

CITY OF WINNIPEG

INVESTIGATION REPORT

To:	City Council for the City of Winnipeg
Re:	City of Winnipeg Members of Council *Code of Conduct By-law No. 19-2018*
Complainant:	Michael Jack
Respondent:	Councillor Russ Wyatt
Allegations:	Harassment and Breach of Confidentiality
Investigator:	Jamie Pytel, Kingsgate Legal
Report Date:	October 28**,** 2024

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I. INTRODUCTION

1. This report concerns a formal complaint made by the Complainant on August 18, 2023 against the Respondent Councillor (the "Complaint"). The Complaint is made pursuant to the *Members of Council Code of Conduct - City of Winnipeg By-Law 19/2018* (the "Code").

2. The Complaint references Court of King's Bench of Manitoba's decision in *6165347 Manitoba Inc. and 7138793 Manitoba Ltd*. *v. The City of Winnipeg* 2023 MBKB 114 (the "Legal Action"). As the City of Winnipeg's Integrity Commissioner found herself in a conflict of interest given her law firm's connection to the Legal Action at the time the Complaint was submitted, this matter was referred to me.

3. The Complainant was employed by the City starting in July 2000 and served as the CAO from July 2021 until he resigned his position on June 28, 2024.

4. The Respondent was a Councillor on Winnipeg's City Council from 2002 to 2018, and from 2022 to the present.

5. The Complainant alleges that on August 3, 2023 he was publicly harassed through the publication of an interview given by the Respondent to the Winnipeg media (the "Media Article"). In the Media Article, the Respondent was quoted as saying that the CAO was not adequately performing his duties, he should have terminated a staff member who was involved in the Legal Action, and the Complainant's employment should be terminated. The Complaint and the Complainant's interview statement from this investigation are found at **Appendices A and B**.

6. The Complainant also alleges that the Respondent breached the confidentiality requirements of the Code in the Media Article by referring to information being provided by the CAO to Council about the Legal Action. The Complainant said this negatively impacted his ability to do his job, as he would have to anticipate confidentiality breaches by the Respondent when briefing Council on confidential matters.

7. The Respondent denied that he breached the Code of Conduct and said he was merely expressing his opinions as a municipally elected official, which he is entitled to do. The Respondent asserts that the Complainant was obliged to bring his concerns to the Governance Committee of Council rather than through the Code of Conduct process. He says that the Code of Conduct process is the wrong process for hearing the Complainant's concerns.

8. For Council's consideration, this report contains the details of this investigation, my findings that the Respondent has breached the Code of Conduct, and recommendations as to the appropriate sanctions.

II. INVESTIGATION SCOPE and PROCESS

9. This investigation was carried out pursuant to the process set out in Part B of the Complaint Procedures of the Code.

10. I first reviewed the Complaint and determined that the harassment and breach of confidentiality allegations fell within the jurisdiction of the Code. However, the Complainant's allegations of defamation were outside of the jurisdiction of the Code and were not investigated.

11. I interviewed the Complainant to obtain details about the Complaint, and took his statement. He was given an opportunity to review and edit his statement before finalizing it and returning it to me.

12. I noted that the Complaint also referenced concerns regarding alleged treatment towards members of the Complainant's staff. I asked the Complainant to confirm whether he was making a complaint about alleged treatment towards him or his two staff members, or both. If he was advancing a complaint about how his staff were treated, those staff members should be given an opportunity to comment on whether they wished to have alleged conduct towards them become the subject of a Code of Conduct investigation.

13. As no indication was received that the two staff members were wishing to bring their concerns forward, I did not make findings about alleged conduct towards the two staff members, who are referred to as **Employee X** and **Employee Y** in this report.

14. At the time of submitting the Complaint, the Complainant was skeptical that an informal resolution of his concerns could be achieved. However, the Complainant later indicated to me that he was open to informal resolution.

15. With the Complainant's consent, I provided the Respondent with the full Complaint and the Complainant's interview statement. I told the Respondent that I would like to interview him, get his statement, and explore informal resolution. The

Respondent declined to be interviewed or discuss informal resolution. He chose only to provide a written response to the Complaint, which is **Appendix C** to this report.

16. The Complainant was then given the Respondent's response. The Complainant's reply to the Respondent's response is found at **Appendix D**.

17. Investigation findings in this report were made **objectively**, taking into account context and the surrounding circumstances where appropriate, and whether there was sufficient information on a **balance of probabilities** of a breach of the Code.

18. As findings of a breach of the Code were made and a report would be submitted to Council, I provided a copy of the draft report to the Respondent for his response. He did not provide a response to this report and it was finalized without the benefit of the Respondent's written or oral response.

III. RELEVANT SECTION(S) OF THE CODE OF CONDUCT

19. The relevant sections of the Code are as follows:

Confidential Information
1.a Members must not disclose and shall only use confidential information as required for their duties of office.

Confidential Information is information which is otherwise not available to the general public, including information contained in the agenda for or discussed at an *in camera* meeting held pursuant to the City's *In Camera By-law*, and information in the possession of or received in confidence by the City that the City is either prohibited from disclosing, is required to refuse to disclose, or may refuse to disclose pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act*.

Conduct Concerning Staff
8.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.

8.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.

Respectful Conduct

9.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;…
   …
   d. bullying;

IV. COMPLAINT

20. The Complaint in full is attached as **Appendix A** to this Report and contains the Media Article and other relevant documents. The Complainant's Interview Statement is found at **Appendix B**.

21. The headline of the Media Article in question says:

> *Winnipeg Councillor calls for termination of top civil servant. [The Respondent] wants [the Complainant] turfed for not firing [redacted] at centre of $5M court penalty.*

22. The Media Article says, in part:

> *A Winnipeg councillor has called for the termination of chief administrative officer [the Complainant] over the response to a multimillion-dollar court judgement against the city.*
>
> *[The Respondent] says he's upset that the city has not fired [Employee X]…*
>
> > *"It sends a message to the entire civil service of the City of Winnipeg, that you can break the principles of your profession, you can break city policies … you can break the Planning Act, and there's no consequences," [the Respondent] said in an interview…*

[The Respondent] says [the Complainant's] failure to remove [Employee X] has caused him to lose confidence in the city's top civil servant.

[The Respondent] says he has also seen messages indicating that [the Complainant] is considering filing an appeal of the judge's decision, which he called a 'delay tactic' that could potentially expose the city to an even greater legal penalty.

> *"I think this is an indication where we have the most important position in the public service, being the CAO, not acting," [the Respondent] says.*
>
> *"We need a change. We need a new CAO and we need to start removing some of the dead wood that exists in senior management."*

23. The Complainant acknowledges that the Respondent is entitled to make fair comment and hold opinions, but says that the Respondent's statements in the Media Article breached the Code by:

    a. demeaning, defaming and harassing the Complainant;

    b. questioning why the Complainant did not terminate the employment of Employee X and demanding that the Complainant's employment also be terminated.

    c. failing to show respect at all times for the Complainant's professional capacities;

    d. deliberately attacking the Complainant in public for his work with respect to the Legal Action. The Complainant says this was an attempt to coerce, unduly influence or intimidate the Complainant with respect to the recommendations he would be giving Council regarding the Legal Action. The Respondent's comments also suggested the Complainant acted improperly regarding the Legal Proceeding.

    e. divulging confidential or privileged information which impedes the Complainant's ability to perform his duties for fear that information provided in confidence would then be improperly released by the Respondent to the media;

f. The Respondent's comments about the Legal Action violated the Confidential Information requirements of the Code.

24. The Complainant says the Respondent's conduct matters especially because of the public nature of the comments.

25. With respect to the Respondent speaking about the Legal Action to the media, the Complainant outlines an alleged pattern of the Respondent disclosing what the Complainant feels is confidential information, including one time information provided to Council at a Council Seminar.

26. However, the Complainant's primary concern is about the Respondent speaking about the Legal Action in the Media Article in which he references information provided to Council by the Complainant in an **email dated July 19, 2023**. The Complainant says this email is the only message he had given the Respondent regarding the court's decision in the Legal Action before the Media Article was published on August 3, 2023. The email says, in part:

> As for the City, our own counsel had been reviewing the decision, and I have asked for a detailed memo outlining the potential grounds of appeal and supporting analysis. Once we have received this, I will then determine whether to recommend the City files an appeal. Should I make that recommendation, I would require the approval of the Mayor and the Chair of the Standing Policy Committee on Property and Development before we could initiate the appeal on behalf of the City.
>
> I have also heard concerns and received questions from some of you about the status of one defendant who remains a City employee.
>
> As you're aware, we routinely avoid publicly discussing HR matters about specific employees, and this is no exception.
>
> It should be remembered that until the court process has played out to a full conclusion, when all matters have been either appealed or all appeal periods have been exhausted, this matter remains before the courts.

27. The Complainant says:

> …to attack me in a deliberately and obviously public manner for the prospect that an appeal is merely being <u>considered</u> can only be

characterized as intimidation or coercion against the Public Service actually considering such an appeal…

To suggest impropriety on my part because an appeal is even being "considered" not only demonstrates a profound misunderstanding of the CAO's duties to the City, but it can only have been uttered to intimidate, coerce or influence the conduct of the Public Service as we try to work through these complicated and highly-charged issues.

To be abundantly clear, I strongly believe the Councillor can and is entitled to hold an opinion that an appeal would not be in the best interests of the City; however, to take to a media platform to denounce the possibility of this discussion even occurring can only be characterized as intimidation, coercion or undue influence.
…

Conduct like that the Councillor has exhibited can only serve to damage the proper functioning of any organization and level of government. I desire nothing more than to be able to brief my elected officials on matters of significance, which are frequently confidential and sensitive. On occasion, the advice being provided in any briefing may also be subject to solicitor-client privilege.

For one Councillor to demonstrate that the confidentiality of sensitive or privileged information and opinion can no longer be guarded or protected ultimately does a disservice to the residents of Winnipeg.

In some of his comments referenced above, the Councillor also pondered the message that might be sent to the Public Service by certain actions, or lack thereof, from me and my office. On a completely different order of magnitude is the message sent to the Public Service when a sitting Councillor is permitted to:

- name employees publicly with the intent of impugning their professional reputations, ethics and integrity;
- demand they be fired, failing which, the Councillor will demand the CAO also be fired; and
- attempt to coerce how an otherwise rational discussion of legal issues can/should occur.

> These are tremendously damaging messages, that will absolutely have an insidious and lingering impact on the City's ability to attract good, competent people, long after I have left the organization.

28. The Complainant further says with respect to comments made in the Media Article:

> I am concerned that breaches of confidentiality negatively impact my and City staff's ability to do our jobs, and negatively impact the City of Winnipeg.
>
> My concerns with breaches of confidentiality are all connected to the August 3, 2023 media story that is attached to my complaint. It says that I am considering filing an appeal of Justice McCarthy's judgment regarding [the] law suit. That discussion and that fact were intended to be confidential as it concerns litigation. To discuss that at all is very key and fundamental. Discussing any confidential communications that I provide to Council to try to assist and inform them, and then having it relayed to media, remains a valid concern. I think the Councillor's comments are objectively and obviously meant to intimidate, even if I did not feel intimidated by them. This is then linked with the Councillor saying he was going to try to get me fired…
>
> Everything around this litigation was tough. It was a very acrimonious discussion overall with many layers to it. I certainly felt an impediment at the beginning after the news article, and it probably rattled me a bit. I think that feeling has decreased. I don't think it's impacting my daily interactions. I still try to interact with the Councillor and invite him to contact me informally on matters.
>
> I am remarkably resilient and today probably do not feel diminished in my ability to do the role. But in the days after the news article, there was absolutely an impact. I had people contacting me because it was in the media that I was getting fired. That is difficult. I also know enough about media that people don't spend a lot of time trying to get to the bottom of anything. It's enough to see that somebody's called for this person to be fired. When you drop a bomb like that publicly, there are inevitably going to be consequences.
>
> The Councillor's failure to keep staff recommendations confidential ends up having a bit of a chill factor. Anytime we're bringing forward recommendations, this will now be on my mind. I don't think I'll deviate, but it'll be on my mind. The next time we're having discussions of a legal nature where I need all of Council to be able to hear about something confidential, we will have to go through a bunch gymnastics to try to prepare for the inevitable breach of confidentiality that this Councillor is demonstrating. When you have to explain why you're settling a case, you're explaining very clearly some of the weaknesses in the case.

You're explaining some of the risks of going to trial. These are all of the things you absolutely can't be just explaining to somebody who's going to turn around and hand this to the entire world. It makes it very hard to effectively do our jobs and still try to serve Council. It's also yet another handcuff on my ability to attract great people here, which we need.

The consistent message to Councillors about how the public service is operating is to contact me. I doubt anyone would suggest I'm not responsive when they've tried to connect with me on items or issues, including this Councillor. There's nothing that prevented him from connecting with me. I would have much preferred he just called me and had a discussion than go to the media. This so is offensive because it really feels performative to me. It doesn't feel like he was trying to work on anything constructively. This was for a purpose that I don't feel was at all connected to his job as a Councillor.

29. The **Respondent's reply** to the Complaint is found at **Appendix C**. He denies that he violated the Code and says:

1) As an elected municipal official, I have a right to be able to comment publicly on matters before the media pertaining to the City of Winnipeg.

2) As an elected municipal official, I have a right to comment publicly on the performance of the CAO, who is a Statutory Officer, and reports directly to Council.

3) As an elected municipal official, I had no vehicle to raise concerns via a Human Resource Committee, because said committee does not exist.

4) As the CAO, [the Complainant] chose to ignore proper procedures by filing a complaint with the Integrity Commissioner, rather than first exhausting other avenues available to him, as he was in a unique position, as the CAO, and could have and should have sent his concern to the Governance Committee of Council, which states, in By-law No. 7100/97 under section 14, subsection (4):

"To resolve difficulties between Councillors and administration."

[The Complainant's] failure to do this, represents a major breach as the Governance Committee of Council was set up to handle said matters. As the CAO, he was in a unique position, in other words he had more mechanisms at his disposal to deal with his concern, than does a non-city employee, such as a member of the public. His failure to recognize this underscores the unfairness of [the Complainant's] complaint to the Integrity Commissioner.

5) To understand my concern, and my right as an elected official to express my opinion, which strikes to the very core of our democratic beliefs and ideals, please note the following:

I spoke out following a court decision to award damages AGAINST the CITY for $5 million. To put that into perspective, that is 2/3rds of a 1% property tax increase inside the City of Winnipeg.

Furthermore, my concern was also the example and message that [the Complainant] was sending to the remainder of the public service of the City of Winnipeg. Namely, the reason the City was assessed damages of said amount by the Court was because City Employees chose to break City Policies, Planning Policies, and indeed Planning/Municipal Laws pertaining to the legal rights of property owners and their ability to make application in order to subdivide and rezone their lands. By [the Complainant] deciding to retain the said employee, and/or by failing to place said employee on administrative leave, and/or by failing to demote said employee, the message is presented to the public service that its ok to do this, as employees who take such actions will not face any consequences. In fact, by appealing the decision, the implication can be made that the city defends such actions, as was determined by a court of law.

Compare that to consequences for employee actions that are common in the private sector. If you cost your company, for example, $5 million dollars, via a court decision against the company, not to mention the legal costs required for said defense in court, the private sector would take actions to remonstrate or discipline or dismiss said employee. Until taxpayer dollars are treated as if it were your own money, the City of Winnipeg will continue to make wasteful decisions, including decisions that lead to court actions that end up costing the City money. This was a message I wanted to convey, again, on a matter before the press, and therefore I have every right as an elected official to express said opinion in an open society.

[The Complainant] needed to send a message that the City of Winnipeg does not tolerate actions by its employees that break policies, procedures and laws. He failed to do this on all counts in terms of this matter, and that is exactly why I called for his resignation, which is my right to do as an elected member of Council.

Furthermore, [the Complainant] pushed for the damage amount to be appealed, once again costing taxpayers hundreds of thousands of more dollars in legal fees.

All of this was in the public realm, as the court decision was and is public, including plans by the City to undertake an appeal. Therefore, I, as an elected Municipal Official, has every right to comment publicly on such a matter.

6) [The Complainant's] contention that the Council Seminar, where information was given about appealing the Court decision, was confidential, is completely false and once again demonstrates [the Complainant's] failure to understand the purpose of Council Seminars, as outlined in the City of Winnipeg Charter, which overrides all City By-laws and procedures, including the Code of Conduct [the Complainant] is quoting, the City of Winnipeg Charter states as follows:

> "Council seminars
>
> 78(1) The provisions of this Division do not apply to seminars convened by some or all members of council or a committee of council for the purpose of receiving information or discussing policies and other matters that affect the city."

The "Division" referred to in the section is Division 4, on how meetings are to be organized, rules of meetings for Council and Committees of Council. Therefore, clause 78(1) of the City of Winnipeg Charter states, in layman terms, that all the above rules stated thus far DO NOT apply to Council Seminars. Indeed, the purpose of Council Seminars is to receive information or discuss policies or other matters.

Indeed, it could be argued that [the Complainant's] attempt to make the Council Seminar secretive was in direct violation of the City of Winnipeg Charter, and as the CAO, a violation of one of his core duties, which is to uphold said statute! If a "Chill" is being created, as [the Complainant] contends, it is [the Complainant] who is the one attempting to place a "chill" over an open and democratic meeting system, as outlined in the Charter, as I have quoted above.

7) It must also be pointed out that other members of Council, including myself, have called for the Office of the Integrity Commissioner powers to be expanded to included Senior Management and their conduct. This has arisen due to recent revelations, proven in court, where senior management acted inappropriately. Yet, to this day, no said option exists. And to my knowledge, at no point did [the Complainant], as the CAO, advocate for said accountability that would have rightly occurred if senior management are subject to complaints, via an Office of an Integrity Commissioner, as members of Council are subject to today.

Furthermore, to make matters worse, I can file a complaint against the Code of Conduct against [the Complainant], on the said matter that is now before you in this complaint, however the arbitrator of said complaints, is who? The CAO! [The

Complainant] himself! This left me with no other option then to speak publicly as, I have already clearly written, I had a right to do.

8) Finally, my rights as a Councillor have been infringed upon, namely my democratic right to freedom of speech about City matters already before the press, and for the former CAO attempt to stifle debate, is probably a matter that speaks more to his conduct than to the conduct of others.

   I am referring to the fact that on June 18, 2024, the City of Winnipeg released the Workforce Management Audit Report. It found blaring examples of a failure of senior management to conduct basic human resource practices, such as regular job performance reviews. Other issues were found as well.

   [The Complainant] resigned as the CAO on June 17, 2024, with his resignation coming into effect on June 28, 2024. This could be a coincidence, however, that is up for public discussion, as has already been the case.

   Nonetheless, as the Head of the City of Winnipeg Public Service, the CAO would have been or should have been the office holder who would have ensured that all proper Human Resource procedures are followed, including regular Job Performance Reviews. For the former CAO to attempt to complain about a member of council not following rules of confidentiality, when no confidentiality existed nor should have existed, is ironic since the basic HR procedures and rules of the City of Winnipeg, at the highest level, were not followed during the time he was the CAO.

IN CONCLUSION:

Therefore, I believe that [the Complainant], who has tremendous powers delegated to himself in the role of CAO, acted more like a "bully", in an attempt to silence public discussion on important public matters by an elected member of Council. I deserve an apology by [the Complainant], for:

i) Attempting to intimidate an elected member of Council by engaging the Integrity Commissioner on a matter already before the media, in a failed attempt to try to silence me as the Court decision was of serious consequence and embarrassment to the senior management of the City of Winnipeg, such as [the Complainant], as it resulted in a $5 million damage award against the City.

ii) Failing to follow City procedures by not first raising his concerns formally via the Governance Committee of Council, thus failing to exhaust all other avenues available to himself as the CAO.

iii) Attempting to circumvent the City of Winnipeg Charter, which states Council Seminars are to be open places for discussion of information and policy, by attempting to create a 'secret' meeting, which violates both the words and the intent of the City of Winnipeg Charter.

iv) Failing to realize, which he should have known as the CAO, that the City of Winnipeg Charter is the overriding legal document for the City of Winnipeg, and therefore all other procedures and policies, including the Code of Conduct, must adhere to the Charter's will, and that said other documents cannot be used to supersede the Charter in any way.

v) Taking away time and energy I have now spent on responding to this outrageous complaint, when time and energy could have better been served working for the City of Winnipeg productively, rather than to address a disgruntled former employee who clearly filed a unfair complaint, in my opinion, but a complaint nonetheless that could have been dealt with via other avenues available to himself, such as formally making representation before the Governance Committee of Council, a right the CAO has, a right that this CAO failed to exercise prior to making a formal complaint via the Office of Integrity Commissioner.

30. The **Complainant's reply to the Respondent's response** is contained at **Appendix D**. The Complainant says he was within his rights procedurally to submit a Code complaint, and says:

> The Council Briefing referred to in my original complaint was not a "Council Seminar" as contemplated by s.78(1) of *The Charter*. The most obvious feature that distinguished it from s.78(1) is that it was convened by me as CAO, not "…some or all members of council or a committee of council…" It was a briefing which included advice delivered verbally from lawyers; even the most unsophisticated of elected officials (and the Respondent is a veteran Councillor, clearly <u>not</u> unsophisticated in such matters) would understand that legal advice is intended to be privileged and confidential. This element of the [Respondent's] Response is disturbingly inaccurate.

31. The Complainant also says the Complaint was submitted nearly a year before his resignation and that the Respondent's:

…attempt to characterize my complaint as being from a "disgruntled former employee" is clearly inaccurate on all counts, and entirely consistent with the unfortunate bullying and disrespect that gave rise to the original complaint.

V. DISCUSSION AND FINDINGS

Jurisdiction

32. The Respondent submits that the Complainant's use of the Code of Conduct process to raise concerns is contrary to the requirement that he first bring his concerns to the Governance Committee of Council, pursuant to *The City Organization By-law No.* 7100/97, Section 14(4) which states:

    GOVERNANCE COMMITTEE

    14. Council shall establish and appoint a Governance Committee, chaired by the Speaker and comprised of four other members of Council, each a representative of the remaining four Community Committee areas not represented by the Speaker, to be appointed annually at the Organizational Meeting of Council, and empowered as a governing body of Council…

    (4) To resolve difficulties between Councillors and administration.

33. I find this submission by the Respondent to be without merit. I find that the Complainant is entitled to make a complaint about alleged violations of the Code as set out in his Complaint. There is nothing in the Code or By-Law 7100/97 that requires him to first take his concerns to the Governance Committee, or through any other process.

34. Sections 8 and 9 of the Code refer to the treatment of "staff" by Councillors. The definitions of "staff" in the Code means "City staff". As the CAO was a member of City staff at the time of the Complaint, he was entitled to raise concerns under the Code process about alleged treatment towards him by the Respondent. Nowhere does the Code exclude the person in the CAO role from submitting a Code complaint.

35. In my view, Bylaw 7100/97 was not intended to respond to the types of concerns raised by the Complainant. A reasonable interpretation of By-law 7100/97 is that it was intended to resolve difficulties between Councillors and administration that

arise from day-to-day operations (governance) of Council, Committees and Councillor offices, not harassment complaints submitted by individuals. The Complainant could have tried to see if the Governance Committee would engage in trying to resolve these concerns. But he chose the Code of Conduct process which, in my view, he is entitled to do.

36. I find that the Respondent's argument that this is the wrong process for the Complaint is without merit.

Harassment Allegations

37. Section 8.c of the Code says that Council 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.

38. I find that the Respondent's negative comments about the Complainant's failure to terminate the employment of Employee X or be fired himself, is an attempt to publicly coerce the Complainant to terminate Employee X, which decision is entirely within the Complainant's purview. If the Respondent felt that the Complainant should receive this feedback as part of Council's oversight of the CAO role, the media was not the proper forum for this feedback. It ought to have been shared in private with the Complainant, especially as it relates to an employment matter.

39. The Respondent also appears to be attempting to publicly coerce the Complainant from bringing information to Council about a potential appeal of the Legal Action, including referring to it as "a 'delay tactic' that could potentially expose the city to an even greater legal penalty". If the Respondent had views about the Legal Action he was entitled to express his views. However, he is not entitled to attack the Complainant in this fashion for carrying out what are the obvious next lines of enquiry by the CAO with respect to the Legal Action.

40. Further, the Respondent implies that the Complainant could unilaterally decide to appeal the Court's decision in the Legal Action, when in fact he would need appropriate approvals to do so. The Complainant should have been at liberty to carry out the proper functioning of his role without this kind of public attack suggesting the Complainant was not acting in the best interests of the City. I find that publicly attacking the Complainant in this fashion about the Legal Action was contrary to the expectations of section 8.c. of the Code.

41. Section 8.d says 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. Section 9.a says that all Members have a duty to treat City staff with respect and without abuse, harassment, or intimidation. In these types of investigations, harassment findings are made objectively, determining whether a reasonable person ought to have known the conduct would be unwelcome, and that it is inappropriate, demeaning, humiliating, embarrassing or otherwise offensive. Harassment includes insults, threats, or bullying.

42. I do not find that the Respondent acted maliciously or falsely when he made his comments. I agree that the Respondent was expressing his opinions and exercising his right to freedom of expression. However, when accepting the office, a Council Member's freedom of expression rights are fettered by the concurrent requirement to abide by the Code. I find that the Respondent's comments in the Media Article did not amount to fair comment.

43. While it's important for the Respondent to carry out his obligations as an elected official, he should do so without publicly singling out the Complainant, questioning his professional capacities, and threatening his employment. Of particular concern are the Respondent's comments in the Media Article:

> "We need a change. We need a new CAO and we need to start removing some of the dead wood that exists in senior management."

44. These comments are a direct attack on the Complainant's professional capacities and employment. Calling for the CAO to be terminated is objectively intimidating and harassing. Referring to the Complainant's staff as "dead wood" is particularly disrespectful language. The Respondent knew or ought to have known these comments would have offended the Complainant and left him feeling threatened, demeaned and his professional capacities questioned.

45. The Respondent's explanation that he had no other recourse but to bring these concerns to the media is without merit. While the findings in the Legal Action were no doubt very impactful to the City and all involved, feedback about the CAO relative to the Legal Action ought to be raised *in camera*, preferably with Council present, as the CAO reports to all of Council. Instead, the Respondent intentionally chose to go directly to the media, regardless of the Code of Conduct requirements.

46. The Respondent's conduct is also unfair and egregious given the power differential between the Complainant and the Respondent. While the Respondent felt he was at liberty to make these comments publicly as an elected official, realistically if the Complainant responded publicly to the Respondent's comments he risked losing his employment. He was also restricted from commenting about Employee X given Employee X's privacy rights.

47. The Respondent suggests that by submitting his Complaint, the Complainant is attempting to intimidate him and "silence public discussion on important public matters by an elected member of Council". I find these comments are unfair and without merit. There is nothing precluding the Respondent from making fair comment about matters before Council and matters related to The City of Winnipeg. However, the Respondent's comments in the Media Article were not simply part of a political debate or commentary about stewardship of public funds. They were a personal attack and threats directed at the Complainant.

48. I find that the Respondent's comments in the Media Article were offensive, disrespectful, threatening, and an attack on the capacities and employment of the Complainant. This amounted to harassment of the Complainant. The Respondent attempted to intimidate, coerce and influence the Complainant and how he carried out his duties. This conduct is prohibited by the Code.

Breach of Confidentiality

49. Section 1.a of the Code provides that Councillors must not disclose and shall only use confidential information as required for their duties of office. Confidential information is defined as information which is otherwise not available to the general public.

50. The Respondent raises the Winnipeg Charter and says the Complainant's concerns about information provided during a Council Seminar are invalid. I have taken the Complainant's mention of the Council Seminar as information showing a potential pattern or propensity to violate confidentiality. I am not making findings about anything that may have been said at a Council Seminar.

51. The Complainant's specific concern is the release of information found in the Complainant's July 19, 2023 email to Council about the Legal Action. According to the Complainant, that is the only information the Councillor had when he spoke to the media about the Complainant seeking legal advice about an appeal. I find that

the content of that email was not information meant to be available to the general public.

52. The Respondent is a seasoned Council Member and no doubt has been privy to confidential and privileged information related to litigation in the past. In my view, he deliberately disclosed and disparaged the fact that an appeal was being considered. While considering whether an appeal should be launched is an obvious next step and would not surprise anyone, that does not derogate from the fact that **this category of information** provided to Council (i.e. potential steps in litigation involving the City) should never be disclosed at all, much less to the media. While the potential damage may be minor, the ongoing problem is the concern that the Respondent will continue to fail to protect confidential information from disclosure and hamper the efforts of City administration to carry out their duties.

53. Overall, I find that the mere disclosure that the City was considering an appeal was somewhat of a minor violation of the confidentiality requirements. The Respondent did not actually reveal any legal advice that was given, just that it was being sought. I suggest this report serve as a warning to the Councillor to be mindful of the impact of this kind of conduct and be held accountable should he repeat it in the future. I find the more serious breach is the negative comment that this was a "delay tactic" by the Complainant, as discussed above. This aspect of the Complaint falls more in the realm of harassment of the Complainant and interference with his ability to do his job, than a significant breach of confidentiality warranting a finding of a Code breach.

Good Faith Requirement and Abuse of Process

54. In each investigation, I consider whether the complaint is brought in good faith. In this case, the Respondent also suggests that the Complainant is misusing the process in an attempt to bully the Respondent.

55. I did not find indicia of a bad faith motive by the Complainant or an abuse of this process, regardless of whether the Complainant may have been fearful of losing his job given the Media Article. I note that even if the Complainant's concerns were found to be unsubstantiated, that would not automatically result in a bad faith finding. It was within the Complainant's rights to bring these concerns forward for review and possible investigation through the Code of Conduct process.

56. I note that the Respondent's response to the Complaint is somewhat deflective of the impact of his conduct. He refers to the Complainant as a "bully" simply for bringing his complaint forward through the Code of Conduct process. This is Council's Code and it clearly provides a mechanism for City staff to bring their concerns forward. The Complainant should not be asked to apologize for doing something that is clearly within his rights to do.

57. There is a level of ridicule by the Respondent against the Complainant for invoking this process. In my view, the risk of ridiculing staff for engaging in this process will dissuade others from bringing their good faith concerns forward, which can have a negative impact on City staff's ability to perform their duties and on the overall Code of Conduct program.

58. I find that the complaint was brought in good faith. The Respondent's ridicule of the Complainant for bringing his concerns forward were deflective and merely a continuation of the harassment of the Complainant.

VI. FINDINGS

59. I find that:

1. The Complainant was entitled to submit his concerns about alleged conduct by the Respondent directly through the Code of Conduct complaint process. He was not required to first bring his concerns to a Council Committee under the *The City Organization By-law No.* 7100/97 or some other process.

2. The Respondent's comments as reported in the Media Article were an attempt to use his authority for the purpose of intimidating, coercing or influencing the Complainant to terminate Employee X's employment and to refrain from providing information to Council about a possible appeal in the Legal Action. This violates Section 8.c of the Code which says that Council 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 the staff's duties. There is sufficient information within the content of the Media Article to support a finding of an intent to interfere with the Complainant's duties, particularly by giving these comments to the media and threatening the Complainant's employment if certain actions were or were not taken by the Complainant.

3. The Respondent's comments in the Media Article questioned the Complainant's professional capacities, personally attacked him and threatened his employment. The comments were offensive, disrespectful, threatening and amount to harassment. Generally referring to some members of the Complainant's staff as "dead wood" was disrespectful, objectively offensive, and questioned the Complainant's professional capacities. The Respondent knew or ought to have known his comments were offensive, disrespectful, and threatening. I find that this conduct violated Sections 8.d and 9.a of the Code.

4. These breaches are more serious as they were given to the media and the Respondent knew or ought to have known that they would be published in the media.

5. I did not find the Respondent's comments in the Media Article regarding confidential information about the Legal Action to be significant enough to warrant a finding of a breach of the confidentiality requirements of the Code. However, this should be taken as a warning to the Respondent to not disclose this category of information in the future or risk being found to be in breach of the Code.

6. The Complaint was brought in good faith and was not an abuse of this process.

VII. RECOMMENDATIONS

60. It is Council's responsibility to decide what sanctions, if any, will be imposed on the Respondent for breaching the Code. As the investigator, I may make recommendations on appropriate sanction(s) for Council's consideration.

61. The Enforcement section of the Code sets out the possible sanctions when these kinds of breaches are found, including:

    i. the Member be reprimanded;
    ii. the Member be required to make a public apology;
    iii. the Member be removed from a committee; and/or
    iv. the Mayor be requested to remove the Member from their position as Chair of a committee.

62. The Code provides that when Council is deciding whether to impose any of the listed sanctions, Council must consider the following factors:

a. The nature of the Code of Conduct contravention;
b. The length or persistence of the Code of Conduct contravention;
c. Whether the Member knowingly contravened the Code of Conduct;
d. Whether the Member took steps to prevent, mitigate or remedy the Code of Conduct contravention;
e. Whether the contravention was committed through an error of judgment made in good faith; and
f. Whether the Member previously contravened the Code of Conduct.

63. I suggest that the Respondent's conduct was deliberate. He did nothing to try to address his concerns or bring this information forward informally or through other means before choosing to proceed directly to the media. The information in the Media Article will be available forever to anyone who cares to find it or happens upon it. His conduct is particularly concerning given the power differential between the Councillor and the Complainant. He did not try to mitigate or remedy the contraventions.

64. It does not appear that the Respondent has previously breached the Code. If that is not the case (as Council may have more information than is available to me), Council may take prior breaches into account when considering sanction.

65. I recommend the following sanction for Council's consideration:

a. As the Respondent's comments were made in public, a public apology for this conduct be made by the Respondent at a Council Meeting. The apology would include:

- an acknowledgement that an investigation has found that he publicly disrespected and harassed the Complainant in the Media Article and was found to have breached the Code of Conduct;
- an acknowledgement that his comments in the Media Article were unacceptable and contrary to the expectations of the Code of Conduct;
- that it was unfair and inappropriate of him to personally attack the Complainant, try to interfere with the Complainant's job duties, and publicly threaten his employment;
- a correction of the misinformation that the Complainant was engaging in delay tactics regarding the Legal Action, when it was the Complainant's role only to bring information and recommendations to Council;
- a commitment to treat City staff in the future with respect and professionalism.

b. If a proper apology is not issued by the Respondent prior to the next scheduled Council Meeting after the sanction hearing, Council will issue a public reprimand of the Respondent which includes correcting the impression left by the Respondent that the Complainant was engaging in delay tactics in the Legal Action to the detriment of the City.

Respectfully submitted by Jamie Pytel of Kingsgate Legal

VIII. APPENDIX A – COMPLAINT

Part A: Informal Complaint Procedure

Before I proceed with the substance of the complaint, I want to summarize why I do not reasonably believe I am currently able to have a confidential, informal discussion with the Councillor about my concerns, as contemplated by Appendix B of the Code.

I acknowledge that the Code permits, but does not require, "any individual who identifies or witnesses behaviour or activity by a Member of Council…that they believe contravenes the Rules of the Code of Conduct…" to seek to address the complaint informally.

This approach is consistent with the manner in which I would always attempt to resolve such a complaint. I also recognize attempting to address a matter informally doesn't necessarily require confidentiality, but I believe that is implied if I were to approach an elected official to informally address a matter. However, two recent experiences with this Councillor have demonstrated to me that I am unable to rely upon any expectation of confidentiality in my communications with him, no matter how serious the subject matter.

My first example is from earlier this year. On March 15, I provided a confidential, time-sensitive briefing seminar to all of Council on developments in connection with the City's attempts to settle a major piece of litigation related to the City's claim against a number of defendants alleging fraud surrounding the construction of the Winnipeg Police Service Headquarters ("WPS HQ litigation"). Council seminars are often venues for the Public Service to share confidential and time-sensitive information with Councillors. [The Respondent] did not attend the seminar, but reached out to me afterwards to request the briefing privately. In an effort to brief the Councillor fully on the potential ramifications of a related motion he had introduced at the February 2023 meeting of Council, I provided the same information that I had provided in the Council seminar in (what I believed to be) a confidential and sensitive discussion. The very same day, I personally witnessed the Councillor providing an interview to CBC News in which he relayed a summary of the very advice I had provided; the full article is…attached.

In the second and most recent example, which forms the primary basis of this complaint, the Councillor divulged a confidential update I had provided via email to Council regarding a recent Court decision and potential next steps. In particular, the following statement is attributed to the Councillor:

> "*[The Respondent] says he has also seen messages indicating that [the Complainant] is considering filing an appeal of the judge's decision, which he called a 'delay tactic' that could potentially expose the city to an even greater legal penalty.*"

The full article is…attached.

The only message the Councillor had received from me had been the single message I sent to Council, advising that the Public Service would be reviewing the decision and considering next steps, attached to this complaint as "07 19 2023 [Complainant] email to Council re Parker Lands Litigation."

Formal Complaint: Breaches of the Code regarding the August 3, 2023 CBC News article

The basis for my formal complaint is focused upon the Councillor's comments to CBC News, including all comments attributed to the Councillor, as posted to their online platform on August 3, 2023, and also aired on their evening news on that same date. I recognize the Integrity Commissioner, and/or her delegate, will make any determinations about what provisions of the Code may be applicable; nonetheless, I respectfully submit that the conduct of the Councillor has contravened all of the following provisions of the Code:

Conduct Concerning Staff

…

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.

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;

…

d. bullying;

Background

Should you wish me to get into a substantive discussion about the Councillor's comments, I am prepared to do so. However, to be clear, nothing about the within complaint should be construed as disagreement with any opinion held by the Councillor; as a democratically-elected official, the Councillor is entitled to any opinion and is always protected to make

fair comments arising therefrom.

This complaint is being submitted for the following reasons:

(a) He is not entitled to name any City employee publicly to demand their termination; this applies to both me, as CAO, and [Employee X];
(b) He is not entitled to divulge any confidential information or advice to the media;
(c) He is not entitled to publicly demean, defame or harass any employee of the City;
(d) He is required by the Code to "at all times show respect for staff's professional capacities"; and,
(e) The litigation matter he is referring to remains before the Courts, and any comment – even if permitted – would be entirely premature.

The gist of the Councillor's complaints in the article are that:

(f) I haven't yet fired [Employee X], and
(g) "(I am) considering filing an appeal of the judge's decision…"

Management and supervision of the entire Public Service has been delegated, by Charter and the City's Organization By-law, to the CAO. It is not within the legislative purview of Council to comment on the employment status or termination of any City employee other than Statutory Officers (CAO, CFO, City Clerk, and City Auditor).

However, leaving any City process or delegated authority aside, to openly declare in the media that a specific, named employee deserves to be fired clearly contravenes both Sections 8.d and 9 of the Code. This is exacerbated by the reality that, as of the date of submission of this complaint, the entire matter remains before the Court and any number of appeals may conceivably be initiated.

More bluntly, even if a City employee was charged and convicted of a <u>criminal</u> offence, and the time period for any appeal had expired, it would still amount to a contravention of the Code for the Councillor to specifically attack that individual employee.

In the current fact scenario, it is reprehensible that the Councillor has deliberately chosen to comment so publicly about the professional and/or ethical reputation of [Employee X].

The Councillor further impugned and injured the professional and ethical reputation of [Employee X] when he offered this in the same interview:

"*It sends a message to the entire civil service of the City of Winnipeg, that you can break the principles of your profession, you can break city policies … you can break the Planning Act, and there's no consequences," [the Respondent] said in an interview.*

Despite the matter remaining before the Courts, this statement would lead any reasonable reader to believe that the Councillor has determined – and has chosen to speak about it publicly in the media – that [Employee X] has:

- "broken" the principles of his profession
- "broken" City policies
- "broken" the Planning Act

all without consequences.

Surely being publicly maligned by a sitting City Councillor amounts to some measure of "consequences".

Section 8.c of the Code – Intimidation, Coercion and Influence

Further to the above, to attack me in a deliberately and obviously public manner for the prospect that an appeal is merely being considered can only be characterized as intimidation or coercion against the Public Service actually considering such an appeal. (It should be noted that the Public Service, on its own, is not even able to initiate such an appeal without the approval of the Mayor and the Chair of the relevant Standing Policy Committee. The most we will be able to offer are recommendations, one way or the other.)

In the judicial decision in question, the City received an unfavourable decision against two employees (current employee [Employee X], and former employee [Employee Y]) who were both found liable for misfeasance in public office; the City was held to be vicariously liable for the actions of those two employees.

As any lawyer or anyone familiar with the legal system will understand, due diligence in light of receiving an unfavourable judicial decision not only allows, but demands that consideration be given to the merits of the decision, and whether the decision contains any grounds of potential appeal. This analysis is standard, and is required for either legal counsel or someone in my position to properly advise their client/organization as to next steps.

To suggest impropriety on my part because an appeal is even being "considered" not only demonstrates a profound misunderstanding of the CAO's duties to the City, but can only have been uttered to intimidate, coerce or influence the conduct of the Public Service as we try to work through these complicated and highly-charged issues.

To be abundantly clear, I strongly believe the Councillor can and is entitled to hold an opinion that an appeal would not be in the best interests of the City; however, to take to a media platform to denounce the possibility of this discussion even occurring can only be characterized as intimidation, coercion or undue influence.

Other complaints

While I am attempting to refrain from diving too deeply into the substance of the Councillor's other attributed criticisms of my conduct, I must note a few other examples the Councillor has quoted in apparent justification for taking to a media platform to call for my termination:

"*Other issues he cited include the city's proposed settlement with a towing company accused of defrauding the city for $1 million worth of courtesy tows that never happened; the handling of a*

settlement regarding the construction of the police headquarters; and ongoing problems within the civil service, such as a shortage of 311 staff."

Context on each of these three items follows:

(h) Proposed settlement against Tartan Towing
    - The entire record is available publicly, and the Councillor has never once contacted me to discuss any issues with our proposed settlement, or the litigation thereof;

(i) "The handling of a settlement" regarding the construction of the police headquarters
    - Other than the Councillor breaching the expectation of confidentiality, as mentioned in the first explanatory part of this complaint, the Councillor has never raised any issue with the "handling" of the settlement;
    - The Councillor was offered the same confidential briefings on the recommended settlement as the rest of Council;
        - The first of which he chose not attend, the second of which he excused himself ostensibly because we couldn't allow his Executive Assistant to remain in the room, due to advice regarding solicitor-client privilege;

(j) "Ongoing problems within the civil service, such as shortage of 311 staff"
    - The City's challenges attracting and retaining staff to the 311 Call Centre are well-documented, existed long before my commencement as CAO, and reflects a legitimate recruitment/retention issue we continue to work on.

I am only addressing these incidental matters in support of my assertion that they were included solely to provide apparent support for his call for my termination, but without any substance thereto. This is important because the perfunctory recitation of issues while publicly maligning me and calling for my termination contravenes Sections 8.c, 8.d and 9 as aforementioned.

<u>Why This Matters</u>

This matters because of the public nature of the comments the Councillor chose to make.

The Councillor hasn't once contacted me to discuss any of these concerns. As recently as this past winter, this Councillor felt comfortable enough contacting me directly late one evening to discuss a local road condition issue in his Ward. No barriers existed to the Councillor contacting me to discuss any of this. The Councillor hasn't once contacted me to learn more about the process we need to follow to perform our due diligence regarding any potential appeal.

Instead, the Councillor has seen fit, for reasons only he may be able to explain, to publicly malign both [Employee X] and me. To be frank, as the CAO of the City of Winnipeg and a statutory officer reporting to the Executive Policy Committee of Council, I likely would not be bringing this complaint forward had the Councillor's public comments focused solely on my employment. The nature of the position of the CAO and his/her relationship to Council can sometimes be a politically charged one. I accepted my position as a statutory officer fully understanding this reality. However, in my role as CAO I have also committed to providing the remaining 10,000-plus public servants working under me with a safe and respectful workplace, free of behaviours such as unlawful discrimination, harassment, rumours that damage a person's reputation, disruptive workplace conflict, and disrespectful behaviour. These are codified in the City's internal administrative standard AS HR-002, *Respectful Workplace*. This administrative standard also states: "A respectful workplace requires the cooperation and support from every employee in the organization. Everyone has a responsibility to set a positive example and behave in a manner which will not reasonably offend, intimidate, embarrass or humiliate others, whether deliberate or unintentional."

Under this administrative standard, I, as the administrative head of the Public Service, am obligated to ensure all my employees enjoy a safe and respectful workplace environment.

Conduct like that the Councillor has exhibited can only serve to damage the proper functioning of any organization and level of government. I desire nothing more than to be able to brief my elected officials on matters of significance, which are frequently confidential and sensitive. On occasion, the advice being provided in any briefing may also be subject to solicitor-client privilege.

For one Councillor to demonstrate that the confidentiality of sensitive or privileged information and opinion can no longer be guarded or protected ultimately does a disservice to the residents of Winnipeg.

In some of his comments referenced above, the Councillor also pondered the message that might be sent to the Public Service by certain actions, or lack thereof, from me and my office. On a completely different order of magnitude is the message sent to the Public Service when a sitting Councillor is permitted to:

- name employees publicly with the intent of impugning their professional reputations, ethics and integrity;
- demand they be fired, failing which, the Councillor will demand the CAO also be

fired; and

- attempt to coerce how an otherwise rational discussion of legal issues can/should occur.

These are tremendously damaging messages, that will absolutely have an insidious and lingering impact on the City's ability to attract good, competent people, long after I have left the organization.

Manitoba

[The Respondent] motion for police HQ inquiry causes commotion at Winnipeg city hall

[The Respondent] says he was warned inquiry talk could jeopardize $21.5M settlement in civil suit

Bartley Kives · CBC News · Posted: Mar 20, 2023 4:14 PM CDT | Last Updated: March 20

[photo removed]

[The Respondent] says he was warned his motion calling for a police headquarters inquiry could jeopardize a proposed settlement with defendants in a police headquarters lawsuit. (Justin Fraser/CBC)

[The Respondent] says he's been warned his motion calling for a public inquiry into Winnipeg's police headquarters could jeopardize a $21.5-million settlement with dozens of defendants in a city lawsuit over the project.

The [Respondent] says [the Complainant] told him city lawyers are concerned about his motion to renew a request for the province to call a public inquiry into the police headquarters and major real-estate transactions examined by a city audit in 2014.

City council is slated to debate that motion Thursday, after council votes on a $21.5-million settlement with most of the people and companies the city sued for fraud and deficiencies related to the police headquarters.

Both [the Complainant] and Winnipeg Mayor Scott Gillingham have described that civil settlement as a positive outcome after the police headquarters served as the subject of two city audits in 2014 and a five-year RCMP investigation that concluded without charges in 2019.

[The Respondent] said he was warned any council call for a provincial public inquiry, either before or after the city concludes its deal with the defendants in its civil lawsuit, could place the city at risk.

"It may be considered bad faith even after the agreement has been signed, and therefore we are in contravention of the agreement. So therefore you really never can debate or request a public inquiry," [the Respondent] said Monday in an interview at city hall.

[The Complainant] declined to comment on [the Respondent's] statement.

Gillingham said he will not comment on confidential legal advice.

"The city's position on an inquiry hasn't changed. My focus right now is on the settlement offer," the mayor said in a statement.

[The Respondent] said he intends to vote against the settlement. Only an inquiry, he said, would get to the bottom of events that transpired at city more than a decade ago.

"We need to have a public inquiry. The fact that the provincial government has not called for a public inquiry and set up a public inquiry already should outrage everyone," [the Respondent] said.
[photo removed]

City council voted in 2017 to ask the province to call a public inquiry. Former mayor Brian Bowman has repeated that call several times.

Former premier Brian Pallister and current Premier Heather Stefanson rejected those calls, stating an inquiry could jeopardize ongoing legal action.

The Manitoba Court of Appeal has to do decide whether to uphold or overturn a 2022 civil ruling by the Court of King's Bench, which concluded former Winnipeg CAO Phil Sheegl accepted a $327,200 bribe from police headquarters contractor Armik Babakhanians of Caspian Construction.

[The Respondent] called the city's proposed settlement with Babakhanians and dozens of other police headquarters defendants a "backroom deal" that would limit the city's ability to learn more about what happened with the construction of the police headquarters and other projects.

Winnipeg's 2014 city real estate audit examined five transactions in detail: the Parker land swap, the sale of the former Canad Inns Stadium site, the sale of Winnipeg Square Parkade, the aborted sale of downtown surface parking lot Parcel 4 and the purchase of the former Canada Post office and warehouse complex that was converted into the police headquarters. [The Respondent] also wants the inquiry to look at the expansion of RBC Convention Centre.

"We are now slamming the door on knowing exactly what happened in terms of all these public works, hundreds of millions of dollars spent in terms of capital projects," he said.

Former Winnipeg mayor Bowman said last week the need for an inquiry would increase after a proposed settlement because there will be no court hearing involving Babakhanians and most of the other police headquarters defendants.

Manitoba

Winnipeg councillor calls for termination of top civil servant

[The Respondent] wants [the Complainant] turfed for not firing [redacted] at centre of $5M court penalty

Cameron MacLean · CBC News · Posted: Aug 03, 2023 5:00 AM CDT | Last Updated: August 3

[photo removed]

[The Complainant] was appointed chief administrative officer in 2021. [The Respondent] has called for [the Complainant's] termination over his handling of a court decision against the city. (Trevor Brine/CBC)

A Winnipeg councillor has called for the termination of chief administrative officer [the Complainant] over the response to a multimillion-dollar court judgment against the city.

[The Respondent] says he's upset that the city has not fired [Employee X].

[Employee X] is one of two [redacted] employees who King's Bench Justice Shauna McCarthy found "liable for misfeasance in public office" for deliberately slowing progress on developer Andrew Marquess's efforts to develop 19 hectares on the former Parker lands.

"It sends a message to the entire civil service of the City of Winnipeg, that you can break the principles of your profession, you can break city policies … you can break the Planning Act, and there's no consequences," [the Respondent] said in an interview.

McCarthy awarded Marquess $5 million in damages. A hearing to determine court costs has been set for Sept. 5.

The lawsuit also named [Employee Y], who has since left the city. [The Respondent] says [the Complainant's] failure to remove [Employee X] has caused him to lose confidence in the city's top civil servant.

[The Respondent] says he has also seen messages indicating that [the Complainant] is considering filing an appeal of the judge's decision, which he called a "delay tactic" that could potentially expose the city to an even greater legal penalty.

[photo deleted]

[The Respondent] says he has lost confidence in [the Complainant] for not terminating a city planner. (Justin Fraser/CBC)

"I think this is an indication where we have the most important position in the public service, being the CAO, not acting," [the Respondent] said.

"We need a change. We need a new CAO and we need to start removing some of some of the dead wood that exists in senior management."

Process to be followed: mayor

The City of Winnipeg did not grant a request for an interview with [the Complainant].

In an email, city spokesperson Felicia Wiltshire wrote the city does not publicly discuss human resource matters regarding specific employees.

"The city is taking the decision of Madam Justice McCarthy very seriously," Wiltshire wrote in the email.

"We continue to determine our next steps, and until this matter has concluded, it is still before the courts so we are unable to provide any further information."

Mayor Scott Gillingham said the city's legal team is still reviewing the decision and whether to file an appeal.

Regarding [Employee X's] continued employment, Gillingham said "there's a process for unionized employees to be followed."

The roots of the conflict between Marquess and the city go back more than a decade to 2009, when members of city council's property and development committee approved a land swap between the city and Marquess.

The developer gave up a small parcel of serviced land in Fort Rouge that Winnipeg Transit needed for a new garage. In exchange, Marquess acquired the Parker lands, a larger triangle of unserviced city land in Fort Garry.

[The Complainant] was appointed CAO in 2021.

[The Respondent] says the handling of the Parker lands lawsuit decision is just one of several concerns he has with [the Complainant's] performance.

Other issues he cited include the city's proposed settlement with a towing company accused of defrauding the city for $1 million worth of courtesy tows that never happened; the handling of a settlement regarding the construction of the police headquarters; and ongoing problems within the civil service, such as a shortage of 311 staff.

If the city does not act by removing either [Employee X] or [the Complainant], [the Respondent] plans to bring forward a motion calling for the CAO's termination at the first council meeting after the summer break in September.

This is not the first time [the Respondent] has called for the termination of a Winnipeg CAO.

In 2017, he demanded the resignation of [name redacted] over issues regarding land assembly to extend Abinojii Mikanah (at the time named Bishop Grandin Boulevard).

Prior to that, in 2013, he called for the city to fire [name redacted] over an audit of city real estate transactions.

07 19 2023 [Complainant's] email to Council re Parker Lands Litigation

From: **[The Complainant]**
To: **Council**
Subject: Parker Lands Litigation
Date: Wednesday, July 19, 2023 10:08:53 AM

Mayor and Councillors,

I'm writing to provide a brief update on this matter. Several of you have contacted me with various questions and concerns, so I'm hoping to address those as best I can with this update.

I'll begin by acknowledging that we are taking the decision of Madam Justice McCarthy very seriously. Her Ladyship made a number of findings and related conclusions, all of which we in the Public Service continue to analyze.

Timing

The typical next steps are that the lawyer for the plaintiffs (the Parker Lands Corporate Owners) will prepare the necessary paperwork to finalize this proceedings in the Court of King's Bench. It is anticipated there will be discussion amongst all counsel about the wording, and more particularly, about the costs to be awarded to and from each party.

As you will have noted, the judge's ruling on costs was left rather general; some defendants were found not liable, some were, and the City was ultimately held vicariously liable. So there will undoubtedly be a number of opinions amongst the parties about how costs are to be awarded / apportioned. Some of those discussions may ultimately need to take place in front of the judge, with the judge being able to provide greater specificity before the Judgment and Bill of Costs are formally issued.

It would not be surprising with a matter involving this many parties for that process to take several weeks at least.

Potential Appeals

Two of the individual defendants were found liable, and the City was therefore held vicariously liable.

The individual defendants are represented by external counsel, and will be entitled to consider whether to appeal.

As for the City, our own counsel have been reviewing the decision, and I have asked for a detailed memo outlining any potential grounds of appeal and supporting analysis. Once we have received this, I will then determine whether to recommend the City files an appeal. Should I make that recommendation, I would require the approval of the Mayor and the Chair of the Standing Policy Committee on Property and Development before we could initiate the appeal on behalf of the City.

Existing Employees

I have also heard concerns and received questions from some of you about the status of one defendant who remains a City employee.

As you're aware, we routinely avoid publicly discussing HR matters about specific employees, and this is no exception. Having said that, I know you are interested, as are other stakeholders who are contacting you and raising the same questions.

Apart from what a court or tribunal finds about any particular employee, that employee is entitled to be dealt with fairly by their employer. Regardless of what a judge might say, if an employer believes some form of discipline is warranted against an employee, it is incumbent on that employer to carry out their own investigation and come to their own conclusions. While a court decision can certainly inform that process, an employer typically won't completely defer to another decision-maker's opinion about that employee.

I hope you can understand we will not be publicly discussing the status of that particular employee. [redacted]

It should be remembered that until the court process has played out to a full conclusion, when all matters have either been appealed or all appeal periods have been exhausted, this matter remains before the courts.

I am also committing to keeping you updated as we move through the next steps in this overall process.

Please don't hesitate to contact me directly should you wish to discuss any of this further.

Thanks,

IX. APPENDIX B – COMPLAINANT'S INTERVIEW STATEMENT

Below is the Complainant's interview statement which supplements his complaint:

1. I confirm that part of my concerns is the Councillor's handling of information including divulging confidential information or advice to the media. I am concerned that breaches of confidentiality negatively impact my and City staff's ability to do our jobs, and negatively impact the City of Winnipeg.

2. My concerns with breaches of confidentiality are all connected to the August 3, 2023 media story that is attached to my complaint. It says that I am considering filing an appeal of Justice McCarthy's judgment regarding Andrew Marquess' law suit. That discussion and that fact were intended to be confidential as it concerns litigation. To discuss that at all is very key and fundamental. Discussing any confidential communications that I provide to Council to try to assist and inform them, and then having it relayed to media, remains a valid concern. I think the Councillor's comments are objectively and obviously meant to intimidate, even if I did not feel intimidated by them. This is then linked with the Councillor saying he was going to try to get me fired.

3. This news article had an absolute impact on members of the public service. I've got 10,300 people working here. You do what you think is your job using your best judgement and then you can have your Councillor calling for your termination. I can't even measure or know with any certainty the gravity or the impact that had and the chill that sent throughout the entire organization. But I know it had an impact. Objectively, this really would have had an impact on any employee.

4. I had a lot of staff in the ensuing days approach me to discuss the article and the derisive statements he made. At the same time, we were going through discussions about an appeal and City staff felt those comments. I was standing in front of what was ultimately their recommendation, and I was concurring that we should be appealing the decision. The comments the Councillor said about [Employee X] in the news article were all completely beyond the pale.

5. The Councillor never brought these concerns to me before the news article. It just came out of nowhere in the middle of the summer break. At that moment, in a very slow news cycle during the summer, this thing comes out of the blue. Then, because it was a rather slow news cycle, the media were following this for a day or two, and they were asking about support for having me fired. This narrative started, as though I was on my way out. That was a very hard month.

6. I've had a long career that I'm remarkably proud of. It's culminated thus far in this role that I enjoy very much. I was very seriously considering whether I was going to be terminated. It wasn't a practical reality, but of course I had to consider it when you have a Councillor actually calling for it in the media. So that was hard. It was the dead of summer when most of our Council had gone.

7. Everything around this litigation was tough. It was a very acrimonious discussion overall with many layers to it. I certainly felt an impediment at the beginning after the news article, and it probably rattled me a bit. I think that feeling has decreased. I don't think it's impacting my daily interactions. I still try to interact with the Councillor and invite him to contact me informally on matters.

8. I am remarkably resilient and today probably do not feel diminished in my ability to do the role. But in the days after the news article, there was absolutely an impact. I had people contacting me because it was in the media that I was getting fired. That is difficult. I also know enough about media that people don't spend a lot of time trying to get to the bottom of anything. It's enough to see that somebody's called for this person to be fired. When you drop a bomb like that publicly, there are inevitably going to be consequences.

9. The Councillor's failure to keep staff recommendations confidential ends up having a bit of a chill factor. Anytime we're bringing forward recommendations, this will now be on my mind. I don't think I'll deviate, but it'll be on my mind. The next time we're having discussions of a legal nature where I need all of Council to be able to hear about something confidential, we will have to go through a bunch gymnastics to try to prepare for the inevitable breach of confidentiality that this Councillor is demonstrating. When you have to explain why you're settling a case, you're explaining very clearly some of the weaknesses in the case. You're explaining some of the risks of going to trial. These are all of the things you absolutely can't be just explaining to somebody who's going to turn around and hand this to the entire world. It makes it very hard to effectively do our jobs and still try to serve Council. It's also yet another handcuff on my ability to attract great people here, which we need.

10. The consistent message to Councillors about how the public service is operating is to contact me. I doubt anyone would suggest I'm not responsive when they've tried to connect with me on items or issues, including this Councillor. There's nothing that prevented him from connecting with me. I would have much preferred he just called me and had a discussion than go to the media. This so is offensive because it really feels performative to me. It doesn't feel like he was trying to work on anything constructively. This was for a purpose that I don't feel was at all connected to his job as a Councillor.

11. There is not a formal process for providing me with feedback. We've got a Committee of Council who are trying to develop some sort of process. In practical terms, it's been more informal. My door's always open, and if it's a complaint about the CAO, those are discussions that typically take place with the Mayor or the Mayor's office.

X. APPENDIX C – RESPONDENT'S WRITTEN RESPONSE TO COMPLAINT

1) As an elected municipal official, I have a right to be able to comment publicly on matters before the media pertaining to the City of Winnipeg.

2) As an elected municipal official, I have a right to comment publicly on the performance of the CAO, who is a Statutory Officer, and reports directly to Council.

3) As an elected municipal official, I had no vehicle to raise concerns via a Human Resource Committee, because said committee does not exist.

4) As the CAO, [The Complainant] chose to ignore proper procedures by filing a complaint with the Integrity Commissioner, rather than first exhausting other avenues available to him, as he was in a unique position, as the CAO, and could have and should have sent his concern to the Governance Committee of Council, which states, in By-law No. 7100/97 under section 14, subsection (4):

   "To resolve difficulties between Councillors and administration."

   [The Complainant's] failure to do this, represents a major breach as the Governance Committee of Council was set up to handle said matters. As the CAO, he was in a unique position, in other words he had more mechanisms at his disposal to deal with his concern, than does a non-city employee, such as a member of the public. His failure to recognize this underscores the unfairness of [the Complainant's] complaint to the Integrity Commissioner.

5) To understand my concern, and my right as an elected official to express my opinion, which strikes to the very core of our democratic beliefs and ideals, please note the following:

   I spoke out following a court decision to award damages AGAINST the CITY for $5 million. To put that into perspective, that is 2/3rds of a 1% property tax increase inside the City of Winnipeg.

   Furthermore, my concern was also the example and message that [the Complainant] was sending to the remainder of the public service of the City of Winnipeg. Namely, the reason the City was assessed damages of said amount by the Court was because City Employees chose to break City Policies, Planning Policies, and indeed Planning/Municipal Laws pertaining to the legal rights of property owners and their ability to make application in order to subdivide and rezone their lands. By [the Complainant] deciding to retain the said employee, and/or by failing to place said employee on administrative leave, and/or by failing to demote said employee, the message is presented to the public service that its ok to do this, as employees who take such actions will not face any consequences.

In fact, by appealing the decision, the implication can be made that the city defends such actions, as was determined by a court of law.

Compare that to consequences for employee actions that are common in the private sector. If you cost your company, for example, $5 million dollars, via a court decision against the company, not to mention the legal costs required for said defense in court, the private sector would take actions to remonstrate or discipline or dismiss said employee. Until taxpayer dollars are treated as if it were your own money, the City of Winnipeg will continue to make wasteful decisions, including decisions that lead to court actions that end up costing the City money. This was a message I wanted to convey, again, on a matter before the press, and therefore I have every right as an elected official to express said opinion in an open society.

[The Complainant] needed to send a message that the City of Winnipeg does not tolerate actions by its employees that break policies, procedures and laws. He failed to do this on all counts in terms of this matter, and that is exactly why I called for his resignation, which is my right to do as an elected member of Council.

Furthermore, [the Complainant] pushed for the damage amount to be appealed, once again costing taxpayers hundreds of thousands of more dollars in legal fees.

All of this was in the public realm, as the court decision was and is public, including plans by the City to undertake an appeal. Therefore, I, as an elected Municipal Official, has every right to comment publicly on such a matter.

6) [The Complainant's] contention that the Council Seminar, where information was given about appealing the Court decision, was confidential, is completely false and once again demonstrates [the Complainant's] failure to understand the purpose of Council Seminars, as outlined in the City of Winnipeg Charter, which overrides all City By-laws and procedures, including the Code of Conduct [the Complainant] is quoting, the City of Winnipeg Charter states as follows:

> "Council seminars
>
> 78(1) The provisions of this Division do not apply to seminars convened by some or all members of council or a committee of council for the purpose of receiving information or discussing policies and other matters that affect the city."

The "Division" referred to in the section is Division 4, on how meetings are to be organized, rules of meetings for Council and Committees of Council. Therefore, clause 78(1) of the City of Winnipeg Charter states, in layman terms, that all the above rules stated thus far DO NOT apply to Council Seminars. Indeed, the purpose of Council Seminars is to receive information or discuss policies or other matters.

Indeed, it could be argued that [the Complainant's] attempt to make the Council Seminar secretive was in direct violation of the City of Winnipeg Charter, and as the CAO, a violation of one of his core duties, which is to uphold said statute! If a "Chill" is being created, as [the Complainant] contends, it is [the Complainant] who is the one attempting to place a "chill" over an open and democratic meeting system, as outlined in the Charter, as I have quoted above.

7) It must also be pointed out that other members of Council, including myself, have called for the Office of the Integrity Commissioner powers to be expanded to included Senior Management and their conduct. This has arisen due to recent revelations, proven in court, where senior management acted inappropriately. Yet, to this day, no said option exists. And to my knowledge, at no point did [the Complainant], as the CAO, advocate for said accountability that would have rightly occurred if senior management are subject to complaints, via an Office of an Integrity Commissioner, as members of Council are subject to today.

   Furthermore, to make matters worse, I can file a complaint against the Code of Conduct against [the Complainant], on the said matter that is now before you in this complaint, however the arbitrator of said complaints, is who? The CAO! [the Complainant] himself! This left me with no other option then to speak publicly as, I have already clearly written, I had a right to do.

8) Finally, my rights as a Councillor have been infringed upon, namely my democratic right to freedom of speech about City matters already before the press, and for the former CAO attempt to stifle debate, is probably a matter that speaks more to his conduct than to the conduct of others.

   I am referring to the fact that on June 18, 2024, the City of Winnipeg released the Workforce Management Audit Report. It found blaring examples of a failure of senior management to conduct basic human resource practices, such as regular job performance reviews. Other issues were found as well.

   [The Complainant] resigned as the CAO on June 17, 2024, with his resignation coming into effect on June 28, 2024. This could be a coincidence, however, that is up for public discussion, as has already been the case.

   Nonetheless, as the Head of the City of Winnipeg Public Service, the CAO would have been or should have been the office holder who would have ensured that all proper Human Resource procedures are followed, including regular Job Performance Reviews. For the former CAO to attempt to complain about a member of council not following rules of confidentiality, when no confidentiality existed nor should have existed, is ironic since the basic HR procedures and rules of the City of Winnipeg, at the highest level, were not followed during the time he was the CAO.

IN CONCLUSION:

Therefore, I believe that [the Complainant], who has tremendous powers delegated to himself in the role of CAO, acted more like a "bully", in an attempt to silence public discussion on important public matters by an elected member of Council. I deserve an apology by [the Complainant], for:

i) Attempting to intimidate an elected member of Council by engaging the Integrity Commissioner on a matter already before the media, in a failed attempt to try to silence me as the Court decision was of serious consequence and embarrassment to the senior management of the City of Winnipeg, such as [the Complainant], as it resulted in a $5 million damage award against the City.

ii) Failing to follow City procedures by not first raising his concerns formally via the Governance Committee of Council, thus failing to exhaust all other avenues available to himself as the CAO.

iii) Attempting to circumvent the City of Winnipeg Charter, which states Council Seminars are to be open places for discussion of information and policy, by attempting to create a 'secret' meeting, which violates both the words and the intent of the City of Winnipeg Charter.

iv) Failing to realize, which he should have known as the CAO, that the City of Winnipeg Charter is the overriding legal document for the City of Winnipeg, and therefore all other procedures and policies, including the Code of Conduct, must adhere to the Charter's will, and that said other documents cannot be used to supersede the Charter in any way.

v) Taking away time and energy I have now spent on responding to this outrageous complaint, when time and energy could have better been served working for the City of Winnipeg productively, rather than to address a disgruntled former employee who clearly filed a unfair complaint, in my opinion, but a complaint nonetheless that could have been dealt with via other avenues available to himself, such as formally making representation before the Governance Committee of Council, a right the CAO has, a right that this CAO failed to exercise prior to making a formal complaint via the Office of Integrity Commissioner.

XI. APPENDIX D - COMPLAINANT'S REPLY TO RESPONDENT'S RESPONSE TO COMPLAINT

As most of the [Respondent's] Response contains accusations, allegations, criticisms and ad hominem attacks against me, I don't intend to address those to any significant degree. My understanding of the current process is that you have been engaged to investigate the complaint I have filed, not to accept fresh complaints from an elected official about a former public servant.

As to the balance of the [Respondent's] Response that I will address, it will likely be most efficient if I simply paste several of the statements made by the Respondent, and address them directly.

As the CAO, [the Complainant] chose to ignore proper procedures by filing a complaint with the Integrity Commissioner, rather than first exhausting other avenues available to him, as he was in a unique position, as the CAO, and could have and should have sent his concern to the Governance Committee of Council, which states, in By-law No. 7100/97 under section 14, subsection (4):

"To resolve difficulties between Councillors and administration."

There are numerous reasons why this statement is erroneous:

- A plain reading of the Councillors' Code of Conduct places no obligation on any public servant to do as the Respondent has asserted
- To suggest that I should have tried to make this complaint immediately public and political is absurd, and clearly would have flown in the face of the processes prescribed under the Code
- This Code exists for anyone impacted by a Councillor's conduct to have some recourse; to suggest that the most appropriate course of action is to immediately go public, where a Committee of elected officials is expected to somehow weigh in, is patently absurd and completely incorrect
- There is also no defined or established process how a public servant (as opposed to a Councillor) can simply unilaterally place any such matter on the agenda for this Committee
- I am shocked and disappointed to note the Respondent's egregious lack of understanding of very basic procedural matters

[The Complainant's] contention that the Council Seminar, where information was given about appealing the Court decision, was confidential, is completely false and once again demonstrates [the Complainant's] failure to understand the purpose of Council Seminars, as outlined in the City of Winnipeg Charter, which overrides all City By-laws and procedures, including the Code of Conduct [the Complainant] is quoting, the City of Winnipeg Charter states as follows:

"Council seminars

78(1) The provisions of this Division do not apply to seminars convened by some or all members of council or a committee of council for the purpose of receiving information or discussing policies and other matters that affect the city."

The Council Briefing referred to in my original complaint was not a "Council Seminar" as contemplated by s.78(1) of *The Charter*. The most obvious feature that distinguished it from s.78(1) is that it was convened by me as CAO, not "…some or all members of council or a committee of council…". It was a briefing which included advice delivered verbally from lawyers; even the most unsophisticated of elected officials (and the Respondent is a veteran Councillor, clearly not unsophisticated in such matters) would understand that legal advice is intended to be privileged and confidential. This element of the [Respondent's] Response is disturbingly inaccurate.

Taking away time and energy I have now spent on responding to this outrageous complaint, when time and energy could have better been served working for the City of Winnipeg productively, rather than to address a disgruntled former employee who clearly filed a unfair complaint…

Given the Respondent's significant delay in responding throughout this process, he may not be aware that I filed this complaint close to one full year prior to tendering my resignation. To attempt to characterize my complaint as being from a "disgruntled former employee" is clearly inaccurate on all counts, and entirely consistent with the unfortunate bullying and disrespect that gave rise to the original complaint.

As mentioned at the outset, I consider the entirety of the [Respondent's] Response to be false, intended to do nothing but distract from the original complaint, and blatantly defamatory. Should one iota of the [Respondent's] Response be uttered publicly, I will not hesitate to take all necessary actions that are warranted in the circumstances.