



John Mascarin
Direct: 416.865.7721
E-mail: jmascarin@airdberlis.com

REPORT TO COUNCIL RE CODE OF CONDUCT: GIFTS AND BENEFITS

THE CORPORATION OF THE CITY OF GUELPH

Aird & Berlis LLP

John Mascarin

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CITY OF GUELPH REPORT TO COUNCIL RE CODE OF CONDUCT: GIFTS & BENEFITS

I INTRODUCTION

1. This is a report with respect to the written advice we provided as Integrity Commissioner to a member of the Council of the City of Guelph (the “City”) on November 9, 2024 pursuant to subsection 223.3(2.2) of the *Municipal Act, 2001*.¹
2. The written advice was provided to Mayor Cam Guthrie (the “Mayor”) pursuant to a request in writing from him pertaining to a concern related to section 5 of the [Code of Conduct for Council and Local Boards](#) (the “Code”).
3. The Mayor’s request for advice was made on November 7, 2024.
4. In reviewing the request for advice and the disclosure provided by the Mayor, we have determined that there has been a contravention of the Code.
5. The Code’s Appendix includes a provision detailing how the Integrity Commissioner should proceed in this instance. Section 5 of the Code’s Appendix 1 – Integrity Commissioner Complaint Protocol, provides as follows:

5. Procedure for Obtaining Advice

...

3. Where the Integrity Commissioner learns of a violation of the Code through the request for advice from a member, **they are required to report such a violation to Council.** [emphasis added]
6. This is not an investigative report based on a complaint that has been filed pursuant to the Code. It is a separate, stand-alone report that is authorized pursuant to the City’s Code that requires the Integrity Commissioner to report any instance of a violation of the Code that may be discovered when written advice is provide to a member of Council by the Integrity Commissioner.

II INTEGRITY COMMISSIONER – AUTHORITY & JURISDICTION

7. We were appointed to the role of Integrity Commissioner for the City in accordance with section 223.3 of the *Municipal Act, 2001*.

¹ Subsection 223.3(2.2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides as follows:

Request for advice shall be in writing

223.2 (2.1) A request by a member of council or of a local board for advice from the Commissioner under paragraph 4, 5 or 6 of subsection (1) shall be made in writing.

Advice shall be in writing

(2.2) If the Commissioner provides advice to a member of council or of a local board under paragraph 4, 5 or 6 of subsection (1), the advice shall be in writing.

8. 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.
9. One of the key functions of the Integrity Commissioner, as set out in subsection 233.3(1) or the *Municipal Act, 2001*, is the express ability to provide specific written advice to members with respect to their obligations under the Code, other council ethical policies, rules or procedures, and the *Municipal Conflict of Interest Act*:

Integrity Commissioner

223.3 (32) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to any or all of the following:

...

4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.

...

10. In this case, the written advice was provided to the Mayor in accordance with paragraph 223.3(3) 4 of the *Municipal Act, 2001*.

III REQUEST FOR ADVICE

11. The Mayor requested written advice from us based on an article that he referred to us from the *Vancouver Sun* entitled "New West mayor's all-expenses paid trip to Dubai breached ethics rules: Commissioner" which detailed the findings of a report from the Ethics Commissioner for the City of New Westminster respecting a complaint that the city's mayor had violated the city's code of conduct and the *Community Charter*² in accepting an all expenses paid trip while attending the COP28 Local Climate Action Summit in Dubai in December 2023.³
12. In the request for advice, the Mayor advised that he is a director on the North American Board of Directors of the Global Covenant of Mayors for Climate and Energy ("GCoM") which is described as follows:

The **Global Covenant of Mayors for Climate and Energy** is an international alliance of cities and local governments with a shared vision to promote and support voluntary action to combat climate change and move towards an inclusive, just, low-emissions, and resilient society.⁴

² *Community Charter*, S.B.C. 2003, c. 26.

³ *Vancouver Sun*, "New West mayor's all-expenses paid trip to Dubai breached ethics rules: Commissioner" (November 1, 2024) online: [New West mayor's all-expenses paid trip Dubai breached ethics rules | Vancouver Sun](#).

⁴ [Global Covenant of Mayors for Climate & Energy | Canada](#).

13. The Mayor is part of the GCoM Canada Cohort.⁵ We are not aware that Council ever endorsed nor was required to support or approve the Mayor's participation in the organization.
14. The Mayor expressed that he reached out to the Integrity Commissioner because he was concerned about the report from New Westminster given that, as a board member of GCoM, he had been able to attend conferences and events organized by GCoM to learn, network and understand how other communities in Canada and beyond have been dealing with climate change.
15. The Mayor fully disclosed that he had attended the same conference as the mayor from New Westminster in Dubai and that he was shortly scheduled to attend meetings in Brazil for the U20 Summit sponsored by GCoM.
16. The Mayor disclosed that he had attended and was intending to attend the forthcoming conference based on funding from Mike Bloomberg Philanthropies, the European Union and GCoM. The funding would provide for travel, accommodation and meals as well as conference attendance.
17. We posed a number of questions to the Mayor with respect to the City's and Council's knowledge and/or formal support for his involvement as a director of GCoM and/or attendances at GCoM events. The Mayor responded forthrightly and candidly to our questions and sought to disclose all relevant facts to us as requested.
18. The Mayor also advised us that he had been successful through his association with GCoM to secure funding for climate change initiatives for the City. He also highlighted the various benefits of the association to the City.
19. We reviewed the Summary Report⁶ from the Ethics Commissioner in New Westminster on an investigation she conducted concerning a complaint filed against that city's mayor that he breached the municipality's code of conduct and section 105 of British Columbia's *Community Charter* by attending the Local Climate Action Summit conference in Dubai in December 2023 where he received complementary travel, meals, and accommodation.
20. The Ethics Commissioner determined that New Westminster's mayor breached the code of conduct and the *Community Charter* by receiving gifts or personal benefits connected with the performance of the duties of his office, including attendance at the aforementioned conference, travel, accommodations and meals, within the meaning of section 105 of the *Community Charter*.

⁵ *Ibid.* The Global Covenant of Mayors for Climate and Energy in Canada is a collaboration between the Federation of Canadian Municipalities, ICLEI Canada, C40 Cities, Carbon Disclosure Project (CDP) and the Global Covenant of Mayors Secretariat supported by funding from the European Union. Together, we can further advance local climate action in Canada, adding value, opportunities, and streamlined support for members.

⁶ Summary Report to City of New Westminster Council in the Matter of An Ethics Commissioner Investigation under the Corporation of the City of New Westminster, Bylaw No. 8408, 2023 (October 2023) online: [Summary Report \(02518163.DOCX;1\)](#) ("Summary Report").

21. Section 105 of British Columbia's *Community Charter* provides as follows:

Restrictions on accepting gifts

105(1) A council member must not, directly or indirectly, accept a fee, gift or personal benefit that is connected with the member's performance of the duties of office.

(2) Subsection (1) does not apply to

- (a) a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office,
- (b) compensation authorized by law, or
- (c) a lawful contribution made to a member who is a candidate for election to a local government.

(3) A person who contravenes this section is disqualified from holding office as described in section 108.1 [disqualification for contravening conflict rules] unless the contravention was done inadvertently or because of an error in judgment made in good faith.

22. The above statutory requirements were incorporated into New Westminster's code of conduct.

23. The Ethics Commissioner determined that "the travel, meals, lodging, and conference attendance were plainly connected with the Respondent's [i.e. mayor's] performance of his duties of office. The Respondent was invited to attend, and did attend, in his capacity as Mayor of the City." That led to her determination that the travel, meals, lodging and conference attendance constituted a gift or personal benefit to the mayor.

24. The Ethics Commissioner wrote as follows in her Summary Report:

Through the gifted travel, the Respondent was able to attend a prestigious conference, visit Dubai, and receive free meals and lodging throughout. I also note that the Respondent has written extensively about his attendance at the conference on his personal blog.

Although the conference may have provided benefit to the City, the publication of this information on a personal blog also has the potential to personally benefit the Respondent as increasing his stature within the climate action community.

The fact that COP28 may have been attended by other Canadian politicians does not negate the character of the trip as gift or personal benefit. While the trip may have been beneficial to both the Respondent and the City, that does not mean it is exempt from the definition of a gift or personal benefit under the *Community Charter*. Similarly, the fact that the funds were received from an organization that has views that are aligned with the City's goals in reducing global emissions does not change the character of the gift.⁷

⁷ Summary Report, at paras. 19-21.

25. The Ethics Commissioner also determined that the gift or personal benefit received could *not* be viewed as an incident or protocol of social obligation that would normally accompany the responsibilities of office. She determined that the mayor was not to be disqualified from office (the penalty under the statute) because he acted in good faith, informed people at New Westminster, did not attempt to hide his acceptance of the benefit and posted publicly about the trip.
26. The Ethics Commissioner determined that the mayor “was motivated in his acceptance of the gift to further the City’s goals relating to climate action.” The Ethics Commissioner also noted that the mayor had received initial advice that the trip was not a gift or personal benefit but that the advice was changed and he was advised to file a disclosure statement (which he immediately did).

IV OUR ADVICE

27. While the law in Ontario is different from British Columbia we indicated that there is ultimately no material difference that would lead to a different result in this particular instance.
28. There is no statutory requirement in the *Municipal Act, 2001* that is similar to section 105 of the British Columbia *Community Charter*. However, O. Reg. 55/18⁸ prescribes four mandatory subject matters that must be included in an Ontario municipality’s code of conduct. The first required matter that must be included is:
 1. Gifts, benefits and hospitality.
29. The City’s [Code of Conduct for Council and Local Boards](#) contains provisions related to gifts and benefits in Section 5 (see full text in Appendix A).
30. Section 5 sets out a general absolute prohibition that precludes a member of Council from accepting any fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of their duties of office, unless permitted by the exceptions that are listed in Section 5.
31. We reviewed the express closed list of exceptions, and determined that none of them would apply to the travel, accommodation, meals and other personal benefits that are funded by GCoM (including the exceptions noted in Sections 5 f) and g) of the Code).
32. We accepted the reasoning and the analysis set out in the Ethic Commissioner’s Summary Report respecting gifts and personal benefits to the mayor of New Westminster.
33. Accordingly, it is our opinion that the same logic and ultimate determinations would apply in the situation of the Mayor’s receipt of the personal benefits from GCoM to attend the upcoming U20 Summit in Brazil. We did not and will not repeat the analysis in our assessment.
34. The fact that the Mayor is a North American Director of GCoM (unlike the mayor in New Westminster) does not, in our opinion, alter the assessment, analysis or the determination of the matter related to gifts and benefits under the Code.

⁸ O. Reg. 55/18 – *Codes of Conduct - Prescribed Subject Matters*.

35. Like the mayor in New Westminster, the Mayor's connection to GCoM and his directorship on the North American Board of Directors of GCoM are inextricably linked to his office as the Mayor of the City of Guelph.
36. We considered the Mayor's membership or affiliation with GCoM as relating to the indirect performance of his duties of office as Mayor of the City.
37. In conclusion, it is our opinion that the Mayor was not entitled to accept payment or free arrangements for travel, accommodation and meals related to GCoM meetings in accordance with Section 5 of the Code.
38. We are also of the view, similar to the ultimate conclusions of the Ethics Commissioner in New Westminster that the Mayor acted in good faith and that his acceptance of the travel, accommodation, meals and conference expense payments were to further the City's own initiatives with respect to climate change. We believe that the Mayor did so inadvertently not considering that the largesse provided by GCoM would be a personal benefit to him and contrary to the Code.
39. We noted that despite this conclusion, we appreciate that the Mayor's role on the North American Board of Directors on GCoM and his attendances at GCoM conferences were and would continue to be beneficial to the City. Accordingly, we recommended to the Mayor there were at least two ways in which he could continue his role with GCoM and also attend future conferences. We recommended to the Mayor that he could seek:
 - specific approval and authorization from Council by way of:
 - an override of the prohibition in the Code (if funding is to come from GCoM), or
 - the payment of expenses related to travels, accommodation and meals from the City; or
 - an amendment to the Code to incorporate either a specific exception for his role in GCoM or a general exception for all members to be able to accept similar arrangements with other organizations which provide a meaningful benefit to the City.
40. We also commend the public disclosure of his role with GCoM and his past attendances at GCoM summits, conferences and events.⁹ We understand that the Mayor disclosed his previous attendances to senior administrative staff at the City on November 12, 2024, and that he cancelled his scheduled trip to Brazil.

V FORM OF REPORTING

41. Since providing our written advice to the Mayor, we have been made aware of a complaint that has been filed against him for contravening Section 5 of the Code in respect of his acceptance of the gifts and benefits from GCoM. We communicated with the complainant and indicated that we had been made aware of the issue prior to the filing of the complaint and that we would be preparing a report to Council.

⁹ Like the mayor in New Westminster, the Mayor had never maintained his affiliation with GCoM in secret and had posted about his attendances at GCoM events on social media.

42. Accordingly, we will not be formally conducting an investigation into the filed complaint but are reporting to Council pursuant to Section 5 - 3 of Appendix 1 – Integrity Commissioner Complaint Protocol of the Code.
43. We note that this is also authorized by the Code in Section 4 - 6 of Appendix 1 – Integrity Commissioner Complaint Protocol which provides:
 6. If the Integrity Commissioner is of the opinion that a complaint is frivolous, vexatious, not made in good faith or that there are insufficient grounds for an enquiry, the Integrity Commissioner shall not prepare a preliminary report to Council and shall not conduct an enquiry. The Integrity Commissioner shall advise the complainant in writing of the decision and reasons for not undertaking an investigation. (emphasis added)
44. As a courtesy, we provided a copy of a draft of this Report to the Mayor on November 18, 2024. He responded on November 19, 2024 and he accepted the Report and would not request any revisions. In our opinion, there is no need to conduct a separate inquiry or investigation into this matter.

VI CONCLUSIONS

45. We have determined that the Mayor was in contravention of Section 5 of the Code with respect to his acceptance of gifts or benefits from GCoM.
46. For the reasons noted above, we are of the opinion that the Mayor acted inadvertently. The Mayor came forward to seek advice from us as Integrity Commissioner upon discovering the report from the Ethics Commissioner in New Westminster. We believe that he was full and frank of his disclosure of the matter and in responding to all of our initial questions.
47. Moreover, the Mayor has taken the remedial steps we recommended to him: he has disclosed his association with GCoM to senior management at the City and has cancelled his planned trip and attendance at the GCoM-sponsored conference in Brazil.
48. Based on the foregoing, we do not make any recommendations as to penalty.
49. The whole of Council has received training on the Code this term and, accordingly, we are not recommending any additional educational session either for the Mayor or for Council but we hope that this Report may serve as a learning tool with respect to the obligations of members of Council respecting gifts and benefits under the Code.

Respectfully submitted,

AIRD BERLIS LLP



John Mascarin

Integrity for The Corporation of the City of Guelph

Dated this 19th day of November, 2024

APPENDIX A

CODE OF CONDUCT

5. Gifts and Benefits

No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of their duties of office, unless permitted by the exceptions listed below. For these purposes, a fee, advance, gift, or personal benefit provided with the member's knowledge to a member's spouse, child or parent, or to a member's staff that is connected directly or indirectly to the performance of the member's duties, is deemed to be a gift to that member.

The following are recognized as exceptions:

- a) compensation authorized by by-law;
- b) such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
- c) a political contribution otherwise reported by law;
- d) services provided without compensation by persons volunteering their time;
- e) a suitable memento of a function honouring the member;
- f) food, lodging, transportation and entertainment provided by provincial, regional or local governments, or political subdivisions of them, by the federal government or a foreign country;
- g) food and beverages consumed at banquets, receptions or similar events, if:
 - i) attendance serves a legitimate business purpose;
 - ii) the person extending the invitation or a representative of the organization is in attendance; and
 - iii) the value is reasonable and attendance at events sponsored by the same entity is infrequent;
- h) communication to the offices of a member, including subscriptions to newspapers and periodicals.

In the case of categories (b), (e), (f), (g) and (h), if the value of the gift or benefit exceeds \$300, or if the total value received from any one source during the course of a calendar year exceeds \$300, the member shall within 30 days of receipt of the gift or reaching the annual limit, file a disclosure statement with the City Clerk.

The disclosure statement must indicate:

- a) the nature of the gift or benefit;
- b) its source and date of receipt;
- c) the circumstances under which it was given or received;
- d) its estimated value;
- e) what the recipient intends to do with the gift; and
- f) whether any gift will at any point be left with the City.

Any disclosure statements will be a matter of public record.

Except in the case of category (f), a member may not accept a gift or benefit worth in excess of \$500 or gifts or benefits from one source during a calendar year worth in excess of \$500. No member shall seek or obtain by reason of their office any personal privilege or advantage with respect to City services not otherwise available to the general public and not consequent to their official duties.