCKING ON SOCIAL MEDIA .....</b>	<b>16</b>
<b>FINDINGS.....</b>	<b>18</b>
<b>RECOMMENDATIONS.....</b>	<b>19</b>
<b>APPENDIX A.....</b>	<b>20</b>

## COMPLAINT

The Complainant alleges that on April 18, 2020:

Councillor Nickel made a lengthy post that specifically targeted Councillor Knack, falsely claiming Knack was advocating for increased "frivolous spending on temporary bike lanes". Overall, the post failed to share the facts in relation to the use of car lanes for pedestrian traffic, a public health measure that was not enacted purely to encourage active transport. The post also failed to properly represent the decisions made by Council on this matter.

What's more, is on this post Councillor Nickel deleted multiple comments from citizens, seemingly keeping only the comments that agreed with his initial post. Most concerning, Nickel attached an image that was a caricature of Andrew Knack burning money. This image was very disrespectful and demonstrated a Councillor not acting with the decorum expected of them.

Attached as **Appendix A** is the Respondent's April 18 social post that was provided by the Complainant and is the subject of this Complaint (the "April 18 post").

## CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION

The applicable sections of the *Code of Conduct* say:

Part A: Representing the Municipality, section 1 d):

While carrying out their duties, Councillors must accurately represent and respect decisions made by Council while preserving the value of fair comment and differences of opinion.

Part A: Representing the Municipality, section 1 e):

While carrying out their duties, Councillors must communicate respectfully with members of the public, Councillors, City employees, and Councillor's employees.

Part B: Communications, section 1 a):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure their communications accurately reflect the facts of Council's decisions.

Part B: Communications, section 1 c):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications are accurate and not issue any communication that the Councillor knows, or ought to have known, to be false.

Part B: Communications, section 1 d):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications issued by, or on behalf of, the Councillor, including social media, are respectful and do not discriminate, harass, or demonstrate disrespect toward any person.

Part B: Communications, section 1 e):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will not issue any communications that mislead the public about any matter.

Part E: Respectful Interactions, section 1:

Councillors will conduct themselves with decorum at all times, including while attending meetings, interacting with City employees and Councillor's employees, and engaging with the public.

Part E: Respectful Interactions, section 3:

Councillors must not use any harassing or disrespectful language about Council, a Councillor or the public.

The Complainant alleges that the Respondent failed to act with "decorum" in the April 18 post. The *Code* says: "Councillors will act with decorum at all times". There is no definition in the *Code* for decorum. I suggest that Members of Council would generally have an understanding of what this means short of a definition within the *Code*. In any event:

*Oxford English Dictionary* (oed.com) defines decorum as:

That which is proper, suitable, seemly, befitting, becoming; fitness, propriety, congruity.

*Miriam-Webster.com* defines decorum as:

Correct or proper behaviour that shows respect and good manners.

## PROCESS and JURISDICTIONAL ISSUES

The Complaint was in writing, was within the time limits set out in the *Code*, and included the sections of the *Code* the Complainant felt were violated [Part A Sections 1 b) d) and e) and Sections E 1 and 3].

As part of the public interest function of my role, at times I may need to identify which sections of the *Code* I feel are applicable based on the information presented. This applies whether a complainant or respondent raises certain information or sections of the *Code*. I can also make a finding with respect to a section of the *Code* even if a complainant, or respondent in his or her defence, does not identify the correct sections of the *Code*. However, the allegations and information presented must relate to a section of the *Code*. I have included in this report those sections of the *Code* that I found potentially apply to the issues raised in this Complaint.

During the investigation, when I had questions or needed more detail about this Complaint, I was able to contact the Complainant via email using the contact information provided by the Complainant. All information provided was considered for this investigation. I determined that it was not necessary to personally interview or have the Complainant swear a statutory declaration.

I provided the Respondent with all of the information and allegations provided to me by the Complainant. I interviewed the Respondent and he provided his written statement in response to this Complaint. The content of the Respondent's statement is contained within this report under the applicable headings. I also provided the Respondent with the sections of the *Code* I felt were relevant to this investigation and a list of the issues I felt were raised in this investigation. I invited the Respondent to raise any concerns around process or arguments at any time during this process. I reviewed and considered all of the information provided to me by the Respondent.

I did not find it to be in the public interest to identify the Complainant by name in this report. However, the Respondent was given the written Complaint, including name of the Complainant (except contact information), in case the identity of the Complainant raised any issues or defences for the Respondent.

I considered whether the April 18 post was done as part of the Respondent's role as a City of Edmonton Councillor, or was purely personal. The Respondent says:

My social media accounts are my own property. The costs associated with them I pay out of my own pocket....I changed the name on my Facebook page because I do not want there to be any confusion that this is my political opinion. I changed it to say Mike Nickel, not Councillor Mike Nickel. I wanted it to be crystal clear that the opinions expressed are my personal opinions. Even though I am Councillor Nickel, Mike Nickel has rights to express his opinion. I believe using my title as Councillor is no different than a doctor using a "Dr." prefix in their personal life. Members of Council express their personal opinion on their personal pages frequently. All Councillors post blogs, use social media etc. as an unofficial method to communicate with the public. Any official platforms to engage with constituents are owned by the City. The April 18 post was on a privately operated platform where I communicate with the public regarding activities both related and unrelated to Council.

In my view, whether the Respondent pays for his social media accounts himself is irrelevant. What matters is the content of those communications. Whether he communicates his views on social media or uses some other medium, I find that the *Code* applies if those communications are about Council, his role as a Councillor, Members of Council, or the business of the City.

Fellow Integrity Commissioner Melinda Munro for the County of Brant in Ontario likened these situations to the employment law cases in which employees can be terminated for their outside of Council chambers social media activity. I agree with her analogy, as set out in *Bartscher v. Cardy*, 2018 ONMIC 28:

While [the Code of Conduct] refers to 'official duties', it cannot be the case that the Council intended that its members would be free to behave in an outrageous manner outside the Council chambers such as to undermine public confidence in the office...the law of employment has long established that 'off-duty' conduct can be cause for discipline and dismissal where it is done in such a way as to damage the reputation or work environment of the employer....It can

reasonably be suggested that once elected as a public official, all public activities are 'official duties' for the purpose of behaving in a manner consistent with the Code.

It is also worth noting that Part E section 1 of the *Code* says: "Councillors will act with decorum at all times...while engaging with the public." This requirement is not limited to conduct in Council or Committee meetings or at official Council functions. I also note that some of the sections of the Code (i.e. Part A, Sections 1d and 1e) when referring to Members of Council's duties include the phrase "while carrying out their official duties". Part B, Section 1d which deals with respectful communications while on social media does not include this phrase.

In this case, the April 18 post was clearly posted about Councillor Andrew Knack and about City of Edmonton business. Given the subject matter of the April 18 post and the fact that the Respondent says he was advocating on behalf of some of his constituents, I find that the *Code* applies.

The Respondent says he would react differently to this investigation if Councillor Knack had made a complaint. However, the *Code* says:

If any person believes that a Councillor has contravened this code of conduct, that person may make a written complaint to the Integrity Commissioner.

In my view, it is perfectly acceptable for members of the public to question the conduct of Members of Council. The *Code* provides a way for them to do this. Based on the language of the *Code*, it is not a requirement that the alleged "victim" be the complainant.

The impugned conduct also needs to be sufficiently egregious to warrant investigation, and not a minor or trivial issue. Here, I decided to investigate, in part, because the language and images depicted in the April 18 post came across, at first blush, as potential breaches of the *Code*. However, more investigation, thought and analysis were needed to determine if, in context, the April 18 post violated the *Code*.

The Complainant is also concerned that comments about the April 18 post were deleted from the Respondent's social media page, "seemingly keeping only the comments that agreed with his initial post". Without some investigation and analysis, it was not clear if this would be found to be a breach of the *Code*. I did not undergo a complete review of social media activity by the Respondent, but I did consider whether deleting or blocking on social media is a potential breach of the *Code*.

While typically I would not issue a report to Council unless there were findings of a Code breach, here there were mixed findings and the issues overlapped. Therefore, aspects of the Complaint that are both dismissed and accepted are found in this report.

## THE LEGAL and CODE OF CONDUCT BACKDROP

This investigation is centred around the right to freedom of expression and how it interacts with the *Code of Conduct*. The Respondent asserts that in the April 18 post he was simply asserting his freedom of expression rights and he should not be censored or censured for doing this.



The role of a Municipal Councillors is complex and includes being both a politician and a legislator. This is sometimes referred to as a “hybrid function”. As stated in *Geatrix v. Williams*<sup>1</sup>:

The Courts have confirmed that municipal councillors have hybrid political and legislative functions<sup>2</sup>. That they are representatives of the communities that elect them,<sup>3</sup> and that members of the public have the right to address their municipal representatives on issues of concern<sup>4</sup>...

It is part of the role of a Council Member to communicate with members of the public about municipal issues. This includes both initiating communication and responding to communication initiated by members of the public. In doing so, a Council Member is not limited to explaining and defending what the municipality is already doing. As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give effect to those views.<sup>5</sup> Some of those views may involve a change in law or a change in direction. **Provided that a Council Member proceeds lawfully and in a manner consistent with the *Municipal Act*, the Code and other legislation and by-laws**, nothing prevents a Council Member from taking, defending and seeking to implement a position that advocates change. Indeed, the Courts have clearly stated that as an elected representative of the public a municipal councillor is entitled to take “an open leadership role” on an issue.<sup>6</sup> **[emphasis added]**

As well, as stated in *Jeffrey v. Sprovieri*<sup>7</sup>:

Political commentary must comply with the Code, but otherwise an Integrity Commissioner has no jurisdiction over it. As Integrity Commissioner Cameron noted in the 2012 case:

I cannot and will not be a referee for free speech in a political arena provided it stays within the bounds of...the Code.

Subsequently, Mr. Randy Pepper, the delegate of Integrity Commissioner Cameron, expanded on the same principle in Investigation Report No. BIC-33-1112:

Freedom of expression is a fundamental right in Canada so the Code must be interpreted in a manner consistent with this fundamental right. Based on the law set out below, I cannot find that the Code should be interpreted to appoint the Integrity Commissioner as a speech referee in the political arena.

As the Supreme Court of Canada noted in the *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139:

---

<sup>1</sup> By Integrity Commissioner Guy Giorno for the Town of Orangeville in Ontario, 2018 ONMIC 6 at para 132.

<sup>2</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1179 at 1196.

<sup>3</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc.* note 13, at 1193.

<sup>4</sup> *Re McGill and City of Brantford* (1980), 111 D.L.R. (3d) 405 (Ont. Dist. Ct.) at 411, cited with approval by *Old St. Boniface Residents Assn. Inc.*, note 13, at 1193-4.

<sup>5</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20.

<sup>6</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, (1989), 58 Man. R. (2d) 255 (C.A.) at 264, affirmed [1990] 3 S.C.R. 1170.

<sup>7</sup> 2018 ONMIC 21, Guy Giorno, as Integrity Commissioner for the City of Brampton, at para 86.

Freedom of expression, like freedom of religion, serves to anchor the very essence of our democratic political and societal structure...Hence, the justification for the widest freedom of political speech stems not only from some abstract search for truth, but also from the tangible goal of preserving democracy...I find that the Integrity Commissioner has a very limited role in relation to the “freewheeling debate on matters of public interest...

The Complainant alleges that the Respondent included false information in the April 18 post. The *Code of Conduct* provides that while preserving the value of fair comment and differences of opinion, Councillors must ensure their communications accurately reflect the facts of Council’s decisions, that all communications are accurate and not issue any communications that mislead the public about any matter. The Complainant also alleges that the Respondent specifically targeted Councillor Knack, and that the cartoon image was disrespectful and the Respondent did not act with decorum.

The Ontario Supreme Court stated in *Buck v. Morris et al.*, 2015 ONSC 5632, at paragraphs 189-193:

There can be no doubt that politics, whether it be federal, provincial or municipal, is not for the faint of heart. Some might say a thick skin is a prerequisite for any politician.

A thick skin, however, does not mean that a politician is fair game for those intent on damaging their reputation with false, malicious, and defamatory statements. Freedom of speech, whether in the political forum or not, does not extend to statements that are untrue and have as their sole purpose an intent to damage someone else’s reputation.

The right to freedom of speech in our society is not an absolute right. While freedom of speech is a cherished right in a free and democratic society, there are reasonable limitations. The Town of Aurora, like many other towns and cities in the Province of Ontario, has a Code of Conduct that purports to codify parameters of reasonable conduct for elected Town officials...

The plaintiff clearly has a perception that she has an unfettered right to freedom of expression and freedom of speech. That freedom, however, is circumscribed by the Code.

The Supreme Court of Canada in *Prud’homme v. Prud’homme*, 2002 SCC 85, stated at paras 42-45:

...while elected municipal officials must be quite free to discuss matters of public interest, they must act as would the reasonable person. The reasonableness of their conduct will often be demonstrated by their good faith and the prior checking they did to satisfy themselves as to the truth of their allegations. These are guidelines for exercising the right to comment, which has been repeatedly reaffirmed by the courts.

I am of the view that it is not the role of the Integrity Commissioner to censor or interfere with political debate and commentary. It is not my role to decide whether views expressed by Members of Council are meritorious or properly held.

It is also not my role to interpret whether the *Code* is contrary to the freedom of expression rights found in the *Canadian Charter of Rights*, which is an issue for the courts to decide. However, I am of the view that the right to freedom of expression found in the *Charter* has limits. In this case, the limits have been self-imposed by City Council with the issuance of the *Code of Conduct*. The *Code* allows fair comment

and Members of Council to hold a position on an issue. This is balanced with *Code* requirements, such as, to accurately represent Council's activities, be respectful and act with decorum.

No code of conduct can list all of the possible ways individuals can disrespect one another. Some codes provide non-exhaustive lists of what is considered disrespectful conduct to give those who are governed by the code a sense of what is contrary to the code. However, it is left to those who are governed by those codes to use their judgement. When a complaint is made, those who administer the code and investigate alleged breaches (in this case, me as the Integrity Commissioner), must determine if the impugned conduct is disrespectful. As part of that review, consideration is given to the context and facts around the impugned conduct.

The *Code of Conduct* requires Members of Council to respect the decisions made by Council while preserving the value of fair comment and differences of opinion. Some Integrity Commissioners in Canada have commented on this requirement. For instance, Bruce Elman, Integrity Commissioner for the City of Windsor says<sup>8</sup>:

City or Municipal Councils occupy a unique role in our society. They are, at one time, both deliberative legislative bodies for the geographical entity known as their city, town, county, or municipal district, and at the same time, they are, effectively, a corporate board of directors for the commercial entity known as the Municipal Corporation of (in this case) the City of Windsor....

In other words, in the lead up to a specific decision, Council is a deliberative governmental body wherein almost unfettered freedom of speech reigns but once that decision is made, Council becomes a corporate board and, as with vast majority of corporate boards, public dissent is discouraged or even prohibited. The reason is rational and sensible: Decisions made by Council become the official policy of the City of Windsor. When Members of Council speak out or engage in conduct indicating opposition to official City policy outside the deliberative confines of the legislative process, their comments or conduct can diminish the integrity of Council decisions in the public eye, damage public confidence in Council itself, or even undermine the City's reputation, domestically or internationally. One can only imagine how [the Councillor's statement] – perhaps taken as hyperbole here in Windsor – might be viewed in California or Calgary or Copenhagen or Cairo.

It should be noted that Councillors have plenty of opportunities prior to a decision being made by Council to express their views on the merits of a proposal and they can provide as much context as they wish and use as much hyperbole as they believe is necessary. If a Councillor has particular concerns regarding an item on the Council Agenda, the Councillor can call a press conference to express those concerns. Councillors can post their concerns on their webpages or on social media to express those concerns. Councillors can go to community groups or BIAs to rally support for their position. The Councillor can even encourage citizens to become delegates to Council when the matter is debated. Finally, Councillors may express all of their concerns during the debate on the matter when it comes before Council.

---

<sup>8</sup> Re Complaint brought pursuant to the Code of Conduct of the City of Windsor against Councillor Rino Berolin, Integrity Commissioner Bruce Elman's report dated April 20, 2018.

Even then, after the decision is made, Councillors are free to explain why they voted as they did during the Council deliberations. They should, however, acknowledge the legitimacy of Council's decision as resulting from the deliberative and democratic processes of Council. **They should not be disrespectful and their comments should not be disparaging or inaccurate.** [emphasis added]

At the centre of this investigation are decisions made by Council during the COVID-19 pandemic and historically with respect to the construction of bike lanes in the City of Edmonton. A review of the history reveals:

- The construction of bike lanes was a decision made by Council going back to 2009 when the Council of the day carried a motion to approve the policy that: “The City of Edmonton strives to be pedestrian and bicycle friendly”.
- On June 11, 2014 Council passed a motion that “enhanced public engagement strategies” outlined in a report by Transportation Services that included a bicycle infrastructure plan be approved. The Respondent voted in favour of this motion.
- During Council Meetings in November and December 2014, Council passed the 2015-2018 Capital Budget, including a motion for a \$8.8 Million bikeway for the 102 Avenue area. The Respondent voted in favour of this motion.
- In 2016, the Respondent voted in favour of a motion for capital funding of \$7.5 Million and an annual operating cost of \$625,000 for physically separated bike lane infrastructure.
- With respect to the 2019-2022 Capital Budget discussed at the November and December 2018 Council meetings, the Respondent voted against a motion seeking increased funding of \$2.17 Million for bike infrastructure expenditures, but the motion was passed. The Respondent also voted against a motion on the \$5.7 Billion Capital and Operating Budget that included design and construction of a minimum grade bike grid in various areas in Edmonton, but the motion was passed.
- In response to this investigation, the Respondent referred me to the March 26, 2020 Emergency Advisory Committee of Council. A review of that meeting revealed that Councillor Knack brought forward concerns from some of his constituents that they were struggling with physical distancing outdoors during the pandemic. City Administration said that they would review options in this regard. It was clear at this meeting that this was delegated to City Administration. No Council motions were passed in this regard.
- City Administration made expanded spaces available on some City of Edmonton roads and paths during the COVID-19 pandemic in April 2020. This was done to facilitate physical distancing during the pandemic. These were multimodal spaces for active transportation for:
  - Biking
  - Running

- Walking
- Rollerblading
- Wheelchair use
- Etc.

The decision to do this was made by Administration under the State of Local Emergency, but Administration normally has the authority to make these sorts of decisions. Regular updates were given to Council about these measures and Councillors could raise any concerns they had with them.

## SUMMARY OF RESPONDENT'S SUBMISSIONS

The Respondent provided some submissions regarding this investigation all of which were reviewed and considered by me. The following is a summary of the Respondent's submissions that were relevant to the issues<sup>9</sup>:

- By passing the *Code of Conduct*, Council did not agree to contract out of the *Canadian Charter of Rights and Freedoms*;
- Terms used in the *Code of Conduct*, like "disrespectful" have no objective criteria against which words can be measured;
- As "respectfully" is not defined in the *Code of Conduct*, the Integrity Commissioner is discouraged from inserting her own "personal subjective standards into that void";
- Members of Council should not be punished for acts that were never intended to cause harm;
- If victimless speech is to be censored there will be a chilling effect on free expression;
- Non-defamatory speech that may be offensive but falls short of inciting hatred to an identifiable group is constitutionally protected;
- There is no objective standard that exists regarding social media posts that could result in the posts being deemed offensive or disrespectful, especially by norms established in the political arena;
- The Respondent does not attack another Councillor, he simply questions Council and certain Members of Council spending priorities. He merely questions and sometimes attacks another Councillor's spending priorities for the City of Edmonton;
- There is no personal attack. There is no disrespect. There is only a fundamental difference on an important fiscal matter. Far from disrespecting an adversary, the Respondent respects a fellow Councillor by essentially challenging him to a social media debate and giving him an opportunity to defend his position;
- The cartoon image of Councillor Knack is not offensive. It does not portray the Councillor in an unflattering light or distort his appearance in any negative way. It is simply a visual depiction to graphically demonstrate the thesis that Council's spending priorities are askew;
- There is no need to censure social media. The internet is self-policing. When someone posts something offensive, they are immediately 'outed' and/or castigated for their viewpoints;

---

<sup>9</sup> The Respondent can also make further written submissions to Council before the Council meeting to consider this report and will have time at the meeting to make oral submissions.

- Members of Council should be allowed to participate unfettered in political debate regarding difficult fiscal choices. The Respondent should not be censured for doing his job – attempting to convince Members of Council and those who “follow” and support those Members, that the City of Edmonton needs to reprioritize its spending.

## RESPONDENT’S INFORMATION - APRIL 18 POST

With respect to the April 18 post, the Respondent says:

- This post was in response to Councillor Knack making a comment on Twitter regarding my April 17, 2020 social media post(s). This post did not name any Councillors and contained a description of an idea suggested by Councillor Knack at the March 26, 2020 Emergency Advisory Committee meeting, then enacted by the Administration without consultation of Council, with a picture of one site. The post also brought forward my opinion of actions that we should be taking to minimize the negative impacts of COVID. In Councillor Knack’s April 17, 2020 post, he made implications that I sit in Council meetings, vote no to everything, and do not offer solutions. I believed this to be an inaccurate interpretation of my work and responded with a comparable interpretation of his work.
- The cartoon image of Councillor Knack in my April 18, 2020 post had some stop animation showing Councillor Knack throwing money into a fire. Councillor Knack has since released a blog breaking down his disagreement with my April 18, 2020 post, then stated in a radio interview on April 21, 2020 that he did not find the post offensive.
- Mayor Iveson sent me a text message April 19, 2020, asking me to take down the April 18, 2020 post. As a professional courtesy to Councillor Knack, I asked my social media staff to remove it. The April 18, 2020 post has been taken down on all sources, while the April 17, 2020 post remains active. In hindsight, I wish I would not have taken it down.
- I do not think the April 18, 2020 post is disrespectful. I am expressing my opinion, as other Councillors do. It was in response to Councillor Knack’s expression of his opinion. To me, this is just another form of expression about this type of behavior on Council. It was about Councillor Knack because Councillor Knack initiated the situation. In the public square, sitting Councillors retain freedom of expression.
- It strikes me as political bigotry. They don’t have to like my opinion. Before [the] complaint came in, [another member of the public] put out a call to action to file a complaint against me....On the April 18, 2020 post, someone made a comment that shared a link to a cycling special interest group calling for more people to file complaints against me. I deleted my post and I cannot find the cycling group post. Since this complaint has been filed, someone made a parody account of me that is similar to the cartoon I made of Councillor Knack. This account has followers that include the Mayor, sitting Councillors, Council staff, and City staff. Due to the anonymous nature of Twitter, I do not know how many of these followers filed complaints against me. While I do not intend to silence the right to freedom of expression of others, I do find it ironic that they are not only not offended by this, but effectively endorsing it. Their application of offensive standards is inconsistent.

- The issues around bike lanes go back for years. I have always questioned whether this is a wise financial decision. However, they have always been part of larger infrastructure budgets which I have supported. If they were presented as individual items, my support would be based on the merits of the individual project. It is my political opinion that bike lanes are inappropriate, based on the fact that the Downtown Bike Network failed to meet 3 out of 4 of the targets they set for themselves, as shown in a report to Council/Committee. I have always been an advocate of value for taxes, and I do not see an equitable value proposition for bike lanes.
- The cartoon is about spending money wisely. I have many constituents who are vehemently opposed to spending money on bike lanes. And for those who were on the fence before the pandemic, they are definitely against now when we've spent money on bike lanes, but can't cut the lawns.
- The City opened more "emergency bike lanes" recently. I have not seen evidence they are being used as intended, therefore I believe the City is wasting resources. Most of Council has endorsed this project on numerous occasions. The April 18, 2020 post was intended to outline the spending priorities of some of my colleagues on Council.
- If the Complainant says I have accused Councillor Knack of approving bike lanes during a pandemic that is their interpretation. They have to practice their own due diligence, too. There has to be a reasonable limit on what I need to respond. I cannot manage everyone's possible interpretations.
- I deny that the April 17, 2020 [sic April 18, 2020] post contained misinformation about the implementation of bike lanes during a pandemic.
- I'm a politician. Councillor Knack is a politician. I exercised my freedom of expression and opinion. I understand there are limits to freedom of expression. The April 18, 2020 post is not derogatory, hateful or disrespectful. It's not a personal attack, it was a response to a post from Councillor Knack. I challenge other politicians on what they have done. This is just a different way of challenging them.
- The decision to install bike lanes during the pandemic was made by the Covid-19 Task Team who decided to expand the network. It was not the decision of Council. But, at every turn, Councillor Knack has been an advocate of bike lanes through the budget process, including Councillor Knack making the suggestion for this action at the March 26, 2020 Emergency Advisory Committee. The April 18, 2020 post is my interpretation. It's a metaphor for the spending habits by Council and in particular Councillor Knack. It's not just about pylons. It's a grander theme of what's being spent.
- I consider the April 18, 2020 post to be relatively tame. Complainants get to speak on their agenda. Anyone who speaks against their agenda is accused of unfair comment. It's like they want to shout you down. There is a political bigotry that exists where you cannot seem to have a legitimate discussion or comment without someone being offended. They have the right to be offended, but not the right to censor me.

- The Code of Conduct cannot be used to inhibit my individual freedoms. The cartoon of Councillor Knack was just another form of expression.
- I have never apologized for the April 18, 2020 post and I'm not going to apologize. There is a principle here with what is a fair and open expression of personal opinion. I do not think I have violated the Code of Conduct.

### Discussion and Analysis

The Respondent says his April 18 post was in response to prior negative comments by Councillor Knack. However, the Respondent did not provide any evidence of this and did not identify what post he was referring to, despite being told that if he wants me to consider this argument he must provide the information necessary to support the argument. Simply saying the April 18 post was a response to a post by Councillor Knack is not an answer.

The Respondent also refers to other alleged activity on social media involving Mayor Iveson and other Councillors, but provides nothing to support these suggestions. I have not been given anything to conclude that the Respondent's allegations of other Members of Council's conduct should be taken as mitigating factors when determining the outcome of this investigation.

I find the following comments in the April 18 post (which I have underlined) concerning:

*Right now, every resident in Edmonton is watching their spending carefully.*

*Andrew Knack, why can't you?*

*Every dollar we spend wisely might mean another worker getting their job back at the City of Edmonton very soon. Does that mean anything to you?*

*I get it, you have no idea what to do in this situation so you are reverting to what you know.*

*I'm sure when you suggest more tax increases shortly it will be no big deal...*

*Your most recent flavour of the week is more bike lanes.*

*At some point, we will need every dollar at our disposal to bring this city back to life. To re-hire those people I mentioned above.*

*I hope you haven't forgotten about them already.*

*My solution to the current problem is to be very careful with spending right now. We should only spend what we absolutely must.*

*Somehow this isn't a solution for you. I get it. It's not flashy. It's not exciting.*

*Well I'm sorry saving money and spending wisely isn't your current priority.*

I find the manner of communicating in these comments is disrespectful. The comments come across as demeaning, derisive, belittling, and personal. Despite the Respondent saying this is not a personal attack, I find there is no doubt it is a personal attack publicly directed at Councillor Knack. Here, the Respondent says, in part, that he is fulfilling his duty to his constituents when he speaks on issues such



as bike lanes. I completely agree that part of his role as Councillor is to raise issues on behalf of his constituents. However, this does not extend to making personal attacks on another Councillor with whom he has a difference of opinion.

The Respondent says that it is a stretch for anyone to say that the comments and image in the April 18 post are suggesting that Councillor Knack approved the construction of bike lanes during a pandemic. He says this post is a metaphor for wasteful spending. In my view, if the Respondent is going to make a metaphor on social media, it ought to be obvious that it is a metaphor. Clearly, it was seen as misleading by the Complainant. It was not clearly about Councillor Knack's decisions regarding spending, but was about the current installation of what the Respondent referred to as Councillor Knack's "most recent flavour of the week more bike lanes".

The issue of bike lanes and the specific temperature of the electorate for spending money during a pandemic makes this all the more of a hot button issue. This therefore requires the Respondent to not be reckless in how he presents the information. In fact, as discussed above, the recent introduction of temporary spaces for physical distancing was for a multiple of purposes (not just cycling) during the COVID-19 pandemic. This was a decision made by the City Administration and not by Council. In the April 18 post the Respondent suggests that Councillor Knack is responsible for this decision which, by the Respondent's own admission, is not true as he reports that Administration made this decision without Council approval.

I agree with the Respondent that he cannot be responsible for every interpretation that might be made by others of his communications. I also fully support and will not interfere with Members of Council expressing their views on matters of public interest and engaging in vigorous political debate. This gives the electorate an opportunity to hear the elected official's views and decide for themselves if they support those views. However, those communications must, objectively, not be misleading. I find, on balance, that the comments and image in the April 18 post are misleading as they leave the impression that Councillor Knack was responsible for approving more bikes lanes during a pandemic, which he was not.

With respect the cartoon image of Councillor Knack in the April 18 post, the Respondent argues that this image is not disrespectful and not offensive. He argues that this is simply another form of expression. However, I see the Councillor's oversized head superimposed on a smaller body, as he broadly smiles while burning (presumably) taxpayers' money as a belittling, personal attack, and not fair comment as between politicians on a political issue.

The cartoon image of the Councillor throwing money for "bike lanes" on a fire was capable of being viewed by many people. It reasonably left the impression that during a time of pandemic, when many were suffering financially, the Councillor was willing to burn money on the construction of bike lanes. The cartoon image does not say temporary bike lanes. I suggest that social media users often engage on social media by scrolling and seeing images without necessarily reading the accompanying commentary. Therefore, the cartoon image was likely to also have been viewed in isolation by some viewers while they scrolled the feed. I find that the cartoon image of the Councillor burning money on "bike lanes" was misleading.

## Findings – April 18 Post

On balance, I find that the comments and cartoon image posted by the Respondent in the April 18 post violated the *Code of Conduct* as follows:

- (1) The personal attack on Councillor Knack and the manner of communicating was disrespectful, in violation of Part B, section 1 d) of the *Code of Conduct* that says Councillors must ensure that all communications issued by Councillors, including on social media, are respectful.
- (2) The personal attack on another Councillor and the manner of communicating lacked decorum, in violation of Part E, section 1 of the *Code of Conduct* that requires Councillors to act with decorum at all times.
- (3) Communicating misleading information that left the impression that Councillor Knack approved the installation of bike lanes during a pandemic, when the decision was to temporarily use public space to expand spaces for multimodal use for physical distancing during the COVID-19 pandemic. This was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the *Code of Conduct* that say Councillors must ensure that their communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter.

## DELETING AND BLOCKING ON SOCIAL MEDIA

The Complainant says the Respondent deleted multiple comments from citizens, seemingly only keeping the comments that agreed with his April 18 post. For the reasons explained below, I did not seek out and do an exhaustive review of the social media activity by the Respondent. However, I did review the issue of Councillor members deleting or blocking on their social media pages.

The Respondent says his unwritten social media policy is to use a common-sense approach based on the following principles:

- Mike Nickel's social media pages are the property of Mike Nickel.
- We reserve the right to remove anyone acting inappropriately, degrading, or offensive from our social media pages.
- We do not tolerate bots or anonymous accounts from interacting with our page.
- Individuals using "fake names" or "pseudonyms" while interacting with our pages will be removed and/or blocked.
- Anyone spamming or mass copying / pasting underneath comments in an attempt to intimidate or skew engagement in the conversation will be removed.

The Respondent says:

- I allow contrary views on my social media pages as long as they are not abusive, profane or inappropriate activity such as spamming, taking over the site with too many posts that are copied and pasted, etc. I tell my staff to block or delete posts if the language in them is abusive,

uses profanity or they are spamming to take over the conversation. There are limits. When it becomes abusive, then the limits kick in. As a principle, I don't involve myself and don't want to be talking about personalities. [A commentator]...was deleted and blocked because she made a comment, then copied and pasted it as a reply to several other comments, and stopped when my staff blocked her. She is entitled to her opinion, but I am familiar with the tactic she used, that sends a notification to each person replied to, as an effort to get more people to see the comment. My staff made a judgement call on my behalf, based on the principles I have given them. I fully support my staff in this decision.

## Discussion and Analysis

The understanding of the intersection of municipal codes of conduct and the use of social media is somewhat in its infancy. Many municipal councils are looking at bringing in social media policies to govern these issues. While Council has not specifically enacted a social media policy, Edmonton's City Council chose to explicitly include in the *Code of Conduct* the requirement that their communications on social media must be respectful. Many codes are not this explicit.

However, the *Code of Conduct* does not require Members of Council to engage the public on social media or to participate in debate with members of the public. In my view, when Councillors use social media platforms as a method to communicate to the public on issues of public interest, they need to tread carefully when limiting participation by the public. These platforms are used by the public to raise their concerns. It is part of the Council member's role to initiate communications and respond to communications by the public.

The role of municipal councillors is somewhat different from other politicians who may find themselves subject to their own political party's policies on social media use. Many such parties have brought into effect policies that permit members to block or delete commentators if, for instance, they use threatening or discriminatory language, or troll the politician's site. Blocking happens at all political levels in Canada, although some commentators see it as an affront to democracy and possibly off-side the elected official's obligations to their constituents. The preponderance of commentary on this issue is politicians' public accounts should remain public, unless blocking is necessary and justified.<sup>10</sup>

To my knowledge, the Canadian Courts have not ruled on whether elected officials can block members of the public, in particular, their constituents. In the United States, some courts have ruled that politicians who block constituents are violating the First Amendment of the U.S. Constitution which protects freedom of speech. The Southern District Court of New York found that President Trump should not be permitted to block people on his Twitter account as Twitter is a "public forum" under the First Amendment.<sup>11</sup> However, the freedom of expression protections under the *Canadian Charter of*

---

<sup>10</sup> For instance, the former Integrity Commissioner for the City of Toronto, Val Jepsen, in her 2016 *Annual Report* commented that "...social media is a way to communicate with constituents and blocking them could be seen as a refusal of service". See also "Can a politician block you on Twitter?" by Cara Zwibel of the Canadian Civil Liberties Association, June 7, 2019, [ccla.org](http://ccla.org), who says online spaces have become the public square and unless being subjected to repeated harassment, blocking by elected officials is "terrible for democracy".

<sup>11</sup> See: National Observer, July 4, 2019, by Emma McIntosh and Fatima Syed.

*Rights* are different from the U.S. First Amendment, and the Canadian courts have not ruled on how our *Charter* will respond to such actions by politicians.

This is an important issue, as social media platforms are used extensively not only by politicians, but also by constituents for a number of reasons, including knowing their politicians' views on particular topics, to express their own views and to get updates on what is happening within their municipality. By blocking someone, an elected official is singling out that person who is no longer being allowed, as others are, to weigh in on the issues. That person is also prevented from immediately and easily seeing posts by that elected official. The member of the public can search for this information, but it is not readily available when they are blocked.

Many elected officials argue that constituents can still contact them after they are blocked through other means such as email. This helps the elected official verify the author of the communication and engage in more private discussions. The Respondent also says that he is just blocking people from this form of communication, not all communication.

I am of the view that it is entirely reasonable for elected officials to place some parameters on acceptable conduct on their social media pages. This is particularly so if the page is being hijacked by people trolling, spamming, using bots, using discriminatory or harassing language, etc.

Whether the Respondent violated the *Code* when he deleted and blocked those commenting on the April 18 post is not an issue that is clearly covered by the *Code*. I suggest that blocking would be a breach of the *Code*, for instance, if it was proven, on a balance of probabilities, that a Member of Council was deleting or blocking someone based on grounds that are protected by Human Rights legislation. But that is not the case here.

The Respondent has some guidelines with respect to the behaviour he will tolerate on his social media pages. Such guidelines always require an element of judgment and it is not for me to question that judgement. However, in my view, to encourage democratic debate on a site that is meant to serve the public, I suggest that blocking should be done sparingly, with other methods such as muting being considered only when justified. Comments, if said respectfully, should not be deleted or blocked even if they express a contrary view. But, this is currently within the Member of Council's discretion. There are no specific rules in the *Code of Conduct* or Council policies that apply to this issue.

### Findings – Deleting and Blocking Social Media

I find on balance that the *Code of Conduct* was not violated when the Respondent blocked commentators from his social media page. While I think this sort of blocking should be done sparingly and based on justifiable and defensible guidelines, there is nothing currently in the *Code* that prevents this. There is no legal guidance on this issue. Council may choose to pass a social media policy to address this situation. In the interim, this is left to Members of Council to use their judgment.

### FINDINGS

1. The comments and cartoon image posted by the Respondent in the **April 18 post** violated the *Code of Conduct* as follows:

- (a) The personal attack on another Councillor and the manner of communicating was disrespectful, in violation of Part B, section 1 d) of the *Code of Conduct* that says Councillors must ensure that all communications issued by Councillors, including on social media, are respectful.
- (b) The personal attack on another Councillor and the manner of communicating lacked decorum, in violation of Part E, section 1 of the *Code of Conduct* that requires Councillors to act with decorum.
- (c) Communicating misleading information that left the impression that Councillor Knack approved the installation of bike lanes during a pandemic, when the decision was to temporarily use public space to expand spaces for multimodal use for physical distancing during the COVID-19 pandemic and was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the *Code of Conduct* that say Councillors must ensure that their communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter.

## RECOMMENDATIONS

Section 153 (e.1) of the *Municipal Government Act* requires Councillors to adhere to the *Code of Conduct*. I have found that the Respondent did not adhere to the *Code*.

### **I recommend that Council:**

1. Accept this report.
2. Direct that Mayor Iveson on behalf of Council issue a letter of reprimand addressed to the Respondent with respect to *Code of Conduct* violations found in this report.

APPENDIX A



**Councillor Mike Nickel**

19 hrs · 🌐



Right now, every resident in Edmonton is watching their spending carefully.

**Andrew Knack**, why can't you? 🙄

Every dollar we spend wisely might mean another worker getting their job back at the City of Edmonton very soon. Does that mean anything to you?

I get it, you have no idea what to do in this situation so you are reverting to what you know.

I'm sure when you suggest more tax increases shortly it will be no big deal...

Your most recent flavour of the week is more bike lanes.

At some point, we will need every dollar at our disposal to bring this city back to life. To re-hire those people I mentioned above.

I hope you haven't forgotten about them already.

My solution to the current problem is to be very careful with spending right now. We should only spend what we absolutely must.

Somehow this isn't a solution for you. I get it, it's not flashy. It's not exciting.

Well I'm sorry saving money and spending wisely isn't your current priority.

With the reduced traffic on the roads there is now a great opportunity for cyclists to enjoy the roadways.

I truly mean it. To everyone in this city enjoy the outdoors and get some fresh air.

Edmonton is one of the least dense of all the major cities on the planet. There are so many places to walk and be outside and have a 2 metre buffer.

Spending money frivolously on temporary bike lanes and orange pylons won't cut it.

I'm really sorry, but this is the fundamental difference between us I guess...

C'mon Andrew, now is your time to show some fiscal restraint.



   119

55 comments 51 shares

 Like

 Comment

 Share

# Office of the Integrity Commissioner

integrity.commissioner@edmonton.ca

**INVESTIGATION REPORT 2007**  
**BY JAMIE PYTEL**  
**INTEGRITY COMMISSIONER for**  
**THE CITY OF EDMONTON**

Report Date: July 19, 2020

To: City Council for The City of Edmonton

Re: *Council Code of Conduct Bylaw 18483*  
(the “*Code of Conduct*” or “*Code*”)  
Complaint 2007

Complainant: Complainant 2007

Date of Complaint: April 20, 2020

Respondent: Councillor Mike Nickel



## TABLE OF CONTENTS

<b>COMPLAINT .....</b>	<b>3</b>
<b>CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION .....</b>	<b>4</b>
<b>PROCESS and JURISDICTIONAL ISSUES .....</b>	<b>5</b>
<b>THE LEGAL and CODE OF CONDUCT BACKDROP .....</b>	<b>7</b>
<b>SUMMARY OF RESPONDENT’S SUBMISSIONS .....</b>	<b>11</b>
<b>DELETING AND BLOCKING ON SOCIAL MEDIA .....</b>	<b>14</b>
<b>RECOMMENDATIONS.....</b>	<b>16</b>
<b>APPENDIX A – APRIL 17 POST .....</b>	<b>17</b>

## COMPLAINT

The Complainant alleges that on April 18 [sic 17] to 20, 2020:

Councillor Mike Nickel contravened these parts of the Council Code of Conduct:

A1b) consider all decisions and issues thoughtfully, consistently, impartially, and fairly by considering all relevant facts, opinions, and perspectives;

Councillor Nickel misrepresented facts about City of Edmonton spending and council discussions regarding city expenditures. This irreversibly harms the trust the community can place in council, ultimately undermining efforts to help Edmontonians.

A1d) accurately represent and respect decisions made by Council while preserving the value of fair comment and differences of opinion;

Instead of engaging in thoughtful conversation, Councillor Nickel decided to undermine several other city councillors by posting baseless rhetoric on media platforms. Here, a difference of opinion was not respected.

A1e) communicate respectfully with members of the public, Councillors, City employees, and Councillor's employees

Councillor Nickel is actively blocking private citizens from his social media pages. This is reprehensibly disrespectful. Seriously, I do not understand how this behaviour is allowed in a publically-funded government body.

B1A) accurately represent and respect decisions made by Council while preserving the value of fair comment and differences of opinion;

In Councillor Nickel's post, he says: "There is NO considering for the tens of thousands of Edmontonians who will slip into poverty", despite the City of Edmonton providing a media update two days prior on the City's request to prevent a deficit and their lobbying the provincial government for immediate work on infrastructure jobs. Further, Councillor Nickel says: "There is NO approach on how to deal with hundreds of businesses who will be unable to rehire workers or be able to pay their property taxes", despite Mayor Iveson's April 9th announcement regarding his support and lobbying for the Small Business Revitalization Enhancement Program, and his lobbying for property tax deferral on March 24th.<sup>1</sup>

Attached as **Appendix A** is the Respondent's April 17 social media post that was provided by the Complainant and is the subject of this Complaint (the "April 17 post").

---

<sup>1</sup> The Complainant provided a link to Mayor Iveson's post in this regard.

## CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION

The applicable sections of the *Code of Conduct* say:

Part A: Representing the Municipality, section 1 d):

While carrying out their duties, Councillors must accurately represent and respect decisions made by Council while preserving the value of fair comment and differences of opinion.

Part A: Representing the Municipality, section 1 e):

While carrying out their duties, Councillors must communicate respectfully with members of the public, Councillors, City employees, and Councillor's employees.

Part B: Communications, section 1 a):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure their communications accurately reflect the facts of Council's decisions.

Part B: Communications, section 1 c):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications are accurate and not issue any communication that the Councillor knows, or ought to have known, to be false.

Part B: Communications, section 1 d):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications issued by, or on behalf of, the Councillor, including social media, are respectful and do not discriminate, harass, or demonstrate disrespect toward any person.

Part B: Communications, section 1 e):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will not issue any communications that mislead the public about any matter.

Part E: Respectful Interactions, section 1:

Councillors will conduct themselves with decorum at all times, including while attending meetings, interacting with City employees and Councillor's employees, and engaging with the public.

Part E: Respectful Interactions, section 3:

Councillors must not use any harassing or disrespectful language about Council, a Councillor or the public.

There is no definition in the *Code* for decorum. I suggest that Members of Councillor would generally have an understanding of what this means short of a definition within the *Code*. In any event:

*Oxford English Dictionary* (oed.com) defines decorum as:

That which is proper, suitable, seemly, befitting, becoming; fitness, propriety, congruity.

*Mirriam-Webster.com* defines decorum as:

Correct or proper behaviour that shows respect and good manners.

## PROCESS and JURISDICTIONAL ISSUES

The Complaint was in writing, was within the time limits set out in the *Code*, and included the sections of the *Code* the Complainant felt were violated [Part A, sections 1 b), 1 d), 1 e) and Part A, section 1 a)].

As part of the public interest function of my role, at times I may need to identify which sections of the *Code* I feel are applicable based on the information presented. This applies whether a complainant or respondent raises certain information or sections of the *Code*. I can also make a finding with respect to a section of the *Code* even if a complainant, or respondent in his or her defence, does not identify the correct sections of the *Code*. However, the allegations and information presented must relate to a section of the *Code*.

I have included in this report those sections of the *Code* that I found potentially apply to the issues raised in this Complaint.

During the investigation, when I had questions or needed more detail about this Complaint, I contacted the Complainant via email using the contact information provided by the Complainant. All information provided was considered for this investigation. I determined that it was not necessary to personally interview or have the Complainant swear a statutory declaration.

I provided the Respondent with all of the information and allegations provided to me by the Complainant. I interviewed the Respondent and he provided his written statement in response to this Complaint. The content of the Respondent's statement is contained within this report under the applicable headings. I also provided the Respondent with the sections of the *Code* I felt were relevant to this investigation and a list of the issues I felt were raised in this investigation. I invited the Respondent to raise any concerns around process or arguments at any time during this process. I reviewed and considered all of the information provided to me by the Respondent.

I did not find it to be in the public interest to identify the Complainant by name in this report. However, the Respondent was given the written Complaint, including name of the Complainant (except contact information), in case the identity of the Complainant raised any issues or defences for the Respondent.

I considered whether the April 17 post was done as part of the Respondent's role as a City of Edmonton Councillor, or was purely personal. In my view, whether the Respondent pays for his social media accounts himself is irrelevant. What matters is the content of those communications. Whether he communicates his views on social media or uses some other medium, I find that the *Code* applies if

those communications are about Council, his role as a Councillor, Members of Council, or the business of the City.

Fellow Integrity Commissioner Melinda Munro for the County of Brant in Ontario likened these situations to the employment law cases in which employees can be terminated for their outside of Council chambers social media activity. I agree with her analogy, as set out in *Bartscher v. Cardy*, 2018 ONMIC 28:

While [the Code of Conduct] refers to ‘official duties’, it cannot be the case that the Council intended that its members would be free to behave in an outrageous manner outside the Council chambers such as to undermine public confidence in the office...the law of employment has long established that ‘off-duty’ conduct can be cause for discipline and dismissal where it is done in such a way as to damage the reputation or work environment of the employer....It can reasonably be suggested that once elected as a public official, all public activities are ‘official duties’ for the purpose of behaving in a manner consistent with the Code.

It is also worth noting that Part E section 1 of the *Code* says: “Councillors will act with decorum at all times...while engaging with the public.” This requirement is not limited to conduct in Council or Committee meetings or at official Council functions. I also note that some of the sections of the Code (i.e. Part A, Sections 1d and 1e) when referring to Members of Council’s duties include the phrase “while carrying out their official duties”. Part B, Section 1d which deals with respectful communications while on social media does not include this phrase.

In this case, the April 17 post was clearly posted about Council, decisions by Council and about Mayor Iveson and some of the Councillors. Given the subject matter of the April 7 post, I find that the *Code* applies. I note that the Complainant is not a Member of Council and no Members of Council have complained about the April 17 post. The *Code* says:

If any person believes that a Councillor has contravened this code of conduct, that person may make a written complaint to the Integrity Commissioner.

In my view, it is perfectly acceptable for members of the public to question the conduct of Members of Council. The *Code* provides a way for them to do this. Based on the language of the *Code*, it is not a requirement that the alleged “victim” be the complainant.

The impugned conduct also needs to be sufficiently egregious to warrant investigation, and not a minor or trivial issue. Here, I decided to investigate, in part, because the language in the April 17 post came across, at first blush, as potential breaches of the *Code*. However, more investigation, thought and analysis were needed to determine if, in context, the April 17 post violated the *Code*.

The Complainant is also concerned that comments posted by private citizens were blocked from the Respondent’s social media pages. Without some investigation and analysis, it was not clear if this would be found to be a breach of the *Code*. I did not undergo a complete review of social media activity by the Respondent, but I did consider whether deleting or blocking on social media is a potential breach of the *Code*.

While typically I would not issue a report to Council unless there were findings of a Code breach, here there were mixed findings and the issues overlapped. Therefore, aspects of the Complaint that are both dismissed and accepted are found in this report.

## THE LEGAL and CODE OF CONDUCT BACKDROP

This investigation is centred around the right to freedom of expression and how it interacts with the *Code of Conduct*. The Respondent asserts that in the April 17 post he was simply asserting his freedom of expression rights and he should not be censored or censured for doing this.

The role of a Municipal Councillors is complex and includes being both a politician and a legislator. This is sometimes referred to as a “hybrid function”. As stated in *Geatrix v. Williams*<sup>2</sup>:

The Courts have confirmed that municipal councillors have hybrid political and legislative functions<sup>3</sup>. That they are representatives of the communities that elect them,<sup>4</sup> and that members of the public have the right to address their municipal representatives on issues of concern<sup>5</sup>...

It is part of the role of a Council Member to communicate with members of the public about municipal issues. This includes both initiating communication and responding to communication initiated by members of the public. In doing so, a Council Member is not limited to explaining and defending what the municipality is already doing. As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give effect to those views.<sup>6</sup> Some of those views may involve a change in law or a change in direction. **Provided that a Council Member proceeds lawfully and in a manner consistent with the *Municipal Act*, the Code and other legislation and by-laws**, nothing prevents a Council Member from taking, defending and seeking to implement a position that advocates change. Indeed, the Courts have clearly stated that as an elected representative of the public a municipal councillor is entitled to take “an open leadership role” on an issue.<sup>7</sup> **[emphasis added]**

As well, as stated in *Jeffrey v. Sprovier*<sup>8</sup>:

Political commentary must comply with the Code, but otherwise an Integrity Commissioner has no jurisdiction over it. As Integrity Commissioner Cameron noted in the 2012 case:

---

<sup>2</sup> By Integrity Commissioner Guy Giorno for the Town of Orangeville in Ontario, 2018 ONMIC 6 at para 132.

<sup>3</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1179 at 1196.

<sup>4</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc.* note 13, at 1193.

<sup>5</sup> *Re McGill and City of Brantford* (1980), 111 D.L.R. (3d) 405 (Ont. Dist. Ct.) at 411, cited with approval by *Old St. Boniface Residents Assn. Inc.*, note 13, at 1193-4.

<sup>6</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20.

<sup>7</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, (1989), 58 Man. R. (2d) 255 (C.A.) at 264, affirmed [1990] 3 S.C.R. 1170.

<sup>8</sup> 2018 ONMIC 21, Guy Giorno, as Integrity Commissioner for the City of Brampton, at para 86.

I cannot and will not be a referee for free speech in a political arena provided it stays within the bounds of...the Code.

Subsequently, Mr. Randy Pepper, the delegate of Integrity Commissioner Cameron, expanded on the same principle in Investigation Report No. BIC-33-1112:

Freedom of expression is a fundamental right in Canada so the Code must be interpreted in a manner consistent with this fundamental right. Based on the law set out below, I cannot find that the Code should be interpreted to appoint the Integrity Commissioner as a speech referee in the political arena.

As the Supreme Court of Canada noted in the *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139:

Freedom of expression, like freedom of religion, serves to anchor the very essence of our democratic political and societal structure...Hence, the justification for the widest freedom of political speech stems not only from some abstract search for truth, but also from the tangible goal of preserving democracy...I find that the Integrity Commissioner has a very limited role in relation to the “freewheeling debate on matters of public interest...

The *Code of Conduct* provides that while preserving the value of fair comment and differences of opinion, Councillors must ensure their communications accurately reflect the facts of Council’s decisions, that all communications are accurate and not issue any communications that mislead the public about any matter.

On this issue, the Ontario Supreme Court stated in *Buck v. Morris et al.*, 2015 ONSC 5632, at paragraphs 189-193:

There can be no doubt that politics, whether it be federal, provincial or municipal, is not for the faint of heart. Some might say a thick skin is a prerequisite for any politician.

A thick skin, however, does not mean that a politician is fair game for those intent on damaging their reputation with false, malicious, and defamatory statements. Freedom of speech, whether in the political forum or not, does not extend to statements that are untrue and have as their sole purpose an intent to damage someone else’s reputation.

The right to freedom of speech in our society is not an absolute right. While freedom of speech is a cherished right in a free and democratic society, there are reasonable limitations. The Town of Aurora, like many other towns and cities in the Province of Ontario, has a Code of Conduct that purports to codify parameters of reasonable conduct for elected Town officials...

The plaintiff clearly has a perception that she has an unfettered right to freedom of expression and freedom of speech. That freedom, however, is circumscribed by the Code.

The Supreme Court of Canada in *Prud’homme v. Prud’homme*, 2002 SCC 85, stated at paras 42-45:

...while elected municipal officials must be quite free to discuss matters of public interest, they must act as would the reasonable person. The reasonableness of their conduct will often be demonstrated by their good faith and the prior checking they did to satisfy themselves as to the

truth of their allegations. These are guidelines for exercising the right to comment, which has been repeatedly reaffirmed by the courts.

I am of the view that it is not the role of the Integrity Commissioner to censor or interfere with political debate and commentary. It is not my role to decide whether views expressed by Members of Council are meritorious or properly held.

It is also not my role to interpret whether the *Code* is contrary to the freedom of expression rights found in the *Canadian Charter of Rights*, which is an issue for the courts to decide. However, I am of the view that the right to freedom of expression found in the *Charter* has limits. In this case, the limits have been self-imposed by City Council with the issuance of the *Code of Conduct*. The *Code* allows fair comment and Members of Council to hold a position on an issue. This is balanced with *Code* requirements, such as, to accurately represent Council's activities, be respectful and act with decorum.

No code of conduct can list all of the possible ways individuals can disrespect one another. Some codes provide non-exhaustive lists of what is considered disrespectful conduct to give those who are governed by the code a sense of what is contrary to the code. However, it is left to those who are governed by those codes to use their judgement. When a complaint is made, those who administer the code and investigate alleged breaches (in this case, me as the Integrity Commissioner), must determine if the impugned conduct is disrespectful. As part of that review, consideration is given to the context and facts around the impugned conduct.

The *Code of Conduct* requires Members of Council to respect the decisions made by Council while preserving the value of fair comment and differences of opinion. Some Integrity Commissioners in Canada have commented on this requirement. For instance, Bruce Elman, Integrity Commissioner for the City of Windsor says<sup>9</sup>:

City or Municipal Councils occupy a unique role in our society. They are, at one time, both deliberative legislative bodies for the geographical entity known as their city, town, county, or municipal district, and at the same time, they are, effectively, a corporate board of directors for the commercial entity known as the Municipal Corporation of (in this case) the City of Windsor....

In other words, in the lead up to a specific decision, Council is a deliberative governmental body wherein almost unfettered freedom of speech reigns but once that decision is made, Council becomes a corporate board and, as with vast majority of corporate boards, public dissent is discouraged or even prohibited. The reason is rational and sensible: Decisions made by Council become the official policy of the City of Windsor. When Members of Council speak out or engage in conduct indicating opposition to official City policy outside the deliberative confines of the legislative process, their comments or conduct can diminish the integrity of Council decisions in the public eye, damage public confidence in Council itself, or even undermine the City's reputation, domestically or internationally. One can only imagine how [the Councillor's statement] – perhaps taken as hyperbole here in Windsor – might be viewed in California or Calgary or Copenhagen or Cairo.

---

<sup>9</sup> Re Complaint brought pursuant to the Code of Conduct of the City of Windsor against Councillor Rino Berolin, Integrity Commissioner Bruce Elman's report dated April 20, 2018.



It should be noted that Councillors have plenty of opportunities prior to a decision being made by Council to express their views on the merits of a proposal and they can provide as much context as they wish and use as much hyperbole as they believe is necessary. If a Councillor has particular concerns regarding an item on the Council Agenda, the Councillor can call a press conference to express those concerns. Councillors can post their concerns on their webpages or on social media to express those concerns. Councillors can go to community groups or BIAs to rally support for their position. The Councillor can even encourage citizens to become delegates to Council when the matter is debated. Finally, Councillors may express all of their concerns during the debate on the matter when it comes before Council.

Even then, after the decision is made, Councillors are free to explain why they voted as they did during the Council deliberations. They should, however, acknowledge the legitimacy of Council's decision as resulting from the deliberative and democratic processes of Council. **They should not be disrespectful and their comments should not be disparaging or inaccurate.** [emphasis added]

At the centre of this investigation are decisions made by Council during the COVID-19 pandemic and historically with respect to the construction of bike lanes in the City of Edmonton. A review of the history reveals:

- The construction of bike lanes was a decision made by Council going back to 2009 when the Council of the day carried a motion to approve the policy that: "The City of Edmonton strives to be pedestrian and bicycle friendly".
- On June 11, 2014 Council passed a motion that "enhanced public engagement strategies" outlined in a report by Transportation Services that included a bicycle infrastructure plan be approved. The Respondent voted in favour of this motion.
- During Council Meetings in November and December 2014, Council passed the 2015-2018 Capital Budget, including a motion for a \$8.8 Million bikeway for the 102 Avenue area. The Respondent voted in favour of this motion.
- In 2016, the Respondent voted in favour of a motion for capital funding of \$7.5 Million and an annual operating cost of \$625,000 for physically separated bike lane infrastructure.
- With respect to the 2019-2022 Capital Budget discussed at the November and December 2018 Council meetings, the Respondent voted against a motion seeking increased funding of \$2.17 Million for bike infrastructure expenditures, but the motion was passed. The Respondent also voted against a motion on the \$5.7 Billion Capital and Operating Budget that included design and construction of a minimum grade bike grid in various areas in Edmonton, but the motion was passed.
- In response to this investigation, the Respondent referred me to the March 26, 2020 Emergency Advisory Committee of Council. A review of that meeting revealed that Councillor Knack brought forward concerns from some of his constituents that they were struggling with physical

distancing outdoors during the pandemic. City Administration said that they would review options in this regard. It was clear at this meeting that this was delegated to City Administration. No Council motions were passed in this regard.

- City Administration made expanded spaces available on some City of Edmonton roads and paths during the COVID-19 pandemic in April 2020. This was done to facilitate physical distancing during the pandemic. These were multimodal spaces for active transportation for:
  - Biking
  - Running
  - Walking
  - Rollerblading
  - Wheelchair use
  - Etc.

The decision to do this was made by Administration under the State of Local Emergency, but Administration normally has the authority to make these sorts of decisions. Regular updates were given to Council about these measures and Councillors could raise any concerns they had with them.

## SUMMARY OF RESPONDENT'S SUBMISSIONS

The Respondent provided some submissions regarding this investigation all of which were reviewed and considered by me. The following is a summary of the Respondent's submissions that were relevant to the issues<sup>10</sup>:

- By passing the *Code of Conduct*, Council did not agree to contract out of the *Canadian Charter of Rights and Freedoms*;
- Terms used in the *Code of Conduct*, like "disrespectful" have no objective criteria against which words can be measured;
- As "respectfully" is not defined in the *Code of Conduct*, the Integrity Commissioner is discouraged from inserting her own "personal subjective standards into that void";
- Members of Council should not be punished for acts that were never intended to cause harm;
- If victimless speech is to be censored there will be a chilling effect on free expression;
- Non-defamatory speech that may be offensive but falls short of inciting hatred to an identifiable group is constitutionally protected;
- There is no objective standard that exists regarding social media posts that could result in the posts being deemed offensive or disrespectful, especially by norms established in the political arena;

---

<sup>10</sup> The Respondent can also make further written submissions to Council before the Council meeting to consider this report and will have time at the meeting to make oral submissions.

- The Respondent does not attack another Councillor, he simply questions Council and certain Members of Council spending priorities. He merely questions and sometimes attacks another Councillor’s spending priorities for the City of Edmonton;
- There is no personal attack. There is no disrespect. There is only a fundamental difference on an important fiscal matter. Far from disrespecting an adversary, the Respondent respects a fellow Councillor by essentially challenging him to a social media debate and giving him an opportunity to defend his position;
- The cartoon image of Councillor Knack is not offensive. It does not portray the Councillor in an unflattering light or distort his appearance in any negative way. It is simply a visual depiction to graphically demonstrate the thesis that Council’s spending priorities are askew;
- There is no need to censure social media. The internet is self-policing. When someone posts something offensive, they are immediately ‘outed’ and/or castigated for their viewpoints;
- Members of Council should be allowed to participate unfettered in political debate regarding difficult fiscal choices. The Respondent should not be censured for doing his job – attempting to convince Members of Council and those who “follow” and support those Members, that the City of Edmonton needs to reprioritize its spending.

With respect to the April 17 post, the Respondent says:

- I shared on social media the message on April 17, 2020. This post reflects how strongly I feel about the issues. Saying the Mayor and Councillors have checked out on reality is a fair comment by me and is shared by many members of the public at large. I have not apologized for posting this message and I will not apologize. This is me exercising my freedom of personal expression.

### Discussion and Analysis

The April 17 post appears to contain political statements about Council including these statements:

There is NO leadership on how we rebuild Edmonton after this crisis.  
 There is NO considering for the tens of thousands of Edmontonians who will slip into poverty.  
 There is NO approach on how to deal with hundreds of businesses who will be unable to rehire workers or be able to pay their property taxes.

In my view, the very language used, such as: “NO approach’ and “NO leadership”, are statements of opinion and political commentary. It is obvious from reading the April 17 post that the Respondent disagrees with the decisions of Council to the point of saying there is no approach. The question is whether this is fair comment on a political issue or whether the Respondent is misrepresenting the facts and not respecting decisions of Council.

It is doubtful that anyone reading these statements would take them literally, but would see them as statements of opinion. A cursory review will find support for an alternative view. I expect that most people reading this post would not read it literally and would likely be aware of steps taken by Council that support an alternate view than the one expressed by the Respondent. I find that these statements are less about disrespecting decisions of Council and more about challenging Council’s overall approach and strategy.

However, I do find that these statements push the limits on Part A, 1d and Part B 1a of the *Code* that require Members of Council to accurately respect and represent decisions made by Council and ensure their communications accurately reflect the facts of Council's decisions. While troubled by how the Respondent pushes the limits on the *Code*, I err on the side of freedom of expression with respect to these statements. The comments were made by the Respondent using his political judgement and it is for the electorate, not me, to judge. I find that these comments are protected by the fair comment provisions in the *Code*.

In the April 17 post the Respondent includes a photograph of pilons on the road with the words "Closing down roads. Adding temporary bike & walk lanes. During a pandemic! Have the mayor & some councillors completely checked out on reality?" This is a misleading statement. In fact, the decision was to allow for multimodal use (not just for cycling) to accommodate physical distancing during the COVID-19 pandemic. This was a decision of City Administration, not Council. The Respondent attributes this decision to Council when it was not a Council decision. This comes across as stretching the facts around the issue of bike lanes to suit the Respondent's political agenda. It is well understood that the installation of bike lanes on Edmonton streets is a matter of public interest and some disagreement.

To rely on the fair comment protection, the Respondent must ensure the truth of his statements before expressing his opinion. Some may say that this post just reflects Mayor Iveson's and some Councillors' historical and current support of bike lanes and is not a stretch. But the context matters. These are decisions made by City Administration (not Council) to temporarily expand spaces for a multitude of outdoor uses to accommodate physical distancing during the pandemic. While I accept that Administration is accountable to Council and some on Council expressed support for the measure to expand space for physical distancing outdoors, this was done by the Administration during a pandemic. The Respondent goes too far in either attributing this to Council and creating the impression that the construction of more bike lanes has been approved by Council. This is not mere hyperbole. It is misleading and does not accurately reflect the decisions of Council.

The choice of language and manner of communicating used in the April 17 post I find to be disrespectful. For instance, when the Respondent says:

"More bike lanes during a pandemic!?! I wish this was a joke but it isn't...

Our mayor and some on Edmonton city council have completely lost grip on what is important right now...

You think we would be taking things seriously right now and use vital city resources and the power of our office properly...

And over an image of the temporary road expansions:

"have the mayor & some councillors completely checked out on reality?"

I find that this derogatory and derisive manner of communication is disrespectful of Council and lacks decorum. The Respondent is free to express his opinions, but how he does this must be in compliance with the *Code*.

## Findings – April 17 Post

On balance, I find that while some of the views expressed in the April 17 post are fair comment, the Respondent violated the *Code of Conduct* as follows:

- (a) The manner of communicating was disrespectful of Council in violation of Part B Section 1d);
- (b) The Respondent’s conduct lacked decorum, in violation of Part E Section 1 of the *Code*;
- (c) The Respondent did not accurately reflect the facts of Council’s decisions when he attributed the installation of “bike lanes” or “temporary bike lanes” during a pandemic to Council in violation of Part B, Section 1a) of the *Code*; and
- (d) The Respondent was misleading, when he attributed the installation of “bike lanes” or “temporary bike lanes” during a pandemic to Council in violation of Part B, Section 1 e) of the *Code*.

## DELETING AND BLOCKING ON SOCIAL MEDIA

In the April 18 to 20, 2020 period, the Complainant says the Respondent was actively blocking private citizens from his social media pages which he says is disrespectful.

The Respondent says his unwritten social media policy is to use a common-sense approach based on the following principles:

- Mike Nickel’s social media pages are the property of Mike Nickel.
- We reserve the right to remove anyone acting inappropriately, degrading, or offensive from our social media pages.
- We do not tolerate bots or anonymous accounts from interacting with our page.
- Individuals using “fake names” or “pseudonyms” while interacting with our pages will be removed and/or blocked.
- Anyone spamming or mass copying / pasting underneath comments in an attempt to intimidate or skew engagement in the conversation will be removed.

The Respondent says:

- I allow contrary views on my social media pages as long as they are not abusive, profane or inappropriate activity such as spamming, taking over the site with too many posts that are copied and pasted, etc. I tell my staff to block or delete posts if the language in them is abusive, uses profanity or they are spamming to take over the conversation. There are limits. When it becomes abusive, then the limits kick in. As a principle, I don’t involve myself and don’t want to be talking about personalities. [A commentator]...was deleted and blocked because she made a comment, then copied and pasted it as a reply to several other comments, and stopped when my staff blocked her. She is entitled to her opinion, but I am familiar with the tactic she used, that sends a notification to each person replied to, as an effort to get more people to see the comment. My staff made a judgement call on my behalf, based on the principles I have given them. I fully support my staff in this decision.

## Discussion and Analysis

The understanding of the intersection of municipal codes of conduct and the use of social media is somewhat in its infancy. Many municipal councils are looking at bringing in social media policies to govern these issues. While Council has not specifically enacted a social media policy, Edmonton's City Council chose to explicitly include in the *Code of Conduct* the requirement that their communications on social media must be respectful. Many codes are not this explicit.

However, the *Code of Conduct* does not require Members of Council to engage the public on social media or to participate in debate with members of the public. In my view, when Councillors use social media platforms as a method to communicate to the public on issues of public interest, they need to tread carefully when limiting participation by the public. These platforms are used by the public to raise their concerns. It is part of the Council member's role to initiate communications and respond to communications by the public.

The role of municipal councillors is somewhat different from other politicians who may find themselves subject to their own political party's policies on social media use. Many such parties have brought into effect policies that permit members to block or delete commentators if, for instance, they use threatening or discriminatory language, or troll the politician's site. Blocking happens at all political levels in Canada, although some commentators see it as an affront to democracy and possibly off-side the elected official's obligations to their constituents. The preponderance of commentary on this issue is politicians' public accounts should remain public, unless blocking is necessary and justified.<sup>11</sup>

To my knowledge, the Canadian Courts have not ruled on whether elected officials can block members of the public, in particular, their constituents. In the United States, some courts have ruled that politicians who block constituents are violating the First Amendment of the U.S. Constitution which protects freedom of speech. The Southern District Court of New York found that President Trump should not be permitted to block people on his Twitter account as Twitter is a "public forum" under the First Amendment.<sup>12</sup> However, the freedom of expression protections under the *Canadian Charter of Rights* are different from the U.S. First Amendment, and the Canadian courts have not ruled on how our *Charter* will respond to such actions by politicians.

This is an important issue, as social media platforms are used extensively not only by politicians, but also by constituents for a number of reasons, including knowing their politicians' views on particular topics, to express their own views and to get updates on what is happening within their municipality. By blocking someone, an elected official is singling out that person who is no longer being allowed, as others are, to weigh in on the issues. That person is also prevented from immediately and easily seeing posts by that elected official. The member of the public can search for this information, but it is not readily available when they are blocked.

---

<sup>11</sup> For instance, the former Integrity Commissioner for the City of Toronto, Val Jepsen, in her 2016 *Annual Report* commented that "...social media is a way to communicate with constituents and blocking them could be seen as a refusal of service". See also "Can a politician block you on Twitter?" by Cara Zwibel of the Canadian Civil Liberties Association, June 7, 2019, [ccla.org](http://ccla.org), who says online spaces have become the public square and unless being subjected to repeated harassment, blocking by elected officials is "terrible for democracy".

<sup>12</sup> See: National Observer, July 4, 2019, by Emma McIntosh and Fatima Syed.

Many elected officials argue that constituents can still contact them after they are blocked through other means such as email. This helps the elected official verify the author of the communication and engage in more private discussions. The Respondent also says that he is just blocking people from this form of communication, not all communication.

I am of the view that it is entirely reasonable for elected officials to place some parameters on acceptable conduct on their social media pages. This is particularly so if the page is being hijacked by people trolling, spamming, using bots, using discriminatory or harassing language, etc.

Whether the Respondent violated the *Code* when he deleted and blocked commentators on his social media pages is not an issue that is clearly covered by the *Code*. I suggest that blocking would be a breach of the *Code*, for instance, if it was proven, on a balance of probabilities, that a Member of Council was deleting or blocking someone based on grounds that are protected by Human Rights legislation. But that is not the case here.

The Respondent has some guidelines with respect to the behaviour he will tolerate on his social media pages. Such guidelines always require an element of judgment and it is not for me to question that judgement. However, in my view, to encourage democratic debate on a site that is meant to serve the public, I suggest that blocking should be done sparingly, with other methods such as muting being considered only when justified. Comments, if said respectfully, should not be deleted or blocked even if they express a contrary view. But, this is currently within the Member of Council's discretion. There are no specific rules in the *Code of Conduct* or Council policies that apply to this issue.

### Findings – Deleting and Blocking on Social Media

I find on balance that the *Code of Conduct* was not violated when the Respondent blocked commentators on his social media page. While I think this sort of blocking should be done sparingly and based on justifiable and defensible guidelines, there is nothing currently in the *Code* that prevents this. There is no legal guidance on this issue. Council may choose to pass a social media policy to address this situation. In the interim, this is left to Members of Council to use their judgment.


### RECOMMENDATIONS

Section 153 (e.1) of the *Municipal Government Act* requires Councillors to adhere to the *Code of Conduct*. I have found that the Respondent did not adhere to the *Code*.

#### I recommend that Council:

1. Accept this report.
2. Direct that Mayor Iveson on behalf of Council issue a letter of reprimand addressed to the Respondent with respect to *Code of Conduct* violations found in this report.

APPENDIX A – APRIL 17 POST

 **Mike Nickel**  
April 17 at 2:58 PM · 🌐

😞 I'm fed up. Enough is enough.

More bike lanes during a pandemic!?! I wish this was a joke but it isn't..

- ✗ There is NO leadership on how we rebuild Edmonton after this crisis.
- ✗ There is NO consideration for the tens of thousands of Edmontonians who will slip into poverty.
- ✗ There is NO approach on how to deal with hundreds of businesses who will be unable to rehire workers or be able to pay their property taxes.

Our mayor and some on Edmonton city council have completely lost grip on what is important right now.

Our neighbours at the City of Vancouver are on the brink of bankruptcy. People are fighting for their careers, their life's work, and their families. They are fighting for everything that makes them whole.

Some are even fighting this infection in hospitals. My thoughts are on them as well.

People are relying on us right now to make decisions that will minimize the damage of this virus.

You think we would be taking things seriously right now and use vital city resources and the power of our office properly.

Instead I go to a recent council meeting where we discuss closing down roads and opening up temporary bike lanes and walking lanes on the roads. With pylons! That will do the trick, right? 👍

I taught my kids their entire life not to walk on the streets.

Right now people are fatigued and stressed. We don't need to be experimenting with our roadways.

Also if there are emergencies, don't we want our roads open for emergency vehicles?

Democracy WILL continue during this pandemic.

Please don't remain silent. Speak up.





# Office of the Integrity Commissioner

[integrity.commissioner@edmonton.ca](mailto:integrity.commissioner@edmonton.ca)

**INVESTIGATION REPORT 2008**  
**BY JAMIE PYTEL**  
**INTEGRITY COMMISSIONER for**  
**THE CITY OF EDMONTON**

Report Date: July 19, 2020

To: City Council for The City of Edmonton

Re: *Council Code of Conduct Bylaw 18483*  
(the “Code of Conduct” or “Code”)  
Complaint 2008

Complainant: Complainant 2008

Date of Complaint: April 20, 2020

Respondent: Councillor Mike Nickel

## TABLE OF CONTENTS

COMPLAINT .....	3
CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION .....	3
PROCESS and JURISDICTIONAL ISSUES .....	4
THE LEGAL and CODE OF CONDUCT BACKDROP .....	6
SUMMARY OF RESPONDENT’S SUBMISSIONS .....	11
DISCUSSION AND ANALYSIS .....	12
FINDINGS – APRIL 17 POST.....	13
DELETING AND BLOCKING ON SOCIAL MEDIA .....	14
DISCUSSION AND ANALYSIS .....	14
FINDINGS – DELETING AND BLOCKING ON SOCIAL MEDIA .....	16
RECOMMENDATIONS.....	16
APPENDIX A – APRIL 17 POST .....	17

## COMPLAINT

The Complainant alleges that from April 17 to 20, 2020:

Councillor Nickel is removing respectful but unfavourable comments from his Facebook page, as well as banning those making them, particularly on this post. The post also contains inaccurate information about Council and Administration's current activities.

Nickel's posts suggest that City Administration and Council have no plans and have taken no action - aside from demarcating the temporary activity spaces - with regards to health, safety, and financial security of Edmontonians during this crisis. This is provably false even after a cursory glance over Council meeting minutes over the last two months which include discussions and votes on property tax deferrals, utility bill deferrals, eliminating transit fares, budget amendments, etc. This is on top of other actions that included temporary layoffs and service reductions at the City of Edmonton to curb spending.

Attached as **Appendix A** is the Respondent's April 17 social media post that was provided by the Complainant and is the subject of this Complaint (the "April 17 post").

## CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION

The applicable sections of the *Code of Conduct* say:

Part A: Representing the Municipality, section 1 d):

While carrying out their duties, Councillors must accurately represent and respect decisions made by Council while preserving the value of fair comment and differences of opinion.

Part A: Representing the Municipality, section 1 e):

While carrying out their duties, Councillors must communicate respectfully with members of the public, Councillors, City employees, and Councillor's employees.

Part B: Communications, section 1 a):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure their communications accurately reflect the facts of Council's decisions.

Part B: Communications, section 1 c):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications are accurate and not issue any communication that the Councillor knows, or ought to have known, to be false.

Part B: Communications, section 1 d):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications issued by, or on behalf of, the Councillor, including social media, are respectful and do not discriminate, harass, or demonstrate disrespect toward any person.

Part B: Communications, section 1 e):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will not issue any communications that mislead the public about any matter.

Part E: Respectful Interactions, section 1:

Councillors will conduct themselves with decorum at all times, including while attending meetings, interacting with City employees and Councillor's employees, and engaging with the public.

Part E: Respectful Interactions, section 3:

Councillors must not use any harassing or disrespectful language about Council, a Councillor or the public.

There is no definition in the *Code* for decorum. I suggest that Members of Council would generally have an understanding of what this means short of a definition within the *Code*. In any event:

*Oxford English Dictionary* (oed.com) defines decorum as:

That which is proper, suitable, seemly, befitting, becoming; fitness, propriety, congruity.

*Miriam-Webster.com* defines decorum as:

Correct or proper behaviour that shows respect and good manners.

## PROCESS and JURISDICTIONAL ISSUES

The Complaint was in writing, was within the time limits set out in the *Code*, and included the sections of the *Code* the Complainant felt were violated [Part A, sections 1 b), 2 d), Part B 1 a) and 1 e), and Part E section 1].

As part of the public interest function of my role, at times I may need to identify which sections of the *Code* I feel are applicable based on the information presented. This applies whether a complainant or respondent raises certain information or sections of the *Code*. I can also make a finding with respect to a section of the *Code* even if a complainant, or respondent in his or her defence, does not identify the correct sections of the *Code*. However, the allegations and information presented must relate to a section of the *Code*.

I have included in this report those sections of the *Code* that I found potentially apply to the issues raised in this Complaint.

During the investigation, when I had questions or needed more detail about this Complaint, I contacted the Complainant via email using the contact information provided by the Complainant. All information provided was considered for this investigation. I determined that it was not necessary to personally interview or have the Complainant swear a statutory declaration.

I provided the Respondent with all of the information and allegations provided to me by the Complainant. I interviewed the Respondent and he provided his written statement in response to this Complaint. The content of the Respondent's statement is contained within this report under the applicable headings. I also provided the Respondent with the sections of the *Code* I felt were relevant to this investigation and a list of the issues I felt were raised in this investigation. I invited the Respondent to raise any concerns around process or arguments at any time during this process. I reviewed and considered all of the information provided to me by the Respondent.

I did not find it to be in the public interest to identify the Complainant by name in this report. However, the Respondent was given the written Complaint, including name of the Complainant (except contact information), in case the identity of the Complainant raised any issues or defences for the Respondent.

I considered whether the April 17 post was done as part of the Respondent's role as a City of Edmonton Councillor, or was purely personal. In my view, whether the Respondent pays for his social media accounts himself is irrelevant. What matters is the content of those communications. Whether he communicates his views on social media or uses some other medium, I find that the *Code* applies if those communications are about Council, his role as a Councillor, Members of Council, or the business of the City.

Fellow Integrity Commissioner Melinda Munro for the County of Brant in Ontario likened these situations to the employment law cases in which employees can be terminated for their outside of Council chambers social media activity. I agree with her analogy, as set out in *Bartscher v. Cardy*, 2018 ONMIC 28:

While [the Code of Conduct] refers to 'official duties', it cannot be the case that the Council intended that its members would be free to behave in an outrageous manner outside the Council chambers such as to undermine public confidence in the office...the law of employment has long established that 'off-duty' conduct can be cause for discipline and dismissal where it is done in such a way as to damage the reputation or work environment of the employer....It can reasonably be suggested that once elected as a public official, all public activities are 'official duties' for the purpose of behaving in a manner consistent with the Code.

It is also worth noting that Part E section 1 of the *Code* says: "Councillors will act with decorum at all times...while engaging with the public." This requirement is not limited to conduct in Council or Committee meetings or at official Council functions. I also note that some of the sections of the Code (i.e. Part A, Sections 1d and 1e) when referring to Members of Council's duties include the phrase "while carrying out their official duties". Part B, Section 1d which deals with respectful communications while on social media does not include this phrase.

In this case, the April 17 post was clearly posted about Council, decisions by Council and about Mayor Iveson and some of the Councillors. Given the subject matter of the April 7 post, I find that the *Code* applies. I note that the Complainant is not a Member of Council and no Members of Council have complained about the April 17 post. The *Code* says:

If any person believes that a Councillor has contravened this code of conduct, that person may make a written complaint to the Integrity Commissioner.

In my view, it is perfectly acceptable for members of the public to question the conduct of Members of Council. The *Code* provides a way for them to do this. Based on the language of the *Code*, it is not a requirement that the alleged “victim” be the complainant.

The impugned conduct also needs to be sufficiently egregious to warrant investigation, and not a minor or trivial issue. Here, I decided to investigate, in part, because the language in the April 17 post came across, at first blush, as potential breaches of the *Code*. However, more investigation, thought and analysis were needed to determine if, in context, the April 17 post violated the *Code*.

The Complainant is also concerned that the Respondent was deleting unfavourable comments and blocking some commentators from his social media page. Without some investigation and analysis, it was not clear if this would be found to be a breach of the *Code*. I did not undergo a complete review of social media activity by the Respondent, but I did consider whether deleting or blocking on social media is a potential breach of the *Code*.

While typically I would not issue a report to Council unless there were findings of a Code breach, here there were mixed findings and the issues overlapped. Therefore, aspects of the Complaint that are both dismissed and accepted are found in this report.

## THE LEGAL and CODE OF CONDUCT BACKDROP

This investigation is centred around the right to freedom of expression and how it interacts with the *Code of Conduct*. The Respondent asserts that in the April 17 post he was simply asserting his freedom of expression rights and he should not be censored or censured for doing this.

The role of a Municipal Councillors is complex and includes being both a politician and a legislator. This is sometimes referred to as a “hybrid function”. As stated in *Geatrix v. Williams*<sup>1</sup>:

The Courts have confirmed that municipal councillors have hybrid political and legislative functions<sup>2</sup>. That they are representatives of the communities that elect them,<sup>3</sup> and that

---

<sup>1</sup> By Integrity Commissioner Guy Giorno for the Town of Orangeville in Ontario, 2018 ONMIC 6 at para 132.

<sup>2</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1179 at 1196.

<sup>3</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc.* note 13, at 1193.

members of the public have the right to address their municipal representatives on issues of concern<sup>4</sup>...

It is part of the role of a Council Member to communicate with members of the public about municipal issues. This includes both initiating communication and responding to communication initiated by members of the public. In doing so, a Council Member is not limited to explaining and defending what the municipality is already doing. As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give effect to those views.<sup>5</sup> Some of those views may involve a change in law or a change in direction. **Provided that a Council Member proceeds lawfully and in a manner consistent with the *Municipal Act*, the Code and other legislation and by-laws**, nothing prevents a Council Member from taking, defending and seeking to implement a position that advocates change. Indeed, the Courts have clearly stated that as an elected representative of the public a municipal councillor is entitled to take “an open leadership role” on an issue.<sup>6</sup> **[emphasis added]**

As well, as stated in *Jeffrey v. Sprovier*<sup>7</sup>:

Political commentary must comply with the Code, but otherwise an Integrity Commissioner has no jurisdiction over it. As Integrity Commissioner Cameron noted in the 2012 case:

I cannot and will not be a referee for free speech in a political arena provided it stays within the bounds of...the Code.

Subsequently, Mr. Randy Pepper, the delegate of Integrity Commissioner Cameron, expanded on the same principle in Investigation Report No. BIC-33-1112:

Freedom of expression is a fundamental right in Canada so the Code must be interpreted in a manner consistent with this fundamental right. Based on the law set out below, I cannot find that the Code should be interpreted to appoint the Integrity Commissioner as a speech referee in the political arena.

As the Supreme Court of Canada noted in the *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139:

Freedom of expression, like freedom of religion, serves to anchor the very essence of our democratic political and societal structure...Hence, the justification for the widest freedom of political speech stems not only from some abstract search for truth, but also from the tangible goal of preserving democracy...I find that the Integrity Commissioner has a very limited role in relation to the “freewheeling debate on matters of public interest...

---

<sup>4</sup> *Re McGill and City of Brantford* (1980), 111 D.L.R. (3d) 405 (Ont. Dist. Ct.) at 411, cited with approval by *Old St. Boniface Residents Assn. Inc.*, note 13, at 1193-4.

<sup>5</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20.

<sup>6</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, (1989), 58 Man. R. (2d) 255 (C.A.) at 264, affirmed [1990] 3 S.C.R. 1170.

<sup>7</sup> 2018 ONMIC 21, Guy Giorno, as Integrity Commissioner for the City of Brampton, at para 86.



The *Code of Conduct* provides that while preserving the value of fair comment and differences of opinion, Councillors must ensure their communications accurately reflect the facts of Council's decisions, that all communications are accurate and not issue any communications that mislead the public about any matter.

On this issue, the Ontario Supreme Court stated in *Buck v. Morris et al.*, 2015 ONSC 5632, at paragraphs 189-193:

There can be no doubt that politics, whether it be federal, provincial or municipal, is not for the faint of heart. Some might say a thick skin is a prerequisite for any politician.

A thick skin, however, does not mean that a politician is fair game for those intent on damaging their reputation with false, malicious, and defamatory statements. Freedom of speech, whether in the political forum or not, does not extend to statements that are untrue and have as their sole purpose an intent to damage someone else's reputation.

The right to freedom of speech in our society is not an absolute right. While freedom of speech is a cherished right in a free and democratic society, there are reasonable limitations. The Town of Aurora, like many other towns and cities in the Province of Ontario, has a Code of Conduct that purports to codify parameters of reasonable conduct for elected Town officials...

The plaintiff clearly has a perception that she has an unfettered right to freedom of expression and freedom of speech. That freedom, however, is circumscribed by the Code.

The Supreme Court of Canada in *Prud'homme v. Prud'homme*, 2002 SCC 85, stated at paras 42-45:

...while elected municipal officials must be quite free to discuss matters of public interest, they must act as would the reasonable person. The reasonableness of their conduct will often be demonstrated by their good faith and the prior checking they did to satisfy themselves as to the truth of their allegations. These are guidelines for exercising the right to comment, which has been repeatedly reaffirmed by the courts.

I am of the view that it is not the role of the Integrity Commissioner to censor or interfere with political debate and commentary. It is not my role to decide whether views expressed by Members of Council are meritorious or properly held.

It is also not my role to interpret whether the *Code* is contrary to the freedom of expression rights found in the *Canadian Charter of Rights*, which is an issue for the courts to decide. However, I am of the view that the right to freedom of expression found in the *Charter* has limits. In this case, the limits have been self-imposed by City Council with the issuance of the *Code of Conduct*. The *Code* allows fair comment and Members of Council to hold a position on an issue. This is balanced with *Code* requirements, such as, to accurately represent Council's activities, be respectful and act with decorum.

No code of conduct can list all of the possible ways individuals can disrespect one another. Some codes provide non-exhaustive lists of what is considered disrespectful conduct to give those who are governed by the code a sense of what is contrary to the code. However, it is left to those who are governed by those codes to use their judgement. When a complaint is made, those who administer the code and investigate alleged breaches (in this case, me as the Integrity Commissioner), must determine if the

impugned conduct is disrespectful. As part of that review, consideration is given to the context and facts around the impugned conduct.

The *Code of Conduct* requires Members of Council to respect the decisions made by Council while preserving the value of fair comment and differences of opinion. Some Integrity Commissioners in Canada have commented on this requirement. For instance, Bruce Elman, Integrity Commissioner for the City of Windsor says<sup>8</sup>:

City or Municipal Councils occupy a unique role in our society. They are, at one time, both deliberative legislative bodies for the geographical entity known as their city, town, county, or municipal district, and at the same time, they are, effectively, a corporate board of directors for the commercial entity known as the Municipal Corporation of (in this case) the City of Windsor....

In other words, in the lead up to a specific decision, Council is a deliberative governmental body wherein almost unfettered freedom of speech reigns but once that decision is made, Council becomes a corporate board and, as with vast majority of corporate boards, public dissent is discouraged or even prohibited. The reason is rational and sensible: Decisions made by Council become the official policy of the City of Windsor. When Members of Council speak out or engage in conduct indicating opposition to official City policy outside the deliberative confines of the legislative process, their comments or conduct can diminish the integrity of Council decisions in the public eye, damage public confidence in Council itself, or even undermine the City's reputation, domestically or internationally. One can only imagine how [the Councillor's statement] – perhaps taken as hyperbole here in Windsor – might be viewed in California or Calgary or Copenhagen or Cairo.

It should be noted that Councillors have plenty of opportunities prior to a decision being made by Council to express their views on the merits of a proposal and they can provide as much context as they wish and use as much hyperbole as they believe is necessary. If a Councillor has particular concerns regarding an item on the Council Agenda, the Councillor can call a press conference to express those concerns. Councillors can post their concerns on their webpages or on social media to express those concerns. Councillors can go to community groups or BIAs to rally support for their position. The Councillor can even encourage citizens to become delegates to Council when the matter is debated. Finally, Councillors may express all of their concerns during the debate on the matter when it comes before Council.

Even then, after the decision is made, Councillors are free to explain why they voted as they did during the Council deliberations. They should, however, acknowledge the legitimacy of Council's decision as resulting from the deliberative and democratic processes of Council. **They should not be disrespectful and their comments should not be disparaging or inaccurate.” [emphasis added]**

---

<sup>8</sup> Re Complaint brought pursuant to the Code of Conduct of the City of Windsor against Councillor Rino Berolin, Integrity Commissioner Bruce Elman's report dated April 20, 2018.

At the centre of this investigation are decisions made by Council during the COVID-19 pandemic and historically with respect to the construction of bike lanes in the City of Edmonton. A review of the history reveals:

- The construction of bike lanes was a decision made by Council going back to 2009 when the Council of the day carried a motion to approve the policy that: “The City of Edmonton strives to be pedestrian and bicycle friendly”.
- On June 11, 2014 Council passed a motion that “enhanced public engagement strategies” outlined in a report by Transportation Services that included a bicycle infrastructure plan be approved. The Respondent voted in favour of this motion.
- During Council Meetings in November and December 2014, Council passed the 2015-2018 Capital Budget, including a motion for a \$8.8 Million bikeway for the 102 Avenue area. The Respondent voted in favour of this motion.
- In 2016, the Respondent voted in favour of a motion for capital funding of \$7.5 Million and an annual operating cost of \$625,000 for physically separated bike lane infrastructure.
- With respect to the 2019-2022 Capital Budget discussed at the November and December 2018 Council meetings, the Respondent voted against a motion seeking increased funding of \$2.17 Million for bike infrastructure expenditures, but the motion was passed. The Respondent also voted against a motion on the \$5.7 Billion Capital and Operating Budget that included design and construction of a minimum grade bike grid in various areas in Edmonton, but the motion was passed.
- In response to this investigation, the Respondent referred me to the March 26, 2020 Emergency Advisory Committee of Council. A review of that meeting revealed that Councillor Knack brought forward concerns from some of his constituents that they were struggling with physical distancing outdoors during the pandemic. City Administration said that they would review options in this regard. It was clear at this meeting that this was delegated to City Administration. No Council motions were passed in this regard.
- City Administration made expanded spaces available on some City of Edmonton roads and paths during the COVID-19 pandemic in April 2020. This was done to facilitate physical distancing during the pandemic. These were multimodal spaces for active transportation for:
  - Biking
  - Running
  - Walking
  - Rollerblading
  - Wheelchair use
  - Etc.

The decision to do this was made by Administration under the State of Local Emergency, but Administration normally has the authority to make these sorts of decisions. Regular updates were given to Council about these measures and Councillors could raise any concerns they had with them.

## SUMMARY OF RESPONDENT'S SUBMISSIONS

The Respondent provided some submissions regarding this investigation all of which were reviewed and considered by me. The following is a summary of the Respondent's submissions that were relevant to the issues<sup>9</sup>:

- By passing the *Code of Conduct*, Council did not agree to contract out of the *Canadian Charter of Rights and Freedoms*;
- Terms used in the *Code of Conduct*, like “disrespectful” have no objective criteria against which words can be measured;
- As “respectfully” is not defined in the *Code of Conduct*, the Integrity Commissioner is discouraged from inserting her own “personal subjective standards into that void”;
- Members of Council should not be punished for acts that were never intended to cause harm;
- If victimless speech is to be censored there will be a chilling effect on free expression;
- Non-defamatory speech that may be offensive but falls short of inciting hatred to an identifiable group is constitutionally protected;
- There is no objective standard that exists regarding social media posts that could result in the posts being deemed offensive or disrespectful, especially by norms established in the political arena;
- The Respondent does not attack another Councillor, he simply questions Council and certain Members of Council spending priorities. He merely questions and sometimes attacks another Councillor's spending priorities for the City of Edmonton;
- There is no personal attack. There is no disrespect. There is only a fundamental difference on an important fiscal matter. Far from disrespecting an adversary, the Respondent respects a fellow Councillor by essentially challenging him to a social media debate and giving him an opportunity to defend his position;
- The cartoon image of Councillor Knack is not offensive. It does not portray the Councillor in an unflattering light or distort his appearance in any negative way. It is simply a visual depiction to graphically demonstrate the thesis that Council's spending priorities are askew;
- There is no need to censure social media. The internet is self-policing. When someone posts something offensive, they are immediately ‘outed’ and/or castigated for their viewpoints;
- Members of Council should be allowed to participate unfettered in political debate regarding difficult fiscal choices. The Respondent should not be censored for doing his job – attempting to convince Members of Council and those who “follow” and support those Members, that the City of Edmonton needs to reprioritize its spending.

With respect to the April 17 post, the Respondent says:

- I shared on social media the message on April 17, 2020. This post reflects how strongly I feel about the issues. Saying the Mayor and Councillors have checked out on reality is a fair

---

<sup>9</sup> The Respondent can also make further written submissions to Council before the Council meeting to consider this report and will have time at the meeting to make oral submissions.

comment by me and is shared by many members of the public at large. I have not apologized for posting this message and I will not apologize. This is me exercising my freedom of personal expression.

## DISCUSSION AND ANALYSIS

The April 17 post appears to contain political statements about Council including these statements:

There is NO leadership on how we rebuild Edmonton after this crisis.

There is NO considering for the tens of thousands of Edmontonians who will slip into poverty.

There is NO approach on how to deal with hundreds of businesses who will be unable to rehire workers or be able to pay their property taxes.

In my view, the very language used, such as: “NO approach’ and “NO leadership”, are statements of opinion and political commentary. It is obvious from reading the April 17 post that the Respondent disagrees with the decisions of Council to the point of saying there is no approach. The question is whether this is fair comment on a political issue or whether the Respondent is misrepresenting the facts and not respecting decisions of Council.

It is doubtful that anyone reading these statements would take them literally, but would see them as statements of opinion. A cursory review will find support for an alternative view. I expect that most people reading this post would not read it literally and would likely be aware of steps taken by Council that support an alternate view than the one expressed by the Respondent. I find that these statements are less about disrespecting decisions of Council and more about challenging Council’s overall approach and strategy.

However, I do find that these statements push the limits on Part A, 1d and Part B 1a of the *Code* that require Members of Council to accurately respect and represent decisions made by Council and ensure their communications accurately reflect the facts of Council’s decisions. While troubled by how the Respondent pushes the limits on the *Code*, I err on the side of freedom of expression with respect to these statements. The comments were made by the Respondent using his political judgement and it is for the electorate, not me, to judge. I find that these comments are protected by the fair comment provisions in the *Code*.

In the April 17 post the Respondent includes a photograph of pilons on the road with the words “Closing down roads. Adding temporary bike & walk lanes. During a pandemic! Have the mayor & some councillors completely checked out on reality?” This is a misleading statement. In fact, the decision was to allow for multimodal use (not just for cycling) to accommodate physical distancing during the COVID-19 pandemic. This was a decision of City Administration, not Council. The Respondent attributes this decision to Council when it was not a Council decision. This comes across as stretching the facts around the issue of bike lanes to suit the Respondent’s political agenda. It is well understood that the installation of bike lanes on Edmonton streets is a matter of public interest and some disagreement.

To rely on the fair comment protection, the Respondent must ensure the truth of his statements before expressing his opinion. Some may say that this post just reflects Mayor Iveson’s and some Councillors’ historical and current support of bike lanes and is not a stretch. But the context matters. These are

decisions made by City Administration (not Council) to temporarily expand spaces for a multitude of outdoor uses to accommodate physical distancing during the pandemic. While I accept that Administration is accountable to Council and some on Council expressed support for the measure to expand space for physical distancing outdoors, this was done by the Administration during a pandemic. The Respondent goes too far in either attributing this to Council and creating the impression that the construction of more bike lanes has been approved by Council. This is not mere hyperbole. It is misleading and does not accurately reflect the decisions of Council.

The choice of language and manner of communicating used in the April 17 post I find to be disrespectful. For instance, when the Respondent says:

“More bike lanes during a pandemic!?! I wish this was a joke but it isn’t...

Our mayor and some on Edmonton city council have completely lost grip on what is important right now...

You think we would be taking things seriously right now and use vital city resources and the power of our office properly...

And over an image of the temporary road expansions:

“have the mayor & some councillors completely checked out on reality?”

I find that this derogatory and derisive manner of communication is disrespectful of Council and lacks decorum. The Respondent is free to express his opinions, but how he does this must be in compliance with the *Code*.

Complainant and is the subject of this Complaint (the “April 17 post”).

## FINDINGS – APRIL 17 POST

On balance, I find that while some of the views expressed in the April 17 post are fair comment, the Respondent violated the *Code of Conduct* as follows:

- (a) The manner of communicating was disrespectful of Council in violation of Part B Section 1d);
- (b) The Respondent’s conduct lacked decorum, in violation of Part E Section 1 of the *Code*;
- (c) The Respondent did not accurately reflect the facts of Council’s decisions when he attributed the installation of “bike lanes” or “temporary bike lanes” during a pandemic to Council in violation of Part B, Section 1a) of the *Code*; and
- (d) The Respondent was misleading, when he attributed the installation of “bike lanes” or “temporary bike lanes” during a pandemic to Council in violation of Part B, Section 1 e) of the *Code*.

## DELETING AND BLOCKING ON SOCIAL MEDIA

In the April 17 to 20, 2020 period, the Complainant says the Respondent was removing respectful but unfavourable comments from his social media pages and banning those making them, particularly with respect to the April 17 post.

The Respondent says his unwritten social media policy is to use a common-sense approach based on the following principles:

- Mike Nickel's social media pages are the property of Mike Nickel.
- We reserve the right to remove anyone acting inappropriately, degrading, or offensive from our social media pages.
- We do not tolerate bots or anonymous accounts from interacting with our page.
- Individuals using "fake names" or "pseudonyms" while interacting with our pages will be removed and/or blocked.
- Anyone spamming or mass copying / pasting underneath comments in an attempt to intimidate or skew engagement in the conversation will be removed.

The Respondent says:

- I allow contrary views on my social media pages as long as they are not abusive, profane or inappropriate activity such as spamming, taking over the site with too many posts that are copied and pasted, etc. I tell my staff to block or delete posts if the language in them is abusive, uses profanity or they are spamming to take over the conversation. There are limits. When it becomes abusive, then the limits kick in. As a principle, I don't involve myself and don't want to be talking about personalities. [A commentator]...was deleted and blocked because she made a comment, then copied and pasted it as a reply to several other comments, and stopped when my staff blocked her. She is entitled to her opinion, but I am familiar with the tactic she used, that sends a notification to each person replied to, as an effort to get more people to see the comment. My staff made a judgement call on my behalf, based on the principles I have given them. I fully support my staff in this decision.

## DISCUSSION AND ANALYSIS

The understanding of the intersection of municipal codes of conduct and the use of social media is somewhat in its infancy. Many municipal councils are looking at bringing in social media policies to govern these issues. While Council has not specifically enacted a social media policy, Edmonton's City Council chose to explicitly include in the *Code of Conduct* the requirement that their communications on social media must be respectful. Many codes are not this explicit.

However, the *Code of Conduct* does not require Members of Council to engage the public on social media or to participate in debate with members of the public. In my view, when Councillors use social media platforms as a method to communicate to the public on issues of public interest, they need to tread carefully when limiting participation by the public. These platforms are used by the public to raise

their concerns. It is part of the Council member's role to initiate communications and respond to communications by the public.

The role of municipal councillors is somewhat different from other politicians who may find themselves subject to their own political party's policies on social media use. Many such parties have brought into effect policies that permit members to block or delete commentators if, for instance, they use threatening or discriminatory language, or troll the politician's site. Blocking happens at all political levels in Canada, although some commentators see it as an affront to democracy and possibly off-side the elected official's obligations to their constituents. The preponderance of commentary on this issue is politicians' public accounts should remain public, unless blocking is necessary and justified.<sup>10</sup>

To my knowledge, the Canadian Courts have not ruled on whether elected officials can block members of the public, in particular, their constituents. In the United States, some courts have ruled that politicians who block constituents are violating the First Amendment of the U.S. Constitution which protects freedom of speech. The Southern District Court of New York found that President Trump should not be permitted to block people on his Twitter account as Twitter is a "public forum" under the First Amendment.<sup>11</sup> However, the freedom of expression protections under the *Canadian Charter of Rights* are different from the U.S. First Amendment, and the Canadian courts have not ruled on how our *Charter* will respond to such actions by politicians.

This is an important issue, as social media platforms are used extensively not only by politicians, but also by constituents for a number of reasons, including knowing their politicians' views on particular topics, to express their own views and to get updates on what is happening within their municipality. By blocking someone, an elected official is singling out that person who is no longer being allowed, as others are, to weigh in on the issues. That person is also prevented from immediately and easily seeing posts by that elected official. The member of the public can search for this information, but it is not readily available when they are blocked.

Many elected officials argue that constituents can still contact them after they are blocked through other means such as email. This helps the elected official verify the author of the communication and engage in more private discussions. The Respondent also says that he is just blocking people from this form of communication, not all communication.

I am of the view that it is entirely reasonable for elected officials to place some parameters on acceptable conduct on their social media pages. This is particularly so if the page is being hijacked by people trolling, spamming, using bots, using discriminatory or harassing language, etc.

Whether the Respondent violated the *Code* when he deleted and blocked commentators on his social media pages is not an issue that is clearly covered by the *Code*. I suggest that blocking would be a breach of the *Code*, for instance, if it was proven, on a balance of probabilities, that a Member of

---

<sup>10</sup> For instance, the former Integrity Commissioner for the City of Toronto, Val Jepsen, in her 2016 *Annual Report* commented that "...social media is a way to communicate with constituents and blocking them could be seen as a refusal of service". See also "Can a politician block you on Twitter?" by Cara Zwibel of the Canadian Civil Liberties Association, June 7, 2019, [ccla.org](http://ccla.org), who says online spaces have become the public square and unless being subjected to repeated harassment, blocking by elected officials is "terrible for democracy".

<sup>11</sup> See: National Observer, July 4, 2019, by Emma McIntosh and Fatima Syed.



Council was deleting or blocking someone based on grounds that are protected by Human Rights legislation. But that is not the case here.

The Respondent has some guidelines with respect to the behaviour he will tolerate on his social media pages. Such guidelines always require an element of judgment and it is not for me to question that judgement. However, in my view, to encourage democratic debate on a site that is meant to serve the public, I suggest that blocking should be done sparingly, with other methods such as muting being considered only when justified. Comments, if said respectfully, should not be deleted or blocked even if they express a contrary view. But, this is currently within the Member of Council's discretion. There are no specific rules in the *Code of Conduct* or Council policies that apply to this issue.

#### FINDINGS – DELETING AND BLOCKING ON SOCIAL MEDIA

I find on balance that the *Code of Conduct* was not violated when the Respondent blocked commentators on his social media page. While I think this sort of blocking should be done sparingly and based on justifiable and defensible guidelines, there is nothing currently in the *Code* that prevents this. There is no legal guidance on this issue. Council may choose to pass a social media policy to address this situation. In the interim, this is left to Members of Council to use their judgment.


#### RECOMMENDATIONS

Section 153 (e.1) of the *Municipal Government Act* requires Councillors to adhere to the *Code of Conduct*. I have found that the Respondent did not adhere to the *Code*.

##### **I recommend that Council:**

1. Accept this report.
2. Direct that Mayor Iveson on behalf of Council issue a letter of reprimand addressed to the Respondent with respect to *Code of Conduct* violations found in this report.

APPENDIX A – APRIL 17 POST

 **Mike Nickel**  
April 17 at 2:58 PM · 🌐

😞 I'm fed up. Enough is enough.

More bike lanes during a pandemic!?! I wish this was a joke but it isn't..

- ✗ There is NO leadership on how we rebuild Edmonton after this crisis.
- ✗ There is NO consideration for the tens of thousands of Edmontonians who will slip into poverty.
- ✗ There is NO approach on how to deal with hundreds of businesses who will be unable to rehire workers or be able to pay their property taxes.

Our mayor and some on Edmonton city council have completely lost grip on what is important right now.

Our neighbours at the City of Vancouver are on the brink of bankruptcy. People are fighting for their careers, their life's work, and their families. They are fighting for everything that makes them whole.

Some are even fighting this infection in hospitals. My thoughts are on them as well.

People are relying on us right now to make decisions that will minimize the damage of this virus.

You think we would be taking things seriously right now and use vital city resources and the power of our office properly.

Instead I go to a recent council meeting where we discuss closing down roads and opening up temporary bike lanes and walking lanes on the roads. With pylons! That will do the trick, right? 👍

I taught my kids their entire life not to walk on the streets.

Right now people are fatigued and stressed. We don't need to be experimenting with our roadways.

Also if there are emergencies, don't we want our roads open for emergency vehicles?

Democracy WILL continue during this pandemic.

Please don't remain silent. Speak up.



**Closing down roads.  
Adding temporary bike & walk lanes.  
During a pandemic!**

**Have the mayor & some councillors  
completely checked out on reality?**

**ENOUGH  
IS  
ENOUGH !**

# Office of the Integrity Commissioner

integrity.commissioner@edmonton.ca

**INVESTIGATION REPORT 2009**  
**BY JAMIE PYTEL**  
**INTEGRITY COMMISSIONER for**  
**THE CITY OF EDMONTON**

Report Date: July 19, 2020

To: City Council for The City of Edmonton

Re: *Council Code of Conduct Bylaw 18483*  
(the “Code of Conduct” or “Code”)  
Complaint 2009

Complainant: Complainant 2009

Date of Complaint: April 21, 2020

Respondent: Councillor Mike Nickel

## TABLE OF CONTENTS

COMPLAINT .....	3
CODE OF CONDUCT AND PROCESS .....	3
RESPONDENT'S INFORMATION .....	3
FINDINGS .....	6

## COMPLAINT

The Complainant alleges that on April 19, 2020:

I am his constituent. He blocked me on twitter for disagreeing with him. His twitter account and handle indicate he is a councillor. It appears to be a professional account and he uses it to communicate city business. Blocking a constituent from communicating or receiving city communication from their representative is disrespectful.

When asked what the Respondent blocked, the Complainant replied:

It was about his opposition to the temporary active transport lanes on Saskatchewan Drive.

## CODE OF CONDUCT AND PROCESS

The Complaint was in writing, was within the time limits set out in the *Code*, and included the section of the *Council Code of Conduct* the Complainant felt was violated, which says:

Part A: Representing the Municipality, section 1 e):

While carrying out their duties, Councillors must communicate respectfully with members of the public, Councillors, City employees, and Councillor's employees.

During the investigation, I determined that it was not necessary to personally interview or have the Complainant swear a statutory declaration. I communicated via email with the Complainant on any questions I had about this investigation.

I provided the Respondent with all of the information and allegations provided to me by the Complainant. I interviewed the Respondent and he provided his written statement in response to this Complaint. The content of the Respondent's statement is contained within this report I invited the Respondent to raise any concerns around process or arguments at any time during this process. I reviewed and considered all of the information provided to me by the Respondent.

I did not find it to be in the public interest to identify the Complainant by name in this report. However, the Respondent was given the written Complaint, including name of the Complainant (except contact information), in case the identity of the Complainant raised any issues or defences for the Respondent.

## RESPONDENT'S INFORMATION

The Respondent says:

- I allow contrary views on my social media pages as long as they are not abusive, profane or inappropriate activity such as spamming, taking over the site with too many posts that are copied and pasted, etc. I tell my staff to block or delete posts if the language in them is abusive, uses profanity or they are spamming to take over the conversation. There are limits. When it becomes abusive, then the limits kick in. As a principle, I don't involve myself and don't want to

be talking about personalities. [A commentator (not the Complainant)]...was deleted and blocked because she made a comment, then copied and pasted it as a reply to several other comments, and stopped when my staff blocked her. She is entitled to her opinion, but I am familiar with the tactic she used, that sends a notification to each person replied to, as an effort to get more people to see the comment. My staff made a judgement call on my behalf, based on the principles I have given them. I fully support my staff in this decision.

The Respondent says his unwritten social media policy is to use a common-sense approach based on the following principles:

- Mike Nickel's social media pages are the property of Mike Nickel.
- We reserve the right to remove anyone acting inappropriately, degrading, or offensive from our social media pages.
- We do not tolerate bots or anonymous accounts from interacting with our page.
- Individuals using "fake names" or "pseudonyms" while interacting with our pages will be removed and/or blocked.
- Anyone spamming or mass copying / pasting underneath comments in an attempt to intimidate or skew engagement in the conversation will be removed.

### Discussion and Analysis

For the reasons explained below, I did not seek out and do an exhaustive review of the social media activity by the Respondent or the Complainant. There was no breach of the *Code* based on the analysis that follows.

The understanding of the intersection of municipal codes of conduct and the use of social media is somewhat in its infancy. Many municipal councils are looking at bringing in social media policies to govern these issues. While Council has not specifically enacted a social media policy, Edmonton's City Council chose to explicitly include in the *Code of Conduct* the requirement that their communications on social media must be respectful. Many codes are not this explicit.

However, the *Code of Conduct* does not require Members of Council to engage the public on social media or to participate in debate with members of the public. In my view, when Councillors use social media platforms as a method to communicate to the public on issues of public interest, they need to tread carefully when limiting participation by the public. These platforms are used by the public to raise their concerns. It is part of the Council member's role to initiate communications and respond to communications by the public.

The role of municipal councillors is somewhat different from other politicians who may find themselves subject to their own political party's policies on social media use. Many such parties have brought into effect policies that permit members to block or delete commentators if, for instance, they use threatening or discriminatory language, or troll the politician's site. Blocking happens at all political levels in Canada, although some commentators see it as an affront to democracy and possibly off-side

the elected official's obligations to their constituents. The preponderance of commentary on this issue is politicians' public accounts should remain public, unless blocking is necessary and justified.<sup>1</sup>

To my knowledge, the Canadian Courts have not ruled on whether elected officials can block members of the public, in particular, their constituents. In the United States, some courts have ruled that politicians who block constituents are violating the First Amendment of the U.S. Constitution which protects freedom of speech. The Southern District Court of New York found that President Trump should not be permitted to block people on his Twitter account as Twitter is a "public forum" under the First Amendment.<sup>2</sup> However, the freedom of expression protections under the *Canadian Charter of Rights* are different from the U.S. First Amendment, and the Canadian courts have not ruled on how our *Charter* will respond to such actions by politicians.

This is an important issue, as social media platforms are used extensively not only by politicians, but also by constituents for a number of reasons, including knowing their politicians' views on particular topics, to express their own views and to get updates on what is happening within their municipality. By blocking someone, an elected official is singling out that person who is no longer being allowed, as others are, to weigh in on the issues. That person is also prevented from immediately and easily seeing posts by that elected official. The member of the public can search for this information, but it is not readily available when they are blocked.

Many elected officials argue that constituents can still contact them after they are blocked through other means such as email. This helps the elected official verify the author of the communication and engage in more private discussions. The Respondent also says that he is just blocking people from this form of communication, not all communication.

I am of the view that it is entirely reasonable for elected officials to place some parameters on acceptable conduct on their social media pages. This is particularly so if the page is being hijacked by people trolling, spamming, using bots, using discriminatory or harassing language, etc.

Whether the Respondent violated the *Code* when he deleted and blocked those commenting on the April 18 post is not an issue that is clearly covered by the *Code*. I suggest that blocking would be a breach of the *Code*, for instance, if it was proven, on a balance of probabilities, that a Member of Council was deleting or blocking someone based on grounds that are protected by Human Rights legislation. But that is not the case here.

The Respondent has some guidelines with respect to the behaviour he will tolerate on his social media pages. Such guidelines always require an element of judgment and it is not for me to question that judgement. However, in my view, to encourage democratic debate on a site that is meant to serve the public, I suggest that blocking should be done sparingly, with other methods such as muting being considered only when justified. Comments, if said respectfully, should not be deleted or blocked even if

---

<sup>1</sup> For instance, the former Integrity Commissioner for the City of Toronto, Val Jepsen, in her 2016 *Annual Report* commented that "...social media is a way to communicate with constituents and blocking them could be seen as a refusal of service". See also "Can a politician block you on Twitter?" by Cara Zwibel of the Canadian Civil Liberties Association, June 7, 2019, [ccla.org](http://ccla.org), who says online spaces have become the public square and unless being subjected to repeated harassment, blocking by elected officials is "terrible for democracy".

<sup>2</sup> See: National Observer, July 4, 2019, by Emma McIntosh and Fatima Syed.



they express a contrary view. But, this is within the Councillor's discretion. There are no specific rules in the *Code of Conduct* or Council policies that apply to this issue.

#### **Findings – Deleting and Blocking Social Media**

I find on balance that the *Code of Conduct* was not violated when the Respondent blocked commentators on his social media page. While I think this sort of blocking should be done sparingly and based on justifiable and defensible guidelines, there is nothing currently in the *Code* that prevents this. There is no legal guidance on this issue. Council may choose to pass a social media policy to address this situation. Currently, this is left to Members of Council to use their judgment.

#### **FINDINGS**

While appreciative of the Complainant for raising this topical issue, for the reasons noted above, I have made no findings of a breach of the *Code of Conduct* by the Respondent.

# Office of the Integrity Commissioner

integrity.commissioner@edmonton.ca

**INVESTIGATION REPORT 2010**  
**BY JAMIE PYTEL**  
**INTEGRITY COMMISSIONER for**  
**THE CITY OF EDMONTON**

Report Date: July 19, 2020

To: City Council for The City of Edmonton

Re: *Council Code of Conduct Bylaw 18483*  
(the “Code of Conduct” or “Code”)  
Complaint 2010

Complainant: Complainant 2010

Date of Complaints: April 20 and May 20, 2020

Respondent: Councillor Mike Nickel

## TABLE OF CONTENTS

<b>COMPLAINTS .....</b>	<b>3</b>
<b>CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION .....</b>	<b>3</b>
<b>PROCESS and JURISDICTIONAL ISSUES .....</b>	<b>4</b>
<b>THE LEGAL and CODE OF CONDUCT BACKDROP .....</b>	<b>7</b>
<b>SUMMARY OF RESPONDENT’S SUBMISSIONS .....</b>	<b>11</b>
<b>RESPONDENT’S INFORMATION - APRIL 18 POST.....</b>	<b>12</b>
<b>MAY 20 POST .....</b>	<b>16</b>
<b>RECOMMENDATIONS.....</b>	<b>17</b>
<b>APPENDIX A .....</b>	<b>18</b>
<b>APPENDIX B .....</b>	<b>20</b>

## COMPLAINTS

The Complainant alleges that on April 19, 2020 [sic April 18, 2020]:

Councillor Nickel posted a defamatory image of Councillor Knack on Facebook. This is not 'respectful communication with members of the public, councillors, city employees, and councillors employees.' The post included a cartoon style image of an individual burning dollar bills, with a photo of Councillor Knack's face superimposed over top.

The Complainant provided a copy of the cartoon image which is the subject of this complaint and is attached as **Appendix A** to this report (the "April 18 post").

The Complainant also alleged that on May 20, 2020:

- [The May 20 post contains] two screen shots of an image depicting Kermit the Frog and text describing free transit and spending on bike lanes. The second image shows how Councillor Nickel has tagged Don Iveson as being in the photo, i.e. Don Iveson is Kermit the Frog. The text in the image represents that Don Iveson has decided to make transit free independent of COVID-19 health concerns, and that he is somehow scheming to expand bike lanes, and "add a gondola". The decisions are made jointly by council and councillor Nickel has an opportunity to participate in those decisions. Representing these decisions as pet projects by Don Iveson alone does not accurately represent the role or function of council. I do not believe Mike Nickel should spend his time, or time of his assistants or staff, creating disrespectful images such as the attached.

The Complainant provided a copy of the May 20 post which is the subject of this complaint and is attached as **Appendix B** to this report.

## CODE OF CONDUCT – APPLICABLE SECTIONS AND INTERPRETATION

The applicable sections of the *Code of Conduct* say:

Part A: Representing the Municipality, section 1 d):

While carrying out their duties, Councillors must accurately represent and respect decisions made by Council while preserving the value of fair comment and differences of opinion.

Part A: Representing the Municipality, section 1 e):

While carrying out their duties, Councillors must communicate respectfully with members of the public, Councillors, City employees, and Councillor's employees.

Part B: Communications, section 1 a):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure their communications accurately reflect the facts of Council's decisions.

Part B: Communications, section 1 c):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications are accurate and not issue any communication that the Councillor knows, or ought to have known, to be false.

Part B: Communications, section 1 d):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will ensure that all communications issued by, or on behalf of, the Councillor, including social media, are respectful and do not discriminate, harass, or demonstrate disrespect toward any person.

Part B: Communications, section 1 e):

Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will not issue any communications that mislead the public about any matter.

Part E: Respectful Interactions, section 1:

Councillors will conduct themselves with decorum at all times, including while attending meetings, interacting with City employees and Councillor's employees, and engaging with the public.

Part E: Respectful Interactions, section 3:

Councillors must not use any harassing or disrespectful language about Council, a Councillor or the public.

There is no definition in the *Code* for decorum. I suggest that Members of Councillor would generally have an understanding of what this means short of a definition within the *Code*. In any event:

*Oxford English Dictionary* (oed.com) defines decorum as:

That which is proper, suitable, seemly, befitting, becoming; fitness, propriety, congruity.

*Miriam-Webster.com* defines decorum as:

Correct or proper behaviour that shows respect and good manners.

## PROCESS and JURISDICTIONAL ISSUES

The Complaints were in writing, were within the time limits set out in the *Code*, and included the sections of the *Code* the Complainant felt were violated [Part A Section 1 e), Part B Section 1 d) and Section E].

As part of the public interest function of my role, at times I may need to identify which sections of the *Code* I feel are applicable based on the information presented. This applies whether a complainant or respondent raises certain information or sections of the *Code*. I can also make a finding with respect to a section of the *Code* even if a complainant, or respondent in his or her defence, does not identify the

correct sections of the *Code*. However, the allegations and information presented must relate to a section of the *Code*.

I have included in this report those sections of the *Code* that I found potentially apply to the issues raised in this Complaint. I have not included those sections that were identified by the Complainant that I did not find to be relevant. For instance, the Complainant identified Section E of the *Code*. In my view, only the Sections E 1 and E 3 are potentially applicable.

During the investigation, when I had questions or needed more detail about this Complaint, I contacted the Complainant via email using the contact information provided by the Complainant. All information provided was considered for this investigation. I determined that it was not necessary to personally interview or have the Complainant swear a statutory declaration.

I provided the Respondent with all of the information and allegations provided to me by the Complainant. I interviewed the Respondent and he provided his written statement in response to this Complaint. The content of the Respondent's statement is contained within this report under the applicable headings. I also provided the Respondent with the sections of the *Code* I felt were relevant to this investigation and a list of the issues I felt were raised in this investigation. I invited the Respondent to raise any concerns around process or arguments at any time during this process. I reviewed and considered all of the information provided to me by the Respondent.

I did not find it to be in the public interest to identify the Complainant by name in this report. However, the Respondent was given the written Complaint, including name of the Complainant (except contact information), in case the identity of the Complainant raised any issues or defences for the Respondent.

I considered whether the April 18 post was done as part of the Respondent's role as a City of Edmonton Councillor, or was purely personal. The Respondent says:

My social media accounts are my own property. The costs associated with them I pay out of my own pocket....I changed the name on my Facebook page because I do not want there to be any confusion that this is my political opinion. I changed it to say Mike Nickel, not Councillor Mike Nickel. I wanted it to be crystal clear that the opinions expressed are my personal opinions. Even though I am Councillor Nickel, Mike Nickel has rights to express his opinion. I believe using my title as Councillor is no different than a doctor using a "Dr." prefix in their personal life. Members of Council express their personal opinion on their personal pages frequently. All Councillors post blogs, use social media etc. as an unofficial method to communicate with the public. Any official platforms to engage with constituents are owned by the City. The April 18 post was on a privately operated platform where I communicate with the public regarding activities both related and unrelated to Council.

In my view, whether the Respondent pays for his social media accounts himself is irrelevant. What matters is the content of those communications. Whether he communicates his views on social media or uses some other medium, I find that the *Code* applies if those communications are about Council, his role as a Councillor, Members of Council, or the business of the City.

Fellow Integrity Commissioner Melinda Munro for the County of Brant in Ontario likened these situations to the employment law cases in which employees can be terminated for their outside of

Council chambers social media activity. I agree with her analogy, as set out in *Bartscher v. Cardy*, 2018 ONMIC 28:

While [the Code of Conduct] refers to ‘official duties’, it cannot be the case that the Council intended that its members would be free to behave in an outrageous manner outside the Council chambers such as to undermine public confidence in the office...the law of employment has long established that ‘off-duty’ conduct can be cause for discipline and dismissal where it is done in such a way as to damage the reputation or work environment of the employer....It can reasonably be suggested that once elected as a public official, all public activities are ‘official duties’ for the purpose of behaving in a manner consistent with the Code.

It is also worth noting that Part E section 1 of the *Code* says: “Councillors will act with decorum at all times...while engaging with the public.” This requirement is not limited to conduct in Council or Committee meetings or at official Council functions. I also note that some of the sections of the Code (i.e. Part A, Sections 1d and 1e) when referring to Members of Council’s duties include the phrase “while carrying out their official duties”. Part B, Section 1d which deals with respectful communications while on social media does not include this phrase.

In this case, the April 18 post was clearly posted about Councillor Andrew Knack and about City of Edmonton business. The subject matter of the April 18 post and the fact that the Respondent says he was advocating on behalf of some of his constituents. The May 20 Post was clearly about Mayor Iveson and the decisions of Council. I find that the *Code* applies to both posts.

The Respondent says he would react differently to this investigation if Councillor Knack had made a complaint. However, the *Code* says:

If any person believes that a Councillor has contravened this code of conduct, that person may make a written complaint to the Integrity Commissioner.

In my view, it is perfectly acceptable for members of the public to question the conduct of Members of Council. The *Code* provides a way for them to do this. Based on the language of the *Code*, it is not a requirement that the alleged “victim” be the complainant.

The Complainant alleges defamation by the Respondent in the April 18 post. I have previously commented on issues of defamation and specifically requested that defamation be removed from the *Code*, which it was well before this Complaint. In my view, matters of defamation are more properly dealt with in a court of law and not determined by an Integrity Commissioner. Accordingly, whether the April 18 post was defamatory is not considered in this investigation.

The impugned conduct also needs to be sufficiently egregious to warrant investigation, and not a minor or trivial issue. Here, I decided to investigate, in part, because the cartoon image depicted in the April 18 post came across, at first blush, as a potential breaches of the *Code*. However, more investigation, thought and analysis were needed to determine if, in context, the April 18 post violated the *Code*. The same applies to the May 20 post.

## THE LEGAL and CODE OF CONDUCT BACKDROP

This investigation is centred around the right to freedom of expression and how it interacts with the *Code of Conduct*. The Respondent asserts that in the April 18 post he was simply asserting his freedom of expression rights and he should not be censored or censured for doing this.

The role of a Municipal Councillors is complex and includes being both a politician and a legislator. This is sometimes referred to as a “hybrid function”. As stated in *Geatrix v. Williams*<sup>1</sup>:

The Courts have confirmed that municipal councillors have hybrid political and legislative functions<sup>2</sup>. That they are representatives of the communities that elect them,<sup>3</sup> and that members of the public have the right to address their municipal representatives on issues of concern<sup>4</sup>...

It is part of the role of a Council Member to communicate with members of the public about municipal issues. This includes both initiating communication and responding to communication initiated by members of the public. In doing so, a Council Member is not limited to explaining and defending what the municipality is already doing. As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give effect to those views.<sup>5</sup> Some of those views may involve a change in law or a change in direction. **Provided that a Council Member proceeds lawfully and in a manner consistent with the *Municipal Act*, the Code and other legislation and by-laws**, nothing prevents a Council Member from taking, defending and seeking to implement a position that advocates change. Indeed, the Courts have clearly stated that as an elected representative of the public a municipal councillor is entitled to take “an open leadership role” on an issue.<sup>6</sup> **[emphasis added]**

As well, as stated in *Jeffrey v. Sprovieri*<sup>7</sup>:

Political commentary must comply with the Code, but otherwise an Integrity Commissioner has no jurisdiction over it. As Integrity Commissioner Cameron noted in the 2012 case:

I cannot and will not be a referee for free speech in a political arena provided it stays within the bounds of...the Code.

Subsequently, Mr. Randy Pepper, the delegate of Integrity Commissioner Cameron, expanded on the same principle in Investigation Report No. BIC-33-1112:

---

<sup>1</sup> By Integrity Commissioner Guy Giorno for the Town of Orangeville in Ontario, 2018 ONMIC 6 at para 132.

<sup>2</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1179 at 1196.

<sup>3</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc.* note 13, at 1193.

<sup>4</sup> *Re McGill and City of Brantford* (1980), 111 D.L.R. (3d) 405 (Ont. Dist. Ct.) at 411, cited with approval by *Old St. Boniface Residents Assn. Inc.*, note 13, at 1193-4.

<sup>5</sup> *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20.

<sup>6</sup> *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, (1989), 58 Man. R. (2d) 255 (C.A.) at 264, affirmed [1990] 3 S.C.R. 1170.

<sup>7</sup> 2018 ONMIC 21, Guy Giorno, as Integrity Commissioner for the City of Brampton, at para 86.



Freedom of expression is a fundamental right in Canada so the Code must be interpreted in a manner consistent with this fundamental right. Based on the law set out below, I cannot find that the Code should be interpreted to appoint the Integrity Commissioner as a speech referee in the political arena.

As the Supreme Court of Canada noted in the *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139:

Freedom of expression, like freedom of religion, serves to anchor the very essence of our democratic political and societal structure...Hence, the justification for the widest freedom of political speech stems not only from some abstract search for truth, but also from the tangible goal of preserving democracy...I find that the Integrity Commissioner has a very limited role in relation to the "freewheeling debate on matters of public interest...

The Ontario Supreme Court stated in *Buck v. Morris et al.*, 2015 ONSC 5632, at paragraphs 189-193:

There can be no doubt that politics, whether it be federal, provincial or municipal, is not for the faint of heart. Some might say a thick skin is a prerequisite for any politician.

A thick skin, however, does not mean that a politician is fair game for those intent on damaging their reputation with false, malicious, and defamatory statements. Freedom of speech, whether in the political forum or not, does not extend to statements that are untrue and have as their sole purpose an intent to damage someone else's reputation.

The right to freedom of speech in our society is not an absolute right. While freedom of speech is a cherished right in a free and democratic society, there are reasonable limitations. The Town of Aurora, like many other towns and cities in the Province of Ontario, has a Code of Conduct that purports to codify parameters of reasonable conduct for elected Town officials...

The plaintiff clearly has a perception that she has an unfettered right to freedom of expression and freedom of speech. That freedom, however, is circumscribed by the Code.

The Supreme Court of Canada in *Prud'homme v. Prud'homme*, 2002 SCC 85, stated at paras 42-45:

...while elected municipal officials must be quite free to discuss matters of public interest, they must act as would the reasonable person. The reasonableness of their conduct will often be demonstrated by their good faith and the prior checking they did to satisfy themselves as to the truth of their allegations. These are guidelines for exercising the right to comment, which has been repeatedly reaffirmed by the courts.

I am of the view that it is not the role of the Integrity Commissioner to censor or interfere with political debate and commentary. It is not my role to decide whether views expressed by Members of Council are meritorious or properly held.

It is also not my role to interpret whether the *Code* is contrary to the freedom of expression rights found in the *Canadian Charter of Rights*, which is an issue for the courts to decide. However, I am of the view that the right to freedom of expression found in the *Charter* has limits. In this case, the limits have been self-imposed by City Council with the issuance of the *Code of Conduct*. The *Code* allows fair comment

and Members of Council to hold a position on an issue. This is balanced with *Code* requirements, such as, to accurately represent Council's activities, be respectful and act with decorum.

No code of conduct can list all of the possible ways individuals can disrespect one another. Some codes provide non-exhaustive lists of what is considered disrespectful conduct to give those who are governed by the code a sense of what is contrary to the code. However, it is left to those who are governed by those codes to use their judgement. When a complaint is made, those who administer the code and investigate alleged breaches (in this case, me as the Integrity Commissioner), must determine if the impugned conduct is disrespectful. As part of that review, consideration is given to the context and facts around the impugned conduct.

The *Code of Conduct* requires Members of Council to respect the decisions made by Council while preserving the value of fair comment and differences of opinion. Some Integrity Commissioners in Canada have commented on this requirement. For instance, Bruce Elman, Integrity Commissioner for the City of Windsor says<sup>8</sup>:

City or Municipal Councils occupy a unique role in our society. They are, at one time, both deliberative legislative bodies for the geographical entity known as their city, town, county, or municipal district, and at the same time, they are, effectively, a corporate board of directors for the commercial entity known as the Municipal Corporation of (in this case) the City of Windsor....

In other words, in the lead up to a specific decision, Council is a deliberative governmental body wherein almost unfettered freedom of speech reigns but once that decision is made, Council becomes a corporate board and, as with vast majority of corporate boards, public dissent is discouraged or even prohibited. The reason is rational and sensible: Decisions made by Council become the official policy of the City of Windsor. When Members of Council speak out or engage in conduct indicating opposition to official City policy outside the deliberative confines of the legislative process, their comments or conduct can diminish the integrity of Council decisions in the public eye, damage public confidence in Council itself, or even undermine the City's reputation, domestically or internationally. One can only imagine how [the Councillor's statement] – perhaps taken as hyperbole here in Windsor – might be viewed in California or Calgary or Copenhagen or Cairo.

It should be noted that Councillors have plenty of opportunities prior to a decision being made by Council to express their views on the merits of a proposal and they can provide as much context as they wish and use as much hyperbole as they believe is necessary. If a Councillor has particular concerns regarding an item on the Council Agenda, the Councillor can call a press conference to express those concerns. Councillors can post their concerns on their webpages or on social media to express those concerns. Councillors can go to community groups or BIAs to rally support for their position. The Councillor can even encourage citizens to become delegates to Council when the matter is debated. Finally, Councillors may express all of their concerns during the debate on the matter when it comes before Council.

---

<sup>8</sup> Re Complaint brought pursuant to the Code of Conduct of the City of Windsor against Councillor Rino Berolin, Integrity Commissioner Bruce Elman's report dated April 20, 2018.

Even then, after the decision is made, Councillors are free to explain why they voted as they did during the Council deliberations. They should, however, acknowledge the legitimacy of Council's decision as resulting from the deliberative and democratic processes of Council. **They should not be disrespectful and their comments should not be disparaging or inaccurate.** [emphasis added]

Relevant background for this investigation are decisions made by Council during the COVID-19 pandemic and historically with respect to the construction of bike lanes in the City of Edmonton. A review of the history reveals:

- The construction of bike lanes was a decision made by Council going back to 2009 when the Council of the day carried a motion to approve the policy that: “The City of Edmonton strives to be pedestrian and bicycle friendly”.
- On June 11, 2014 Council passed a motion that “enhanced public engagement strategies” outlined in a report by Transportation Services that included a bicycle infrastructure plan be approved. The Respondent voted in favour of this motion.
- During Council Meetings in November and December 2014, Council passed the 2015-2018 Capital Budget, including a motion for a \$8.8 Million bikeway for the 102 Avenue area. The Respondent voted in favour of this motion.
- In 2016, the Respondent voted in favour of a motion for capital funding of \$7.5 Million and an annual operating cost of \$625,000 for physically separated bike lane infrastructure.
- With respect to the 2019-2022 Capital Budget discussed at the November and December 2018 Council meetings, the Respondent voted against a motion seeking increased funding of \$2.17 Million for bike infrastructure expenditures, but the motion was passed. The Respondent also voted against a motion on the \$5.7 Billion Capital and Operating Budget that included design and construction of a minimum grade bike grid in various areas in Edmonton, but the motion was passed.
- In response to this investigation, the Respondent referred me to the March 26, 2020 Emergency Advisory Committee of Council. A review of that meeting revealed that Councillor Knack brought forward concerns from some of his constituents that they were struggling with physical distancing outdoors during the pandemic. City Administration said that they would review options in this regard. It was clear at this meeting that this was delegated to City Administration. No Council motions were passed in this regard.
- City Administration made expanded spaces available on some City of Edmonton roads and paths during the COVID-19 pandemic starting in April 2020. This was done to facilitate physical distancing during the pandemic. These were multimodal spaces for active transportation for:
  - Biking
  - Running

- Walking
- Rollerblading
- Wheelchair use
- Etc.

The decision to do this was made by Administration under the State of Local Emergency, but Administration normally has the authority to make these sorts of decisions. Regular updates were given to Council about these measures and Councillors could raise any concerns they had with them.

## SUMMARY OF RESPONDENT'S SUBMISSIONS

The Respondent provided some submissions regarding this investigation all of which were reviewed and considered by me. The following is a summary of the Respondent's submissions that were relevant to the issues<sup>9</sup>:

- By passing the *Code of Conduct*, Council did not agree to contract out of the *Canadian Charter of Rights and Freedoms*;
- Terms used in the *Code of Conduct*, like "disrespectful" have no objective criteria against which words can be measured;
- As "respectfully" is not defined in the *Code of Conduct*, the Integrity Commissioner is discouraged from inserting her own "personal subjective standards into that void";
- Members of Council should not be punished for acts that were never intended to cause harm;
- If victimless speech is to be censored there will be a chilling effect on free expression;
- Non-defamatory speech that may be offensive but falls short of inciting hatred to an identifiable group is constitutionally protected;
- There is no objective standard that exists regarding social media posts that could result in the posts being deemed offensive or disrespectful, especially by norms established in the political arena;
- The Respondent does not attack another Councillor, he simply questions Council and certain Members of Council spending priorities. He merely questions and sometimes attacks another Councillor's spending priorities for the City of Edmonton;
- There is no personal attack. There is no disrespect. There is only a fundamental difference on an important fiscal matter. Far from disrespecting an adversary, the Respondent respects a fellow Councillor by essentially challenging him to a social media debate and giving him an opportunity to defend his position;
- The cartoon image of Councillor Knack is not offensive. It does not portray the Councillor in an unflattering light or distort his appearance in any negative way. It is simply a visual depiction to graphically demonstrate the thesis that Council's spending priorities are askew;
- There is no need to censure social media. The internet is self-policing. When someone posts something offensive, they are immediately 'outed' and/or castigated for their viewpoints;
- Members of Council should be allowed to participate unfettered in political debate regarding difficult fiscal choices. The Respondent should not be censured for doing his job – attempting to

---

<sup>9</sup> The Respondent can also make further written submissions to Council before the Council meeting to consider this report and will have time at the meeting to make oral submissions.

convince Members of Council and those who “follow” and support those Members, that the City of Edmonton needs to reprioritize its spending.

#### RESPONDENT'S INFORMATION - APRIL 18 POST

With respect to the April 18 post, the Respondent says:

- This post was in response to Councillor Knack making a comment on Twitter regarding my April 17, 2020 social media post(s). This post did not name any Councillors and contained a description of an idea suggested by Councillor Knack at the March 26, 2020 Emergency Advisory Committee meeting, then enacted by the Administration without consultation of Council, with a picture of one site. The post also brought forward my opinion of actions that we should be taking to minimize the negative impacts of COVID. In Councillor Knack's April 17, 2020 post, he made implications that I sit in Council meetings, vote no to everything, and do not offer solutions. I believed this to be an inaccurate interpretation of my work and responded with a comparable interpretation of his work.
- The cartoon image of Councillor Knack in my April 18, 2020 post had some stop animation showing Councillor Knack throwing money into a fire. Councillor Knack has since released a blog breaking down his disagreement with my April 18, 2020 post, then stated in a radio interview on April 21, 2020 that he did not find the post offensive.
- Mayor Iveson sent me a text message April 19, 2020, asking me to take down the April 18, 2020 post. As a professional courtesy to Councillor Knack, I asked my social media staff to remove it. The April 18, 2020 post has been taken down on all sources, while the April 17, 2020 post remains active. In hindsight, I wish I would not have taken it down.
- I do not think the April 18, 2020 post is disrespectful. I am expressing my opinion, as other Councillors do. It was in response to Councillor Knack's expression of his opinion. To me, this is just another form of expression about this type of behavior on Council. It was about Councillor Knack because Councillor Knack initiated the situation. In the public square, sitting Councillors retain freedom of expression.
- It strikes me as political bigotry. They don't have to like my opinion. Before [the] complaint came in, [another member of the public] put out a call to action to file a complaint against me....On the April 18, 2020 post, someone made a comment that shared a link to a cycling special interest group calling for more people to file complaints against me. I deleted my post and I cannot find the cycling group post. Since this complaint has been filed, someone made a parody account of me that is similar to the cartoon I made of Councillor Knack. This account has followers that include the Mayor, sitting Councillors, Council staff, and City staff. Due to the anonymous nature of Twitter, I do not know how many of these followers filed complaints against me. While I do not intend to silence the right to freedom of expression of others, I do find it ironic that they are not only not offended by this, but effectively endorsing it. Their application of offensive standards is inconsistent.

- The issues around bike lanes go back for years. I have always questioned whether this is a wise financial decision. However, they have always been part of larger infrastructure budgets which I have supported. If they were presented as individual items, my support would be based on the merits of the individual project. It is my political opinion that bike lanes are inappropriate, based on the fact that the Downtown Bike Network failed to meet 3 out of 4 of the targets they set for themselves, as shown in a report to Council/Committee. I have always been an advocate of value for taxes, and I do not see an equitable value proposition for bike lanes.
- The cartoon is about spending money wisely. I have many constituents who are vehemently opposed to spending money on bike lanes. And for those who were on the fence before the pandemic, they are definitely against now when we've spent money on bike lanes, but can't cut the lawns.
- The City opened more "emergency bike lanes" recently. I have not seen evidence they are being used as intended, therefore I believe the City is wasting resources. Most of Council has endorsed this project on numerous occasions. The April 18, 2020 post was intended to outline the spending priorities of some of my colleagues on Council.
- If the Complainant says I have accused Councillor Knack of approving bike lanes during a pandemic that is their interpretation. They have to practice their own due diligence, too. There has to be a reasonable limit on what I need to respond. I cannot manage everyone's possible interpretations.
- I deny that the April 17, 2020 [sic April 18, 2020] post contained misinformation about the implementation of bike lanes during a pandemic.
- I'm a politician. Councillor Knack is a politician. I exercised my freedom of expression and opinion. I understand there are limits to freedom of expression. The April 18, 2020 post is not derogatory, hateful or disrespectful. It's not a personal attack, it was a response to a post from Councillor Knack. I challenge other politicians on what they have done. This is just a different way of challenging them.
- The decision to install bike lanes during the pandemic was made by the Covid-19 Task Team who decided to expand the network. It was not the decision of Council. But, at every turn, Councillor Knack has been an advocate of bike lanes through the budget process, including Councillor Knack making the suggestion for this action at the March 26, 2020 Emergency Advisory Committee. The April 18, 2020 post is my interpretation. It's a metaphor for the spending habits by Council and in particular Councillor Knack. It's not just about pylons. It's a grander theme of what's being spent.
- I consider the April 18, 2020 post to be relatively tame. Complainants get to speak on their agenda. Anyone who speaks against their agenda is accused of unfair comment. It's like they want to shout you down. There is a political bigotry that exists where you cannot seem to have a legitimate discussion or comment without someone being offended. They have the right to be offended, but not the right to censor me.

- The Code of Conduct cannot be used to inhibit my individual freedoms. The cartoon of Councillor Knack was just another form of expression.
- I have never apologized for the April 18, 2020 post and I'm not going to apologize. There is a principle here with what is a fair and open expression of personal opinion. I do not think I have violated the Code of Conduct.

### Discussion and Analysis

The Respondent says his April 18 post was in response to prior negative comments by Councillor Knack. However, the Respondent did not provide any evidence of this and did not identify what post he was referring to, despite being told that if he wants me to consider this argument he must provide the information necessary to support the argument. Simply saying the April 18 post was a response to a post by Councillor Knack is not an answer.

The Respondent also refers to other alleged activity on social media involving Mayor Iveson and other Councillors, but provides nothing to support these suggestions. I have not been given anything to conclude that the Respondent's allegations of other Members of Council's conduct should be taken as mitigating factors when determining the outcome of this investigation.

With respect the cartoon image of Councillor Knack in the April 18 post, the Respondent argues that this image is not disrespectful and not offensive. He argues that this is simply another form of expression. However, I see the Councillor's oversized head superimposed on a smaller body, as he broadly smiles while burning (presumably) taxpayers' money as a belittling, personal attack, and not fair comment as between politicians on a political issue.

The cartoon image of the Councillor throwing money for "bike lanes" on a fire was capable of being viewed by many people. It reasonably left the impression that during a time of pandemic, when many were suffering financially, the Councillor was willing to burn money on the construction of bike lanes. The cartoon image does not say temporary bike lanes. I suggest that social media users often engage on social media by scrolling and seeing images without necessarily reading the accompanying commentary. Therefore, the cartoon image was likely to also have been viewed in isolation by some viewers while they scrolled the feed. I find that the cartoon image of the Councillor burning money on "bike lanes" was misleading.

I find this manner of communicating is demeaning, derisive, and personal and therefore disrespectful. Despite the Respondent saying this is not a personal attack, I find there is no doubt it is a personal attack publicly directed at Councillor Knack. Here, the Respondent says, in part, that he is fulfilling his duty to his constituents when he speaks on issues such as bike lanes. I completely agree that part of his role as Councillor is to raise issues on behalf of his constituents. However, this does not extend to making personal attacks on another Councillor with whom he has a difference of opinion.

The issue I have with the image is shows Councillor Knack apparently burning money on bike lanes during a pandemic. The accompanying commentary that goes with the image [which was not provided by the Complainant, but is relevant context] is very critical of Councillor Knack and falsely suggests that he is responsible for the installation of bike lanes during a pandemic. The timing of this cartoon image matters. The issue of bike lanes and the specific temperature of the electorate for spending money

during a pandemic makes this all the more of a hot button issue. This therefore requires the Respondent to not be reckless in how he presents the information. In fact, the recent introduction of temporary spaces for physical distancing was for a multiple of purposes (not just cycling) during the COVID-19 pandemic. This was a decision made by the City Administration and not by Council. In image in the April 18 post suggests that Councillor Knack is burning money on bike lanes during a pandemic. It also suggests that Councillor Knack was responsible for this decision which, by the Respondent's own admission, is not true as he reports that Administration made this decision without Council approval.

The Respondent says that it is a stretch for anyone to say that the image in the April 18 post are suggesting that Councillor Knack approved the construction of bike lanes during a pandemic. He says this post is a metaphor for wasteful spending. In my view, if the Respondent is going to make a metaphor on social media, it ought to be obvious that it is a metaphor. It was not clearly about Councillor Knack's decisions regarding spending, but was about the current installation of what the Respondent referred to in the accompanying commentary as Councillor Knack's "most recent flavour of the week more bike lanes".

I agree with the Respondent that he cannot be responsible for every interpretation that might be made by others of his communications. I also fully support and will not interfere with Members of Council expressing their views on matters of public interest and engaging in vigorous political debate. This gives the electorate an opportunity to hear the elected official's views and decide for themselves if they support those views. However, those communications must, objectively, not be misleading. I find, on balance, that the image in the April 18 post with the words "bike lanes" was misleading as it leaves the impression that Councillor Knack was responsible for approving more bikes lanes during a pandemic, which he was not. I appreciate this was political commentary on the part of the Respondent, but it must not be factually misleading.

With respect the cartoon image of Councillor Knack in the April 18 post, the Respondent argues that this image is not disrespectful and not offensive. He argues that this is simply another form of expression. However, I see the Councillor's oversized head superimposed on a smaller body, as he broadly smiles while burning (presumably) taxpayers' money as a belittling, personal attack, and not fair comment as between politicians on a political issue.

The cartoon image of the Councillor throwing money for "bike lanes" on a fire was capable of being viewed by many people. It reasonably left the impression that during a time of pandemic, when many were suffering financially, the Councillor was willing to burn money on the construction of bike lanes. The cartoon image does not say temporary bike lanes. I suggest that social media users often engage on social media by scrolling and seeing images without necessarily reading the accompanying commentary. Here, the Complainant only provided a copy of the cartoon. The cartoon image was likely to also have been viewed in isolation by some viewers while they scrolled the feed. I find that the cartoon image of the Councillor burning money on "bike lanes" was misleading.

### **Findings – April 18 Post**

On balance, I find that the cartoon image posted by the Respondent in the April 18 post violated the *Code of Conduct* as follows:



- (1) The personal attack on Councillor Knack and the manner of communicating was disrespectful, in violation of Part B, section 1 d) of the *Code of Conduct* that says Councillors must ensure that all communications issued by Councillors, including on social media, are respectful.
- (2) The personal attack on another Councillor and the manner of communicating lacked decorum, in violation of Part E, section 1 of the *Code of Conduct* that requires Councillors to act with decorum at all times.
- (3) Communicating misleading information that left the impression that Councillor Knack approved the installation of bike lanes during a pandemic, when the decision was to temporarily use public space to expand spaces for multimodal use for physical distancing during the COVID-19 pandemic. This was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the *Code of Conduct* that say Councillors must ensure that their communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter.

#### MAY 20 POST

The Respondent did not provide specific responses to the allegations raised about the May 20, 2020 post. I will assume that his submissions asserting freedom of expression are also his response to this post.

In the May 20 post, the Respondent suggests that Mayor Iveson is responsible for the decision to “add dozens of emergency bike lanes”. This is misleading as this was a decision to temporarily use public space to expand spaces for multimodal use (not just for cycling) for physical distancing during the COVID-19 pandemic and was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the Code of Conduct that say Councillors must ensure that their communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter.

#### Findings – May 20 post

On balance, I find that the comments and image posted by the Respondent in the May 20 post violated the *Code of Conduct* as follows:

- (1) Communicating misleading information that left the impression that Mayor Iveson was responsible for approving the addition of dozens of emergency bike lanes was misleading, when this was a decision to temporarily use public space to expand spaces for multimodal use for physical distancing during the COVID-19 pandemic and was a decision made by City Administration, not by Council. This violates Part B, sections 1 a) and e) of the *Code of Conduct* that say Councillors must ensure that their communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter.

## RECOMMENDATIONS

Section 153 (e.1) of the *Municipal Government Act* requires Councillors to adhere to the *Code of Conduct*. I have found that the Respondent did not adhere to the *Code*.

**I recommend that Council:**

1. Accept this report.
2. Direct that the Mayor on behalf of Council issue a letter of reprimand addressed to the Respondent with respect to *Code of Conduct* violations found in this report.

## APPENDIX A

[Note: the Complainant provided the cartoon image in this post in the original complaint. For context, the entire post is contained in this Appendix].



**Councillor Mike Nickel**

19 hrs · 🌐



Right now, every resident in Edmonton is watching their spending carefully.

**Andrew Knack**, why can't you? 🙄

Every dollar we spend wisely might mean another worker getting their job back at the City of Edmonton very soon. Does that mean anything to you?

I get it, you have no idea what to do in this situation so you are reverting to what you know.

I'm sure when you suggest more tax increases shortly it will be no big deal...

Your most recent flavour of the week is more bike lanes.

At some point, we will need every dollar at our disposal to bring this city back to life. To re-hire those people I mentioned above.

I hope you haven't forgotten about them already.

My solution to the current problem is to be very careful with spending right now. We should only spend what we absolutely must.

Somehow this isn't a solution for you. I get it, it's not flashy. It's not exciting.

Well I'm sorry saving money and spending wisely isn't your current priority.

With the reduced traffic on the roads there is now a great opportunity for cyclists to enjoy the roadways.

I truly mean it. To everyone in this city enjoy the outdoors and get some fresh air.

Edmonton is one of the least dense of all the major cities on the planet. There are so many places to walk and be outside and have a 2 metre buffer.

Spending money frivolously on temporary bike lanes and orange pylons won't cut it.

I'm really sorry, but this is the fundamental difference between us I guess...

C'mon Andrew, now is your time to show some fiscal restraint.



119

55 comments 51 shares

Like

Comment

Share



**In this photo**

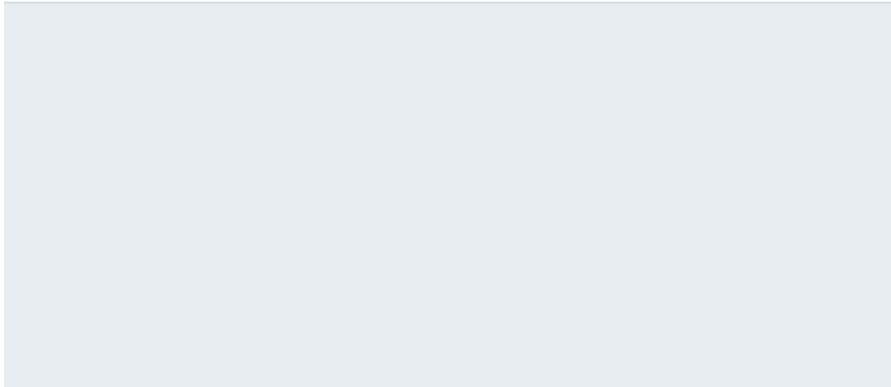


**Don Iveson** ✓

@doniveson

Following

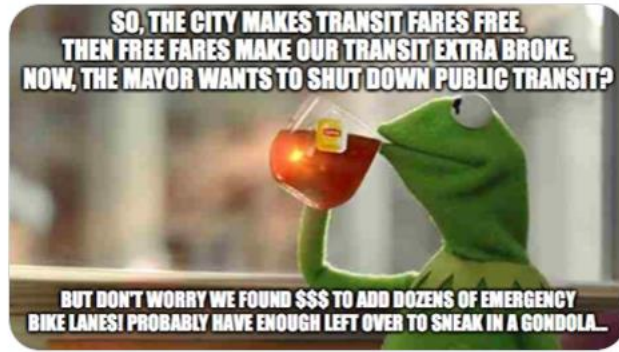
Mayor of #Edmonton, 🇨🇦. City building for the next generation in the heart of #Treaty6 territory. #YEGcc #YEGmetro #CDNmuni



---

♥ Twin Parks Community liked  
 **Mike Nickel** @ClrMikeNickel · 3h ✓  
What a strange day in Edmonton...

#yeg #yegcc



Don Iveson



# GUARDIAN LAW GROUP LLP

BARRISTERS AND SOLICITORS

JONATHAN DENIS, QC\*  
DONNA L. GEE, RN, BN, JD\*  
KEVIN METZ, B. COMM., JD\*  
JAY C.P. DAMEN, JD\*  
MATHEW FARRELL, LLB

GEORGE Y. HUANG JD\*  
CHRIS ERICKSON, LLB  
GABRIEL VRHOVAC, STUDENT -AT- LAW  
KYLE SHEWCHUK, STUDENT -AT- LAW  
AMBER BISHOP, STUDENT -AT- LAW

CLINT DOCKEN, QC\*  
*OF COUNSEL*  
VIRGINIA MAY, QC, RET'D

\*Denotes Professional Corporation

**Lawyer: Jonathan Denis, Q.C.**  
Email: [jdenis@guardian.law](mailto:jdenis@guardian.law)

**Paralegal: Kate Love**  
Email: [kate@guardian.law](mailto:kate@guardian.law)

August 11, 2020

**File No. 50606-001**

**Via Email: [integrity.commissoner@edmonton.ca](mailto:integrity.commissoner@edmonton.ca)**

**Edmonton City Council**  
3<sup>rd</sup> Floor, City Hall  
1 Sir Winston Churchill Square  
Edmonton, AB T5J 2R7

**Attention: Office of the City Clerk**

Dear Ms. Pytel:

**Re: Councillor Mike Nickel**

---

**Introduction:**

Please be advised that we have been retained as counsel for Councillor Mike Nickel. Kindly direct any and all further communications to the attention of the writer.

We submit for your consideration our client's responses in respect of the motion by the Integrity Commissioner for sanction. In essence, this vote is about how the provisions in the *Code of Conduct* concerning decorum and respectful communication ought to be interpreted. In the view of the Commissioner, the provisions of the *Code* extend to police the tone of communications. Councillor Nickel argues that this goes too far and for a clearer and more limited standard.

The second aspect about which the parties disagree is the nature and extent of the requirement for accuracy in communications imposed by the *Code of Conduct*. The Commissioner takes the position that to the extent that any statement is not strictly and technically true, that there is a violation. Conversely, Councillor Nickel takes the position that so long as the statement is substantively true, that glossing over a technicality is not a violation of the *Code of Conduct*.

Ultimately, Edmonton City Council is going to be asked to decide how to interpret the rules that govern political debate, both within and outside of the chamber, and how closely they wish for the Integrity Commissioner to monitor their interactions with both each other and constituents for accuracy, and tone. Councillor Nickel's view is that the *Code of Conduct* does not empower the Commissioner to govern or "police" the tone of communication, so long as any attacks are directed at ideas, and not people. Personal attacks are not permitted, and vulgar language is not permitted, but attacks, even heated attacks on ideas are the daily bread of politics and should not be sanctioned. Similarly, where an attack is substantively true, even if it glosses over details, the *Code of Conduct* does not circumscribe that type of political debate either.

342 - 4<sup>th</sup> Avenue SE Calgary, Alberta T2G 1C9 Telephone: (403) 457-7778 Facsimile: (877) 517-6373

[WWW.GUARDIAN.LAW](http://WWW.GUARDIAN.LAW)

### **The Backdrop--a metaphor:**

The political realm is the epitome of the "marketplace of ideas" and is essential for our democracy itself. It is the crucible in which those ideas are tested, and the forge in which they are refined and honed. Just as in a physical blacksmith's forge, things get heated. As in a forge, ideas get hammered. A blacksmith cannot be gentle with his/her metal and still do a good job. So too, a politician cannot be too gentle with ideas and concurrently be effective for his/her constituents.

There are, of course, limits. Just as blacksmiths should reserve their blows for the iron, politicians should reserve their attacks for ideas. Personal attacks are not appropriate. Likewise, vulgar language is not appropriate. Just as in the forge, sparks will fly, and those working at the forge will inevitably be splashed and burned with the detritus that is ejected from a well struck blow. As long as the blow is aimed at the metal, this is acceptable. Politicians, like blacksmiths, accept such injuries as occupational hazards.

### **The Code of Conduct:**

It is in this context that City Council passed a *Code of Conduct* with respect to how politicians are expected to comport themselves. In that *Code of Conduct*, two obligations of councillors are identified. The first is the obligation of accuracy, which is set out in the *Code* at Part A (1)(d), Part B(1)(a), Part B(1)(c), and Part B(1)(e). The relevant sections are set out below:

#### *Part A: Representing the Municipality*

- (1) While carrying out their duties, Councillors must:
- d) accurately represent and respect decisions made by Council while preserving the value of fair comment and differences of opinion.

#### *Part B: Communications*

- (1) Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will:
- a) ensure their communications accurately reflect the facts of Council's decisions.
  - c) ensure that all communications are accurate and not issue any communication that the Councillor knows, or ought to have known, to be false.
  - e) not issue any communications that mislead Council or the public about any matter. (S2. Bylaw 19142, February 3, 2020)

The second obligation is that of respect. This obligation is variously set out in the *Code* at: Part A(1)(e), Part B(1)(d), Part E(1), and Part E(3). The relevant sections are below:

#### *Part A: Representing the Municipality*

- (1) While carrying out their duties, Councillors must:
- e) communicate respectfully with members of the public, Councillors, City Employees, and Councillor's employees.

#### *Part B: Communications*

- (1) Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will:
- d) ensure that all communications issued by, or on behalf of, the Councillor, including social media, are respectful and do not discriminate, harass, or demonstrate disrespect toward any person.

#### *Part E: Respectful Interactions*

1. Councillors will conduct themselves with decorum at all times, including while attending meetings, interacting with City employees and Councillor's employees, and engaging with the public.



3. Councillors must not use any harassing, offensive, discriminatory, disrespectful, or unparliamentary language about Council, a Councillor, City employees, Councillor's employees, or the public.

### The Statements in Question:

The Integrity Commissioner has outlined a number of statements that it particularly objects to, and helpfully underlines those portions which it finds to be disrespectful within the meaning of the Code:

- More bike lanes during a pandemic!?! I wish this was a joke but it isn't...

Our mayor and some on Edmonton city council have completely lost grip on what is important right now...

You think we would be taking things seriously right now and use vital city resources and the power of our office properly...

- Have the mayor & some councillors completely checked out on reality?
- Right now, every resident in Edmonton is watching their spending carefully.

Andrew Knack, why can't you?

- Every dollar we spend wisely might mean another worker getting their job back at the City of Edmonton very soon. Does that mean anything to you?
- I get it, you have no idea what to do in this situation, so you are reverting to what you know.
- I'm sure when you suggest more tax increases shortly it will be no big deal...
- Your most recent flavour of the week is more bike lanes.
- At some point, we will need every dollar at our disposal to bring this city back to life. To re-hire those people I mentioned above.
- I hope you haven't forgotten about them already.
- My solution to the current problem is to be very careful with spending right now. We should only spend what we absolutely must.
- Somehow this isn't a solution for you. I get it. It's not flashy. It's not exiting.
- Well I'm sorry saving money and spending wisely isn't your current priority.

### Analysis:

#### Respectfulness:

In interpreting these sections, one of the most important touchstones that must guide you is the *Charter of Rights and Freedoms*. Even where the constitutionality of a law is not directly being challenged, it has long been a principle that a law must always be interpreted in a manner

consistent with the constitution. The principles of freedom of speech then, are an important interpretive aid.

This is not just the Councillor Nickel's opinion. It is well supported by the case law. For example, Randy Pepper, delegate of Brampton Integrity Commissioner Cameron is often quoted as saying:

*Freedom of expression is a fundamental right in Canada so the Code must be interpreted in a manner consistent with this fundamental right. Based on the law set out below, I cannot find that the Code should be interpreted to appoint the Integrity Commissioner as a speech referee in the political arena. (Emphasis added)*

Political speech is the most dearly protected of all forms of speech, and it is expressly permitted for those engaged in political debate to use hyperbole or satirize their opponents. For example, Councillor Sprovieri of Brampton, Ontario, once suggested that the mayor views on fluoridation were as follows:

*I'll just continue poisoning babies and illegally mass-drugging a million people with a one-size-fits-all tooth-damaging industrial fluoride acid in the name of oral health.*

The Mayor complained that this violated the city's decorum provisions, which are the corollary to the respect obligations contained in Edmonton's *Code of Conduct*. In deciding that this communication did not violate the *Code* the Integrity Commissioner noted that it was "not [his] place to determine how Councillor Sprovieri should or should not articulate his position on fluoridation."

It should seem obvious that if suggesting your opponent poisons babies is not disrespectful within the meaning of the *Code*, then what Councillor Nickel said cannot be either.

The case law on this point is very consistent. Rhetorical questions that seem to attack the character of a political opponent have likewise been held to be permissible. For example, "Do we seriously want staff to act like a military organization?" and "We are independent elected representatives, not part of a dictator party structure (Canada) or the Politburo, are we?" have been considered, and ruled to be within the bounds of the *Code of Conduct* in Ontario.<sup>1</sup> Even words such as "dictator" and "politburo" are not considered indecent or insulting.

The Integrity Commissioner's role in relation to policing comments on matters of "freewheeling debate on matters of public interest" is "very limited."<sup>2</sup> Even the use of "inflammatory language to incite the public to put pressure on other council members" is not a violation of the *Code*. Rather, "trying to motivate people to support one's viewpoint (or trying to motivate people to oppose a contrary viewpoint) is part of the democratic process."

One is allowed and expected to criticize one's political opponents, using strong language, and in such situations, it is not appropriate to try and muzzle the other side by using the Integrity Commissioner. As the Integrity Commissioner said in respect to the "dictator" comments:

... With great respect, I note that this – responding to what the other side says – is how politicians traditionally handle criticism. If an unfair or inaccurate criticism is made in the course of political debate, then political debate offers its own remedies to address those inaccurate or misleading comments. Specifically, the other side has the ability to correct the record, to provide context, to counterattack, and to defend the conduct.

87. In my view, utilizing the tools of political debate to respond to unfairness and inaccuracy in political debate is far more appropriate than having Integrity Commissioners police the truth and fairness of political speech: *Re Maika*, [2018 ONMIC 11](#), at para. [139](#).<sup>3</sup>

<sup>1</sup> *Linton v Kitras*, 2020 ONMIC 1 (CanLII) at 42

<sup>2</sup> *Linton v Kitras*, 2020 ONMIC 1 (CanLII) at 79

<sup>3</sup> *Ibid.* at 86

Given the foregoing, what does the *Code* rule to be out of bounds? Surely it must be something? And yes, there is something, and that something is directly attacking only the person, rather than the ideas.<sup>4</sup> Such instances are however, rare. There is good reason for this rarity. Politicians are allowed and expected to criticize each other on their records, and such criticism, no matter how strident, is not a violation of the *Code*.

As Mr. Giorno once again said, in *Gerrits v. Currie*, 2020, ONMIC 6:

46. The Supreme Court of Canada has recognized the “interdependence” between democratic governance and freedom of political speech -- in particular the freedom to criticize a governing record:

such institutions derive their efficacy from the free public discussion of affairs, from criticism and answer and counter-criticism, from attack upon policy and administration and defence and counter-attack, from the freest and fullest analysis and examination from every point of view of political proposals.<sup>[4]</sup>

47. The *Code of Conduct* does not prevent one politician from criticizing the record of another politician. To mistake substantive criticism of a record in office with a personal attack is to misunderstand how democracy works. Everyone, elected officials included, is free to look back on what has occurred, and to oppose, to argue that better was possible, to make the case for a different result.

48. I do not believe it is the place of an Integrity Commissioner to interfere in political debate of this nature.

**In summary, we respectfully submit that it is wholly inappropriate, both on a principled basis, and based on the existing case law, for the Integrity Commissioner to sanction Councillor Nickel for what he said.**

#### Accuracy

Similarly with respect to accuracy, when it comes to political debate, the Integrity Commissioner is not the best mechanism for ensuring it. Many of the passages quoted above have also addressed that issue. Moreover, the Supreme Court has endorsed the following passage on the subject:

The essence of the market-place of ideas is that control and regulation of expression is intolerable because we can trust no government to know the truth. Those who purport to legislate the truth invariably turn out to be tyrants. The market-place of ideas argument prescribes an open process precisely because we cannot agree on what is the truth.

Hence the justification for the widest freedom of political speech stems not only from some abstract search for truth, but also from the tangible goal of preserving democracy.

Given the foregoing, the theoretical ability of the Integrity Commissioner to “fact check” political speech is necessarily limited. But beyond that, there are also practical limits. In this case, the practical limits of the Integrity Commissioner’s powers also come in to play.

Firstly, in context, the role of the Integrity Commissioner is not to make determinations about whether anything said by a councillor is right or wrong. When Council Members send emails, “they use the language of ordinary people and not of legal drafters or judges. It would be inappropriate therefore to pick apart the wording of a Council Members [writings] as if it were a legal contract or judicial decision.”<sup>5</sup> Moreover, it is not expected that the interpretation or understanding of the member must be correct every time, failing which they will be subject to

<sup>4</sup> *McGillis v Hart*, 2013 ONMIC 7 (CanLII)

<sup>5</sup> *Greatrix*, *infra* at 164.

sanction. That would be an unfair standard to which councillors ought not to be held.<sup>6</sup> Rather, what is appropriate, is for the Integrity Commissioner to determine whether the member reasonably believes that the utterance is accurate.

In this case, the Integrity Commissioner noted that at a council meeting, it was Councillor Knack who brought up the issue of needing more space for pedestrians and cyclists to socially distance, and that the matter was referred to the administration. It is entirely reasonable for Councillor Nickel to infer from this that the implementation of this idea involved Councillor Knack. The mere fact that his suggestion did not get embodied in a formal council vote, and that it was implemented administratively does not detract from the fact that he was the progenitor of the idea, and it is entirely reasonable for Councillor Nickel to believe that Councillor Knack supported the idea and was involved with administration in its implementation. For Councillor Nickel to therefore publicly espouse the belief that Councillor Knack was involved in “putting in” the “bike lanes” is thus entirely reasonable. It is unfair to Councillor Nickel to sanction him for failing to clarify in his post that *technically* it was administration that implemented this idea, which originated from, and was advocated for by Councillor Knack.

#### **Additional Items:**

It is noteworthy for consideration that, on April 21, 2020 at or around two minutes and 13 seconds into the interview, Councillor Knack commented on the Ryan Jespersen show, in reference to the cartoons shared by Councillor Nickel, that *“I don’t care about a picture that was shared about me. That’s not a big deal.”*<sup>7</sup>

#### **Conclusion:**

The pith and substance of our argument is surmised by Evelyn Beatrice Hall in 1906:

*“I disapprove of what you say, but I will defend to the death your right to say it.”*

The Integrity Commissioner has proposed sanctioning Councillor Nickel for simply doing his job as a public figure. Passing the resolution proposed by the Integrity Commissioner would be counter to the goals of promoting political engagement and proper discourse. Even if council members are opposed to Councillor Nickel’s politics, and even if they do not like him personally, a restriction of political speech of the nature proposed is far too dangerous for any councillor to go along with. This is because councillor Nickel’s speech does not cross the line. It is not close to the line. In fact, it is well within the confines of passionate plainspoken speech of the kind that is expected of politicians engaging the public. If the counsel holds that this kind of speech crosses the line, that is in effect a step which moves the line to a very strange and confusing place. If the line moves to this point, then it will be very difficult to know what does not cross it. At that point, the true transgression could simply become holding an unpopular view.

Politics can be complicated, but it does not have to be. In fact, it is the duty of politicians to engage both their supporters, and their detractors in ways that facilitate dialog on the issues of the day. To do that effectively, plain, direct and forceful language can and should be used. Sometimes, pictures can and should be used to get a point across quickly to busy constituents. Sometimes, as well, details need to be glossed over in order to effectuate political engagement. We all know this. Councillor Nickel has engaged his constituency in the same ways as politicians do every day across this country. This is democracy at work. Censuring this work would do a disservice to the service of everyone in this deliberative body.

*In conclusion, the attempt at sanctions as against Councillor Nickel is a colorable attempt to restrict free speech and public discourse. Further, any such sanction against Councillor Nickel would create a very dangerous precedent and may verily result in a chilling effect on a Councillor’s*

<sup>6</sup> *Greatrix v. Williams*, 2018 ONMIC 6 (CanLII) at 148, 164, and 169.

<sup>7</sup> Ryan Jespersen show, online archive: [https://omny.fm/shows/ryan-jespersen-show/edmonton-councilors-mayor-administration-criticize?in\\_playlist=ryan-jespersen-show!podcast](https://omny.fm/shows/ryan-jespersen-show/edmonton-councilors-mayor-administration-criticize?in_playlist=ryan-jespersen-show!podcast).

*ability to speak freely and effectively represent his/her own constituents. Consequently, we also submit that the proposed sanctions must be rejected in their entirety.*

All of which is respectfully submitted.

Yours very truly,

**GUARDIAN LAW GROUP LLP**



**JONATHAN DENIS, Q.C**

**Partner**

JD/kl

Encl.

c.c.: client

# Sanction Process Complaints 2001-2010

September 2, 2020, Special City Council meeting

---

## Report

In June of 2018, City Council approved its *Code of Conduct*, which is a public document that guides the ethical conduct of members of Council (Attachment 1). At Council's January 13, 2020, meeting, it approved the process for substantiated complaints (see body of the report). The Office of the City Clerk has received reports from the Integrity Commissioner, which indicate violations of the *Code of Conduct*.

The purpose of the Special City Council meeting on September 2, 2020, is to hold a Sanction Hearing.

## Legal Implications

Under the system that Council has adopted it has delegated the decision as to whether specific conduct violates the Council *Code of Conduct* to the Integrity Commissioner. Council cannot overturn the decision of the Integrity Commissioner but specifically retains the decision to decide upon an appropriate sanction. In January, 2020 Council approved special procedures for a sanction hearing to ensure fairness in the process. Given that Council will potentially be making a decision to sanction one of its own members, fairness in the process is a legal requirement. The purpose of the sanction hearing is to decide whether a sanction is warranted, and to decide on the specifics of the sanction.

The role of Council in a sanction hearing is similar to that of Council in a Statutory Public Hearing, or a hearing such as the Community Standards License and Appeal Committee. Members of Council should refrain from making public comment about the specifics of the conduct until the hearing concludes.

**Process for Dealing with Substantiated Complaints Further to the Council Code of Conduct**

Prior to the Item Being Added to a Council Agenda

1. The Integrity Commissioner submits the substantiated complaint report to the City Clerk for inclusion on a Council meeting agenda.
2. To ensure that the Respondent Councillor is able to present a meaningful response to the Integrity Commissioner's report, the City Clerk reaches out to the Respondent Councillor to determine a reasonable timeline before adding the report to an upcoming City Council meeting agenda. Priority is given to adding the item to an existing Council meeting, when the agenda permits. If required, a Special City Council meeting will be called.
3. The Council meeting agenda, including the Integrity Commissioner's report (to the extent possible under FOIP), is posted to the City's website at least 10 clear days before the meeting.
4. The Respondent Councillor may provide a written response to the Integrity Commissioner's report and submit the response to the City Clerk for inclusion on the meeting agenda, to the extent possible under the *Freedom of Information and Protection of Privacy Act*.

At the Meeting

1. City Council determines whether the matter should be dealt with in private in accordance with the provisions of the *Freedom of Information and Protection of Privacy Act*.
2. The Respondent Councillor is given an opportunity to leave their regular seat so they may be joined by their legal counsel.
3. Speakers are heard from in the following order:
  - The Integrity Commissioner may provide a brief presentation on the report. Councillors, including the Respondent Councillor, may ask

questions regarding the Integrity Commissioner's presentation to ensure the process was reasonable in light of the breach and to clarify the sanction recommendations in the report. The more significant the sanctions being recommended, the more Council should take this opportunity to clarify how the Integrity Commissioner reached their conclusions and develop comfort with the fairness of the recommendation.

- The Respondent Councillor may make submissions on the reasonableness of the investigation process and on what sanctions, if any, are appropriate. The Respondent Councillor has 10 minutes to speak. If the Respondent Councillor needs additional time to present a meaningful response, then Council may allow the Respondent Councillor to speak, in additional 10-minute increments. For complicated matters, the 10-minute time limit may be increased.
- If other Councillors wish to question the submissions of the Respondent Councillor, or ask clarifying questions that have arisen to the Integrity Commissioner, they are allowed to do so. Given the nature of this type of meeting, the Chair will approve any questions being asked as they are asked, and may seek legal advice on the suitability of any questions from the City Solicitor.
- There may be exceptional circumstances where, if approved by Council, interested persons who have a direct connection to the event and an interest in the sanctions may be given the option to make submissions regarding the appropriateness of the sanctions. In those circumstances, the submissions will be made and the usual 5-minute time limit for speakers applies. Councillors, including the Respondent Councillor, may question these parties.

4. Once a motion has been put forward on a sanction, the Respondent Councillor is given the opportunity to leave. If they decide not to leave, the meeting proceeds.

5. Debate on the motion proceeds as normal. The Respondent Councillor has 10 minutes to speak on the motion. If the Respondent Councillor needs additional time to present a meaningful response, then Council may allow the



Respondent Councillor to speak, in additional 10-minute increments. The 10-minute time limit may be adjusted to reflect the severity of potential sanctions.

6. Once a motion is ready for vote, the Respondent Councillor is given the opportunity to leave.

7. The vote on any motion takes place in public, as required by the *Municipal Government Act*. The Respondent Councillor must vote, if present.

Notes:

- For matters not addressed above, the rules set out in Bylaw 18155, Council Procedures Bylaw, apply.
- Council should deal solely with matters relating to the results of the investigation process and potential sanctions. Questions relating to the process to reach the results and recommendations are acceptable. The meeting is not an opportunity to second-guess the findings of the Integrity Commissioner (clarification from the Integrity Commissioner as to why an action violates the *Code of Conduct* is acceptable, but challenging that conclusion is not).
- In the event that a lawyer has been retained by the Respondent Councillor to provide legal advice, that person may speak on behalf of the Respondent Councillor or supplement the Respondent Councillors' arguments or answers.
- Portions of the meeting held in private, if any, will be recorded to ensure a record of the proceedings and all reasons are available in case a record is required for review by the court.

**Attachment**

1. Council Code of Conduct Bylaw 18483



**CITY OF EDMONTON**

**BYLAW 18483**

**COUNCIL CODE OF CONDUCT**

**(CONSOLIDATED ON FEBRUARY 3, 2020)**

**THE CITY OF EDMONTON  
BYLAW 18483  
COUNCIL CODE OF CONDUCT**

WHEREAS:

The Municipal Government Act requires councils of all municipalities in Alberta to adopt a code of conduct by bylaw;

Committing to a code of conduct provides Councillors with shared accountability and a framework to guide ethical conduct in a way that upholds the integrity of the City and the high standards of professional conduct the public expects from elected officials;

A code of conduct is one aspect of accountability and transparency both internally, as between Councillors and City employees, as well as externally, with other levels of government, the media, and the public;

Council recognizes that Edmontonians expect the highest standards of ethical conduct from their elected officials and that public interest is best served when Councillors perform their functions of office and manage their private interests with integrity, accountability, transparency, and respect;

The role of a Councillor is to be actively engaged with the electors, community, and region in a way that demonstrates the shared responsibility of being a Councillor and member of a productive Council; and

Considering the City’s municipal purposes and the duties of Councillors, Council desires to demonstrate and promote the principles of integrity, accountability, transparency, and respect through its actions and behaviours;

Edmonton City Council enacts:

- |                    |   |  |
|--------------------|---|--|
| <b>PURPOSE</b>     | 1 | The purpose of this bylaw is to adopt a code of conduct for Councillors.   |
| <b>DEFINITIONS</b> | 2 | <p>(1) Unless otherwise specified, words used in this bylaw have the same meaning as defined in the Municipal Government Act or the <i>Local Authorities Election Act</i>, RSA 2000, c L-21.</p> <p>(2) In this bylaw:</p> <ul style="list-style-type: none"><li>(a) “<b>City</b>” means The City of Edmonton;</li><li>(b) “<b>City employee</b>” means an individual that reports to the City Manager or City Auditor and provides services to the City under an employment agreement, personal</li></ul> |

services agreement, or in the capacity of agent, student, or volunteer;

- (c) “**City Manager**” means the chief administrative officer of the City;
- (d) “**Council**” means the City’s council;
- (e) “**Councillor**” means the City’s councillors and includes the Mayor;
- (f) “**Councillor’s employee**” means an individual that provides services to a Councillor under an employment agreement, personal services agreement, or in the capacity of agent, student, or volunteer;
- (g) “**Councillor’s family**” means a Councillor’s spouse or adult interdependent partner, a Councillor’s children, the parents of a Councillor, and the parents of a Councillor’s spouse or adult interdependent partner;
  - (g.1) “**Ethics Advisor**” means the individual appointed as Ethics Advisor by Council;  
(S14(a), Bylaw 18567, September 5, 2018)
- (h) “**Freedom of Information and Protection of Privacy Act**” means the *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-2;
  - (h.1) “**Integrity Commissioner**” means the individual appointed as Integrity Commissioner pursuant to the Integrity Commissioner Bylaw, Bylaw 18567;  
(S14(b), Bylaw 18567, September 5, 2018)
- (i) “**Mayor**” means the City’s chief elected official;
- (j) “**Municipal Government Act**” means the *Municipal Government Act*, RSA 2000, c M-26; and
- (k) “**spouse**” means the spouse of a married person but does not include a spouse who is living separate and apart from the person if the person and spouse have separated pursuant to a written separation agreement or if their support obligations and family property have been dealt with by a court order.

<b>RULES FOR INTERPRETATION</b>	3	<p>This code of conduct is intended to supplement any other legal duties imposed on a Councillor by an enactment, bylaw, or Council approved policy, including:</p> <ul style="list-style-type: none"> <li>(a) <i>Alberta Human Rights Act</i>, RSA 2000, c A-25.5;</li> <li>(b) <i>Freedom of Information and Protection of Privacy Act</i>;</li> <li>(c) <i>Local Authorities Election Act</i>, RSA 2000, c L-21;</li> <li>(d) <i>Municipal Government Act</i>;</li> <li>(e) <i>Occupational Health and Safety Act</i>, SA 2017, c O-2.1; and</li> <li>(f) <i>Council Procedures Bylaw</i>, Bylaw 18155.</li> </ul>
<b>CODE OF CONDUCT</b>	4	<p>The code of conduct contained in Schedule A of this bylaw is adopted by Council to apply to all Councillors in their capacity as elected officials.</p>
<b>COMPLAINTS</b>	5	<p>If any person believes that a Councillor has contravened the code of conduct adopted by this bylaw, the person may make a written complaint in accordance with Schedule B - Complaints.</p>
<b>SANCTIONS</b>	6	<ul style="list-style-type: none"> <li>(1) If Council determines it appropriate to do so, Council may, by motion passed by special resolution, impose sanctions on a Councillor who contravenes the code of conduct adopted by this bylaw in accordance with Schedule C - Sanctions.</li> <li>(2) Notwithstanding anything in this bylaw, Council may not impose any sanction that has the effect of preventing the Councillor from fulfilling their legislated duties.</li> <li>(3) Nothing in this bylaw requires Council to impose a sanction for any complaint or contravention.</li> </ul>

(NOTE: Consolidation made under Section 69 of the *Municipal Government Act*, R.S.A. 2000, c.M-26 and Bylaw 16620 Section 16, and printed under the City Manager’s authority)

Bylaw 18483, passed by Council June 26, 2018

Amendments:

Bylaw 18567, September 5, 2018

Bylaw 18827, April 2, 2019

Bylaw 18861, May 14, 2019  
Bylaw 19142, February 3, 2020

**SCHEDULE A**  
**COUNCIL CODE OF CONDUCT**

Part A: Representing the Municipality

1. While carrying out their duties, Councillors must:
  - a) act in the best interests of the City as a whole;
  - b) consider all decisions and issues thoughtfully, consistently, impartially, and fairly by considering all relevant facts, opinions, and perspectives;
  - c) attend and vote at all meetings as empowered by and in accordance with the Municipal Government Act, unless prohibited by an enactment from doing so;
  - d) accurately represent and respect decisions made by Council while preserving the value of fair comment and differences of opinion; and
  - e) communicate respectfully with members of the public, Councillors, City employees, and Councillor's employees.

Part B: Communications

1. Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will:
  - a) ensure their communications accurately reflect the facts of Council's decisions;
  - b) refer inquiries regarding Council's position on an initiative to Council's representative for that initiative;
  - c) ensure that all communications are accurate and not issue any communication that the Councillor knows, or ought to have known, to be false;
  - d) ensure that all communications issued by, or on behalf of, the Councillor, including social media, are respectful and do not discriminate, harass, or demonstrate disrespect toward any person; and
  - e) not issue any communications that mislead Council or the public about any matter.  
(S2. Bylaw 19142, February 3, 2020)
2. No Councillor may engage in negotiations or make representations or commitments on behalf of the City unless authorized to do so by Council, but may advocate for the City's interests to any level of government or non-governmental body as opportunities arise.
3. If a Councillor becomes aware of or receives an inquiry that is a ward-specific constituency issue relating to another Councillor's ward, the Councillor will refer the matter to the ward Councillor or request that the person contact the ward Councillor, or alternatively, the Mayor.

Part C: Decision-making Processes

1. Councillors will exercise their authority to make decisions in a manner that demonstrates

fairness, respect for differences, and an intention to work together for the common good and in the public interest.

2. Councillors will prepare for meetings by reviewing materials in advance and will be respectful and attentive to, and ask informed questions of, the public and City employees providing information at a meeting.
3. Councillors will not provide information contained in records or documents at a meeting unless those records or documents have been provided to all of Council in advance, if possible.
4. Councillors will obtain all necessary information about the operations and administration of the City from the City Manager using processes developed by the City Manager, and will respect the role of City employees to provide neutral and objective information without undue influence and interference.

Part D: Adherence to Rules

1. Councillors will comply with the procedural rules for meetings established by Council.
2. Councillors will comply with all applicable laws and Council approved policies, and will support City employees and Councillor's employees to the same on behalf of the City.

Part E: Respectful Interactions

1. Councillors will conduct themselves with decorum at all times, including while attending meetings, interacting with City employees and Councillor's employees, and engaging with the public.
2. Councillors who act as chair of a meeting will, at the start and throughout the meeting, set expectations for appropriate decorum and conduct for all in attendance.
3. Councillors must not use any harassing, offensive, discriminatory, disrespectful, or unparliamentary language about Council, a Councillor, City employees, Councillor's employees, or the public.
4. A Councillor must not demand a City employee to engage in partisan or political activities at any level of government, or subject any City employee to reprisal for a refusal to engage in such activities. A Councillor must also not subject any City employee to reprisal for any engagement in partisan or political activities at any level of government that is done in their personal capacity.
5. If a Councillor makes an inquiry to a City employee when the inquiry is not made in their professional capacity as Councillor, the Councillor must inform the City employee that they are acting in a personal capacity and not as a Councillor.



Part F: Confidential Information

1. Councillors must keep confidential all information received during a Council or council committee meeting held in private in accordance with the Municipal Government Act, information that would be exempt from disclosure under the Freedom of Information and Protection of Privacy Act, or otherwise received in confidence or marked as confidential.
2. If a Councillor receives confidential information, they must use the information only for the purpose for which the information is intended and to fulfill the duties of their office, and must not seek to access confidential information for any other purpose.
3. A Councillor must not use confidential information for personal or private interests, including interests of the Councillor's family, or in any way that may cause harm or detriment to any person.
4. Councillors must respect the right of access to City records under the Freedom of Information and Protection of Privacy Act and the obligation to protect privacy, and will:
  - a) provide any records subject to an access request under the Freedom of Information and Protection of Privacy Act to the City employee appointed as head for the purposes of that Act;
  - b) not interfere with the access request processes set out in the Freedom of Information and Protection of Privacy Act and implemented by the head;
  - c) after receiving notice of an access request, not alter, destroy, or withhold any record that is subject to the request; and
  - d) safeguard personal information.

Part G: Conflicts of Interest

1. Councillors will adhere to the pecuniary interest obligations prescribed by the Municipal Government Act, and will obtain advice whenever a potential pecuniary interest may exist to preserve the integrity of Council's decisions.
2. When exercising official duties, a Councillor must not give preferential treatment to any person or organization with the intent of advancing the Councillor's private interests or for their personal benefit.
3. A Councillor must not act as an advocate before Council on behalf of any person or organization for compensation.
4. Councillors must not use information received as an elected official that is not available to the public or the rest of Council, for a purpose other than carrying out the Councillor's duties.
5. Councillors should avoid carrying out their duties in any manner that may reasonably be perceived as being in conflict with any future endeavour that may be undertaken by the Councillor.

6. Councillors have a right to freely and fully participate in the political process in their personal capacity, including contributing personal money or real property, volunteering, or offering financial support of partisan political activity, provided that, when doing so, they disclose that such participation is not in their capacity as elected officials.
7. While acting in their capacity as elected officials, Councillors will not:
  - a) attend partisan political events; or
  - b) contribute money or real or City property for the benefit of a political party, constituency association, or candidate, or in support of partisan political activities that involve direct or indirect support of, or opposition to, any political party or candidate for public office.
8. Council may, by motion, direct a Councillor or the Mayor to participate in the political process as Council determines appropriate. Whenever such direction is given, the provisions in this part must be applied in a manner that supports participation to the extent that is reasonable and in accordance with applicable laws and Council's direction.

#### Part H: Use of Influence

1. Councillors must not use, or attempt to use, their office for the purpose of intimidating, influencing, threatening, coercing, or directing a Councillor's employee or City employee in a manner contrary to the employee's duties or for the Councillor's personal benefit.
2. If serving as a reference or recommending an individual for employment with the City, a Councillor must comply with the City's hiring practices and must not use their role as an elected official to unfairly influence any hiring decisions.
3. Councillors must not contact or attempt in any way to influence any member of a judicial, quasi-judicial, or regulatory body before which the City may be a party regarding a matter before that body.

#### Part I: City Assets

1. Councillors will only use City assets to assist them in carrying out their duties, but may use City assets that are generally available to the public on the same terms and conditions offered to the public, including complying with booking procedures and paying applicable fees, and may be provided with surplus City promotional items and/or passes to City attractions and facilities for the purpose of donating them to community organizations.  
(S.2, Bylaw 18861, May 14, 2019)
2. A Councillor may use communication facilities, such as computers, telephones, electronic mail, and mobile devices, provided by the City for personal use provided that such use is not offensive or inappropriate, or would not cause harm to any person.
3. Councillors will comply with all information security procedures applicable to City

employees and will not take any actions that may compromise the integrity or security of the City's information systems.

4. A Councillor must not attempt to obtain financial gain from any of the City's intellectual property, and all Councillors acknowledge that the City's intellectual property is owned by the municipal corporation.
5. Councillors will maintain their constituency and City records in accordance with City policies and applicable laws.
6. Immediately prior to the end of their term of office, Councillors will return City assets, including City records, to the City Manager.

Part J: Orientation and Training

1. Councillors will attend all training required by the Municipal Government Act to be provided to Councillors, as well as any additional training directed by Council.

Part K: Elections and Campaigning

1. Public events and advertising or media paid for through City budgets allocated for Council use (ward budgets or Council Contingency) or public events organized or sponsored by Councillors using any City budgets or assets must be completed by May 31 of a general election year and not scheduled until following the inaugural organizational meeting of Council.
2. Councillors must not issue City-funded ward newsletters and City-funded mass electronic mail distributions after May 31 of a general election year.
3. Councillors who are nominated to run for re-election must not participate in any City-sponsored events requiring them to perform official ceremonial duties between nomination day and election day.
4. Councillors must not use their office, the services of City employees, or any City assets, including any of the City's intellectual property, communication facilities, or other facilities, for election- or campaign-related activities.
5. Councillors may only use the City's website, social media, and electronic mail only for official duties. Councillors will maintain separate websites, social media, and electronic mail accounts for all campaign activities and communications. Website and electronic mail distribution lists that are used for official duties may not be used for campaign activities and communications. However, this does not prevent the returning officer from providing links to campaign websites for all candidates on the City's elections website.
6. Councillors must not use any City communications facilities or services for their campaign, including the use of media contacts, electronic mail addresses and distribution lists, the City

of Edmonton photo library, and website development, writing, or print material services provided by City employees.

7. Councillors must not seek individual advice from City employees regarding election rules and processes or their obligations as candidates, including any obligations as candidates that may apply while the Councillor holds office. However, nothing restricts a Councillor from receiving information available to all candidates for an election.
8. Councillors must not use their office to gain an unfair advantage over other candidates, or to provide an unfair advantage for a candidate.
9. Councillors must not use City assets to promote or oppose the candidacy of any person to elected office in any municipal, provincial, or federal campaign.
10. Councillors will respect the role of the returning officer, and will not seek to interfere with the returning officer's duties or any election process.
11. Nothing in this part restricts a Councillor from accepting services or support from City employees or Councillor's employees for election-related purposes, provided that the individual is acting in a personal capacity, on personal time, and not receiving remuneration from the City for the same services.

#### Part L: Gifts and Benefits

In this part, "gift" means a fee or advance paid to or a gift or personal benefit provided with the Councillor's knowledge to a Councillor, the Councillor's family, or to a Councillor's employee, that is connected directly or indirectly to the performance of the Councillor's duties.

1. No Councillor will accept a gift, unless it is:
  - a) compensation authorized by legislation, including compensation for serving on external bodies as a Council-approved City representative;
  - b) suitable mementos (e.g. personal plaques, books, coffee mugs, pen and pencil sets, ties, and scarves) received as an incident of accepted protocol or normal expression of courtesy, or a reasonable memento of a function honouring the Councillor;
  - c) a political contribution otherwise authorized and reported by law, such as in the case of Councillors running for office;
  - d) services provided without compensation by persons volunteering their time to further the interests of the City or the Councillor's ward;
  - e) food, lodging, transportation, or entertainment provided by other levels of government or by the government of a foreign country, or by a conference, seminar, or event organizer where the Councillor is attending in an official capacity;
  - f) in-kind (non cash) sponsorships or donations for community events organized or run by a Councillor, or a third party on behalf of a Councillor, provided that the event will be held in accordance with the standards of conduct and decorum expressed or implied in this code of conduct;

- g) admission to, and food and beverages consumed at, community events and widely-attended events such as conventions, conferences, sporting and arts events, banquets, or training and education programs, provided that:
  - i) the Councillor's attendance serves a legitimate purpose associated with the Councillor's duties;
  - ii) admission is offered by the entity, or a representative or member of the entity, responsible for organizing or presenting the event;
  - iii) the admission is unsolicited by the Councillor; and
  - iv) the value is reasonable and the invitations infrequent.(S.3, Bylaw 18861, May 14, 2019)

- 2. A Councillor will, as soon as practicable, return to the donor any gift that does not comply with this code of conduct, along with an explanation as to why the gift cannot be accepted.
- 3. Official gifts received by Councillors on behalf of the City are considered City assets and are managed by the City Manager for public display and/or archiving.
- 4. Councillors must disclose any single gift accepted by the Councillor with a fair market value in excess of \$300, as well as all gifts from a single donor in a calendar year that collectively exceed \$300, with the exception of gifts falling under sections 1(c) and 1(d) of this part. Each Councillor must file a quarterly disclosure statement with the Office of the City Clerk outlining all gifts exceeding \$300 received for the year to date, or stating that there is nothing to disclose. (S.4, Bylaw 18861, May 14, 2019)
- 5. Disclosure statements will identify the:
  - a) nature and source of the gift;
  - b) date on which the gift was received; and
  - c) fair market value of the gift.
- 6. Disclosure statements may be reviewed by the Ethics Advisor for compliance with this code of conduct and/or future guidance with respect to content.
- 7. Disclosure statements will be a matter of public record, in the prescribed format determined by the City Clerk.

Part M: Retaliation, Interference, and Obstruction

- 1. Councillors must not retaliate against anyone, including another Councillor, who participates or provides information in good faith during an investigation by the Integrity Commissioner.

2. Interfering with or obstructing an Integrity Commissioner investigation is prohibited.  
(S.3, Bylaw 19142, February 3, 2020)

## **SCHEDULE B COMPLAINTS**

### Submission Process

If any person believes that a Councillor has contravened this code of conduct, that person may make a written complaint to the Integrity Commissioner. A sample complaint form will be made available on the City's website.

Written complaints must include the following:

- a) the provisions of the Council Code of Conduct allegedly contravened and the facts surrounding the allegation, including any witnesses;
- b) the name of the Councillor(s) alleged to have contravened the Council Code of Conduct; and
- c) the complainant's name and contact information,

and may be submitted by electronic mail or delivered to:

Office of the City Clerk  
3rd Floor, City Hall  
1 Sir Winston Churchill Square  
Edmonton AB T5J 0R2

A complaint must be received by the Integrity Commissioner, not later than 60 days after the date the person became aware of the conduct giving rise to the complaint. The Integrity Commissioner may use their discretion to grant extensions if:

- a) the delay occurred in good faith;
- b) it is in the public interest to conduct an investigation or to give consideration whether to conduct an investigation; and
- c) no substantial prejudice will result to any person because of the delay.

On receipt of a complaint, an initial assessment will be completed. Complaints that:

- a) are not about a current Councillor;
- b) are about the conduct of a Councillor's employee;
- c) allege criminal activity;
- d) allege a violation of the Municipal Government Act or the Freedom of Information and Protection of Privacy Act; or
- e) are covered by other applicable legislative appeal, complaint, or court processes,

will be immediately refused and the complainant will be advised in writing, with reasons, and provided with information regarding other options, if applicable.

## Investigation

Complaints accepted by the Integrity Commissioner will be investigated, however:

- a) complaints received or under investigation within 90 days prior to a municipal election may be suspended until after election day; and
- b) if the Integrity Commissioner determines that a complaint is frivolous, vexatious, or made in bad faith, the Integrity Commissioner will immediately dismiss the complaint.

If the Integrity Commissioner determines that informal resolution may be possible, they may, with written consent of both the complainant and respondent Councillor(s), refer the complaint to the Ethics Advisor or another third party for resolution.

If a complaint cannot be resolved informally, the Integrity Commissioner will conduct a formal investigation. Formal investigations must be conducted in a fair, timely, and confidential manner that respects the principles of procedural fairness and natural justice.

The complainant and respondent Councillor will receive written notice of the investigation, and the respondent Councillor will receive a copy of the complaint. Names of complainants and witnesses may be provided to the respondent Councillor(s) if:

- a) the investigation cannot be completed without releasing the complainant's name; or
- b) the respondent Councillor(s) require the name(s) to properly respond to the allegations.  
(S.4, Bylaw 19142, February 3, 2020)

During an investigation, a complainant or witness may be asked to provide additional information and may be asked to provide information through a statutory declaration. If a statutory declaration is requested, the Office of the City Clerk may provide a Commissioner for Oaths, free of charge. City employees or Councillor's employees may also be requested to provide information, and any person conducting an investigation on behalf of the Integrity Commissioner may look at any record or thing belonging to or used by the City, and enter any City facility for the purpose of completing the investigation. The respondent Councillor(s) is entitled to disclosure of all relevant information gathered during an investigation.

Once all relevant information has been provided to the respondent Councillor by the Integrity Commissioner, the respondent Councillor will have 10 days to respond to the complaint in writing and may provide any further information in support of their response. This deadline may be extended at the discretion of the Integrity Commissioner. (S. 5, Bylaw 19142, February 3, 2020)

The Integrity Commissioner will strive to complete investigations within 90 days of the date the complaint is accepted. This deadline may be extended at the discretion of the Integrity Commissioner.

Nothing in this bylaw restricts the Integrity Commissioner from providing interim reports to Council on any matter relevant to a complaint, including reports of any interference, obstruction, or retaliation with an ongoing investigation.



### Reporting

Following the investigation, if the Integrity Commissioner believes the complaint is substantiated they must provide a report to Council. The report must contain:

- a) a summary of the complaint;
- b) a summary of information gathered and conclusions made; and
- c) a recommended resolution, including any recommended sanctions in accordance with Schedule C - Sanctions.

Reports to Council from the Integrity Commissioner will be discussed in private if permitted by the Municipal Government Act.

Once Council has received and considered the Integrity Commissioner's report, it will be reviewed in accordance with the Freedom of Information and Protection of Privacy Act and will be posted, to the extent possible, on the City's website.

(S14 C, Bylaw 18567, September 5, 2018)

## **SCHEDULE C SANCTIONS**

On receipt of a substantiated complaint received from the Integrity Commissioner, Council must consider the complaint and results of the investigation, and may impose sanctions on the Councillor subject to the complaint. Council may accept, vary, replace, or reject the recommendations of the Integrity Commissioner.

The Councillor subject to the complaint will have regard to the public perception and appropriateness of participating in the meeting where the complaint is discussed by Council, but cannot be prevented from participating in debate and voting on the resolution should they wish to.

(S.2, Bylaw 18827, April 2, 2019)

Council may, by motion passed by special resolution, impose any of the following sanctions:

- a) issue a letter of reprimand addressed to the Councillor;
- b) require the Councillor to issue a letter of apology;
- c) direct the publication of a letter of reprimand or request for apology and the Councillor's response;
- d) pass a motion to censure;
- e) require the Councillor to attend specified training;
- f) suspend the Councillor from acting as deputy Mayor or acting Mayor, and assign those roles to another Councillor;
- g) suspend the Councillor's duties as chair of Council or council committee meetings and assign those duties to another Councillor;
- h) suspend the Councillor's membership on a council committee;
- i) restrict the Councillor's access to electronic confidential records and require the Councillor to return copies of Council records following each meeting; or
- j) any other sanction Council deems appropriate.

Council may not impose any sanction that has the effect of preventing the Councillor from fulfilling their legislated duties.

If Council imposes a sanction that involves a reduction or suspension of a Councillor's non-legislated duties, Council may also direct that the remuneration payable to the Councillor be reduced or suspended by a proportionate amount.

Council may, in accordance with the Freedom of Information and Protection of Privacy Act, direct that the details of the sanction imposed be released to the public or remain private.

When imposing a sanction, including deciding whether to release the details of the sanction to the public, Council must consider all of the following:

- a) the severity or consequences of the contravention;

- b) the consequences of the contravention;
- c) the principles and intent of this code of conduct;
- d) the public interest; and
- e) whether the Councillor has previously contravened this code of conduct.

Nothing in this bylaw requires Council to impose a sanction for every substantiated complaint. Contraventions that were inadvertent or made in good faith may result in no sanction being imposed.