

ADVISORY BULLETIN

RESPECTFUL CONDUCT

I. PURPOSE OF THE BULLETIN

The purpose of this Bulletin is to provide guidance to Members about the respectful conduct obligations required by the *Code of Conduct for Members of Council* (the “Code”) and the *Procedure By-law*.

These obligations apply to Members’ conduct whenever they perform their duties of office, including during Council and Committee meetings and whether conducted in person, by email, or on social media.

Attaining an elected position within the community is a privilege which carries significant responsibilities and obligations

As the preamble to the *Code* states, Members of Council recognize that they hold office for the benefit of the public and that their conduct must adhere to the highest ethical standards, exceeding the minimum obligations required by law.

Practically speaking, this means that Members of Council must rise above the frustrations they face: “They must not lower the quality of the public discourse, but raise it.”¹

At the same time, they must be allowed sufficient leeway to enter into meaningful political discourse.

It is not the role of the Integrity Commissioner to “censor or interfere with political debate and commentary” or to “decide whether views expressed by Members of Council are meritorious or properly held.”²

II. DEFINITIONS

“*Code*” means the *Code of Conduct for Members of Council - Schedule A to the Members of Council Code of Conduct By-law No. 19/2018*.

“**Duties of Office**” are the duties and activities that relate to the position of the Member, namely participation in activities relating to the proceedings and work of Council and activities undertaken in representing the City or the Member's ward or constituents but do not include:

¹ *Kett (Re)*, 2017, ONMIC6 (CanLII) at para 15

² Report of the Edmonton Integrity Commissioner dated February 23, 2022 re: Councillor Janz

- activities related to the private interests of the Member;
- a Member's election-related activities; and
- activities including fundraising activities designed, in the context of a federal, provincial or municipal election, or any other local election, to support or oppose a political party or an individual candidate.

“**Harassment**” includes:

- i. any behaviour, whether a single incident or a course of conduct, that a reasonable person should have known would be unwelcome, and that is inappropriate, demeaning, humiliating, embarrassing, or otherwise offensive, including but not limited to:
 - a. verbal or written insults, abuse or threats;
 - b. racial or ethnic slurs, including racially derogatory nicknames;
 - c. leering or other offensive gestures;
 - d. bullying; or
 - e. patronizing or condescending behaviour; and
- ii. objectionable and unwelcome sexual solicitations or advances.

“**Member**” or “**Members**” means a member of Council whether the Mayor or a Councillor.

“**Procedure By-law**” means the City of Winnipeg’s *Procedure By-law No. 50/2007*

“**Staff**” means City staff and the Member's own staff, regardless of how the individual is paid and includes a student, intern or volunteer.

III. RESPECTFUL CONDUCT UNDER THE *CODE* AND THE *PROCEDURE BY-LAW*

Members’ respectful conduct obligations are regulated by Section E, Rule 9 of the *Code*, which states:

9. Respectful Conduct

- a. All Members have a duty to treat members of the public, one another, and staff with respect and without abuse, harassment, or intimidation.

Harassment includes:

- i. any behaviour, whether a single incident or a course of conduct, that a reasonable person should have known would be unwelcome, and that is inappropriate, demeaning, humiliating, embarrassing, or otherwise offensive, including but not limited to:

- a. verbal or written insults, abuse or threats;
- b. racial or ethnic slurs, including racially derogatory nicknames;
- c. leering or other offensive gestures;
- d. bullying; or
- e. patronizing or condescending behaviour; and
- ii. objectionable and unwelcome sexual solicitations or advances.

b. While Members may passionately debate issues and promote ideas, they must maintain proper decorum during meetings of: Council, Committees of Council, and boards, agencies or commissions on which they serve as part of their duties of office.

The conduct of Members at meetings of Council as a whole or Committees of Council is also regulated by the *Procedure By-law*, the relevant provisions of which state:³

ORDER AND DECORUM

PRESIDING OFFICER

9(1) The Presiding Officer shall chair meetings of Council, maintain order and decorum and decide questions of order, subject to an appeal to the Council.

(a) When in the opinion of the Presiding Officer an act of harassment whether personal, sexual, racial or otherwise has occurred in the Chamber against a member of Council by another member of Council the Presiding Officer may name the offending member of Council;

(b) Upon being named the offending member shall immediately cease and desist from any further acts of harassment during the meeting;

(c) If at the same meeting the offending member of Council shall again commit an act of harassment the Presiding Officer shall have the offending member ejected from the Council Chamber;

(d) Nothing in Rules 9(1)(a), (b) and (c) limits the power of the Presiding Officer to maintain order and decorum in the Chamber, as provided in Rule 9(1) and the Presiding Officer may take such further and other action as circumstances warrant as he or she in his or her sole discretion deems advisable to maintain order and decorum in the Chamber to effect orderly completion of the proceedings and business of Council.

³ Although the wording of the By-law only makes specific reference to meetings of Council, it is understood to apply to meetings of Committees of Council as well.

DECORUM

9(5) No member shall engage in private conversation in such manner as to interrupt the business of the Council.

9(6) In the Council Chamber, Councillors shall dress appropriate to the office of a member of Council.

9(7) A Councillor may bring a beverage in a cup or glass to his or her desk or ask a Page to bring it, but no food is permitted in the Chamber and no food or drink is permitted in the public gallery.

9(8) No member shall read any newspaper or use a cellular telephone in the Chamber.

9(9) Visitors in the gallery must maintain order and decorum and are not permitted to use flash photography, audio visual equipment, display signs or placards, to applaud participants in debate or to engage in conversation or other behaviour which may disrupt any proceedings of Council or any Committee thereof.

DISRESPECT

9(17) When a member is addressing the Council the member

(a) shall not speak disrespectfully of Her Majesty the Queen or her official representatives;

(b) shall not use offensive words in referring to any member of the Council, or to any officer or any employee of the City;

(c) shall not indulge in personalities in the course of debate nor reflect on the motives of members who may have voted for a particular motion;

(d) shall not use profane, vulgar, offensive, threatening or intimidating language.

IV. GENERAL CONSIDERATIONS

- Members' conduct at meetings of Council or Committees of Council is governed by both the *Code* and the *Procedure By-law*.
- The Presiding Officer, whether the Speaker or Chair of a meeting of Council or a Council Committee respectively, has jurisdiction under the *Procedure By-law* to intervene if they are of the opinion that a Member has not conducted themselves with decorum. Often, conduct that crosses the line is more effectively addressed at the time it occurs.
- The Integrity Commissioner will therefore generally decline to investigate a complaint related to a Member's conduct that occurred during a meeting of Council or a Council Committee where the Presiding Officer has already intervened or otherwise made a ruling regarding the Member's conduct. Little would be gained for the Integrity Commissioner to

revisit a meeting sometime after the event to provide their opinion as to whether they agreed with the Presiding Officer's decision.

- The Presiding Officer requires a certain degree of autonomy to ensure that a meeting is conducted in accordance with order and decorum.
- Under the *Code*, whenever they perform their duties of office, Members must conduct themselves, whether in or outside the Council Chamber, in a manner that is respectful and that is not abusive, harassing, or intimidating;
- Harassment takes its meaning from the context in which the conduct occurs and must be determined on a case-by-case basis; the law cannot provide a bright line between what is or is not harassing behaviour.⁴
- Subjective feelings are not enough to prove that harassment has occurred.
- A determination of whether conduct amounts to harassment within the meaning of the *Code* is made on an objective standard.
- Not every failure to be kind or sensitive rises to the level of a breach of the *Code*.
- Members should remember that people who appear before them in delegation, whether members of Staff or the general public, are often appearing in what is to them an unfamiliar and intimidating forum. While Members are entitled to ask pointed questions of the individuals appearing in delegation they should be mindful to avoid allowing their interactions with delegations or other Members of Council from becoming abusive, intimidating or harassing.
- Without providing an exhaustive list, examples of conduct which may rise to the level of a breach of the *Code* include:
 - use of vulgar language or gestures;
 - name calling or personal remarks;
 - comments that are demeaning, belittling, or cause personal humiliation;
 - racist, homophobic or other comments that are offensive or discriminate against an individual or group of individuals on the basis of a characteristic that is protected under *The Human Rights Code* of Manitoba;
 - comments aimed at attacking an individual's reputation based on information that is untrue and inaccurate; and

⁴ *Alberta Health Services v Johnston*, 2023 ABKB 209 at para.101

- consistent interruptions such that the individual is not given a fair opportunity to communicate their position.

V. POLITICAL SPEECH AND THE POLITICAL ARENA

- The Council Chamber is a political arena, where ideas and positions are passionately debated by elected officials;
- Members are entitled to hold and express opinions and disagreement so long as they do so in a way that does not contravene the *Code*.
- Members operate in a political arena, and are expected to meaningfully participate in debate. The Integrity Commissioner is not a referee of political debate and opinion, and will not investigate complaints regarding conduct that amounts to political speech so long as those comments do not otherwise violate the provisions of the *Code*.
- Political expression and opinion are interpreted in the overall context of freedom of expression, a “fundamental right in Canada”. The *Code* is interpreted in a manner consistent with this right, and in a way that provides as broad an interpretation as possible, consistent with the principles established by the Supreme Court of Canada;⁵
- However, by adopting the *Code*, the Members of Council have agreed to modestly circumscribe their freedom of expression within the limits set out by the *Code*;
- These limits should not prevent vigorous debate or disagreement.
- Generally, the public’s remedy for addressing its disapproval of political speech and activity is at the ballot box during a municipal election, unless the conduct rises to a breach of the *Code*.

VI. RULE 8 – CONDUCT RESPECTING STAFF

Members are reminded that their conduct towards Staff must not only comply with Rule 9, but also with Rule 8 (Conduct Concerning Staff) which reads as follows:

8. Conduct Concerning Staff

- a. Members must not directly or indirectly, request, induce, encourage, aid, or permit staff to do something which, if done by the Member, would be a breach of this Code of Conduct.
- b. Members must not compel staff to engage in partisan political activities or subject them to reprisal of any kind for refusing to engage in such activities.

⁵ See Cowan, Meghan (Aird Berlis); Notice of Summary Dismissal, Code of Conduct Complaint 2022-01, City of Guelph, April 11, 2022 and *Committee for the Commonwealth of Canada v Canada*, [1991] 1 S.C.R. 139 (S.C.C.).

c. Members must not use, or attempt to use, their authority for the purpose of intimidating, coercing, or influencing staff with the intent of interfering with such staff's duties

d. Members must not maliciously or falsely impugn or injure the professional or ethical reputation or the prospects or practice of staff and must at all times show respect for staff's professional capacities.

VII. COMPLAINT EXAMPLES– CITY OF WINNIPEG

The following are examples of complaints that have been submitted to the Integrity Commissioner's office alleging a Member breached Rule 9 where I either dismissed the matter without investigating or, following an investigation, I found the conduct did not amount to a breach of the *Code*.

1. I declined to investigate a complaint about a Member's behaviour towards the Complainant which occurred during hearings held by a City Committee. After reviewing the video record of the proceedings, I did not see any conduct on the part of the Member that amounted to a contravention of Rule 9. **(2019 Annual Report, Sample Complaint #2)**
2. A Member filed a formal complaint against another Member, alleging that the Member had made derogatory and discriminating comments about them during a Council meeting in contravention of Rule 9. I found that the Member's remarks were "unkind and insensitive" but did not rise to the level of "abuse, harassment or intimidation" as described in Rule 9. **(2020 Annual Report, Investigation)**
3. I found that two Members did not contravene Rule 9 when they interjected during the delegation made by a member of the public where they believed that the individual was making inappropriate comments. Specifically, I found that both Members were respectful in their dealings with the Complainant and that "nothing in their behaviour could objectively be construed as vexatious or amounting to harassment, within the meaning of the *Code*." **(2021 Annual Report, Complaints, Example #2)**
4. I dismissed multiple complaints I received in this particular year from members of the public who felt that Members had contravened Rule 9 through their actions during meetings. After reviewing the video recording of each meeting where the behaviour was alleged to have occurred, I concluded that in each case there was no evidence that the conduct of the Member(s) contravened Rule 9. For example, I did not see any Member make personal remarks, raise their voice, use inappropriate language, or interrupt the people who were making presentations. **(2022 Annual Report, Complaints, Example #3)**

VIII. COMPLAINT EXAMPLES – OTHER JURISDICTIONS

1. Chair of local BIA found to have breached Code through derogatory statements made during meeting, including racial slurs, regarding individuals residing in downtown Barrie. **(Barrie, Ontario: Complaint re: Downtown Barrie Business Association Chair Hamilton (April 22, 2021))**

2. Member of Council breached the Code through disparaging and disrespectful comments towards members of the municipal police service during a council meeting. **(Township of West Gray, Ontario: Recommendation Report of the Integrity Commissioner, Complaint against Councillor Rebecca Hergert, July 29, 2022))**
3. Member of Council breached the Code by referencing a personal grievance and speaking disparagingly during a council meeting about an individual, whom the Member mistakenly assumed had been a witness in a previous Integrity Commissioner investigation into his conduct. **(Township of Ryerson, Ontario: Complaint against Councillor Brandt (April 20, 2021))**
4. Member found to have breached the Code when he sent an email to all members of council, using expletive and derogatory language in referring to a fellow member. **West Nipissing, Ontario: Complaint against Councillor Fisher (May 11, 2021))**
5. Member breached the Code when he became aggressive with fellow member during meeting, including approaching him during a break and “backing him into a corner” to attempt to intimidate the member to vote in a certain way; had to be restrained by several on-lookers. **(Welland, Ontario: Councillor DiMarco (May 1, 2020))**
6. Mayor found not to have breached the Code when, in the course of a meeting, he repeatedly defined ongoing events in another country as a “genocide”, an issue which was controversial to many in delegation at the meeting. The Mayor simply expressed an opinion that was popularly held by many and it was not the role of the Integrity Commissioner to fact-check such opinions. **(Brampton, Ontario: Complaint against Mayor Brown (January 26, 2022))**
7. Members did not contravene the Code provisions relating to “respectful conduct” by initiating court application against the City Manager, seeking to compel her to include a line item into the proposed city budget. Bringing a lawsuit is not inherently “disrespectful.” **(Regina, Saskatchewan: Complaint against Councillors LeBlanc and Stevens (March 6, 2023))**

IX. RELEVANT LEGISLATION, BY-LAWS AND POLICIES

- *Code of Conduct for Members of Council – Schedule A, Members of Council Code of Conduct By-law No. 19/2018*
- *Procedure By-law No. 50/2007*

Date: October 5, 2023