

# 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 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 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. 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 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