



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")

October 27, 2023



Process

I was 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.

I conducted virtual meetings with Councillor Neustaeter and six other Councillors, the Mayor, Mr. McMillan, and one civilian witness between August 11, 2023 and August 31, 2023. One Councillor chose not to participate in an investigation meeting and did not provide a rationale. Prior to meeting with the Mayor, he was provided with particulars of the allegations. None of the participants chose to have a support person attend their meeting. At the beginning of each interview, the participants were advised of the need for honesty and their obligation to maintain confidentiality of both the information that we shared and the fact that the Investigation process was occurring. Each participant acknowledged their understanding of both obligations.

In addition to the interviews, I reviewed media articles and videos referred to by Councillor Neustaeter as well as additional documentation provided by other Councillors. Quotes from documents in this report are reproduced as in the originals, except where square brackets are used to indicate text I have inserted. While I have considered all of the information provided to me in the Investigation, I have only referred to information required to make findings of fact in this report.

In this report, in accordance with the Terms of Reference, I summarize the evidence, make findings of fact about the allegations, determine whether they are in breach of the Code of Conduct, and provide legal advice regarding outcomes.

Summary of Allegations

Councillor Neustaeter alleged the Mayor engaged in the following conduct in breach of the Code of Conduct:

1. Misleading the public into believing that Councillor Neustaeter’s words on behalf of Councillors in their public statement on March 17, 2023 (the “Statement”) were responsible for accusations about the Mayor’s alleged sexual impropriety toward a female resident, as well as a confrontation that resulted with the resident’s husband at a later date.
2. Discriminating against Councillor Neustaeter on the basis of gender, age, and physical appearance when Mr. McMillan made comments to the media about Councillor Neustaeter indicating that the words in the Statement had a different meaning because of these factors. Councillor



Neustaeter alleges that the Mayor “endorsed and perpetuated the misogynistic view with his own statements and support of the position.”

Evidence

Undisputed 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 the Statement to the press regarding the conduct of the Mayor. The Mayor was not present for this press conference. The Statement contained the following comment:

While we, as councillors, have been subjected to repeated disrespect, violation of personal and professional boundaries, belittling and constantly disruptive behaviour by the mayor ...

In an email to all the Councillors dated April 13, 2023, the Mayor wrote, “Since your press conference on March 17 2023 I believe it was. I have been accused of a wide range of accusations including a person you all know of making a accusations of me make personal advances to women. I don’t want this to happen to anyone. When this happened, my wife was just a few feet away and we addressed the accusation.”

The Mayor filed a law suit against Councillor Neustaeter on June 12, 2023 (the “Civil Claim”), alleging that the Statement was defamatory and had resulted in members of the public believing that he had engaged in sexually inappropriate conduct towards females.

Media Comments

Following the reading of the Statement and filing of the Civil Claim, the Mayor spoke to the media on a number of occasions about the Statement and about Councillor Neustaeter (the “Media Comments”).

- a. On June 15, 2023, in an interview with *RadioNL 610 AM* published online at the URL www.radionl.com/2023/06/15/kamloops-mayor-suing-councillor-for-defamation-and-libel, the Mayor is quoted as stating, “I’ve had people call me a pervert, you know one guy saying, ‘oh my wife is coming down here, can you make sure you keep your hands off her’ and stuff like that.”
- b. On June 15, 2023, in an interview discussing why he had filed the Civil Claim against Councillor Neustaeter with *INFOnews.ca* published online at the URL infotel.ca/newsitem/kamloops-mayor-launches-defamation-suit-against-councillor/it98894, the reporter summarized that the Mayor said, “He’s heard people in public speculate he’s engaging in sexual harassment at city hall, claiming he’s been called a ‘pervert’ since the March joint statement accused him of breaching professional and personal boundaries.”



- c. On June 16, 2023, in an interview with *CBC News* published online at the URL www.cbc.ca/news/canada/british-columbia/defamation-suit-reid-hamer-jackson-katie-neustaeter-1.6879336, the reporter summarized that the Mayor *“told CBC News on Thursday that he has long been a respectable Kamloops citizen and that he is facing unfair scrutiny due to the emails and public statements detailed in the claim. ‘I’m tired of being called a pervert and different names,’ he said. ‘I think that people need to be held accountable.’”*
- d. On June 21, 2023, the Mayor discussed the allegations contained in the Civil Claim on *Kamloops Last Week*, including engaging in the following conversation with Marty Hastings, reporter (“MH”) and Chris Foulds, reporter (“CF”) (the summary was transcribed from the YouTube video found at www.youtube.com/watch?v=kGdRSp14nQo).

Mayor: *“Come on, you stand up in public and say someone’s violated your personal boundaries, like, what, you don’t think it’s going to affect you?”*

MH: *“Do you feel that’s the sexual misconduct and abuse that’s being inferred?”*

Mayor: *“I’ve had people scream at me, call me a pervert. I’ve, one time my wife and I were down, and this is a person that knows Councillor Neustaeter, and says, ‘Oh my wife’s coming down here tonight, can you make sure you keep your hands off her.’ Like, what good, what good comes out of someone saying that you’ve violated personal boundaries? Tell me what good comes of it ...”*

MH: *“She never said anything about sexual ...”*

CF: *“I never inferred, that’s the first I heard of it. I just figured, you know, it’s a lot of yelling going on at City Hall or something like that, I never ...”*

Mayor: *“So if I got up and said you’ve, uh, ... ya.”*

MH: *“Violated personal boundaries? I would never think that it’s a sexual inuendo at all. But that’s just me, and I’ve never heard anyone else say that. But you’re saying people have said that to you?”*

Mayor: *“... So, if somebody said that to you, the same thing, you don’t feel that somebody saying that they violated personal boundaries ...”*

MH: *“If someone came up to me in public and started calling me a pervert.”*

Mayor: *“What if your ex-girlfriend did it?”*

MH: *“Well, that would be a concern, but that’s not what happened here.”*

Mayor: *“Well, why would that be a concern? Violated sexual boundaries is not a big deal?”*

CF: *“Not sexual boundaries! Personal and professional boundaries.”*

Mayor: *“Oh, oh, sorry / personal and professional boundaries.”*

CF: *“I didn’t read sexual into it. That’s all I’m saying and no one I know did either.”*

- e. On June 16, 2023, in an interview with *Kamloops This Week* published online at www.kamloopsthisweek.com/local-news/mayors-lawyer-explains-why-defamation-suit-levied-



[on-lone-councillor-7157171](#), a reporter summarized that Mr. McMillan stated that when a “young, attractive-looking” councillor claimed personal boundaries were violated, people could infer sexual misconduct (the “McMillan Comment”). This statement referred to Councillor Neustaeter.

Councillor Neustaeter

Councillor Neustaeter said that her relationship with the Mayor had been “*tremendously difficult*” since she was elected and a “*challenge from day one.*” She said the main reason she and the other Councillors decided to make the Statement was the Mayor’s interference with their work. She said he had decided to remove certain Councillors from Standing Committees and replaced them with his friends, donors and candidates who were not elected to Council. She said there were also concerns from both her and other Councillors whose “*family members were absolutely unnecessarily involved*” by the Mayor in political issues. Councillor Neustaeter provided evidence about interactions between her own parent and the Mayor she believed were inappropriate, and noted the Mayor had raised concerns about two Councillors’ family members’ employment with the City.

Councillor Neustaeter said that typically, the Deputy Mayor would make a statement of this nature, but because the Deputy Mayor at the time was one of the Councillors who had been removed from a Standing Committee, as a group they decided that she (Councillor Neustaeter) would be the “*best representative*” to read the Statement. Councillor Neustaeter explained she was chosen because she was not personally affected by the changes to the Standing Committees, and she had a background in communication work.

Councillor Neustaeter said she did the majority of the writing for the Statement, but only after speaking with each Councillor to discuss their concerns with the Mayor and what they wanted the tone of the Statement to be. She noted she sent out a draft Statement to all the Councillors and they had an opportunity to provide feedback and make changes. She said the Statement was approved by every Councillor.

Councillor Neustaeter explained that none of the language in the Statement referred to concerns about sexual harassment or inappropriate conduct of that nature. She said that it “*never came up as a subject matter*” and “*no concerns were expressed*” by any of the Councillors about that issue. Councillor Neustaeter agreed she was aware of a “*well known*” incident that had happened in the community involving the Mayor and a citizen in a bar where this citizen (Witness A) accused the Mayor of harassing his wife (the “*Bar Incident*”), which she believed occurred “on March 31, 2023, but she said that issue was not discussed amongst the Councillors and denied that it factored into the Statement.

Councillor Neustaeter said she had never heard that any members of the public thought the Statement referred to the Mayor being sexually inappropriate until she read that allegation in the Mayor’s Notice of



Civil Claim against her. She stated, *“Not a single person has said, ‘Did he sexually assault you?’ Literally no one, and I would have wanted to disavow that as much as he would.”*

Evidence from Councillors

All six Councillors provided evidence that they were aware of the Statement before it was read out and that they were in agreement with it and had an opportunity to provide their input. I also reviewed email exchanges between the Councillors and Councillor Neustaeter discussing the Statement and the draft Statement.

With respect to the comment in the Statement about *“personal and professional boundaries”* being violated, one Councillor noted that they felt it was a *“mistake”* for Councillor Neustaeter to make reference to her *“personal stuff”* (referring to the Mayor’s interactions with her family members) in *“vague language”* in the Statement as they believed the Mayor would *“go after [Councillor Neustaeter]”* for it. This Councillor noted the boundaries comment also referred to concerns from two other Councillors about the Mayor’s interactions with their family members. All of the Councillors denied that the comment about *“personal and professional boundaries”* referred to any sexual impropriety by the Mayor.

Several Councillors indicated they were aware of the Bar Incident.

No Councillors reported that anyone had made comments to them that they were referring to sexual impropriety by the Mayor in the Statement.

Witness A

Witness A is a citizen of the City. He said that he was at a bar called the Blue Grotto after a Kamloops Blazers Game on March 9, 2023. He stated that the Mayor approached him to shake his hand, and he *“didn’t have any interest in shaking his hand.”* Witness A said the Mayor asked him, *“What the fuck is your problem?”* and he replied, *“My wife is on her way here, if you could keep your hands off her this time that would be great.”* Witness A said an incident between his wife and the Mayor happened in January 2023. Witness A denied that any of the Councillors were involved in this interaction between him and the Mayor.

Mr. McMillan

Given the solicitor-client nature of the relationship between Mr. McMillan and the Mayor, Mr. McMillan limited his evidence on the Mayor’s role, if any, in his (Mr. McMillan’s) comments to the media. He denied he had received any instructions from the Mayor about responding to media inquiries or speaking to the media.



He stated he had responded to a telephone request for commentary on the Civil Claim they had just commenced. Mr. McMillan denied the McMillan Comment about Councillor Neustaeter was discriminatory and said the article did not report the context in which the McMillan Comment was made. He said that in the three months following the Statement, prior to the filing of the Civil Claim, there was *“a lot of speculation”* about the Statement, and no clarification from Councillors about what they meant. He said he spoke to various citizens who informed him they thought the *“personal and professional boundaries”* comment referred to *“inappropriate touching”* or *“a complainant involved with the MeToo movement.”* He noted that the *“same words spoken by a different person of a different gender and age, the context is different.”* Mr. McMillan clarified that the McMillan Comment was an attempt to *“paraphrase that feedback [he was] hearing.”*

Mayor Hamer-Jackson

Statement

The Mayor said he found out about the Statement through the media, as he was not present at the press conference when it was read out. He said he had *“no idea what they were thinking or what they did”* in terms of how the Statement was prepared or who contributed to it. When put to him that all the Councillors contributed to the preparation of the Statement and agreed with it, he said, *“It doesn’t matter what I believe, [Councillor Neustaeter was] the one that read the statement. She’s the one that voiced the Statement to the media, to the reporters, and to everyone else in the country.”*

With respect to the comment about *“personal and professional boundaries,”* the Mayor said he interpreted it *“not to be a good statement.”* When asked what he believed it referred to, he said, *“I’ve been asking that, I have no idea what it meant.”*

Media Comments

The Mayor agreed that he made the Media Comments. He said that he was relaying *“what other people were saying to [him]”* about the Statement. The Mayor stated he did not want to provide the names of individuals who had spoken to him about the Statement given the ongoing Civil Claim. He said the comments he relayed in the Media Comments were not his; rather, it was *“citizens of the community that made these statements.”*

When asked why he spoke with the media about the Statement and his concerns, he said, *“Because they asked questions and I’m the Mayor of Kamloops, and eight Councillors left. ... They left in the middle of a strategic planning meeting to make a statement.”* He explained he *“felt obligated to speak and maybe defend [himself] a little bit too.”*



The Mayor said he did not give Mr. McMillan any instructions to make comments to the media but explained that he referred the media to Mr. McMillan on occasion.

When put to him that the Bar Incident occurred on March 9, 2023 prior to the reading of the Statement, the Mayor said that was not his understanding, and that in the Media Comments he was referring to an incident involving a citizen on March 31, 2023, after the Statement was read out. The Mayor declined to provide the name of the citizen he was referring to or other details about the incident he said happened on March 31, 2023.

Following our first investigation meeting, I reviewed the Civil Rules of Court, Practice Directives, Administrative Notices and Policies, and commentary about the common law implied undertaking in litigation and assertions of privilege, and determined that there was no valid reason based in civil law and procedure for the Mayor's refusal to provide the information sought about the alleged incidents with citizens following the Statement. I informed the Mayor of this determination by letter on October 3, 2023, and requested particulars of the identity of citizens who made comments to him after the Statement, and further details of those incidents.

The Mayor responded by email, stating, *"One individual that yelled out Pervert was driving a blue ford truck, I did not recognize the individual and he did not stick around for any conversation."* I asked the Mayor for a follow-up meeting to discuss this information and to ask for further details, given that in our original meeting he had stated he did not want to share the identity of individuals because of his upcoming Civil Case, while in his email he stated he did not know the identity of the individual(s). I advised the Mayor that absent his participation and willingness to provide particulars, I might draw an adverse inference against him. The Mayor and I exchanged several more email messages in which I requested a meeting and he declined to participate and asked for questions in writing. The Mayor did not give any reason as to why he could not meet with me other than that he believed I had *"missed"* some of our conversation previously. The Mayor further indicated that he believed that disclosing names of the individuals who had allegedly spoken to him without receiving their consent was a breach of their privacy, despite my original assurances that the law did not prevent him from disclosing these names.

Code of Conduct

Foundational Principles

2.1 The key statements of principle that underline this Bylaw are as follows:

(a) Council Members shall serve and be seen to serve their constituents in a conscientious and diligent manner;

(b) Members shall be committed to performing their duties and functions with integrity and shall avoid improper use or influence of their office, and conflicts of interest;

General Conduct



3.1 A Member shall not:

(a) contravene this Bylaw;

...

(d) Bully or Harass another person; or

(e) defame a Member, Staff, or Volunteer.

3.2 A Member shall treat other Members, Staff, and Volunteers with respect and dignity.

...

3.8 A Member must not publish, share, or otherwise reveal, on social media or otherwise, any Personal Information belonging to Members, Staff, or Volunteers, or any of their respective families or other personal relations, nor make any statements attacking Members, Staff, or Volunteers, or any of their respective families or other personal relations.

...

3.11 Without limiting the ability of the Member to hold a position on an issue and respectfully express an opinion, a Member must ensure that:

(a) their communications relating to City, Council, or Committee business are accurate, and must not issue, or allow to be issued on their behalf, any communication that the Member knows, or ought to have known, is false or misleading;

(b) they do not misrepresent, undermine, obstruct, or otherwise act contrary to the will of Council in matters relating to City, Council, or Committee business; and

(c) all communications by, and on behalf of a Member, including communications made via social media, are respectful and do not discriminate against, Bully and Harass, or defame any Member, Staff, or Volunteer.

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.



There is no dispute with the Councillors' evidence that the Statement did not intend to refer to sexual impropriety. The Mayor said that he did not know what their intention was, and provided evidence about his own interpretation and the interpretation of members of the public.

The Mayor and Mr. McMillan provided evidence that citizens had approached them to tell them that they believed the Statement referred to sexual impropriety, and both referenced these incidents in the media. However, both declined to provide me with the names of these individuals or any supporting evidence to corroborate that this occurred. I will address the impact of their refusal in terms of my finding below under analysis and finding, however, the evidence they provided to support their refusal was relevant to my assessment of credibility.

In particular, in our initial meeting, the Mayor declined to provide particular details to support this aspect of his evidence, citing the reason for his refusal to be that he had an upcoming Civil Case dealing with some of the same facts. The fact that the Mayor may have a civil matter involving similar or the same subject matter is not a valid legal basis for him to withhold this information. The Mayor was advised of this, and then altered his reason for not providing the names of individuals, namely that one individual had been driving a blue truck and he did not actually know that individual's name. These two explanations are contradictory. The Mayor was then asked to attend a follow up interview with me to explain the inconsistency, but did not do so, and did not provide any valid basis as to why he could not attend a second interview. He was advised that his failure to attend and provide the names of individuals who he claimed accused him of sexual misconduct may result in an adverse inference being drawn against him. The Mayor continued to fail or refuse to attend a meeting, and then stated he believed providing me with the names of the individuals he was referring to without the opportunity to advise them and request their participation would be a breach of their privacy rights. I had already advised him there was no legal basis for refusing to provide the information sought. Further, his answer, that there was a privacy issue relating to disclosing the name of "individuals", i.e. numerous persons, was inconsistent with his explanation where he referred to only one individual in a blue truck whose name he said he did not know.

Findings and Analysis

There is no dispute that the Statement was prepared by and/or contributed to by all of the Councillors, and that the language "*personal and professional boundaries*" was not intended by them to refer to conduct of a sexual nature, nor does it make express reference to any sexual misconduct.

The issue is whether the Mayor's statements, publicly expressed, would violate the Code of Conduct.

There are two aspects to this analysis: first, the Mayor's opinion about the nature of the Statement and how it could be interpreted (the "Opinion Comments"), and secondly, his comments that citizens did



interpret the Statement this way and made negative comments towards him because of it (the “Citizen Comments”).

With respect to the Mayor’s Opinion Comments, specifically expressing that the Statement was capable of having an interpretation of sexual misconduct, I note that this was framed as his opinion and belief. Those elected to Council have wide latitude to express their opinions and engage in free speech. Political expression, including expressions captured by a municipal code of conduct, “*should be interpreted in a manner consistent with the Canadian Charter of Rights and Freedoms, including the right of freedom of expression*” (see *Re VanLeeuwen*, 2021 ONMIC 13). The decision in *Monforts v Brown*, 2021 ONMIC 10 is useful on this point, when Integrity Commissioner Giorono stated:

121. Before turning to the applicable sections of the Code, I wish to make general observations about communications by elected municipal officials. The role of a Council Member includes communicating with members of the public about local issues. This includes not just responding to residents but initiating communication with the public. In fact, the Courts have clearly stated that, as an elected representative of the public, a municipal councillor is entitled to take “an open leadership role” on an issue. As part of the political process, a Council Member has every right to form views, to hold views, to express views and, while in office, to give effect to those views.

*122. In a case involving the previous Mayor of Orangeville, I observed that a municipal elected official is not required to avoid communicating on controversial, high-profile issues. Quite the contrary. “Given the political and representational roles of a municipal councillor, controversial and/or highly visible topics are ones on which a Council Member would be expected to communicate and on which a Council Member is entitled to communicate.” See *Greatrix v. Williams*, 2018 ONMIC 6 (CanLII), at para. 204.*

The Mayor’s Opinion Comments in the Media Comments do not misquote the Statement, nor do they inaccurately state that the Councillors accused him of sexual misconduct. Rather, the Opinion Comments were about the interpretation that could have been ascribed to the Statement by others and not about Councillor Neustaeter. He further stated that he believed that Councillor Neustaeter should be “*held accountable*.” The Opinion Comments were a matter of opinion which could be accepted, challenged, or rejected by those who chose to engage with them. As they are expressions of opinion, I find that the Opinion Comments do not breach the Code of Conduct.

Both the Mayor and Mr. McMillan provided evidence that the Mayor did not instruct Mr. McMillan to make particular comments to the media. The Mayor does not refer to or endorse the McMillan Comment in any of the Media Statements. I find that the Mayor cannot be held responsible for the conduct of his legal counsel that was not based on his instructions, and the McMillan Comment does not constitute a breach of the Code of Conduct by the Mayor.



However, the Mayor's comments were not limited to his opinion about the Statement. He went further, and he publicly cited that, because of the Statement, he had encounters with citizens who also interpreted it the way he had. With respect to the Citizen Statements, I have determined there is a breach of the Code of Conduct for the following reasons.

The Code of Conduct provides that "Council wishes to conduct its business in a transparent, accountable, and respectful manner". Section 3.11(a) specifically states that members "must not issue, or allow to be issued on their behalf, any communication that the Member knows, or ought to have known, is false or misleading".

The Mayor asserted that the Citizen Statements were true and based on fact. He bears some onus to provide evidence in this investigation to substantiate that what he claimed in public statement to have occurred as a consequence of the Statement. An analogous burden arises in cases of defamation, where a defendant is asserted truth as justification for their statements about another. In *Tilbury v. Coulson*, [2023] B.C.J. No. 231, the Court affirmed that the defence of justification is available as a complete defence to a defamation action where the statement is true in substance and fact: *Mann v. International Association of Machinists and Aerospace Workers*, 2012 BCSC 181 at paras. 76-77 and that it is the defendant who bears the onus of establishing that a statement is true on a balance of probabilities: *Holden v. Hanlon*, 2019 BCSC 622. The defendant need not prove every word or literal truth of the statement. Instead, the defendant need only prove that the gist or defamatory sting of the statement was true or substantially true: *Casses v. Canadian Broadcasting Corporation*, 2015 BCSC 2150 at para. 550.

The Mayor told the public that, following the reading of the Statement, negative incidents involving members of the public happened to him. The Mayor repeated this assertion in his investigation interview, but has repeatedly refused, on various basis, to provide information to support his assertion.

We note that in instances where 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) where 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 two cases, decided in the labour context, articulate helpful principles. In *Steele (Re)*, [2001] B.C.L.R.D. No 77, the B.C. 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.

As noted, the Mayor has provided inconsistent reasons for refusing to provide the names of the citizens he said were involved, and there is no legal basis (be it his civil litigation, or privacy obligations) to support his continued refusal to do so. Even without drawing an adverse inference in the sense of considering the Mayor's statements less likely to be true because of his failure to provide further evidence, there was no evidence other than his claim that the Citizen Comments were true.

Given the Mayor's unwillingness to provide names or specific particulars of the incidents he referred to in the Citizen Comments, and my finding that his evidence was inconsistent and not credible for the reasons set out above, I find that the Mayor breached the Code of Conduct with respect to the Citizen Comments. There is no evidence to corroborate his statements that he was approached by citizens who called him "pervert" or otherwise implied that they believed the Statement referred to sexual impropriety, are true and not misleading.

In the circumstances I find that, in making the Citizen Comments, he was in breach of his obligations under section 3.11(a) of the Code of Conduct.

Recommendations

Given that I have found a breach of the Code of Conduct, I recommend the City consider appropriate censures as found within the Code of Conduct, including consideration of a public apology and training on the Code of Conduct.



Conclusion

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

Sarah Chamberlain

Dated: October 27, 2023