

July 28, 2020



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**Via Email**

The City of Calgary  
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P.O. Box 2100, Station M, Calgary, AB  
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**Attention: Mayor and Members of Council**

Dear Council:

**Re: Advice regarding Alleged Breach of the City of Calgary's (the "City")  
Code of Conduct for Elected Officials Bylaw  
My file: 1614-09875/GJSP**

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The Forensic Investigation Report: Ward 2 Expenses prepared by PricewaterhouseCoopers (the "Report") sets out a number of recommendations. These recommendations are found in the Summary of Recommendations (pages 9-11 of the Report) and in the Recommendations (pages 36-41 of the Report).

Recommendation #11 addresses the question of sanctions and recommends that Council consider discussing the findings in this Report with the City Solicitor and/or legal counsel to determine what sanctions, if any, needs to be taken.

I have been retained to provide City Council with advice regarding sanctions for Council to impose with any substantiated breach of the Code of Conduct confirmed in the Report.

### **Considerations in Determining Sanction**

There are many cases in matters of professional discipline (regulatory) which consider the question of the imposition of sanction and which outline aggravating and mitigating factors to be considered in imposing sanctions.<sup>1</sup> However, the present case arises in the

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<sup>1</sup> *Law Society of British Columbia v. Ogilvie*, (1999) LSDD No. 45, (1999) LSBC 17 lists the following factors as aggravating and mitigating circumstances:

- a. The nature and gravity of the conduct proven;
- b. The age and experience of the respondent;
- c. The previous character of the respondent, including details of prior discipline;
- d. Impact upon the victim;
- e. Advantage gained, or to be gained, by the respondent;
- f. The number of times the offending conduct occurred;

context of the investigation carried out as a result of Council's motion on February 24, 2020,<sup>2</sup> and is not a professional discipline matter.

In order to determine what factors have been considered as aggravating and mitigating circumstances by Integrity Commissioners in other jurisdictions, I have reviewed reported Integrity Commissioner decisions. A number of decisions of Integrity Commissioners from various Ontario municipalities have discussed the principles those Integrity Commissioners have considered in determining whether to impose sanctions. The discussion of the principles can be distilled as follows:

1. The range of sanctions set out in the empowering legislation;<sup>3</sup>
2. The nature of the conduct in question;
3. Remedial actions should be geared to correcting behavior;<sup>4</sup>
4. The sanction should be proportionate to the features of the breach which include the availability of information about expense claims, the awareness of Code of Conduct issues.<sup>5</sup>

The recent Alberta case of *Kissel v. Rocky View (County)*<sup>6</sup> considered sanctions imposed against councillors. The Court confirmed that regulatory sanctions are not intended to be punitive, though specific and general deterrence are usually legitimate considerations. Further, proportionality between wrongdoing (nature of conduct and impact) and penalty is required. The Court confirmed that similar considerations apply to the enforcement of ethical standards under a councillor code of conduct.

Imposing crushing or unfit sanctions can undermine public confidence in the institution or its processes and thereby defeat the purpose of the enforcement system, whether in a traditional professional regulatory context or in a wider variety of settings. Proportionality is commonly required of sanctions imposed in a conduct enforcement system. . . . .<sup>7</sup>

234 The proportionality requirement is inherent in the Code's requirement (s 61(n)) that sanctions be reasonable and appropriate. In my opinion, the requirement

- g. Whether the respondent acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
- h. The possibility of remediating or rehabilitating the respondent;
- i. The impact of the proposed penalty on the respondent;
- j. The need for specific and general deterrence;
- k. The need to ensure the public's confidence in the integrity of the profession; and
- l. The range of penalties imposed in similar cases.

<sup>2</sup>Motion 12.2.1, February 24, 2020.

<sup>3</sup> *Methuku v. Barrow*, 2014 ONSC 5277 at para 35.

<sup>4</sup> *Di Ciano (Re)*, 2019 ONMIC 14 at page 11.

<sup>5</sup> *Mammoliti (Re)*, 2014 ONMIC 5; *Adamiak v. Callaghan*, 2014 ONSC 6656 at para 75.

<sup>6</sup> 2020 CarswellAlta 1297, 2020 ABQB 40.

<sup>7</sup> At para 233 and 234.

of proportionality is an additional constraint on Council's decision making when imposing sanctions under the Code.

*Sanctions listed in the Regulation and the Bylaw*

The Code of Conduct for Elected Officials Regulation Alta. Reg. 200/2017, section 5 sets out the sanctions which are permitted to be imposed against elected officials.

The Code of Conduct for Elected Officials Bylaw No. 26M2018 (the "Bylaw") sets out the same sanctions from the Regulation. Council may consider these listed sanctions that may be imposed for violation of the Bylaw or a City policy governing Member conduct.

92. Sanctions that may be imposed for violating this Bylaw or a City policy governing Member conduct include the following:

- (a) a letter of reprimand addressed to the Member;
  - (b) a request that the Member issue a letter of apology;
  - (c) the publication of a letter of reprimand or request for apology by the Integrity Commissioner, and the Member's response;
  - (d) a requirement that the Member attend training;
  - (e) suspension or removal of the appointment of a Member as the Deputy Mayor;
  - (f) suspension or removal of the Mayor's presiding duties under section 154 of the Municipal Government Act R.S.A. 2000, c. M-26;
  - (g) suspension or removal of the Member from some or all Council committees and bodies to which the Member was appointed by Council; or
  - (h) reduction or suspension of the Member's remuneration as defined in section 275.1 of the Municipal Government Act, R.S.A. 2000, c. M-26, corresponding to a reduction in duties, excluding allowances for attendance at council meetings.
- (27M2020, 2020 July 22)

Section 6 of the Regulation provides that any sanctions imposed must not prevent a councillor from fulfilling the legislated duties of a Councillor.

The Regulation and the Bylaw provide possible sanctions. While Council may consider other sanctions, the sanctions must be related to and proportionate to the circumstances.

*Factors for Council to Consider in Imposing Sanction*

The following factors found in the Report are relevant considerations for Council:

1. The Report investigated the Member's expense claims from an approximately 2-year period. During this period, there were a number of expenses about which the Report raised concerns (see pages 5-7 of the Report).
2. The Member has made voluntary payments in respect of these questioned expenses (\$6,220.66) (see pages 34-35 of the Report).
3. The Report recommends a review of the policies and suggests revisions be made to provide clarity for Council when dealing with expenses and allowances. There are concerns that the number of policies addressing expenses and allowances may lead to confusion and misinterpretation.
4. The Member was elected to Council in 2013<sup>8</sup> and has been a member of council for approximately 7 years.
5. The Report does not mention any previous investigations into the Member's expense claims.

*Recommendations regarding Sanction<sup>9</sup>*

At section 11, the Report includes the following recommendation as to sanction:

Policies PAC006 and PAC007 require disclosure of the name(s) of the party hosted. The certification/attestation provided on the Expense Report or CCC Statement further requires a list of the attendees.

With respect to Councillor Magliocca's expenses in the amount of \$2,248.58, we note that they either: (1) fail to provide the name(s) of the hosting event attendees; or, (2) the name(s) of the hosting event attendees were incorrect. As per PAC006 and PAC007, the disclosure of the name(s) of the party hosted are requirements. As such, these expenses are not in compliance with the aforementioned policies.

Bylaw Number 26M2018 – Being a Bylaw of the City of Calgary to Establish a Code of Conduct for Elected Officials, states that Member must respect and comply with all obligations imposed on the Member by the City's policies and procedures. The failure to comply with PAC006 and PAC007 results in a contravention of the Code of Conduct for Elected Officials.

Council should consider discussing the findings in this Report with the City Solicitor and/or legal counsel to determine what sanctions, if any, needs to be taken.

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<sup>8</sup> See page 17 of the Report.

<sup>9</sup> In making recommendations as to sanction, I have relied upon the conclusions in the Report and have not conducted any independent investigation.

The Report does not provide specific recommendations, but suggests Council obtain advice in relation to them. Under the Bylaw, Council must decide whether to adopt the recommendation or whether to substitute a different, lesser or greater sanction.

Having regard for the listed sanctions under the Bylaw, I recommend Council consider the following recommendations for sanction:

1. Council to issue a letter of reprimand addressed to the Member

Under section 91, the decision that a member violated the Bylaw or a City policy is final and may not be reviewed or reconsidered by Council. The Report concludes that expenses were not in compliance with PAC006 and PAC007, resulting in a contravention of the Code of Conduct for Elected Officials.

In light of the Report's conclusion that there has been non-compliance with the two policies and a resulting contravention of the Bylaw, a letter of reprimand is within the range of permissible sanctions. It reflects the need for prudent fiscal management by elected officials. It should promote future compliance with the policies. It is not disproportionate to the nature of the conduct in question, keeping in mind the number of years the Member has been on Council.

2. Council to request a letter of apology from the Member

A letter of apology from the Member is within the range of permissible sanctions. A letter of apology is an acknowledgement that the Member did not follow the requirements of the policies. It is not disproportionate to the nature of the conduct in question, keeping in mind the need for Member fiscal prudence, as well as recognizing the voluntary repayment of funds.

3. The Member to attend training on the requirements of PAC006 and PAC007, as well as the contents of the Bylaw

The Report notes that there are 4 policies relating to expenses and allowances, which can lead to confusion and misinterpretation. The Report recommends a review of the policies related to a number identified concerns.

Section 92(c) permits Council to require a Member to attend training. The imposition of such training should assist the Member in better understanding the policies to comply with the policies and the Bylaw in future. The imposition of a requirement to attend training regarding the policies ties directly with the concerns which were the subject of the Report and should assist in providing the public confidence that the Member will have greater clarity on how to handle future expense claims.

4. The Member to be removed from the Federation of Canadian Municipalities ("FCM") committees until the City's organization meeting in 2021

Section 92(g) permits the suspension or removal of a Member from a Council committee.

In the present case, the vast majority of the expense claims made were with regard to the Members' participation at FCM events in 2018 and 2019. Removing the Member from FCM for a period of approximately one year should provide sufficient opportunity for the Member to complete the required training about how to complete expense reports and the scope of PAC006 and PAC007. The period of removal is finite, thus permitting the Member to stand for FCM in future, following the period of removal. The length of time recognizes that, due to COVID19, there is likely to be little travel in 2020. As such, a removal until the 2020 organization meeting is likely of insufficient length to reflect the significance of appropriate expense claim management.

Council may consider if other sanctions might be appropriate, keeping in mind the objectives of sanction, as referenced above in this opinion: proportionality, reasonableness, related to the conduct in question, etc. In light of the factors to be considered, there did not seem to be alternative sanctions available for consideration.

I would be pleased to answer any questions you might have.

Yours truly,

**SHORES JARDINE LLP**

Per:



**GWENDOLYN J. STEWART-PALMER, Q.C.**

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