

DATE: MARCH 6, 2024

**RE: CITY OF SASKATOON CODE OF ETHICAL CONDUCT FOR MEMBERS OF CITY COUNCIL BYLAW, 2019
INTEGRITY COMMISSIONER INVESTIGATION REPORT
CODE OF ETHICS COMPLAINT STN 2303**

I. SUMMARY OF COMPLAINT AND ISSUES

1. I received a complaint from a member of the public (the “Complainant”) on December 11, 2023, alleging that Councillor Kirton (the “Respondent”) contravened the City of Saskatoon (the “City”) Code of Ethical Conduct for Members of Council, 2019 Bylaw (“Code”), specifically, section 10 of the Code (Respect).
2. This report describes the investigation and conclusions on whether or not the Respondent was in contravention of the Code as a result of a telephone conversation with the Complainant on December 8, 2023.

II. FACTS

3. The Complainant is a resident of Ward 3 in the City of Saskatoon.
4. Councillor Kirton is a member of City Council, representing Ward 3 in Saskatoon.
5. The name of John A. Macdonald Road in Saskatoon was changed to Miyo-wâhkôhtowin Road, authorized by a decision of City Council.
6. On December 7, 2023 the Complainant left a voicemail for the Respondent, expressing significant concern with the name change, demanding that it be changed back to John A. Macdonald Road and asking for a call back from the Respondent. I listened to the voicemail left by the Complainant and I would characterize his tone and language as agitated and confrontational.
7. On December 8, 2023, the Respondent returned the Complainant’s call. Although the parties differ in their recollection of what was said during the phone conversation, they both agree that the conversation became heated at some point and voices were raised.
8. The Complainant was upset about the change to the name of the street because he cannot pronounce the new Cree name. He is of the opinion that if a name change was needed, it should be something that can be more readily pronounced.
9. Councillor Kirton explained to the Complainant, the rationale behind the name change, that the name change was not an attempt to erase the importance of Sir John A. Macdonald from history, but to avoid putting him up on a pedestal by having a street named after him. The term ‘Miyo-

wâhkôhtowin' means 'good relations' and has a more peaceful impact on indigenous people than the name John A. Macdonald does. There was disagreement between the Complainant and Respondent on the importance of Sir John A. Macdonald.

10. When the Complainant described the difficulty he has pronouncing the Cree name, the Respondent urged the Complainant to keep trying.
11. At some point in the conversation the Complainant uttered the phrase 'get over it', which was the point that the conversation took a more combative turn. The Complainant and Respondent differ on the context for the use of the phrase 'get over it' and I will address that in the Analysis section.
12. The Respondent attempted to explain to the Complainant that the inter-generational trauma caused by residential schools is not something that one can get over. This part of the conversation was heated.
13. The Complainant claims that the Respondent swore at him during the conversation several times. The Respondent does not specifically recall using any profanity during the conversation.
14. The Complainant claims he told Councillor Kirton he was going to start a petition to have the name changed. The Respondent does not recall anything about a petition, but says the Complainant threatened a lawsuit against the City as a result of the name change. From the evidence gathered, I cannot tell which version of this fact is more credible, but as further explained in the Analysis section, I do not think this would materially impact the conclusion.
15. There was no audio recording of the phone call between the Complainant and Respondent. There were no witnesses that overheard both sides of the conversation.
16. The parties differ on some of the details of what was said during the phone conversation on December 8, 2023, but for the reasons stated below, I do not think it is necessary to come to a conclusion on each and every detail that occurred during the phone conversation.

III. PROCESS

17. I was appointed by Council as Integrity Commissioner for the City of Saskatoon under the Code, effective January 1, 2022.
18. The role of the Integrity Commissioner under the Code is to receive, assess and if appropriate, conduct investigations into allegations that a member of Council has violated the Code.
19. I received a complaint from a member of the public on December 11, 2023.
20. Section 88 of the Code requires me to conduct an initial complaint classification prior to deciding whether or not to investigate a complaint.

21. As a result of my review pursuant to section 88, I did not find any other process more appropriate to deal with this complaint and I concluded that the subject matter of the complaint was related to conduct that was regulated by the Code. As a result, I advised the Complainant that the complaint would be investigated.
22. As required by the Code, the Respondent was given an opportunity to respond in writing to the allegations under investigation from the Complaint and the Complainant was given an opportunity to reply in writing.
23. I interviewed the Complainant and the Respondent separately via Microsoft Teams.
24. I did seek an informal resolution to this complaint, unsuccessfully.

IV. ANALYSIS

Complainant position

25. The Complainant alleged that during the phone conversation on December 8, 2023, the Respondent yelled at him, swore at him several times, called him an idiot and ultimately hung up on him by slamming the phone down.
26. The Complainant claims he never got mad or yelled at the Respondent, but the Respondent was yelling at him, interrupting him and trying to talk over him.
27. The Respondent repeatedly told the Complainant to try harder to pronounce the name.
28. The Complainant alleges that the Respondent stated several times that his Dad was in a “*f***ing residential school*” and in response the Complainant says he apologized to the Respondent for that and did not say the natives should ‘*get over it*’, as the Respondent claims.
29. The Complainant explains that the Respondent stated that indigenous people should not experience fear when crossing the road named after John A. Macdonald. The Complainant did not understand how that could create fear for indigenous people. The Complainant did not see how that was relevant to the issue they were discussing. He claims he never said the natives should ‘*get over it*’, as the Respondent claims, but that he said it was a long time ago. John A. Macdonald was the first prime minister of Canada and is a part of the country’s history, which we can learn from rather than trying to erase it.
30. The Complainant claims the Respondent hung up on him without warning, which occurred after the Complainant said he was going to start a petition to have the name changed back and in response, the Respondent said ‘*good f***ing luck*’ and slammed the phone down.
31. The Complainant was adamant that he mentioned starting a petition to have the name of the road changed, but never once threatened a lawsuit against the City.

32. The Complainant says that the Respondent repeatedly interrupted the Complainant during the conversation and the Respondent's voice gradually got louder, as he tried to overpower what was being said by the Complainant.
33. The Complainant feels the conversation was unprofessional and not becoming of a City Councillor.

Respondent position

34. The Respondent does not recall swearing at the Complainant, but does admit that the conversation got heated at some point and that both parties were trying to talk over the other with raised voices.
35. The Respondent was adamant that he did not call the Complainant an idiot because it goes against his nature.
36. The Respondent claims that the Complainant threatened a lawsuit against the City, not a petition as suggested by the Complainant, at which point he felt it was inappropriate to continue the conversation, so he informed the Complainant he was going to end the call, and he hung up. The Respondent says he made the call from Microsoft Teams, so he could not slam the phone down, all he could do was disconnect the call.
37. During my interview with the Respondent, as we discussed the obligations under section 10 of the Code and as the Respondent reflected on his behaviour during the phone conversation, he admitted that he did not live up to the expectations put on a member of Council under section 10 of the Code. Specifically, he admits that he did not treat the Complainant with sufficient dignity, respect and courtesy, as required by section 10 of the Code.
38. The Respondent explains that a comment made by the Complainant to '*get over it*' was something that triggered him, causing him to react in a manner that was not typical of him. The Respondent took this comment by the Complainant to mean that the natives should '*get over it*' in reference to the impact of residential schools and the role Sir John A. Macdonald played in them.
39. The Respondent admits that he should have listened to the Complainant more. He was so focused on trying to get his point across, that it prevented him from listening more to the Complainant's concerns. He regrets not giving the Complainant more space to explain his concerns.
40. The Respondent believes that in returning the Complainant's call and giving him an opportunity to voice his concerns on this issue, he did respect the Complainant's rights as required by section 10(3)(a) of the Code.
41. The Respondent admits that he did not treat the Complainant with sufficient courtesy. He thinks both parties could have done a better job at the conversation, but he acknowledges that he is held to a higher standard as a City Councillor.

Analysis - Credibility and Fact Finding

42. There were two people who overheard the Complainant's side of the phone conversation with the Respondent. I did not find it necessary to speak to these two people, given the Respondent's admissions stated above and that it is the Respondent's conduct that is under review, not the Complainant's.
43. Since the recollection of the conversation differed between the Complainant and Respondent, I found it necessary to assess credibility of both parties. I find that the Complainant's recollection of specific facts in some instances is more credible than the Respondent's, with a few exceptions. The Respondent did not recall specific details like the date of the voicemail or the phone call. His responses to the profanity were somewhat inconsistent and he really did not recall whether or not he swore at the Complainant. The Complainant's recollection of events was consistent over all of the conversations I had with him and in his written responses.
44. However, I do not think the Respondent was intentionally evasive in his lack of recollection of specific details about the conversation. I think that his defensive reaction and anger during the phone conversation was perhaps the reason that he could not recall specific details of the conversation. He was focused on trying to get his point across and paid less attention to specific details of the conversation.
45. I do not think it is necessary to determine what context the 'get over it' comment may have been made or intended by the Complainant. Regardless of how it was meant, it was interpreted by the Respondent in a way that triggered a reaction from him that led to a more heated conversation. The Respondent was defending his point on why indigenous people should not have to 'get over it' and his frustration with the need to explain this to the Complainant led to a raised voice, often talking over the Complainant.
46. I have not made a finding of fact whether it was a petition or a lawsuit mentioned by the Complainant, as I do not think this would in any way impact my conclusions in the investigation.
47. I find the Respondent's evidence more credible than the Complainant in relation to calling the Complainant an idiot. The Complainant's recollection of this was not consistent, but the Respondent was very confident that he would not and did not go that far and I accept that from the Respondent.
48. I find that the Respondent likely did use profanity during the conversation. The Complainant was consistent with his recollection of the profanity, whereas the Respondent's recollection was uncertain. The Complainant's recollection of how the Respondent used the profanity was consistent with his level of anger at those points in the conversation.

Analysis – Section 10 (Respect)

49. Section 10(1) of the Code states as follows:

Members shall treat every person, including other members of Council, City staff, and the public, with dignity, understanding, and respect.

50. It is the treatment of another person that is the subject of section 10(1). Treatment of another person could include statements made by a member of Council, verbally or in writing; it could include the way the member of Council says something to another person; it could include gestures made by the member of Council. There are many different ways in which someone can ‘treat’ someone.
51. The treatment of another person does not include disagreement alone. It might be the way in which a member of Council disagrees with another person, but would not include disagreement without something more.
52. Following are some factors I consider when determining if the behaviour of a member of Council contravened section 10(1):
- i. Disagreement alone is not sufficient;
 - ii. Were the behaviour/comments made in private or public?
 - iii. Were the statements/behaviour directed at a specific person?
 - iv. Was the member of Council repeatedly interrupting the other person? Was there shouting?
 - v. Is the effect of the comments/behaviour to demean, belittle or devalue someone?
 - vi. Intent is relevant but not determinative – the effect/impact of the conduct will be given more weight;
53. I think it is fair to say that there was more than just a disagreement during the phone conversation between the Complainant and Respondent. The Respondent was interrupting and talking over the Complainant, which had the effect of devaluing the Complainant’s opinion. Even when the discussion of issues is passionate and even when the other person is saying something that is triggering, a member of Council has an ethical obligation under the Code to maintain dignity, understanding and respect. By his own admission, the Respondent did not live up to the obligations in section 10(1) of the Code. I would agree.
54. Section 10(2) of the Code states as follows:
- Members shall not engage in discrimination, bullying, harassment, nor use derogatory language towards others, in their roles as members of Council.*
55. There were no allegations or evidence to suggest that the Respondent’s behaviour was discriminatory, bullying or harassment, so I will focus my comments on the use of derogatory language.
56. Derogatory language requires words to be spoken or written. The Merriam-Webster dictionary defines ‘derogatory’ as: *expressive of a low opinion; disparaging; detracting from the character or standing of something*. The Oxford dictionary defines ‘derogatory’ as: *showing critical attitude and lack of respect for somebody; insulting*. The Cambridge dictionary defines ‘derogatory’ as: *showing strong disapproval and not showing respect; disparaging*.

57. I consider the following factors when determining whether or not comments of a member of Council qualify as ‘derogatory language’ in s. 10(2):
- a. Requires words to be spoken or written;
 - b. More than just critical comments, the comments must be insulting to someone’s character or offensive;
 - c. The comments must be directed to someone else, a person or persons;
 - d. The comments must be made in their role as a member of Council
58. As stated above, I have found that the Respondent used profanity in his conversation with the Complainant. Profanity certainly can be derogatory language. However, using the examples provided by the Complainant, I find that the profanity was not directed at the Complainant, it was used as part of the language used by the Respondent during the heated conversation. The profanity was not insulting to the Complainant’s character, it was used as expressive language, albeit in a somewhat confrontational matter, but it was not directed toward the Complainant.
59. Section 10(2) does not prohibit all derogatory language, but it does prohibit it from being directed towards others. The use of profanity during a conversation with a member of the public may be construed as unprofessional and Council members should exercise caution when doing so, but in this specific case, I do not find that the Respondent directed the derogatory language towards the Complainant and therefore in this specific instance, the use of derogatory language did not violate section 10(2) of the Code.
60. Section 10(3) of the Code states as follows:
- Members shall:*
- (a) respect the rights of other people and groups;*
 - (b) treat people with courtesy; and*
 - (c) recognize the importance of the different roles others play in local government decision-making.*
61. I considered the following factors when looking at potential violations of section 10(3):
- a. Does the member’s conduct suggest that other people’s rights are unimportant or less important?
 - b. Is the effect of the member’s conduct to belittle, demean or devalue other people/groups or the rights of other people/groups?
 - c. Is the member repeatedly interrupting someone else or not allowing them adequate time to express their point of view?
 - d. Does the member’s conduct suggest that someone else’s role in local government decision making is less important, unimportant or trivial?
 - e. Is the effect of the member’s conduct to belittle, demean or devalue the roles of someone else in local government decision-making?
62. Treating people with ‘courtesy’ in section 10(3)(b) relates to the ‘treatment’ of another person. It requires conduct directed at a person or persons. This obligation is very similar to respect.

63. The Merriam Webster dictionary meaning of ‘courtesy’ is: *behavior marked by polished manners or respect for others (courteous conduct); consideration, cooperation and generosity in providing something*; the Cambridge dictionary meaning of ‘courtesy’ is: *polite behaviour or a polite action or remark*; the Britannica Dictionary meaning of ‘courtesy’ is: *polite behaviour that shows respect for other people; something you do that is polite or kind*; the Oxford dictionary meaning of ‘courtesy’ is: *polite behaviour that shows respect for other people*.
64. Recognizing the importance of the different roles others play in local government decision making does not speak to disagreement of decisions made by others in local government decision making. It speaks to not demeaning or devaluing other roles in the decision-making process. It suggests some level of deference is required – not to agree on decisions, but to respect the role of someone else in the decision-making process, even and especially when you disagree with them.
65. I do not think the Respondent’s conduct belittled, demeaned or devalued the Complainant, but what stands out to me is that the Respondent admits that he focused more on getting his point across rather than listening to the Complainant’s point of view. The Respondent admits to talking over the Complainant. The behaviour of the Respondent was not polite. Members of the public inform the decision-making of Council and this is an important role in the decision-making process.
66. By prioritizing his own opinion over listening to the Complainant, raising his voice and talking over the Complainant, the Respondent did not treat the Complainant with courtesy, did not respect the Complainant’s right to express his opinion about a decision of Council and did not recognize the importance members of the public play in local decision-making, in violation of section 10(3)(a), (b) and (c) of the Code.

V. CONCLUSION

67. For the reasons stated above, I find that Councillor Kirton contravened sections 10(1) and 10(3) of the Code.

VI. RECOMMENDATION ON SANCTIONS

68. Section 91(2) requires the Integrity Commissioner to recommend censure, sanctions or corrective actions to Council, where a complaint is found to be substantiated. Ultimately, the decision for censure, sanctions or corrective action lies with Council.
69. Any recommended censure, sanctions or correct actions must be permitted in law and is to be designed to ensure that the inappropriate conduct does not continue (section 91(5)).
70. During my interview with Councillor Kirton, he expressed regret for his part in the heated conversation with the Complainant and he expressed a desire to apologize to the Complainant directly. Councillor Kirton did in fact deliver a written apology to me, which I then passed onto the Complainant. This apology was not something required of Councillor Kirton as a result of sanctions under the Code, but was a gesture precipitated entirely upon Councillor Kirton’s own volition.

71. I found Councillor Kirton to be genuinely remorseful for his conduct. He is cognizant of his ethical obligations under the Code, particularly that he, as a member of Council, is held to a higher ethical standard than the average person. It takes integrity and courage for someone to admit their mistakes, particularly when knowing the mistake will be publicly exposed.
72. I believe that the investigation and reporting process under the Code is a sufficient deterrent to prevent similar behaviour from Councillor Kirton in the future and therefore recommend no sanctions be imposed upon him.
73. All of which is respectfully submitted.

**ANGELA KRUK
INTEGRITY COMMISSIONER
CITY OF SASKATOON**