

LIDSTONE & COMPANY
BARRISTERS AND SOLICITORS

**CITY OF VICTORIA CODE OF CONDUCT BYLAW
INVESTIGATION REPORT 2024-01**

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Introduction

This investigation report considers a complaint (the “**Complaint**”) submitted by Mayor Marianne Alto (the “**Complainant**”) pursuant to section 13(1) of the City of Victoria’s [Code of Conduct Bylaw](#) (the “**Bylaw**”).

The Complaint alleges that Councillor Susan Kim (“**Councillor Kim**”) breached the Bylaw by signing a letter titled, “Stand with Palestine: Call on Political Leaders to End Their Complicity in Genocide” (the “**Letter**”) and by “liking” a post on the social media platform “X” (formerly Twitter), dated October 7, 2023 (the “**Tweet**”). The Complaint alleges, in part, that Councillor Kim’s conduct discriminated against Jewish members of the community and that she failed to treat City residents with respect.

This report has been prepared pursuant to section 19 of the Bylaw following a formal investigation of the Complaint. This report summarizes the investigation process, the Complaint, the evidence and submissions from Councillor Kim, and my analysis under the Bylaw. I have found there was a breach of section 5(2) of the Bylaw. I have also found the breach was inadvertent and I do not recommend any sanction under the Bylaw.

The report has been distributed in accordance with section 19(4) of the Bylaw.

Investigation Process

On December 5, 2023, I was appointed by the Mayor as an *ad hoc* investigator pursuant to section 11 of the Bylaw.

On December 12, 2023, I received the Complaint from the City Clerk. The Complaint was submitted by the Mayor but written by a City resident (the “**Resident**”). The Mayor advised the City Clerk that, in her capacity as Mayor, she was the Complainant and was initiating the Complaint based on the information provided to her by the Resident. Upon my review of the Complaint, I determined that the allegations, if true, could constitute a breach of the Bylaw.

On December 20, 2023, I provided a copy of the Complaint to Councillor Kim and requested that she provide a written response to the allegations. On January 22, 2024, I received a response from Councillor Kim through her legal counsel. On February 9, 2023, I interviewed Councillor Kim with her legal counsel present.

I canvassed the possibility of informal resolution with both parties, as required by s. 17(1) of the Bylaw. On March 9, 2024, the Complainant advised she would prefer to have the Complaint resolved formally. On March 11, 2024, I confirmed with the parties that I would proceed with the formal resolution process.

On May 6, 2024, I received additional factual information I had previously requested from Councillor Kim as well as an additional written submission.

On May 10, 2024, I served Councillor Kim’s written submissions on the Complainant and offered her the opportunity to reply. The Complainant opted not to provide a written reply.

I had additional correspondence with the Complainant and Councillor Kim throughout the investigation to answer questions and seek clarification regarding relevant matters. While I have considered all of the submissions made, I have only referred to those I considered necessary to make my findings under the Bylaw.

Procedural Objection

On May 6, 2024, Councillor Kim raised a procedural objection and submitted the Complaint ought to be dismissed outright. She pointed to s. 13(1) of the Bylaw, which only permits complaints to be submitted by Council members, committee members and employees. Councillor Kim submitted that the use of the Bylaw's complaint processes to forward complaints of constituents is not the intention of the Bylaw. She also pointed to s. 13(2)(e) of the Bylaw, which stipulates that a complaint must describe in sufficient detail the part or the parts of the Bylaw "that the *complainant* alleges has or have been breached" (emphasis added). Councillor Kim submitted the Complainant did not follow the correct process because she stated that Councillor Kim's alleged breaches of the Bylaw were "in the attached document", which referred to the Resident's letter. She says the Complainant ought to have identified conduct she personally found to be in violation of the Bylaw.

I do not agree that the Complaint should be dismissed on the grounds identified by Councillor Kim. The Bylaw does not preclude a council member from submitting a complaint written by a member of the public if the member considers there may have been a breach of the Bylaw. The member must be willing to act as complainant under the Bylaw and the complaint must still move through a screening process. If the investigator determined the complaint was frivolous, vexatious or not made in good faith, they could reject the complaint pursuant to s. 14(2) of the Bylaw. There is no basis for me to conclude this Complaint was not submitted in good faith. I also consider the Complaint to contain sufficient detail under s. 13(2) to enable it to be adjudicated under the Bylaw.

Summary of the Complaint and the Evidence

Councillor Kim admits she signed the Letter and liked the Tweet.

Below I have summarized the other evidence obtained during my investigation that is relevant to my findings and recommendations. In accordance with Section 15(3), this Report discloses only those facts that I consider necessary for the purposes of meeting my obligations as an investigator under the Bylaw. There were no issues of credibility in this investigation.

(a) The Letter

The Letter is addressed to Members of Parliament. It urges them "to end their complicity in the ongoing massacres and genocide in Gaza, Occupied Palestine". The Letter states that Canadian political parties "dehumanize Palestinians, facilitating Israeli-led genocide against them". It makes specific allegations against leaders, including that Jagmeet Singh "repeated the unverified accusation that Palestinians were guilty of sexual violence..." The Letter urges political leaders to demand an immediate ceasefire and to "call on Israel to free all Palestinian prisoners, lift its siege on Gaza, and end its illegal occupation". A copy of the Letter is

contained at Appendix “A” to this Report. The names of the signatories have not been included, other than the two that appeared under the heading “Politicians”.

The Complaint alleges the following:

That the letter contained offensive, false, misleading information, encouraged or incited antisemitism putting Jews, including the Victoria Jewish community at risk; cast doubt on well-documented crimes by Hamas on October 7, vicious sexual assaults, and disparaged Canada by saying, “so-called Canada settler-colonial country”.

The Complaint highlights specific phrases in the Letter that are alleged to be offensive, which include the Letter’s reference to Israeli occupation as “terrorist” and to “Israeli-led genocide” against Palestinians. A copy of the Complaint is contained at Appendix “B”. The name and signature of the Resident have been redacted.

Councillor Kim signed the Letter in late October or early November 2023. She did not co-author the Letter. The Letter was circulated using Google Forms. It provided the option to sign as an organization or as an individual. Councillor Kim signed the Letter as an individual. The text boxes for individuals to fill out stated as follows:

Your Name (if signing as an individual), Position (if applicable)

Your answer

If signing as an individual, would you like for your name to be publicly displayed?

- Yes, I consent to having my name publicly posted on the petition
- No, I would prefer to keep my support for the above demand private.

She signed the letter as “Susan Kim, City Councillor”. She checked “Yes” to consent to having her name publicly displayed on the petition. At the time she signed the Letter, Councillor Kim said there were already hundreds of signatories whose names and positions were listed on the Google Form. The names were not organized under any headings.

Councillor Kim does have another occupation in addition to holding elected office. She said it did not occur to her to include her other position as the Letter had been sent to her by an acquaintance in a political sphere. Councillor Kim also said many signatories had put their titles down to show their engagement in civil society. She included her title because she wanted to show the way in which she, too, was a part of civil society. She purposely omitted reference to the City of Victoria to avoid a specific connection to her role there. Councillor Kim said she had considered that including “City Councillor” might still enable her to be identified as a City of Victoria councillor. However, because she was one of hundreds of signatories, she anticipated her name would be lost in the list of names.

On November 17, 2023, the Daily Mail published an article about the Letter online which included an allegation that Councillor Kim had written the Letter with another politician.¹

¹<https://www.dailymail.co.uk/news/article-12763853/sarah-jama-susan-kim-university-alberta-hamas-rape.html>

Councillor Kim searched online for a copy of the Letter. She saw that her name appeared second on the list of signatories under the heading, “Politicians”. A reference to “Victoria, BC” had been added beside her name and title. Councillor Kim also noted that the word “councillor” was spelled with only one “L”. She spells the word with two “L’s”. Councillor Kim concluded that someone had pulled her name out of the list of signatories, moved it to a “Politicians” category, altered the spelling of “councillor” and added the reference to “Victoria, BC”. These steps were taken without Councillor Kim’s knowledge.

On November 20, 2023, Councillor Kim posted a statement on her Instagram account addressing the Letter. The statement was reported on by several news outlets.² Councillor Kim also reached out to a local Rabbi and met with the Rabbi at City Hall. She subsequently prepared a draft apology and met with the Rabbi a second time. Councillor Kim said the Rabbi helped her to realize the ways in which her draft apology continued to be insufficient. She said she realized there was some real hurt and that she had to remove her name from the Letter and re-write her apology. After her second meeting with the Rabbi, Councillor Kim requested that her name be removed from the Letter.

On November 22, 2023, Councillor Kim published an apology for signing the Letter on her Instagram account and sent the apology to her media contact list. The apology is contained at Appendix “C” to the Report.

(b) The Tweet

The Tweet was posted on October 7, 2023 by an organization called Nodutdol. Councillor Kim advised that Nodutdol is a non-profit organization representing diasporic Koreans. The Tweet states:

The Palestinian people are waging a war for liberation – and nothing less.

Power to every Palestinian fighting for their freedom, and glory to every martyr who dies fighting. For every martyr that falls, a new one will rise.

@palyouthmvt @WOLPalestine

The Tweet contains an image of four individuals, two of whom are waving flags; one is a Palestinian flag; the other is a flag which appears to show the lands of North and South Korea. A screenshot of the Tweet is contained at Appendix “D” to the Report.

Councillor Kim liked the Tweet from her public X account. She did not take any other action regarding the Tweet, such as re-tweeting it. The identifying information on Councillor Kim’s X profile page was her photo, her full name, and the title, “City Councillor.” Under location, the account stated “læk^werjən Territories”. Her handle was “@susankimyyj”.

Councillor Kim stated she used her X account in a personal capacity, which she believed would have been clear to anyone reading through her posts, because she did not discuss City matters

² See, for example: <https://www.timescolonist.com/local-news/victoria-councillor-will-not-resign-over-letter-about-israel-hamas-war-7860370>; <https://globalnews.ca/news/10104049/victoria-councillor-hamas-resign/>

or foster discussion about City work on her X account. One of the reasons she used the term “City Councillor” on her X profile was because, the few times she did engage in tweeting, she wanted her tweets to show the position she had. She referred to being able to give some weight to the issues she thought were important.

Councillor Kim does not remember the exact date she liked the Tweet, but thinks it was in early November while she was in Korea. During her trip to Korea, she was immersed in learning about the history of oppression and military occupation on the Korean peninsula.

Councillor Kim said she did not notice the date of the Tweet when she liked it. She only realized the date during the investigation. She said if the Tweet was only viewed in the context of what happened on October 7th, she could appreciate why it would be seen as disrespectful and she felt apologetic about that. When she liked the Tweet several weeks later, she stated she did so with the intention of showing support for the people of Palestine who were being bombed, invaded and occupied. She also submitted the Tweet represents the stance or opinion of Nodutdol and she liked the fact that her diasporic community of Korean Americans was expressing solidarity for the people of Palestine.

Councillor Kim deactivated her X account on or shortly after November 19, 2023.

Councillor Kim stated she did not receive any social media training from the City. She said if she had been given direction about using a disclaimer on her X account, such as saying “Views are my own”, she would have taken it seriously given she was a new councillor.

(c) The Alleged Breaches

The Complaint alleges that Councillor Kim’s conduct in signing the Letter and liking the Tweet is a breach of sections 3(4), 4(a) through (c) and 5(4)(c) of the Bylaw.

The Complaint alleges, in part, the following:

- signing the Letter and liking the Tweet “simultaneous to the massacre, butchery, mass sexual assaults, and hostage taking is a glorification of terrorism, criminal activity and murder”;
- by signing the Letter and liking the Tweet, Councillor Kim has effectively and knowingly agreed to the offensive content, which has harmed the reputation, relations and functioning of the City;
- signing the letter discriminated against Jewish members of the community; and
- Councillor Kim failed to treat all of the City’s residents with respect.

Summary of Councillor Kim’s Submissions

(1) Bylaw is inapplicable by virtue of section 3(4)

Councillor Kim submits her conduct relates to her personal life and the Bylaw is therefore inapplicable. She submits her communications had no bearing on the work of City Council and that she was communicating as a private citizen. If use of the title “City Councillor” was

sufficient to bring her personal communications within the scope of the Bylaw, this should be clearer in the Bylaw, or Council should have received training on the Bylaw.

(2) Communications are *Charter*-protected expression

If the Bylaw is held to apply to her conduct, Councillor Kim submits that ss. 4(a) through (c) and s. 5(4)(c) of the Bylaw are of no force or effect to the extent they infringe her right to freedom of expression under section 2(b) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), in a manner not saved by Section 1. Councillor Kim submits it would be unconscionable in a democracy to discipline an elected official for expressing views that may be considered controversial on a matter of international affairs unrelated to the exercise of their elected duties.

Councillor Kim submits her communications are nowhere near the threshold for hate speech under s. 319 of the *Criminal Code* and states she strongly and unequivocally condemns all forms of hate speech, including antisemitic speech. She rejects the characterization of criticism of Israel or Israeli military operations as antisemitic speech. She relies on the plain and ordinary definition of antisemitism found in the Oxford English Dictionary, arguing there is nothing in the Tweet or Letter that can be properly characterized as antisemitic. She submits that a wide diversity of views exist with respect to the Israel-Palestine conflict and the Gaza War, as exemplified in the case being litigated between South Africa and Israel before the International Court of Justice. A similar diversity of views is reflected in the local community. While some members of the community may disagree with her opinion, that does not remove it from the scope of protection under s. 2(b).

(3) Communications do not breach section 5(2) of the Code

Councillor Kim submits she intended and attempted to maintain a distinction between her work as a Council member and her personal political statements, as required by s. 5(2). She did not identify herself as a City of Victoria Council member; nor did she express that she was speaking on behalf of Council. She points out her name was altered after she signed the Letter without her knowledge. She also submits it was clear she used her X account in a personal capacity.

(4) Communications do not breach section 5(4)(c) of the Bylaw

Councillor Kim submits her communications do not constitute a breach of s. 5(4)(c). Her submissions include the following:

- evaluating respectfulness in political speech is too value-loaded to be a workable basis for censure under the Bylaw, especially in instances where the allegedly impacted groups are not named in the communications;
- the communications cannot just be evaluated in the context of what occurred on October 7th, but must be considered in the broader context of the Israeli-Palestinian conflict which has been ongoing in its modern iteration since at least the 1950s and includes the Israeli occupation of Palestinian lands, the refusal of several states to

recognize the existence of the Palestinian state, and the deaths of tens of thousands of Palestinians, both prior to and after October 2023;

- within the broader context, the Tweet shows support for a nation’s struggle for self-determination, which is legitimate political speech;
- supporting one group in an armed conflict that has involved the widespread death of civilians on both sides does not rise to the level of glorifying civilian casualties; nor should it constitute disrespect towards the other group alleged to be impacted.

Issues and Analysis

The issues to be addressed are as follows:

1. Does the Bylaw apply to Councillor Kim’s conduct?
2. Does Councillor Kim’s conduct breach section 4 of the Bylaw?
3. Does Councillor Kim’s conduct breach section 5(2) of the Bylaw?
4. Does Councillor Kim’s conduct breach section 5(4)(c) of the Bylaw?

The standard to find a breach of the Bylaw is a balance of probabilities. Below I have considered the evidence and the written submissions and have set out my analysis of the relevant provisions of the Bylaw.

1. Does the Bylaw apply to Councillor Kim’s conduct?

Section 3(1) states that the Bylaw applies to “members”. However, s. 3(4) states:

This Bylaw does not apply to a member’s conduct in their personal life, except to the extent that such conduct reasonably undermines, or has the potential to reasonably undermine, public confidence in City governance.

Councillor Kim signed the Letter and liked the Tweet on her personal time and on platforms not controlled by the City. The content of her communications is also unrelated to City business. However, I have determined that by using the title “City Councillor” in communications that she knew were public or could be made public, Councillor Kim’s communications fell outside of the realm of her “personal life”, as that term is used in section 3(4).

Identifying oneself as a “City Councillor” is not simply a generic reference to an occupation. “City Councillor” is the name of a public office, which is a trust conferred by public authority for public purposes.³ If a Council member issues public communications and uses the title of their public office, they are identifying an affiliation with that office, even if they may be expressing their personal views. Councillor Kim did acknowledge that using the title “City Councillor” might give some weight and visibility to her communications.

Councillor Kim was also easily connected with her specific role as a Councillor for the City in both communications. Her X profile provided a clear connection to Victoria by listing her location as “ləkʷəŋən Territories” and having the letters “yyj” in her handle. She was also easily

³ *Re Moll and Fisher* (1979), 96 D.L.R.(3) 506 (Ont.Div.Ct.)

linked to the City when she signed the Letter with only her name and the title “City Councillor”, which is made clear by the fact that a third party added and published the words “Victoria, BC” without Councillor Kim’s knowledge.

Overall, Councillor Kim’s communications provided a sufficient connection to her office as a City of Victoria council member to bring her communications within the scope of the Bylaw.⁴ Whether Councillor Kim fully understood the implications of using the title “City Councillor” is a matter to be addressed pursuant to s. 19(4)(b) of the Bylaw; it is not a factor that exempts her conduct from the scope of the Bylaw altogether.

Given my finding that Councillor Kim was not acting in her personal life, I do not need to decide whether the Bylaw is applicable on the basis that her conduct undermined public confidence in City governance. For clarity, however, I note that s. 3(4) addresses the scope of the Bylaw. It is not a regulatory provision that is capable of being breached.

2. Did Councillor Kim breach section 4 of the Bylaw?

The Complaint alleges that Councillor Kim failed to uphold the standards and values set out in sections 4(a) through (c) of the Bylaw, which state as follows:

General Principles

4 *A member must uphold the following standards and values:*

(a) integrity: a member must be honest, demonstrate strong ethical principles, act fairly, and respect their duty to maintain confidentiality and privacy when it arises;

(b) accountability: a member must be accountable for their decisions and actions, competent and diligent, and act in the best interests of the City as a whole, without regard to the member’s personal interests;

(c) respect: a member must treat members of the public, other members, committee members, and employees respectfully, without abuse, bullying or intimidation and ensure that the work environment is free from discrimination and harassment; ...

Integrity Commissioners in other jurisdictions have concluded that statements of principle are important aids to interpreting the other sections of a code of conduct, but they cannot, on their own, give rise to a breach. In *Newman v. Brown*, 2021 ONMIC 11, Integrity Commissioner Giorno explained that a key reason why statements of principle cannot be breached is because it would lead to uncertain results. The language in statements of principle tends to be broad, which means that outcomes would be “subjective, unpredictable, and quite possibly, inconsistent” (at para. 56). He also noted that because Council members can be subject to

⁴ A similar conclusion was reached in *Ayotte v. Therrien*, 2022 ONMIC 10, wherein the Mayor of Peterborough engaged in personal use of social media about topics unrelated to City business. She identified herself on Twitter and Instagram as Peterborough’s Mayor and her Twitter header image was the City’s logo. The Integrity Commissioner found her social media activity fell within the scope of the Bylaw given the sufficient connection to the office of Council member.

sanctions if they breach the rules in a Bylaw, the rules must be clear, certain and unambiguous (at para. 57).

The decisions of Integrity Commissioners in other jurisdictions are not binding on me, but I consider them instructive, particularly in interpreting similar provisions in the City's Bylaw. I share the concerns about interpreting the subjective language in statements of principle in a predictable manner. Section 4 may be an aid to interpreting other provisions in the Bylaw; it may also be the case that a breach of another provision of the Bylaw will demonstrate a member has not upheld certain standards and values. However, I decline to interpret section 4 as a regulatory provision that is capable of being breached.

3. Did Councillor Kim breach section 5(2) of the Bylaw?

In my initial letter to Councillor Kim, I advised her I would be considering whether she breached s. 5(2) of the Bylaw. I consider it reasonable for the investigator to identify sections of the Bylaw that may have been breached based on the information presented in a complaint, even if a complainant has not identified the same sections.⁵

Section 5(2) states:

A member has an obligation to be clear that any statement or communication made is the member's own view, unless the statement or communication is authorized pursuant to subsection (1).

Section 5(1) states:

A member must not communicate on behalf of the City unless authorized to do so by Council resolution or by virtue of a position or role the member has been authorized to undertake by Council.

Councillor Kim's communications, which I have determined are subject to the Bylaw, were not authorized by Council pursuant to s. 5(1). Therefore, she was subject to s. 5(2). Section 5(2) imposes a positive obligation on members which is distinct from the prohibition set out in s. 5(1). Section 5(2) is not limited to communications about City business but applies to "any" statement or communication made by a member, other than those authorized under s. 5(1).

There is a sound policy rationale for ss. 5(1) and 5(2). A municipal council acts as a collective, through bylaws or resolutions adopted by a majority. No individual member has the authority to bind the municipality or act on its behalf.⁶ However, each individual member is a representative of the Council. If a member communicates using their platform as a member, their communications may reasonably be associated with Council or the City as a whole. Council therefore has a legitimate interest in ensuring a member's personal views are clearly communicated as being the member's own.

⁵ The same finding was made by the City of Edmonton's Integrity Commissioner in Investigation Report 2001, dated July 19, 2020, at p. 5 ([Investigation Report 2001](#))

⁶ See ss. 114(3) 122 of the *Community Charter*, SBC 2003, c. 26. See, also, *Murray Purcha & Son Ltd. v. Barriere (District)*, 2018 BCSC 427, at para. 24.

Councillor Kim’s compliance with s. 5(1) is not in issue. She did not state she was communicating on the City’s behalf on her X account; nor did she sign the Letter on behalf of the City of Victoria as an organization. I have also considered whether the public may have understood that the “likes” on Councillor Kim’s X profile and her name on the Letter represented her own views. However, it would be unworkable to determine compliance with s. 5(2) based on public perception. The obligation in s. 5(2) is also distinct from the prohibition in s. 5(1). It would therefore render s. 5(2) redundant if its obligation was met solely through compliance with s. 5(1). The inclusion of s. 5(2) in the Bylaw must be given reasonable effect.⁷

I have determined Councillor Kim did not meet the positive obligation in s. 5(2) to “be clear” that her communications were her own views. She could have met this obligation on her X profile by including the statement, “Views are my own”. She may have been unable to provide this clarification when she signed the Letter; in such circumstances, to avoid running afoul of s. 5(2), she could have signed the letter as “Susan Kim”, which likely would have removed her actions from the scope of the Bylaw altogether.

In sum, I find that Councillor Kim breached section 5(2), as she did not make it clear that she was communicating her own views when she liked the Tweet and signed the Letter.

4. Did Councillor Kim’s conduct breach section 5(4)(c) of the Bylaw?

Section 5(4)(c) states:

Without limiting the ability of a member to hold a position on an issue and respectfully express their opinions, a member must:

...

(c) ensure that all communications issued by, or on behalf of a member, including communications made via social media, are respectful and do not discriminate, harass, defame or demonstrate disrespect toward any person or group.

Councillor Kim submits s. 5(4)(c) infringes her right to freedom of expression. It is not within my authority to strike down a provision of the Bylaw on *Charter* grounds. My role is to interpret the Bylaw in a manner that is consistent with the *Charter*, including freedom of expression.⁸

Freedom of expression is one of the most important rights in a democratic society. The protection is not limited to views the majority holds or considers to be truthful or in the public interest.⁹ Rather, the purpose of the guarantee is “to ensure that everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind, however unpopular, distasteful or contrary to the mainstream.”¹⁰ In interpreting expressive content, the courts have recognized that different people may draw different meanings from the same statement at

⁷ My interpretation of s. 5.2 is also supported by my review of the language used in other codes of conduct. Some only contain a prohibition like s. 5(1) (see s. 3.3.1 of the [District of Squamish Code](#)); some state a member’s communications are presumed to be made on their own behalf (see s.3.2 of the [City of Vancouver’s Code](#)); some have a section like s. 5(2) but limit the obligation to communications regarding “City business” (see s. 45 of the [City of Surrey Council Code](#)).

⁸ Integrity Commissioners in other jurisdictions have taken the same approach. See, for example, *Re VanLeeuwen*, 2021 ONMIC 13, at para. 179 and [City of Vancouver Integrity Commissioner Report COV-IC-040](#), dated October 17, 2023

⁹ *R. v. Zundel*, [1992] 2 S.C.R. 731.

¹⁰ *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927

different times. A statement that is true on one level or for one person may be false on another level for a different person.¹¹ Overall, the scope of the protection is very broad. Apart from expression communicated in a physically violent manner, if activity conveys meaning, it has expressive content and presumptively falls within the scope of the protection.¹²

While the freedom of expression guarantee is broad, there are certain limits that are reasonably justified under the law, including prohibitions on hate speech and discrimination.

The Complaint alleges that the Letter encourages and perpetuates hate against the Jewish community, including through its characterization of Israel's response to the attack by Hamas as a genocide. The Supreme Court of Canada has defined hate speech as speech that is likely to expose a person or group to detestation and vilification on the basis of a protected characteristic. The standard is high. The definition of "hatred" filters out expression which, while repugnant and offensive, does not incite the level of abhorrence, delegitimization and rejection that risks causing discrimination or other harmful effects. The determination is also objective. A decision-maker must consider whether a reasonable person, aware of the context and circumstances, would view the expression as exposing the protected group to hatred.¹³

If I did consider the Letter was likely to constitute hate speech, I would not consider the Bylaw's complaint process to be the most appropriate forum for the Complaint to be adjudicated and would recommend that it be addressed through other processes, as contemplated by s. 13(6)(c) of the Bylaw.

Neither the Letter nor Councillor Kim's support of it constitute hate speech, as that term is interpreted at law. The Letter is deeply critical of Israel and its military operations in the context of a call for a ceasefire in Gaza and support for Palestine. People may fairly consider some of the language used in the Letter to be offensive and inflammatory, as the Resident does, but I do not find that it constitutes or incites hatred against Jewish people, who are not referred to in the Letter.

The Complaint also alleges Councillor Kim has discriminated against the Jewish community by signing the Letter. Section 7(1)(a) of BC's *Human Rights Code* prohibits a person from publishing any statement which indicates discrimination or an intention to discriminate on the basis of a protected characteristic.¹⁴ The cases considering s. 7(1)(a) establish the following principles with respect to its interpretation:

- It must be shown that the publication had a discriminatory effect, or likely effect, or was intended to do so. A discriminatory effect is one with specific adverse consequences for the complainant;
- Finding a publication offensive or disagreeing with its contents is not sufficient to establish discrimination;
- The statement in question must be more than a mere statement of opinion; and

¹¹ See, for example, *R. v. Zundel*, [1992] S.C.J. No. 70, at para. 32.

¹² *Ross v New Brunswick School District No. 15*, [1996] 1 S.C.R. 825 at paras. 59-60.

¹³ See *Whatcott v. Saskatchewan Human Rights Tribunal*, 2013 SCC 11, at paras. 56-58.

¹⁴ The protected characteristics are Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age.

- The analysis of whether a communication is discriminatory is objective, undertaken from the perspective of a reasonable person.¹⁵

The Human Rights Tribunal has confirmed it is not the purpose of the *Code* to stifle public comment or democratic political action on matters of legitimate public interest; nor is it a purpose of the *Code* to prevent persons and groups with an interest in such matters from requesting government action.¹⁶

Based on the legal standard, I conclude Councillor Kim’s actions were not discriminatory. The Israel/Palestine conflict and the Gaza War are well-known matters of ongoing public interest and debate. The Letter represents an effort by its signatories to call on Canadian political leaders to take further action to support Palestinians, including by urging them to make certain demands of Israel. The Letter is critical of Canadian politicians and of Israel and uses language that people may find offensive, inflammatory and false. However, I cannot conclude that Councillor Kim’s intent in signing the Letter was to discriminate against anyone on the basis of their Jewish identity. Councillor Kim’s actions also did not lead to any adverse impacts. While the Complaint states that the rhetoric in the Letter can lead to “dangerous consequences”, there is no basis for me to conclude that they did, or that any such consequences could be attributed to Councillor Kim’s actions in signing the Letter. People may feel offended by Councillor Kim’s support of the Letter, but that does not constitute an adverse impact under the law.

This leaves me to consider whether Councillor Kim’s communications breach s. 5(4)(c) on the basis they are not “respectful” or “demonstrate disrespect to any person or group.” In my view, the scope of these requirements can reasonably be determined by considering the definition of “respect” in s. 4(c) of the Bylaw, which states:

(c) respect: a member must treat members of the public, other members, committee members, and employees respectfully, without abuse, bullying or intimidation and ensure that the work environment is free from discrimination and harassment; ...

The obligations in s. 4(c) are similar to those that arise pursuant to workplace health and safety legislation, including the duties not to engage in bullying or harassment. The obligations are broader, as they also extend to interactions with the public, but they can otherwise be understood as similar in nature to the expectations in a workplace. In this context, I conclude that a communication would reasonably be considered disrespectful if it would likely constitute “bullying” or “harassment” under the law.¹⁷ Examples include:

- Communications that insult or humiliate an identifiable person or group;
- Communications that target or criticize someone on the basis of a personal characteristic, such as perceived ability, level of intellect, or appearance;¹⁸ and

¹⁵ *Oger v. Whatcott (No. 7)*, 2019 BCHRT 58, at paras. 25 & 134; *Palmer v. BCFT and others*, 2008 BCHRT 322, at para. 43.

¹⁶ See *Oger*, *supra* note 15 at para. 136 and *Palmer*, *supra*, at para. 55.

¹⁷ These examples are distinct from those that would be captured by the other prohibitions in s. 5(4)(c), but it is trite to say any communications captured by the other prohibitions in s. 5(4)(c) would also be disrespectful.

¹⁸ Being targeted on the basis of a protected characteristic under the *Human Rights Code* would also be disrespectful but those are already prohibited under s. 5(4)(c) as discriminatory communications.

- Communications that are abusive or intimidating, such as a threat against an identifiable person or group.

Various contextual factors will also be relevant to the analysis in any case, including how communications are made. For example, communications made via social media may be analyzed differently than communications to a captive audience. The rationale is that voluntary engagement with a communication, such as choosing to access the “likes” on someone’s social media account, might reasonably be inconsistent with a finding that the individual is being bullied or intimidated.¹⁹

Further, a distinction should be drawn between communications that are disrespectful – whether due to their form, content or both – and communications that express a controversial opinion but are not communicated in a disrespectful manner and do not otherwise constitute discrimination, defamation, bullying or harassment. The former will constitute a breach of s. 5(4)(c); the latter will not.

The distinction above achieves an appropriate balance between *Charter* values and Council’s legitimate interests under the Bylaw. It is inherent in the role of an elected official that they will advocate with respect to issues that are important to them. Integrity Commissioners in other jurisdictions have recognized the right of council members to communicate in relation to high profile or controversial topics.²⁰ Some topics are so controversial and divisive that communication of strongly held views regarding those topics will always be considered disrespectful by some, regardless of the form, content or manner of delivery. An overly broad or subjective interpretation of “respectful” could silence permissible political speech, which would run afoul of the *Charter*. On the other hand, Council is entitled to expect that its members will treat the public with a certain level of civility and respect, particularly when they use the platform of their office to communicate.

Based on the foregoing, I do not find that Councillor Kim’s communications are disrespectful under the Bylaw. Signing the Letter and liking the Tweet communicate political views that are protected expression under the *Charter*. Her views do not lose their protection because some may consider them to be inflammatory, offensive and even repugnant.

I have specifically considered the content of the Tweet and whether, in light of its date and the wording used, it glorifies violence against civilians, which is disrespectful. Ultimately, several factors militate against such a finding. The Tweet does not target any individual or group; it does not constitute a threat or personal attack; nor does it defame, discriminate or harass as those terms are legally interpreted. Further, Councillor Kim was entitled to interpret the Tweet’s contents within a context she found relevant or truthful; that context does not have to be accepted by anyone else. I have also considered the fact that the “like” was only accessible on Councillor Kim’s X profile, which people could choose to visit or not. She did not actively promote the Tweet, such as by re-tweeting, or engage in any other conduct that might itself be considered disrespectful.

¹⁹ See, for example, *Chan v. Therrien*, 2021 ONMIC 6 at para. 128.

²⁰ See, for example, *Geatrix v. Williams*, 2018 ONMIC 6 at para. 204.

The virtue of Councillor Kim's decision to use her platform as a council member to express controversial political views is not for me to address. Nor are the merits of Councillor Kim's political opinions. The City's interest pursuant to the Bylaw was limited to ensuring that Councillor Kim made clear that her communications reflected her own views.

Recommendation

If an investigator determines a member has violated the Bylaw, section 19(4)(a) requires the investigator to include a recommendation for a sanction under s. 21 of the Bylaw. However, s. 19(4)(b) states:

(b) if the investigator determines that a member did breach this Bylaw, but that the member took all reasonable steps to prevent it, or that it was trivial or done inadvertently or because of an error in judgment made in good faith, the investigator will so state in the investigation report and may recommend that no sanction be imposed;

Councillor Kim submitted that, if she breached the Bylaw, the breach was an error of judgment made in good faith and no sanction should be imposed. Upon consideration of the relevant facts, I think the proper characterization of Councillor Kim's breach is that it was inadvertent. I do not think she was aware that her communications would fall within the scope of the Bylaw. She believed she was signing the Letter and liking the Tweet in her personal life. As a result, her failure to comply with s. 5(2) was inadvertent. I accept her evidence that if she had been given direction about adding a disclaimer on her X account, such as by adding, "Views are my own", she would have done so. I also note that when Councillor Kim realized her communications had been attributed to her in her role as a councillor for the City, she took steps to address the situation, including by writing an apology to her constituents. These facts support a finding she did not intend to communicate in connection with her office as a City of Victoria council member.

I do think Councillor Kim could benefit from training on the Bylaw. However, I do not recommend training be imposed as a sanction because I think training would benefit Council as a whole. There may be other members who have communicated in ways that do not satisfy the requirement of s. 5(2), including on their social media accounts. As a result, it would not be appropriate to single out one member to be sanctioned.

Conclusion

Councillor Kim breached section 5(2) of the Bylaw by failing to meet the obligation to "be clear" that her communications were her own views. I do not recommend any sanction be imposed because the breach was inadvertent.

All of which is respectfully submitted.

Stand with Palestine: Call on Political Leaders to End Their Complicity in Genocide!

We, the undersigned, residing in so-called Canada, urge Canadian political leaders to end their complicity in the ongoing massacres and genocide in Gaza, Occupied Palestine. The letter, demanding accountability and action from political leaders, is as follows:

Dear Members of Parliament,

You have called on Canada to urge for an **"immediate ceasefire"** in the face of unimaginable devastation. Yet, all Canadian political parties dehumanize Palestinians, facilitating Israeli-led genocide against them. If you truly value Palestinian life and international law, we thus call on you to resign now. Consider the **recent resignation of 23 Labour councillors in the UK** in response to Starmer's support for collective punishment: *"In a choice between serving our parties or justice, we have chosen justice"*.

All of you are **complicit in Israel's killing of over 5000 Palestinians in Gaza** thus far. The Liberal government argued "with a high degree of confidence that Israel did not strike the [Al Ahli] hospital", even after the Anglican Church that owns the hospital and Doctors Without Borders concluded otherwise. Meanwhile, Jagmeet Singh repeated the unverified accusation that Palestinians were guilty of sexual violence, refused to end his party's deal with the Liberals, and revoked the passes of four delegates who joined a pro-Palestine rally at the NDP Convention.

Instead of obfuscating reality, **your letter should have begun by condemning Israeli apartheid and occupation**. Furthermore, by failing to recognize Israeli occupation as "terrorist" and only directing this term at Palestinian resistance, you perpetuate an **Islamophobic trope**. Your language is fuelling the collective trauma being experienced by your constituents, and inciting hate crimes against Palestinians and Muslims. Hence, it is unsurprising that Justin Trudeau did not receive a warm welcome from the Muslim community last week. Whether you identify as Muslim or not, **you should also expect to be shunned for your complicity moving forward**.

We implore you to stand in **genuine** solidarity with the Indigenous communities of Turtle Island and Palestine who continue to resist against settler colonial genocide. As outlined by Dr. Rinaldo Walcott after the Ontario NDP expelled MPP Sarah Jama for supporting Palestine: "Jama's predicament exposes the bankrupt situational morality of Canadian politics in a settler-colonial country that can only but support white settler politics elsewhere as the condition of its own existence".

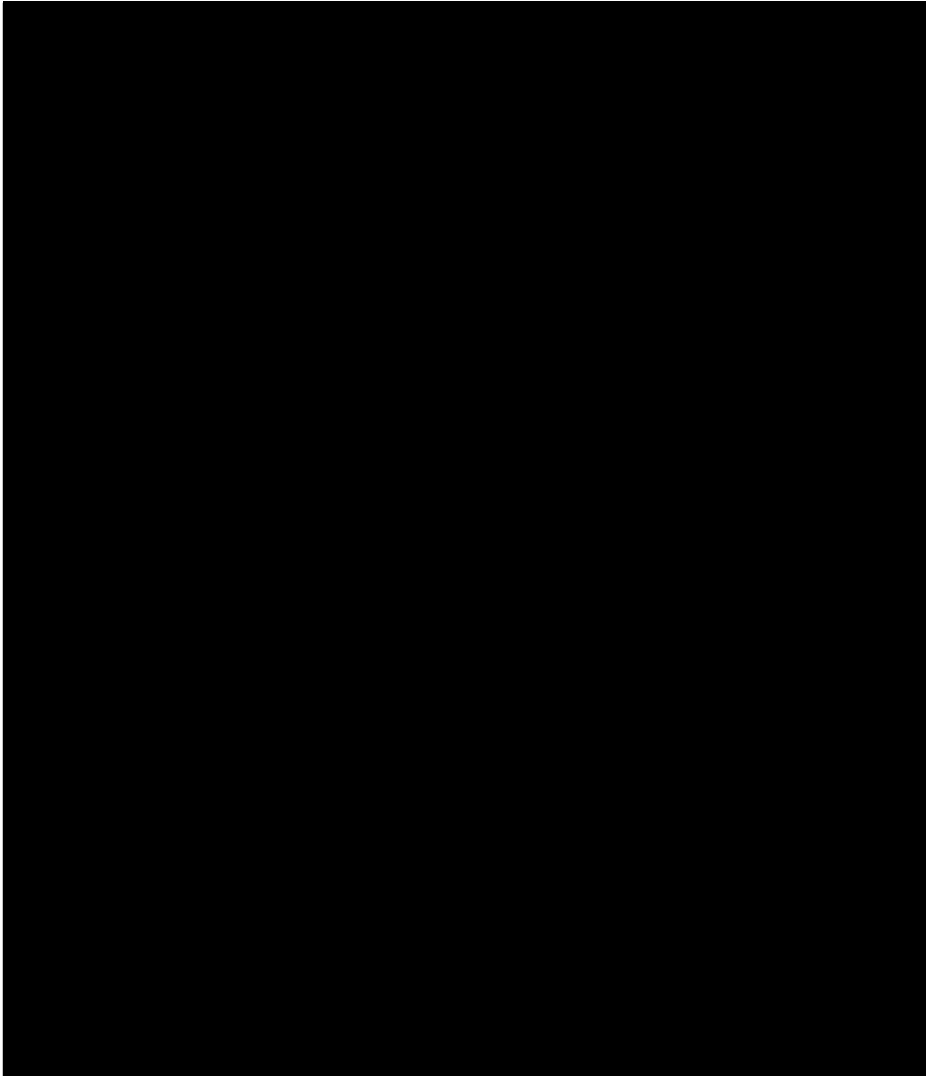
Appendix A

In addition to demanding an immediate ceasefire, **the urgent restoration of human necessities** including water, and the **opening of humanitarian corridors and crossings** for medical purposes, we urge you to call on Israel to **free all Palestinian prisoners, lift its siege on Gaza, and end its illegal occupation**. You must contribute to sensible political and social discourse as elected officials. We urge you to stand on the right side of history where you will be redeemed: **Resign with integrity and dignity**.

Until true justice and freedom,
[The Undersigned]

POLITICIANS

- Sarah Jama, Member of Provincial Parliament (Hamilton Centre, Ontario)
- Susan Kim, City Councilor (Victoria, BC)



Appendix B

Complaint
Pursuant to Code of Conduct for Council Members
A BYLAW OF THE CITY OF VICTORIA
NO. 23-058

I hereby request the initiation of the following complaint against “member”: **Councillor Susan Kim**. and request it to be forwarded to the City Clerk.

Particulars of the complaint are as follows:

1. That Councillor Susan Kim signed an undated letter with the heading “Stand with Palestine: Call on Political Leaders to End Their Complicity in Genocide!” hereinafter referred to as “the letter.” That the letter was made known to the public by the media (The Daily Mail, UK) on the evening of November 16, 2023. Full text of the letter can be found here: <https://web.archive.org/web/20231115210441/https://docs.google.com/forms/d/e/1FAIpQLSeQunbQuMjaKhUF90LqP7rmRPYLGHZSX5FjPMzHPC-rVPromw/viewform>

2. That Councillor Kim signed the letter as “*Susan Kim, City Councilor (sic) (Victoria, BC).*”

3. That the letter contained offensive, false, misleading information, encouraged or incited antisemitism putting Jews, including the Victoria Jewish community at risk; cast doubt on well-documented crimes committed by Hamas on October 7, vicious sexual assaults, and disparaged Canada by saying, “*so-called Canada a settler-colonial country.*”

4. The contents of the letter that can be considered offensive and subject of this complaint are as follows:

a. Calling the massacre of Israeli civilians by Hamas, a Canadian designated terrorist organization, as “*resistance*” and referring to Israel a democratic country as “*terrorist*”:

*“...failing to recognize Israeli occupation as “**terrorist**” and only directing this term at **Palestinian resistance**...”*

b. Doubting or denying that the mass sexual violence perpetuated against Israeli civilians and other Jews, by the terrorist entity Hamas:

*“the **unverified accusation** that Palestinians were guilty of **sexual violence**,”*

c. Referring to Israel using an historically incorrect and weaponized loaded term apartheid:

*“by condemning Israeli **apartheid and occupation**”*

d. Referring to Israel's defence against Hamas as white settler colonial genocide, is racist as Jews are indigenous to the land, and a distortion of facts encouraging hate towards Jews:

*"We implore you to stand in genuine solidarity with the Indigenous communities of Turtle Island and Palestine who continue to resist against **settler colonial genocide.**"*

*"the bankrupt situational morality of Canadian politics in a settler-colonial country that can only but support **white settler politics elsewhere** as the condition of its own existence"*

e. The deliberate omission of mention of the hostages taken by Hamas, while substituting demands to free "Palestinian prisoners" predominantly convicted murderers or terrorists:

*"we urge you to call on Israel to **free all Palestinian prisoners, lift its siege on Gaza, and end its illegal occupation.** You must contribute to sensible political and social discourse as elected officials."*

f. The characterization of Israel's response and right to defend itself against the terrorist attack by Hamas as a genocide, is a blood libel and perpetuates collective hate against the Jewish community.

*"Yet, all Canadian political parties dehumanize Palestinians, facilitating **Israeli-led genocide against them**"*

g. The repetition of a debunked allegation and lie that Israel deliberately bombed the Al Ahli hospital encourages hate against the Jewish community.

"The Canadian government and others confirmed "with a high degree of confidence that Israel did not strike the [Al Ahli] hospital",

5. Councillor Kim "liked" a post on "X" hereinafter referred to as the "Post", (formally known as Twitter) on October 7, 2023 the date of the Hamas terrorist attack in which approximately 1,200 innocent people were murdered, many more sexually assaulted and hundreds taken as hostages.

6. The contents of the Post that Councillor Kim "liked" are:

"The Palestinian people are waging a war for liberation-and nothing less. Power to every Palestinian fighting for their freedom , and glory to every martyr who dies fighting. For every martyr who falls, a new one will rise."

It is submitted that the above-mentioned conduct (signing and possibly co-authoring the letter as a city council member and liking the Post) offends the Bylaw without limiting the generality of the forgoing by:

- I *It reasonably undermines, or has the potential to reasonably undermine, public confidence in City governance, pursuant to **section 3 (4) of the Bylaw;***

- II Failed to uphold the standards and values required by the office and in particular:
 - a.) Integrity: a member must be honest, demonstrate strong ethical principles, and act fairly,

 - b.) accountability: a member must be accountable for their decisions and actions, competent and diligent, and act in the best interests of the City as a whole, without regard to the member's personal interests;

 - c.) respect: a member must treat members of the public, other members, committee members, and employees respectfully, without abuse, bullying or intimidation and ensure that the work environment is free from discrimination and harassment; contrary to **sections 4 (a) to (c) of the Bylaw;**

- III The signing and possible co-authoring the letter and liking the Post, as a City Councillor member, *Councillor Kim failed to ensure that communications issued by, or on behalf of the member, including communications made via social media, was respectful and do not discriminate, harass, defame, or demonstrate disrespect toward any person or group contrary to **sections 5 (4) (c) of the Bylaw***

Summary:

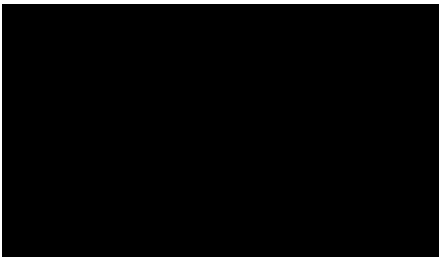
Susan Kim represents the city as a City councillor. Her conduct; the signing of the letter as a member, and liking the Post on October 7, 2023 simultaneous to the massacre, butchery, mass sexual assaults, and hostage taking is a glorification of terrorism, criminal activity and murder are: effectively and knowingly agreeing to this offensive content which has brought the Middle East Hamas Israeli war to the City of Victoria, and consequently harmed the reputation, relations and functioning of the City. The hateful rhetoric contained in the letter can lead to dangerous consequences, such as what has occurred in BC, Montreal, Toronto and elsewhere. This conduct has also divided the community at large and failed to treat all of our residents with respect. Her signing of the letter, and Councillor 's Kim response to the considerable criticism

of her actions lack integrity, failed to act in the best interests of the City and discriminated against Jewish members of our community.

The letter constitutes a highly inflammatory, biased, and racist message which is neither balanced nor respectful to the Jewish community or public at large and has brought and is likely to continue to harm the reputation of the City and is therefore contrary to the best interests of the City. The member to date has issued an ambiguous statement but has not accepted full responsibility for signing the letter and agreeing with every harmful aspect of the content.

To date Councillor Kim has not acknowledged “liking” the Post nor apologized for it.

Respectfully submitted.



November 29, 2023
Victoria, BC

Appendix C

Hello, Victoria:

I am writing again to apologize for signing the open letter that has been the subject of much warranted scrutiny over the past days. I have asked for my name to be removed from the letter. I regret not being more careful in understanding the impact of the letter on the community members I represent.

I signed this letter in a moment of immense grief and a felt urgency to call for an end to violence and support the people of Gaza. In the process, I failed to critically assess the impact this would have on community members directly affected - including Jewish and Palestinian community members - experiencing loss and grieving loved ones.

This apology is part of a process of holding myself accountable, to representing the city with more awareness and consideration. I am deeply grateful for Jewish and Palestinian community members who have taken the time to speak with me and offer generous guidance on how to take action in more considerate, collaborative, and accountable ways ahead.

This is a time when so many of us are feeling raw and shaken as we advocate for peace and justice. I am going to continue to connect with all of those impacted by this conflict to better understand perspectives that are not my own. I am committed to this important work, even in such extremely difficult times, and will proceed gratefully in my post working together towards better futures.

Susan Kim
Councillor, City of Victoria

Posts

Replies

Media

Likes



Nodutdol | 노똥돌 @nodutdol · 2023-10-07 ...

팔레스타인의 해방

The Palestinian people are waging a war for liberation — and nothing less.

Power to every Palestinian fighting for their freedom, and glory to every martyr who dies fighting. For every martyr that falls, a new one will rise.

@palyouthmvmt @WOLPalestine



28

312

1.3K

70K

