



ADDENDUM REPORT TO
DAVID TRAWIN
Chief Administrative Officer
City of Kamloops
AND
DENISE MCCABE
Legal Counsel, Fulton & Company LLP

In this matter of

CODE OF CONDUCT INVESTIGATION
ALLEGATIONS, FINDINGS AND CONCLUSIONS

Submitted by Sarah Chamberlain
Southern Butler Price LLP (the “Investigator”)

January 9, 2024



Process

I was initially asked to conduct a privileged and confidential investigation (the “Investigation”) on behalf of the City of Kamloops (the “City”) into a complaint under the *Code of Conduct Bylaw No. 53* (the “Code of Conduct”) from Councillor Katy Neustaeter (the “Complainant”) against Mayor Reid Hamer-Jackson (the “Mayor”) regarding a series of comments the Mayor made to the media, as well as a comment made by the Mayor’s legal counsel, David McMillan, to the media. The initial report was completed and sent to the City on October 27, 2023 (the “Initial Report”). In the Initial Report, I concluded that the complaint was partially founded, and that some of the comments made by the Mayor to the media constituted a breach of the Code of Conduct.

As part of the City’s process, the Mayor was provided the opportunity to review the Initial Report and issue a response. On November 24, 2023, I was retained by the City to review additional evidence (the “Additional Evidence”) provided by Mr. McMillan by letter to Council dated November 15, 2023 (the “Letter”).

I reviewed the Letter and conducted a follow-up meeting with a citizen (“Witness A”) who was involved in an incident with respect to the Additional Evidence. While I have considered all of the information provided to me, I have only referred to information required to make findings of fact in this Addendum Report.

In this Addendum Report, I summarize the Additional Evidence and Witness A’s evidence and determine whether this evidence impacts the finding in my Initial Report.

Background Evidence

The following evidence is undisputed. The Mayor and Councillors were elected to their current term on October 15, 2022. On March 17, 2023, the Councillors called for a public press conference. Councillor Neustaeter read out a statement to the press regarding the conduct of the Mayor (the “Statement”). The Mayor was not present for this press conference.

Following the public press conference, the Mayor made a number of comments to the Media that contained either his opinion about the nature of the Statement and how it could be interpreted (the “Opinion Comments”), and secondly, comments that citizens interpreted the Statement the same way and made negative comments towards him because of it (the “Citizen Comments”). One of the Citizen Comment examples the Mayor referred to in the media was from Witness A.



Summary of Evidence

Date of Bar Incident

In the Initial Report, the Mayor stated that an incident with Witness A in a bar (the “Bar Incident”) occurred on March 31, 2023. Witness A had stated he believed the incident occurred on March 9, 2023, but was uncertain. He did recall it occurred after a Kamloops Blazers game.

Additional Evidence

In the Letter, Mr. McMillan provided evidence from the Mayor that the Bar Incident occurred on March 31, 2023; specifically, I was provided with a copy of the Kamloops Blazers’ game schedule demonstrating there was no game on March 9, 2023, but there was one on March 31, 2023. I was also given copies of credit card receipts from the Mayor showing he was at the Bar on March 31, 2023.

Witness A

During our follow-up meeting, Witness A again said he did not recall the specific date of the Bar Incident, but reviewed his phone records and agreed it was on March 31, 2023.

Evidence from Witness A’s Spouse

I had asked Witness A during our initial meeting whether his spouse would be willing to speak with me, and he told me at that time she was not willing to participate in the Investigation and was concerned about retaliation from the Mayor.

Additional Evidence

In the Letter, Mr. McMillan raised concern with my failure to conduct an investigation meeting with Witness A’s spouse during the Initial Investigation.

Witness A

During our follow-up meeting, Witness A reiterated his initial evidence to me that his interaction with the Mayor had no connection to the Statement made by the Councillors in March 2023, or any conflict between the Councillors and the Mayor. He confirmed that he made a comment to the Mayor to “keep [his] hands off [his wife]” because of an interaction between the Mayor and his wife that had occurred prior to the Bar Incident.

I again asked Witness A whether I could have the contact information for his wife, and he refused, stating that she was concerned about retaliation from the Mayor and was not willing to participate in this process.



Assessment of Credibility

Where there were material facts in dispute, in assessing credibility, I have applied the test set out by the British Columbia Court of Appeal in the case of *Faryna v Chorny*, [1952] 2 DLR 354, which is as follows:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of the witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth.

Witness A refused to provide his wife's contact information and indicated she did not wish to participate in the Investigation. I note that in instances when an individual refuses to provide information that would corroborate their story, an adverse inference may be drawn. In J. Sopinka, S.N. Lederman and A.W. Bryant, *The Law of Evidence in Canada*, 2d ed. (Toronto: Butterworths, 2009), the authors state at page 377:

In civil cases, an unfavourable inference can be drawn when, in the absence of an explanation, a party litigant does not testify, or fails to provide affidavit evidence on an application, or fails to call a witness who would have knowledge of the facts and would be assumed to be willing to assist that party. In the same vein, an adverse inference may be drawn against a party who does not call a material witness over whom he or she has exclusive control and does not explain it away. Such failure amounts to an implied admission that the evidence of the absent witness would be contrary to the party's case, or at least would not support it.

The following case, decided in the labour context, articulate helpful principles. In *Steele (Re)*, [2001] B.C.L.R.D. No 77, the British Columbia Labour Relations Board stated:

The general rule on adverse inference is that where a party fails to adduce evidence, either through witnesses or by documents, which it would naturally be expected to bring before the trier-of-fact, an unfavourable inference may be drawn against that party. The unfavourable or "adverse" inference which may be drawn from the omission is that the evidence, if called, would have been injurious to, or at least not supportive of, that party's case. The inference does not detrimentally affect the tenor of the party's entire case, but rather only the proof of the specific facts which the missing evidence, if called, could have supported. However, it is always open to a party that has not produced evidence to explain the omission (e.g., the witness in question is incompetent to testify). Where the explanation is satisfactory, no adverse inference will be drawn.



I find that it is not appropriate to draw an adverse inference from Witness A's refusal to provide his wife's contact information to me in these circumstances. The Bar Incident discussed in the Initial Report was Witness A's reasons for making those comments to the Mayor. Witness A has provided consistent evidence throughout this process that his comments were based on his understanding and belief about an allegedly inappropriate interaction between his wife and the Mayor that had occurred earlier in 2023, and that his comment had no connection whatsoever to the Councillors' Statement. Witness A's wife's evidence about her own interaction with the Mayor would not impact my assessment of Witness A's evidence.

During our initial meeting, Witness A was upfront that he was uncertain of the specific date of the Bar Incident but believed it occurred on March 9, 2023. I find that this error was due to a genuine lack of recall and does not impact my assessment of his credibility. Apart from this dispute about the date, both the Mayor and Witness A generally agreed on the facts of the Bar Incident (i.e., where it occurred and what Witness A said to the Mayor). I accept Witness A as a credible witness.

Findings and Analysis

I find that the Additional Evidence as well as the evidence provided by Witness A in our follow-up meeting does not impact my findings or analysis in the Initial Report. Witness A's evidence, which I have accepted, remained consistent that his comments to the Mayor during the Bar Incident did not have any connection to the Statement.

Conclusion

Neither the Additional Evidence or the evidence provided by Witness A in our follow-up meeting impacts my findings or analysis in the Initial Report.

The complaint is partially founded. The Mayor's Citizen Comments breached section 3.11(a) of the Code of Conduct, while the Opinion Comments did not breach the Code of Conduct. All of which is respectfully submitted.

A handwritten signature in cursive script, reading "S Chamberlain", positioned above a horizontal line.

Sarah Chamberlain

Dated: January 9, 2024