



Laura Dean  
Direct: 416.865.7705  
E-mail: ldean@airdberlis.com

# **INTEGRITY COMMISSIONER REPORT ON CODE OF CONDUCT COMPLAINTS 2023-02, 2023-03 & 2024-01**

**THE CORPORATION OF THE CITY OF GUELPH**

**Aird & Berlis LLP**

**Laura Dean**

April 3, 2024

## TABLE OF CONTENTS

A.	INTRODUCTION .....	1
B.	REVIEW OF MATERIALS AND INVESTIGATION .....	2
C.	THE COMPLAINTS .....	2
D.	RELEVANT SECTIONS OF THE CODE .....	5
E.	MAYOR'S RESPONSE .....	7
F.	DETERMINATION .....	8
G.	CONCLUSION.....	10

## INTEGRITY COMMISSIONER REPORT CODE OF CONDUCT COMPLAINTS 2023-02, 2023-03, and 2024-01

### A. INTRODUCTION

1. Three formal complaints (the “**Complaints**”) were received by the Integrity Commissioner. “Complaint One”, assigned number 2023-02, was filed with our office on December 21, 2023; “Complaint Two”, assigned number 2023-03, was filed with our office on December 22, 2023; and “Complaint Three”, assigned number 2024-01, was filed with our office on January 2, 2024.

2. All three complainants (the “**Complainants**”) allege that Mayor Cam Guthrie (the “**Mayor**”) contravened the Code of Conduct for Members of Council and Local Boards (the “**Code**”) while acting in his capacity as mayor for the City of Guelph (the “**City**”).

3. Aird & Berlis LLP is the appointed interim Integrity Commissioner for the City.

4. We were appointed to this role in accordance with section 223.3 of the *Municipal Act, 2001*. As Integrity Commissioner, we are responsible for performing, in an independent manner, the functions assigned by the City with respect to the application of the Code, policies, procedures or rules relating to ethical behaviour and the *Municipal Conflict of Interest Act*, for members of Council and of the City’s local boards.

5. The Code was first approved in February 2013 and has been amended since, with the most recent amendment occurring in September 2023.

6. An additional function of the Integrity Commissioner is to conduct investigations, where warranted, in response to complaints alleging that a member has contravened the Code. This Report sets out the findings of our investigation of the Complaints made in accordance with Section 8 the Integrity Commissioner Complaint Protocol (Appendix 1 of the Code).

7. The principles of procedural fairness require us to provide reasons for our conclusions and recommendations, which we have done in this report (the “**Report**”). Our investigation was conducted in accordance with the Code and with a process that was fair to all parties. We have assessed the evidence in an independent and neutral manner.

8. As part of our investigation, we provided the Mayor with the Complaints and offered him an opportunity to respond to the relevant allegations. He provided a response (the “**Response**”). We have considered the Response as well as information obtained through the Complaints in preparing this Report. The Mayor was also provided with the opportunity to review and comment on a final draft of this Report. The Mayor indicated that he had no additional comments.

9. For the reasons below, we have found that, on the balance of probabilities, the Mayor has not contravened the Code.

## B. REVIEW OF MATERIALS AND INVESTIGATION

10. In order to undertake our investigation and prepare this Report, we reviewed and considered the following:

- (a) the Complaints and supporting materials; and
- (b) the Response.

## C. THE COMPLAINTS

11. The Complaints relate to online exchanges between the Mayor and users of the social media platform X (formerly Twitter) between December 16 and December 20, 2023. The Complaints allege that the Mayor, who has approximately 23.8k followers, breached a number of provisions of the Code when he engaged in an online exchange with a local, non-binary queer person and small business owner with under 400 online followers (“**X User 1**”). The Complaints also allege that some of the Mayor’s tweets targeted a disabled, non-binary person in the community (“**X User 2**”, collectively, the “**X Users**”).

12. As is evident from the exchanges set out below, the X Users were critical of the Mayor publicizing his unmasked public volunteer appearances which took place at a time of heightened levels of COVID-19 and despite public health warnings.

### **December 16, 2023**

The Mayor posted photos on X of himself and his wife performing Christmas carols for residents of a local retirement and long-term care facility (the “**Facility**”). The photos were accompanied by the caption:

*Today [my wife] and I went to [the Facility] and played/sang some Christmas carols for the residents! We had a wonderful time and I’m sure you’ll want [my wife] back soon, me on the other hand...iffy! [laugh cry emoji]*

### **December 17, 2023**

X User 1 responded to the above tweet:

*Long term care homes are full of high risk people.*

*You are only causing harm by doing it.*

*Why can’t you do a virtual concert? That way you can “appear” at multiple homes at once?*

The Mayor responded to X User 1:

*Well there you have it folks, I’m apparently “causing harm” by singing & playing Christmas carols with my wife to cheer people up this season. [shrug emoji]*

On the same day, the Mayor separately tweeted:

*What's social media like these days?*

*Me to [my wife]: Hey, we've been invited to go sing & play some Christmas carols at an old age home to bring some cheer & goodwill to folks! Maybe we could do other homes or venues across the city if you're up for it?!*

*[My wife to me]: Yes, that'd be fun!*

*Social media comments: You're evil.*

X User 1 replied to the Mayor's tweet:

*Imagine going from LTC home to LTC home during peak illness season, passing on god knows what to older immunocompromised folks and thinking you're doing a good deed.*

### **December 19, 2023**

The Mayor posted a photo of himself volunteering with a well-known charity at a local retail store. The photo was accompanied by the caption:

*Great opportunity to give and support those in need in #Guelph through the [handle of the charity's campaign]! Thank you to the [charity] for all they do!*

On the same day, X User 1 replied to the above tweet as follows:

*Your need to spread Christmas cheer will kill many members of our community.*

### **December 20, 2023**

The Mayor responded to X User 1 with the following tweet:

*Raising donations for those less fortunate will "kill many" apparently. [shrug emoji]*

X User 1 replied:

*Put on a [f-ing] respirator.*

The Mayor replied:

*Nah, I'll put on a smile instead.*

X User 2 appears to have responded to another X user regarding the Mayor's December 19<sup>th</sup> photo with the following tweet:

*Sorry, in this particular tweet they have moved on from singing carols at the LTC without a mask on to spreading Christmas cheer and covid at the grocery store without a mask on. My point remains the same, put a mask on Cam you [f-ing] demon.*

The Mayor responded on the same day:

*Mayor Demon.*

On the same day, X User 2 replied to the Mayor's "Nah. I'll smile instead" tweet with the following:

*Again: THIS IS MY MAYOR, TALKING ABOUT HAPPILY VISITING AN LTC HOME WITHOUT A MASK ON, AGAINST PUBLIC HEALTH RECOMMENDATIONS & THE FACT THAT 1 IN 13 ONTARIANS HAS COVID RIGHT NOW. IN 2023 SAYING NO TO WEARING A MASK AROUND OLD DISABLED VULNERABLE PEOPLE.*

13. The Complaints also allege that the Mayor "continued to spread harm" in a local Guelph Facebook group by posting the following comment in reference to the above exchanges on X:

*I adore that they are posting this everywhere. Please, keep sharing. The more people know you're upset about me volunteering for a charity to raise funds for those in need at this Christmas and Holiday season and you instead get upset with me for not wearing a "respirator" is fantastic. So while I got everyone's attention, please give back to those in need if you can, and put a smile on too!*

14. Complaint Three attached various screenshots of comments referencing or directed at the X Users that appear to have been prompted by the above exchange with the Mayor. Some of these comments included highly offensive language and images directed towards the X Users.

### **Complaint One**

15. Complaint One alleges that the Mayor contravened Sections 2, 7, 10, and 12 of the Code by responding derisively to the X Users' criticisms of his unmasked volunteer activities. Complaint One claims that in publicly dismissing the X Users' valid concerns, the Mayor contributed to, and invited, mockery of them on social media.

### **Complaint Two**

16. Complaint Two is extremely similar to Complaint One. It also alleges that the Mayor contravened Sections 2, 7, 10, and 12 of the Code by dismissing the X Users' critiques regarding his unmasked volunteer appearances. This complainant claims the Mayor "cyberbullied" a vulnerable resident of the City who expressed reasonable criticism of the Mayor's actions. Complaint Two alleges that through his conduct on social media during

this period, the Mayor demonstrated a disregard for public health measures and disrespect for his constituents.

### ***Complaint Three***

17. Complaint Three alleges that the Mayor contravened Sections 1, 10, and 12 of the Code through inappropriate use of X from December 16 to 22, 2023. The Complainant claims that the Mayor improperly uses the influence of his office on X by maintaining an account that is deliberately styled and used as an official City-managed social media account. The Complaint alleges that this account provides the Mayor credibility, social standing and a large social media outreach and that his use of the account to mock and retweet the X Users was not fair and amounted to bullying. This Complaint alleges that the Mayor belittled and targeted constituents who expressed valid public health concerns, exposing them to unwelcome abuse over social media.

## **D. RELEVANT SECTIONS OF THE CODE**

18. Collectively, the Complaints allege that the Mayor's conduct contravened sections Sections 1, 2, 7, 10, and 12 of the Code, which provide:

### ***1. Policy Statement***

A written Code of Conduct for Council and Local Boards (the Code) helps to ensure that the members of Guelph City Council (Council) and Local Boards of the City of Guelph (the City) share a common basis for acceptable conduct. The Code is designed to provide a set of rules on ethical conduct and a supplement to the legislative parameters within which the members must operate. These standards serve to enhance public confidence that Guelph's elected and appointed representatives operate from a base of integrity, justice and courtesy. The key principles that underline the Code are as follows:

- All members shall serve and be seen to serve their constituents in a conscientious and diligent manner.
- All members should be committed to performing their functions with integrity.
- All members shall be committed to avoiding the improper use of the influence of their office.
- All members shall be committed to avoiding and declaring conflicts of interest, both real and apparent.
- All members shall perform their duties while in office in a manner that promotes public confidence and will bear close public scrutiny.
- All members shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature and Council.

## **2. Purpose**

Members hold positions of privilege. Therefore, they must discharge their duties in a manner that recognizes a fundamental commitment to the wellbeing of the community and regard for the integrity of the Corporation. The purpose of the Code is to:

- protect the public interest;
- encourage high ethical standards among members of Council and local boards;
- provide a universal understanding of the fundamental rights, privileges, and obligations of members of Council and local boards; and
- provide a means for members of Council and local boards to obtain information on contemplated conduct in circumstances where they are uncertain as to the ethical appropriateness of that conduct.

## **7. Use of Corporate Resources**

No member shall, for personal purposes or profit, make use of any City facilities, services or property other than for purposes connected with the discharge of City duties or associated community activities, unless such use is permitted by one of the following exceptions:

- reasonable and incidental personal use of equipment such as computers, cell phones, smart phones, telephones, tablets, printers, scanners, copiers, e-mail, file storage, voicemail, or any other equipment or technology owned by the City, where the City incurs no additional costs relating to such use, and the use is of limited duration and frequency; and
- use of City property and facilities where such use is universally known to be available to other residents upon request and on equal terms. No member shall obtain financial gain from the use of City-developed intellectual property, computer programs, technological innovations or other patentable items, while an elected official or thereafter. All such property remains the exclusive property of the City.

## **10. Conduct**

As a representative of the City, every member has the duty and responsibility to treat members of the public, one another, and staff appropriately and without abuse, bullying, or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment. A member shall not use indecent, abusive, or insulting words or expressions toward any other member, a member of staff, or a member of the public. A member shall not speak in a manner that is discriminatory to any individual based on that person's race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status or disability.



## ***12. Improper Use of Influence***

No member shall use the influence of their office for any purpose other than for the exercise of their official duties. Examples of prohibited conduct are the use of one's status as a member to improperly influence the decision of another person to the private advantage of oneself, or one's relatives, staff members, and associates, businesses or otherwise. This includes attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member's influence within Council in return for present actions or inaction.

### **E. MAYOR'S RESPONSE**

19. As part of this investigation, the Mayor was provided with an opportunity to review and provide us with a written response to the Complaints. In response to the allegation that he improperly conflated his private views and public office (by promoting content related to his mayoral role on his private X account), the Mayor stated that:

- (a) he took care to only respond to residents' critiques from his private X account;
- (b) he has used and paid for his private X account for over 16 years;
- (c) he did not influence anyone nor accrue any gain from his use of social media during the relevant period; and
- (d) he has only ever used corporate resources in accordance with the parameters set out in the Code.

20. In response to the allegation that the Mayor belittled constituents voicing valid complaints, the Mayor stated that:

- (a) he was "truly upset" by the "vile attacks" suggesting that he and his wife were causing harm by volunteering;
- (b) he felt he had to defend himself and his wife from "unfounded allegations" and "clear untruths" expressed via vulgar language and intentional insults;
- (c) he attempted "take the higher road" and defuse the situation through humour and sarcasm;
- (d) he accepts that his "humour and sarcasm in some responses wasn't helpful"; and
- (e) he ultimately made the decision to disengage from his critics, thereby drawing the episode to a close.

21. In response to the claims that he wrongly disregarded public health measures and rules during the relevant period (by volunteering, unmasked, at a retirement/long-term care home) the Mayor explained that:

- (a) he was not asked to mask when he led carol-singing at the Facility;
- (b) he would have worn a mask if he had been asked;
- (c) he was feeling well and had no symptoms of any illness; and
- (d) he was not aware of any provincial or local Public Health orders to mask in place during the relevant time period.

22. The Mayor noted that he would be pleased to meet with the Complainants in person in order to have “an authentic conversation.”

## **F. DETERMINATION**

23. We have determined, on the balance of probabilities, that the Mayor has not contravened Sections 1, 2, 7, 10, and 12 of the Code. Set out below is a summary of our analysis with respect to each alleged violation.

### ***Sections 1 and 2 of the Code***

24. Sections 1 and 2 of the Code contain the Code’s policy statement and definitions of the Code’s purpose and application. These are guiding tenets of the Code and are not operative provisions intended to be enforced independently.

25. While these principles will be applied to aid with the interpretation and application of the Code, they do not form free-standing independent obligations that can be breached by a member’s actions. As such, we cannot find a breach of Sections 1 or 2 of the Code.

### ***Section 7 of the Code***

26. The Complaints allege that the Mayor contravened Section 7 of the Code by using his social media accounts for personal purposes, other than those connected with the discharge of City duties or associated community activities.

27. The Mayor has confirmed that he pays for his X account and it is not publicly funded. We find the Mayor’s social media accounts are not a City facility, service or property. Therefore, the Mayor’s use of these accounts to promote his activities in the community did not contravene Section 7 of the Code.

28. Despite this finding, however, we have always taken the position that the Code applies to members at any time when they may be perceived as acting in their official capacity. This would include a member’s use of social media in circumstances where the public might reasonably assume the member is speaking or acting on behalf of the City.

**Section 10 of the Code**

29. Complaints One and Two allege that the Mayor contravened Section 10 of the Code by derisively dismissing valid complaints communicated by City residents over X.

30. Complaint Three claims that the Mayor contravened Section 10 of the Code by using his considerable following on social media to bully and intimidate vulnerable members of the public who disagreed with his views.

31. It seems apparent—from the social media posts shared by the Complainants—that the Mayor deployed mocking sarcasm towards the X Users during the relevant exchanges. The X Users also happened to identify as non-white, non-binary, disabled, or all three. We cannot regard this behavior as “using humour” to “defuse the situation” (as claimed by the Mayor in his Response). The Mayor notes that some of his critics used vile and insulting language. This is true. But the Mayor, through his role in public office and his responsibilities under the Code, is held to a different—and higher—standard than his non-elected critics. Even if the Mayor regarded the criticisms as “vile attacks” based on “clear untruths”, he was bound to either respond in a civil manner or not respond at all. While we find the Mayor’s conduct verged toward petulant and mocking, we conclude it did not constitute abuse, bullying or intimidation. We also find there is no evidence to demonstrate that the Mayor communicated in a manner that was discriminatory to any individual based on that person’s race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status or disability. Accordingly, we find the Mayor did not contravene Section 10 of the Code.

**Section 12 of the Code**

32. Complaints One and Two allege that the Mayor contravened Section 12 of the Code by publicly mocking and disparaging the X Users after they criticized his unmasked public appearances.

33. Complaint Three alleges that the Mayor violated Section 12 of the Code by using his public influence and large social media following for improper purposes; specifically, to invite ridicule of constituents who voiced valid criticisms of his behaviour.

34. During the relevant exchanges on social media, the Mayor responded to the X Users who criticized his actions (thereby also “retweeting” these critiques). According to the Mayor’s Response, he “took the higher road” by making “the decision to disengage.” The Mayor also admitted in his Response, however, that he was angered by some of these criticisms. This anger is evident in his retorts. He did not ignore the X Users or substantively engage with their critiques—both of which were options open to him. Instead, he chose to respond with sarcasm. We find that this tactic had the effect of diminishing well-intentioned criticisms and potentially inciting repulsive replies from other X users.

35. We acknowledge the X Users were exposed to harassment by other X users as a result of their public exchanges with the Mayor. However, the evidence does not establish that the Mayor actively invited his followers to mock (or otherwise engage with) the X Users. Based on the above, we have determined that the Mayor did not improperly use his influence of office to his own private advantage. Accordingly, the Mayor did not contravene Section 12 of the Code.

## **G. CONCLUSION**

36. For all of the reasons noted above, it is our conclusion that the Mayor's conduct in the above exchanges did not contravene the Code.

37. Online criticism is a fact of life for members of public office. While politicians who choose to engage in social media should not be expected to endure unending cyberbullying or harassment, they must expect, and even welcome, a certain level of vocal dissent without playing the victim.

38. Based on our finding that the Mayor did not contravene the Code, we have no authority or reason to recommend a penalty. Given our findings, Council has no statutory authority to impose a penalty on the Mayor pursuant to subsection 223.4(5) of the *Municipal Act, 2001*.

39. Council shall receive this Report and make it available to the public.

Respectfully submitted,

AIRD & BERLIS LLP



Laura Dean

Integrity Commissioner for The Corporation of the City of Guelph

LD/JM/km

56389549.3