

Office of the Integrity Commissioner

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INVESTIGATION REPORT 2111
BY JAMIE PYTEL
INTEGRITY COMMISSIONER for
THE CITY OF EDMONTON

Report Date: May 25, 2021

To: City Council for The City of Edmonton

Re: *Council Code of Conduct Bylaw 18483*
(the "Code of Conduct" or the "Code")
Complaint 2111

Complainant: Mayor Don Iveson¹

Respondent: Councillor Mike Nickel

¹ The identity of the Complainant is included in this report in the event this information is relevant for the sanction hearing and the disposition of this investigation by Council.

SUMMARY AND FINDINGS

In a report to Council dated July 19, 2020, I found that Councillor Nickel had violated the *Code of Conduct* related to 10 *Code* complaints made against Councillor Nickel (the “2020 Complaints”). Some of the violations resulted from a cartoon posted on social media which I found to be disrespectful, lacking in decorum and a personal attack on Councillor Knack.

Then, in October 2020, during a live social media event being hosted by Councillor Knack for his constituents, Councillor Nickel asked Councillor Knack if he had asked one of his staff members to make a complaint against Councillor Nickel, to which Councillor Knack twice replied that he had not. When concerns were then raised to me about these interactions by Councillor Knack’s staff member, I sent an email to Councillor Nickel on November 10, 2020 cautioning him to not act in a retaliatory manner against people who make *Code* complaints, in particular, Councillor Knack’s staff member and with respect to the 2020 Complaints.

Then on April 12 and 13, 2021, Councillor Nickel posted on multiple social media platforms saying Councillor Knack’s staff filed a complaint last year against Councillor Nickel, which led to an investigation that Councillor Nickel estimated cost taxpayers over \$50,000. He then suggested Councillor Knack was responsible for these costs, called this a “\$50,000 + Stunt” and asked Councillor Knack if he directed his staff member to make the complaint last year or knew what his staff member was doing.

I then received this Complaint from Mayor Iveson alleging retaliation by Councillor Nickel in his April 12 and 13, 2021 Social Media Posts. I accepted jurisdiction and commenced an investigation.

To be clear, this investigation was not about who made complaints against whom last year. This was about whether Councillor Nickel was acting in a retaliatory fashion against people who make *Code of Conduct* complaints. Councillor Nickel appears to be trying to intimidate or bring ridicule upon those who make *Code* complaints and expose them to public ridicule.

In my view, the most important section of the *Code of Conduct* is Part M, Section 1, which prohibits retaliation against those who make complaints. If this is not enforced, the *Code* becomes meaningless. Councillor Nickel’s April 12 and 13, 2021 Social Media Posts are not mere political commentary or campaigning, they are a direct attack on the *Code of Conduct*.

Councillor Nickel falsely attributed the estimated cost of the 2020 *Code* Complaints to Councillor Knack and his staff member, and called it a “\$50,000 + Stunt”. Councillor Nickel has given no information to show that Councillor Knack encouraged or knew his staff member made a complaint. Even if Councillor Knack did this, which has been repeatedly denied including in a signed witness statement in this investigation, it would be irrelevant. This is Council’s *Code* and Council Members are responsible for enforcing it.

In his April 12 and 13, 2021 Social Media Posts, Councillor Nickel ignores the fact that there were 10 complainants in the 2020 Complaints and that he was found to have committed multiple breaches of the *Code* arising out of those complaints. Instead, he tries to attribute the cost of the investigations of the 2020 Complaints to Councillor Knack and his staff member. This is misleading and false.

Councillor Nickel responded to this Complaint saying this is Mayor Iveson wanting to take “some political swipes” at him. In my view, Councillor Nickel chose to publish the April 12 and 13, 2021 Social Media Posts, is responsible for them and is bound to ensure his actions are within the requirements of the *Code*. Just because another member of Council advances a complaint does not automatically mean it is politically motivated. Even if it is, the *Code* exists in a political arena for elected officials to hold each other accountable for certain conduct. Having a *Code* is required by law. This is Council’s *Code* to enforce, and Mayor Iveson is a member of Council.

As part of his April 13, 2021 Social Media Post, Councillor Nickel re-published the same cartoon for which he was found to be in violation of the *Code* in 2020. This signals Councillor Nickel’s intentional disregard for the *Code of Conduct*.

Councillor Nickel argues that these investigations should be dismissed as being outside of my jurisdiction. If a Council Member takes a run at the *Code* and appears to be acting in a retaliatory fashion about the administration of the *Code*, there is no question I have jurisdiction to investigate such conduct.

I have found that Councillor Nickel’s April 12 and 13, 2021 Social Media Posts were deliberate and intentional violations of the *Code*. He flaunts the requirements of the *Code*, which he and the rest of Council agreed to be bound by when they unanimously passed the *Code of Conduct* in June of 2018.

FINDINGS

When making these findings, I determined whether the allegations are:

Substantiated – there is sufficient evidence on a balance of probabilities to make the finding;

Unsubstantiated - there is insufficient evidence on a balance of probabilities to make the finding; or

Unfounded – there is evidence on a balance of probabilities that the allegation is not true.

I find as follows:

1. I have jurisdiction to investigate this Complaint. The subject matter of this Complaint is governed by the *Code*. I am obliged to investigate this Complaint.
2. Councillor Nickel violated the *Code of Conduct* when he posted the April 12 and 13, 2021 Social Media Posts. He intentionally attempted to ridicule and intimidate people who have made *Code* complaints, or intimidate people from making complaints in the future, all of which is retaliatory and violates Part M, Section 1 of the *Code*.
3. Councillor Nickel's April 12 and 13, 2021 Social Media Posts were misleading and contained false information about the 2020 Complaints and the administration of the *Code of Conduct*, contrary to sections to Part B, Section 1 c) and e) of the *Code*.
4. The publishing of the cartoon about Councillor Knack by Councillor Nickel in his April 13, 2021 Social Media Post is a personal attack on Councillor Knack, the manner of communicating is disrespectful, lacks decorum and is misleading to the public and is in violation of the following sections of the *Code*:
 - a. Part B, section 1 d) which says Councillors must ensure that all communications issued by Councillors, including on social media, are respectful.
 - b. Part E, section 1 which requires Councillors to act with decorum at all times.
 - c. Part B, sections 1 a) and e) which say Councillors must ensure that their communications accurately reflect the facts of Council's decisions and do not mislead the public about any matter.
5. The allegation by Councillor Nickel that this Complaint is frivolous or made in bad faith is unsubstantiated.

RECOMMENDATION FOR SANCTION

I am required under the *Code* to make recommendations for sanction, if any, when I find that the *Code* has been violated.

I recommend that Council pass a motion to censure Councillor Nickel.

When considering this recommendation for sanction, I considered the following:

1. The fact that Council did not sanction Councillor Nickel for the 2020 Complaints does not detract from the fact that he was found to have violated the *Code* multiple times. Councils are at liberty not to sanction if they so choose. Prior violations of the *Code* are considered an aggravating factor when making recommendations for sanctions. Sanctions are typically progressive. Therefore, I have recommended a stronger sanction for these violations.

2. In his April 13, 2021 Social Media Post, Councillor Nickel re-posted a cartoon and comments for which he was previously found to be in violation of the *Code* for being misleading, disrespectful, and lacking decorum.
3. Councillor Nickel was reminded on November 10, 2020 that the *Code* prohibits retaliation and was warned against retaliatory conduct against complainants, and in particular with respect to the 2020 Complaints. Councillor Nickel retaliated despite this caution.
4. A motion to censure is a public reprimand expressing strong disapproval for the actions of a Council Member that is made on the record and recorded in the minutes of the meeting.
5. The April 12 and 13, 2021 Social Media Posts were simultaneously published across multiple social media platforms. They were made in public on social media and contained false and misleading information, therefore the sanction ought to be in public.
6. Councillor Nickel has demonstrated an intentional disregard for and flaunts the requirements of the *Code of Conduct*.
7. The need for deterrence for this type of conduct, particularly when it is intentional.

INTRODUCTION

On April 23, 2021, I informed Councillor Mike Nickel that, pursuant to the *Council Code of Conduct Bylaw 18483*, I had received this Complaint from Mayor Don Iveson. I advised that I had accepted jurisdiction over the Complaint and I was investigating a potential breach or breaches of the *Code*.

Councillor Nickel was given the full content of this Complaint, any relevant sections of the *Code*, and the relevant information I had received and would be taking into account when preparing this report. I asked Councillor Nickel to provide a response to the Complaint by May 3, 2021 and offered to meet with him or call him to obtain his statement in response.

COMPLAINT

Mayor Iveson's Complaint is as follows:

"I have reasonable and probable grounds to believe that Councillor Mike Nickel has contravened the Council Code of Conduct because:

Social media posts by Councillor Nickel across multiple platforms targeting Councillor Knack, specifically alleging a staff member of Councillor Knack's (who is an employee of the City of Edmonton within Councillor Knack's Office) was a complainant in a previous Code complaint that was investigated, and calling into question whether Councillor Knack directed the staff member to file the prior complaint on his behalf, and politicizing the matter of the cost of holding Councillor Nickel to account. (I understand Councillor Knack has previously indicated publicly that he did not direct his staff to lodge any complaint, not that any such allegations or imputations are professional or appropriate in the first place under multiple provisions within the Code of Conduct, particularly concerning retaliation under Part M [of the Council Code of Conduct]."

The dates and times of the alleged conduct are:

April 12, 2021 3:55 p.m. Twitter

April 13, 2021 11:22 a.m. Facebook

CODE OF CONDUCT

The following requirements from the *Code* are relevant to this investigation:

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

While carrying out their duties, Councillors must act in the best interests of the City as a whole.

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 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 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 Council or 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 M: Retaliation, Interference, and Obstruction, section 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.

WITNESSES

The only Witness identified in this investigation was Councillor Andrew Knack.

DISCLOSURE OF INFORMATION

In addition to the Complaint and relevant sections of the *Code*, Councillor Nickel was provided the following information relevant to this investigation:

1. April 12, 2021 3:55 p.m. Twitter post
April 13, 2021 11:22 a.m. Facebook post

[Attached as Appendix A].

2. Witness Statement of Councillor Andrew Knack dated April 22, 2021 [**Attached as Appendix B**]
3. A link to the October 26, 2020 Facebook video that is referenced in Councillor Knack's Statement:

<https://www.facebook.com/139079453433827/videos/651617319054095>

Councillor Nickel was told that in addition to the information in Councillor Knack's statement, Councillor Knack had also advised that he was publicly asked by Councillor Nickel, as seen in the linked Facebook video, if Councillor Knack instructed his staff to file a Code of Conduct complaint, referring to the *Code of Conduct* complaints dated July 19, 2020 that were presented to Council at the September 2, 2020 Council Meeting.

Councillor Knack said he read Councillor Nickel's question and responded at about the 52 minute and 45 second mark. He says it was a short response that generated a written response in the comment section at 53:34 of the video in which Councillor Nickel states:

So your staff made a complaint from your office... but you did not ask them to? Hmmmm 🤔

Councillor Knack says he briefly replied at the 1:03:15 mark and spent about 15 seconds reiterating the same thing he said earlier. He says that there was an initial reply by another person to Councillor Nickel's initial post at 38:32 and then Councillor Knack responded by saying:

Thanks for the message. In case you haven't watched it all yet, I did answer the question. I have never directed anyone to file a complaint. If I wanted a complaint to be made, I'd do it myself. Thanks again for the message and have a great day.

Councillor Knack states that since that reply was to Councillor Nickel's comment, Councillor Nickel would have received a notification about that written reply as well.

4. Back on November 10, 2020, as a result of the above interaction on Facebook and communications received about concerns of retaliation against Councillor Knack's staff member, I sent the following email to Councillor Nickel:

"Hello Councillor Nickel,

I have received a concern relative to the April 19, 2020 Code of Conduct Complaint #2004². The Complainant has advised me that on October 26, 2020 during Councillor Knack's Community Conversation Facebook Live, you came on and publicly commented the following:

1. "Andrew, did you direct your office staff to make a code of conduct complaint?"

² Complaint 2004 was one of 10 *Code* Complaints included in my report to Council on July 19, 2020.

2. “So your staff made a complaint from your office...but you did not ask them to? Hmmm”.

Complainant 2004 says that since this time, the video containing these comments has been viewed more than 1,400 times.

Complainant 2004 alleges that “going after those who have filed complaints” is an abuse of *the Code of Conduct*. Complainant 2004 says Councillor Knack has confirmed on Facebook that he has never directed anyone on his staff to file a complaint. Complainant 2004 says she will “proudly confirm” that she filed the complaint as an individual citizen, exercising her right to hold a public servant accountable.

Complainant 2004 says upon seeing your comments this created a sense of fear because it made her believe that she was being targeted simply for making a complaint and that should not be allowed in any circumstance. She says no citizen should feel fear of retaliation from the person they are complaining about, regardless of who they work for. She says the tools you are using to “expose” people on social media are dangerous, could be harmful and have made her as an employee and citizen “deeply uncomfortable”.

Complainant 2004 has indicated she is not proceeding at this time with a formal *Code of Conduct* retaliation complaint, because she fears retaliation by you. However, she has asked me to forward her concerns to you and, if the conduct continues, she will re-consider her decision to not file a formal complaint.

I wish to remind you of Part M, Section 1 of the *Council Code of Conduct* which says Councillors must not retaliate against anyone, including another Councillor, who participates or provides information in good faith during an investigation.

The very foundation of a *Code of Conduct* program is the understanding that people can bring forward complaints without fear of retaliation. For me, this is the most important section of the *Code*. If people are fearful of bringing forward concerns, then Council will have no way of knowing if there are *Code* breaches.

When I interviewed you about Complaints 2001 to 2010 you indicated that a member of Councillor Knack’s staff was a complainant. Frankly, I found this to be irrelevant as people, including fellow Councillors, are entitled to raise their concerns. You gave no information to lead to the conclusion that the complaint was made in bad faith. Councillor Knack could have made the complaint and it would also be irrelevant as it was about your conduct, not his.

I consulted with the Privacy Office for the City of Edmonton and asked if it would be appropriate to include in my report (which is public) the information about a complainant being a member of a Councillor’s staff, and was told no, this information identifies the complainant. Now, this is what you have done. I wish to point out that the *Code* explicitly supplements the *Freedom of Information and Protection of Privacy Act*. As well, my contract with the City requires me to comply with this Act.

I am deeply concerned with the information provided by the Complainant and her concerns regarding retaliation. I am concerned that exposing a complainant in this manner can amount to intimidating or shaming people from bringing forward their concerns.

If this should proceed to a formal investigation, this email of concern will be included as relevant evidence in that investigation.”

As part of the disclosure in the present investigation, I informed Councillor Nickel that I would be including my November 10, 2020 email in this investigation. I also asked Councillor Nickel if he wished his November 13, 2020 emailed response to be included in the present investigation. He neither responded to this question nor included his November 13, 2020 email in his response. Accordingly, I did not consider his November 13, 2020 email when making findings in this investigation.

COUNCILLOR NICKEL’S RESPONSE

On May 3, 2021, Councillor Nickel provided the following response to this Complaint:

“I have sought advice, received counsel and wish to provide the following brief comments regarding the Code of Conduct Complaints filed against me, which you have inexplicably decided to investigate.

I will restate some of the information I sent to you in my letter of April 9th, 2021³:

- *“I am concerned complainants may have been coached or solicited through political networks to create illegitimate action through your office.”*
- *“I have warned you previously regarding my concerns of the politicization of your office.”*

You brought forward your ideas to Council on February 9th, 2021 to further control the social media pages of Councillors. Council unanimously rejected your ideas, with 13 votes against. By investigating these complaints, I feel strongly that you are legitimizing frivolous and petty political games.

I will once again strongly caution you to ensure your office remains independent and is not used as a tool for political games by my opponents.

As an unelected bureaucrat who must answer to the democratic will of the people, including their elected representatives, please answer the following questions:

1. Are you aware one of the complainants is Mayor Don Iveson?
2. Are you aware this is an election year?
3. What steps have you taken to ensure independence of your office and that it is not being used to score cheap political tricks?...

³ Here, Councillor Nickel references a letter he sent to me in a separate matter.

Here is my official response to complaint 2111:

I feel Mayor Don Iveson wants to take some political swipes at me on his way out. As Integrity Commissioner you have zero right to investigate my election campaign or my independent social media pages. Please forward your concerns to the Municipal Affairs Office or Elections Alberta.”

Your Sincerely,

Mike Nickel

Councillor, Ward 11”

DISCUSSION AND ANALYSIS

I refer Council to **Appendix A** of this report, which contains Councillor Nickel’s April 12 and 13, 2021 Social Media Posts, which posts are specifically directed at Councillor Andrew Knack.

In his April 12, 2021 Social Media Post, Councillor Nickel says:

Last year I critiqued your policy on bike lanes.

In response, your office staff filed an official complaint against me.

It led to an investigation & cost taxpayers \$

After seeing an information request, I estimate this cost over \$50k.

Question

[followed by the words:]

\$50,000 + STUNT?

[followed by a photograph of Councillor Knack, then the words:]

Andrew Knack

Did you direct or know what your staff were doing?

The April 13, 2021 Social Media Post reads:

Last year, I was critical of Andrew Knack’s policy on bike lanes and I put out this fairly mild, political cartoon.

His staff filed a complaint.

I was investigated by City Hall which cost the taxpayers over \$50,000. In the end, council voted not to sanction me...

[these words are followed by the same cartoon for which Councillor Nickel was found in breach of the *Code of Conduct* in 2020, which shows Councillor Knack burning taxpayer's money for bike lanes].

Jurisdiction to Investigate

Notably, on June 26, 2018, Councillor Nickel made the motion at a Council Meeting to pass the *Council Code of Conduct Bylaw 18483*. That motion was then passed unanimously by Council. The *Code* contained sections dealing with matters such as elections, campaigning, respectful communication, decorous conduct, communications on social media, etc.

In my September 2, 2019 Annual Report to Council, I recommended the *Code* be amended to include a section prohibiting retaliation against those who participate in *Code* investigations. On February 3, 2020, Council, including Councillor Nickel, unanimously voted in favour of the inclusion of Part M, Section 1 into the *Code*, which prohibits retaliation against anyone, including another Council Member, who participates or provides information in good faith in a *Code* investigation.

Pursuant to section 9 of the *Integrity Commissioner Bylaw 18567*, I have a duty to receive and investigate *Code of Conduct* complaints. Schedule B of the *Code* says that complaints accepted by me will be investigated.

For me to accept jurisdiction, a complaint must be submitted in accordance with the requirements of the *Code* and be within the jurisdiction of the *Code*. If the complaint does not fall within the *Code*, I dismiss it without investigation.

Complaints received or under investigation within 90 days prior to a municipal election may be suspended until after a Municipal election day. The *Code* is clear that except possibly during this 90-day period, I have an obligation to investigate those topics covered by the *Code*. The language in the *Code* is clear that the *Code* is in operation during an election year and applies to current Council Members, even if running for re-election.

In response to this Complaint, Councillor Nickel says as Integrity Commissioner, I have “zero right to investigate” his election campaign or his independent social media pages and he questions why I have “inexplicably decided to investigate” this Complaint.

In my view, if the content of a complaint is retaliation against people making *Code* complaints, this conduct is within my jurisdiction, even during an election year. In fact, the *Code* contains provisions relative to Council Members' election and campaigning conduct during a Municipal election. Councillor Nickel is currently sitting as a member of Edmonton's City Council and is governed by the *Code of Conduct*.

Councillor Nickel says this Complaint should be forwarded to Municipal Affairs. With respect, the City of Edmonton is the Municipal Government having jurisdiction over these matters. Council has, by Bylaw, appointed me in the designated office of Integrity Commissioner and

delegated its power to receive complaints and carry out investigations pursuant to the *Code*. This is the forum for dealing with the subject matter of this Complaint.

Councillor Nickel also submits that “these concerns” need to be referred to Elections Alberta. With respect, the Elections Commissioner appointed under the *Elections Act* has jurisdiction over complaints or allegations related to campaign finance (Part 5.1) or the third-party advertising (Part 8) under the *Local Authorities Election Act*, neither of which are the subject matter of this Complaint.

This Complaint was submitted in accordance with the requirements of the *Code*. The content of this Complaint is covered by the *Code of Conduct* and is about a sitting Council Member. I am therefore obliged to investigate this Complaint.

Councillor Nickel says in response to this Complaint that he is concerned that “...complainants may have been coached or solicited through political networks to create illegitimate action” through the Integrity Commissioner Office and has “warned” me about “the politicization” of this office. He states that by investigating these complaints, my office is “legitimizing frivolous and petty political games”. He says:

“I will once again strongly caution you to ensure your office remains independent and is not used as a tool for political games by my opponents.”

Pursuant to the *Code*, if I determine that a complaint is frivolous or made in bad faith, I can dismiss it without investigation. When determining that a complaint is frivolous, it must obviously be without merit and have no prospect of success. If, for instance, I determine that a complaint is petty and a waste of my time, Council’s time, and City resources, I will dismiss the complaint.

This Complaint contains retaliation allegations the subject which, if proven true, would be a violation of the *Code*. The April 12 and 13, 2021 Social Media Posts appeared capable of supporting that allegation. Retaliation is a serious breach of the *Code* if proven true. Accordingly, I found that this Complaint was not frivolous.

To determine that this Complaint is made in bad faith, Councillor Nickel must provide some evidence or information to support this contention. Just because another member of Council advances a complaint does not automatically translate into it being politically motivated.

Council is made up of elected officials who are governed by a *Code of Conduct*. If every time a Council Member brings a complaint it should be dismissed as political, then the *Code* becomes meaningless. The *Code* was passed by Council to hold each other accountable in what is obviously a partially political arena. Council Nickel brought nothing to support his contention that this Complaint is made in bad faith. I therefore found that the allegation that this Complaint is frivolous and made in bad faith is unsubstantiated.

I find that I have jurisdiction to investigate this Complaint. The subject matter of this Complaint is governed by the *Code*. I am obliged to investigate this Complaint. The allegation that this Complaint is frivolous and made in bad faith is unsubstantiated.

Retaliation

Mayor Iveson alleges Councillor Nickel targeted Councillor Knack and Councillor Knack's staff member for allegedly participating in a *Code of Conduct* complaint against Councillor Nickel.

Councillor Nickel brings no evidence that Councillor Knack directed his staff member to make a complaint. Both Councillor Knack and Councillor Knack's staff member have denied that Councillor Knack asked his staff member to make a complaint about Councillor Nickel. Even if Councillor Knack did so, it would be irrelevant.

While Councillor Knack said he did not do this, generally, if a Council Member is asked a question or is presented a scenario which is governed by the *Code*, the Council Member should rightfully direct that individual to the *Code* and my office. That is the purpose of the *Code*. **The *Code* is Council's *Code*. Its purpose is, in part, for Council Members to hold each other accountable for their conduct.**

On November 10, 2020 I reminded Councillor Nickel of Part M, Section 1 of the *Code* which prohibits retaliation against anyone for participating in a *Code* complaint. This arose from concerns that are basically the same as what is alleged in this Complaint. At that time, I stated that the very foundation of the *Code* is the understanding that people can bring forward good faith complaints without fear of retaliation. Again, in my view, **the prohibition against retaliation is the most important section of the *Code*.**

In his April 12, 2021 Social Media Post, Councillor Nickel suggests that Councillor Knack is responsible for what Councillor Nickel describes as a "\$50,000 + Stunt". In his April 13, 2021 Social Media Post he says Councillor Knack's staff filed a complaint which was investigated, cost the taxpayers over \$50,000 and in the end Council voted not to sanction him.

By the time he made these posts, Councillor Nickel knew:

- There were 10 complainants that made Complaints that were brought to Council in 2020;
- Councillor Nickel was found to have committed multiple violations of the *Code* with respect to some of the allegations in the 2020 complaints;
- Councillor Knack had already twice said he had not asked his staff member to make a complaint about Councillor Nickel during the October 26, 2020 Facebook interaction;
- On November 10, 2020 I informed Councillor Nickel that Councillor Knack's staff member confirmed that she filed the complaint and had stated she did so "as an individual citizen, exercising her right to hold a public servant accountable".

The April 12 and 13, 2021 Social Media Posts leave the false impression that Councillor Knack is somehow responsible for costing the taxpayers more than \$50,000. Not only is this a false statement about the 2020 Complaints, but importantly, this is retaliatory conduct against people who bring forward *Code* complaints by trying to hold them personally and publicly responsible for the costs associated with complaints. There is no proof that any costs associated with these investigations are the fault of Councillor Knack, and they are certainly not a “stunt” by Councillor Knack.

The content of Councillor Nickel’s April 12 and 13, 2021 Social Media Posts are not mere political commentary or campaigning, but they are an attack on the *Code* and people who make complaints under the *Code*. They are an attempt to intimidate people from making complaints in the future for fear of being publicly blamed for the costs associated with investigating complaints. This conduct is retaliatory and is contrary to the *Code*.

Councillor Nickel’s response to this Complaint that this is just Mayor Iveson wanting to take “some political swipes” at Councillor Nickel is not a valid answer to this Complaint. Councillor Nickel chose to publish these posts, is responsible for them and is bound to ensure his actions are within the requirements of the *Code*. Just because another member of Council advances a complaint does not automatically translate into it being politically motivated. Again, this is Council’s *Code* to enforce. Council Members are required to adhere to the *Code* even in an election year.

Caught in the crossfire is Councillor Knack’s staff member. By challenging Councillor Knack and suggesting he told his staff member to file a complaint, and by calling this a “\$50,000 Stunt”, he retaliates as well against Councillor Knack’s staff member. This is entirely unacceptable and clearly contrary to Part M, Section 1 of the *Code*.

Council is legally required to have a *Code of Conduct*. Intimidating people from making complaints interferes with this legal requirement.

I find that Councillor Nickel violated the *Code of Conduct* when he posted the April 12 and 13, 2021 Social Media Posts. He intentionally attempted to ridicule and intimidate people who have made *Code* complaints, or intimidate people from making complaints in the future, all of which is retaliatory and violates Part M, Section 1 of the Code.

Posting Misleading or False Information

The suggestion by Councillor Nickel in his April 12 and 13, 2021 Social Media Posts that Councillor Knack is responsible for what Councillor Nickel describes as a “\$50,000 + Stunt” is false and misleading. Councillor Nickel has provided no evidence that the 2020 Complaints were brought by Councillor Knack. The word “stunt” imputes that Councillor Knack did something in bad faith that cost the taxpayers \$50,000, which has not been proven in any way. Attributing the cost associated with investigating the 2020 Complaints to Councillor Knack is a

deliberate attempt to mislead the public about information relative to the administration of the *Code*.

It bears repeating that Councillor Nickel was found to have committed multiple violations of the *Code* in the 2020 Complaints and there were 10 complainants. Therefore, attributing the cost of investigating the 2020 Complaints to Councillor Knack and his staff member is false and misleading.

Councillor Nickel's argument that comments in his campaign are off-limits has no merit when he deliberately misleads the public about the operation of the *Code of Conduct*. The *Code* remains a valid Bylaw passed by Council. Communications by Council Members related to the administration of the *Code* must be accurate, even during an election period.

I find that Councillor Nickel's April 12 and 13, 2021 Social Media Posts were misleading and contained false information about the 2020 Complaints and the administration of the *Code of Conduct*, contrary to sections to Part B, Section 1 c) and e) of the *Code*.

Re-posting the Cartoon

In his April 13, 2021 Social Media Post, Councillor Nickel says:

"Last year, I was critical of Andrew Knack's policy on bike lanes and I put out this fairly mild, political cartoon" [Councillor Nickel includes the impugned cartoon]


The language and image used in this post is the same language and image that were found to be in violation of the *Code* in the 2020 Complaints. In the cartoon and commentary, Councillor Nickel attempts to attribute a bike lane policy to Councillor Knack and shows Councillor Knack burning taxpayer's money for bike lanes.

Councillor Knack did not pass a policy on bike lanes in April 2020. Rather, City Administration created multimodal lanes for physical distancing during the COVID-19 pandemic, which lanes could be used for a number of purposes, including bikes. Last year, this was found to be a breach of the *Code* for misleading the public on the decisions of Council, particularly given public interest on the topic of bike lanes. It was also found to be a personal attack on Councillor Knack, was disrespectful and lacking in decorum.

As Councillor Nickel chose to republish the cartoon, I find in this investigation the same findings as in my report to Council for the 2020 Complaints.

I find that the publishing of the cartoon about Councillor Knack by Councillor Nickel in his April 13, 2021 Social Media Post is a personal attack on Councillor Knack, the manner of communicating is disrespectful, lacks decorum and is misleading to the public.

APPENDIX A

 **Mike Nickel**
@MikeNickelYEG

Hi @AndrewKnack,

Last year I critiqued your policy on bike lanes.


In response, your office staff filed an official complaint against me.

It led to an investigation & cost taxpayers \$

After seeing an information request, I estimate this cost over \$50k.


Question 🗨️
#yeg #yegcc

\$50,000+ STUNT?



Andrew Knack:

Did you direct or know what your staff were doing?

 Andrew Knack



Mike Nickel

April 13 at 11:22 AM · 🌐



Last year, I was critical of [Andrew Knack](#)'s policy on bike lanes and I put out this fairly mild, political cartoon.

His staff filed a complaint.

I was investigated by City Hall which cost the taxpayers over \$50,000. In the end, council voted not to sanction me.... [See More](#)



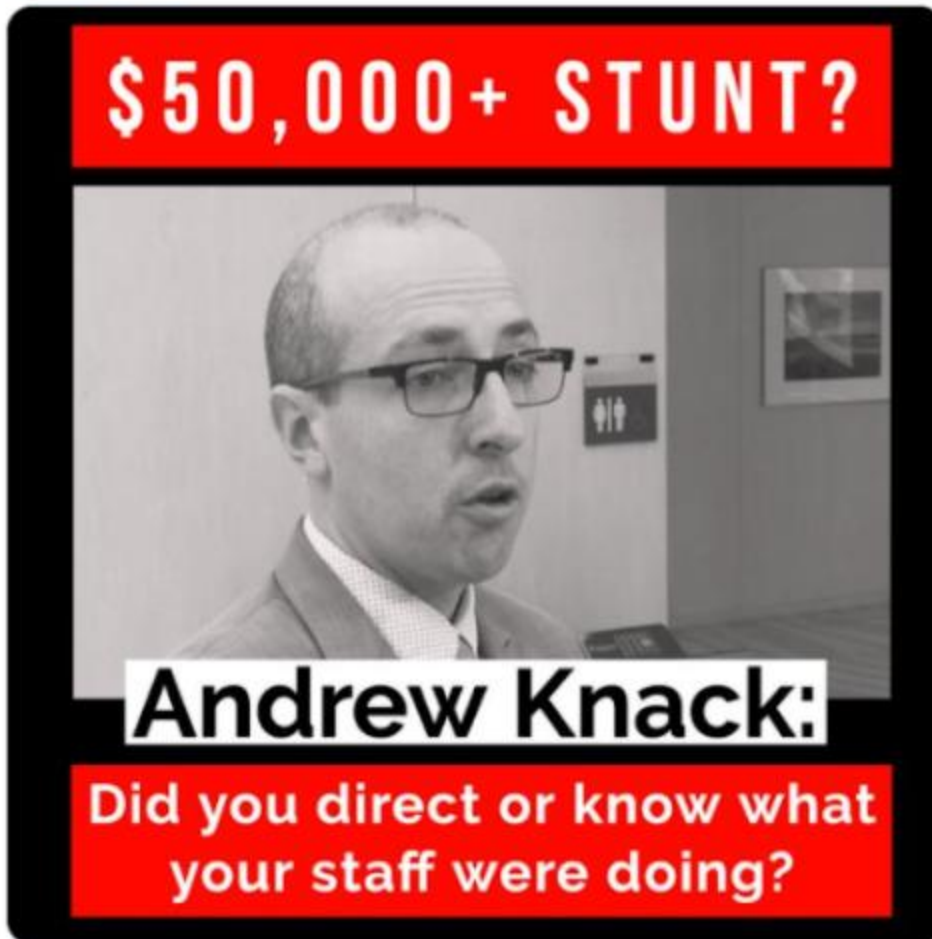
Last year I critiqued your policy on bike lanes.

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It led to an investigation & cost taxpayers \$

After seeing an information request, I estimate this cost over \$50k.

Question 🙋
#yeg #yegcc



Andrew Knack

3:55 PM · Apr 12, 2021 · Twitter Web App



APPENDIX B

STATEMENT OF COUNCILLOR ANDREW KNACK

1. I was interviewed by Jamie Pytel, Integrity Commissioner for the City of Edmonton, by telephone on April 16, 2021. The Integrity Commissioner told me that her office has received a complaint which names me as witness, and that the Complainant alleges:

“Social media posts by Councillor Nickel across multiple platforms targeting Councillor Knack, specifically alleging a staff member of Councillor’s Knack’s (who is an employee of the City of Edmonton within Councillor Knack’s Office) was a complainant in a previous Code complaint that was investigated, and calling into question whether Councillor Knack directed the staff member to file the prior complaint on his behalf, and politicizing the matter of the cost of holding Councillor Nickel to account. (I understand Councillor Knack has previously indicated publicly that he did not direct his staff to lodge any complaint, not that any such allegations or imputations are professional or appropriate in the first place under multiple provisions within the Code of Conduct, particularly concerning retaliation under Part M [of the Council Code of Conduct].”

2. The Integrity Commissioner also advised me of the social media posts from April 12 and 13, 2021 that are the subject matter of the complaint. I am aware of these posts. I believe I was tagged in the posts with the intent of making me aware.
3. Last year, I was made aware that 10 Edmontonians submitted Code of Conduct complaints that were brought to Council about Councillor Nickel. I did not know anything about the 10 complaints in question before they were submitted. I did not know a member of my staff was one of the complainants.
4. I have always told my team that they are their own people and they can do what they want on their own time, as long as they abide by the City of Edmonton policies that apply to them.
5. I think these recent posts are odd because on October 26, 2020 I was doing a virtual town hall meeting. Councillor Nickel posed the same question to me during the virtual town hall meeting about whether I directed my office staff to make a Code of Conduct complaint. I stated that I did not direct anyone to do this. In that same post, somebody posted a follow-up question to which I replied. I again stated I did not direct anyone to file a Code of Conduct complaint. This information has been known to Councillor Nickel for about 6 months.

6. I am pretty sure I told my staff last year that I would not be making my own complaint. I have publicly said this a few times. I have never felt it was appropriate to even hint to staff that they should file a complaint. This topic was never brought up in weekly meetings with my staff. Never at any point was I told by anyone on my staff that they were filing a Code of Conduct complaint.
7. How people treat me is one thing. How they treat my staff is another. Generally, I will not permit my staff to be bullied or have to respond to derogatory emails or social media posts. I tell them not to reply to them.
8. I believe my staff member submitting a Code of Conduct complaint was done in the staff member's personal capacity. They are their own person and they can do things on their own time.
9. Knowing that I publicly already responded to this question, I think it is fair to say that I am being targeted. In my community conversations I will respond and I did, even though I did not need to do that. It is clearly known by Councillor Nickel that I have already responded. This is surprising because the Councillor knows the answer to the question. I do not understand the purpose of the posts and the intent, if not to in some way to target me.
10. I understand that the role I am in will bring public criticism. It is one thing for this to come from a member of the public who might be interested. But at this point it is very clear that this is being done in bad faith. It is not what we would allow for in any other workplace. I expect criticism from a member of the public, but it is different when it comes from another member of Council.
11. It is discouraging. I think there are better ways to express concerns about the Code, which can be done in Council Chambers. People will lose faith in the Code particularly those who work at the City. They need to be able to freely express their views.
12. I am not concerned about what is being directed towards me. My primary concern is the fact that I have a team member who I feel is being targeted. I want my team to feel safe.
13. Councillor Nickel's team have publicly offered criticism of me and that is their right. I have assumed they have done so in their own time. I have never publicly or privately responded to them doing this.
14. It really troubles me that someone who engages like this with someone who is also a member of the public.

15. I would have already made a complaint about this had there not been a complaint made that I am now a witness.

16. The way the social media posts were written this week have ignored the fact that there were 10 Edmontonians who submitted concerns. They are clearly being written in a way that assumes that there was one complaint by someone who happens to work in my office. He was subsequently found to be in violation. This appears to be targeted. I wonder why my team member was singled out and why I was singled out when this is a standard process that any Edmontonian can follow.

I have had an opportunity to review and edit this statement. It is true to the best of my knowledge and belief.

April 22nd, 2021

Date

[signed by Councillor Andrew Knack]

Councillor Andrew Knack