

To Mayor Nenshi and City Council

On December 17, 2018, I received a Memorandum authored by Mayor Nenshi and all members Council except Councillor Farkas. The Memorandum asked me to treat it as formal complaint in regard to the 2018 December 17 conduct of Councillor Farkas.

On that date, Council members were advised that Councillor Farkas had posted on Facebook the following post:

"UPDATE: Council is due for an estimated 2.3% pay increase in 2019. I proposed a 5% reduction, which failed because no Council member seconded it. The pay freeze was also rejected".

The post also included copies of two Council voting pads sheets indicating "Freeze Council Pay in 2019" and "5% Pay Cut" respectively. While both are filled in, only the topic of "Freeze Council Pay in 2019" was actually voted on by Council. The second motion was not seconded and as a result no vote actually took place. Copies of voting pad sheets posted appear below.

ITEM: IN 2019	YES	NO
Cllr. CARRA		X
Cllr. CHAHAL		X
Cllr. CHU		X
Cllr. COLLEY-URQUHART	X	
Cllr. DAVISON		X
Cllr. DEMONG		X
Cllr. FARKAS	X	
Cllr. FARRELL	X	
Cllr. GONDEK	X	
Cllr. JONES	X	
Cllr. KEATING		X
Cllr. MAGLIOCCA		X
Cllr. SUTHERLAND		X
Cllr. WOOLLEY	X	
Mayor NENSHI		X
DEPUTY MAYOR		
TOTALS	6	9

CC 716 (R2017-10)

ITEM:	YES	NO
Cllr. CARRA		X
Cllr. CHAHAL		X
Cllr. CHU		X
Cllr. COLLEY-URQUHART		X
Cllr. DAVISON		X
Cllr. DEMONG		X
Cllr. FARKAS	X	
Cllr. FARRELL		X
Cllr. GONDEK		X
Cllr. JONES		X
Cllr. KEATING		X
Cllr. MAGLIOCCA		X
Cllr. SUTHERLAND		X
Cllr. WOOLLEY		X
Mayor NENSHI		X
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TOTALS		

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By way of explanation, each Councillor has a voting pad they keep in front of them. As appears from the post, it lists all their names and lets them keep track of how each of them votes on various matters they discuss.

During the public portion of the Council meeting Mayor Nenshi reminded Councillor Farkas of the existence of the Code of Conduct for Elected Officials, and more specifically, Section 11 of the Bylaw which requires Councillors to avoid conduct which could undermine public confidence in City governance.

The Mayor wanted Councillor Farkas to retract his post given that Council members were advised during the meeting that the most current Alberta Weekly Earnings Information available would, in fact, result in Council members' compensation decreasing. Councillor Farkas indicated that he was relying on information he had received from City staff for the content on his post. The Mayor, as part of the exchange, reminded Councillor Farkas that the meeting had been advised by Carla Male, Acting CFO, that this information was no longer current. Councillor Farkas responded that the information provided by Administration to the meeting was not final.

Council then adopted a motion pursuant to the *Procedure Bylaw* 35M2017 to remove Councillor Farkas from the meeting until such time as he retracted his post and apologized for posting the same. With the exception of Councillor Farkas, all members of Council voted in favour of the removal motion.

It should also be noted that a citizen also filed a complaint under the Whistleblower program concerning the same matter.

On January 10, 2019, I wrote to the Mayor as follows:

"Mayor Nenshi

I indicated earlier that I would commence an investigation in response to your request and I have done so. Since that time, Councillor Sean Chu has requested that his name be withdrawn from the request. Another Councillor has also asked that that individual's name also be withdrawn. That individual asked that their name remain confidential for now and I am respecting that request. I have not yet met with Councillor Farkas as it seems appropriate to me that this matter be held in abeyance pending any action which may be taken by Council on January 16, 2019 respecting a review by the City Auditor of the factual background leading up to what has become an important issue to Council and the citizens of Calgary. I appreciate the request for an investigation deals with a matter of a posting and may be seen as distinct from the remuneration issue more generally which is clearly a political issue. However, context as to how this all arose is important and to help with context we all need to know the facts as it appears conflicting policies and direction may exist. I emphasize the word may.

I have not discussed the request with Councillor Farkas to date because as I said facts are important. I would, however, like to forward this email to Councillor Farkas as he is part of the equation. I will only do so with your concurrence.

I have not talked publicly in any way respecting my work to date as in my view these matters should be kept confidential until the investigation has run its course. I have no control over those receiving a copy of this email but would hope they would keep this confidential as well.

I await your reply.

Sal LoVecchio

Integrity Commissioner”.

As the remuneration narrative evolved, what became clear was Council had been provided information which was not final and, depending on your point of view, could be considered conflicting. What was also clear was the fact the full Council had a remuneration issue to deal with, they had to all be working on the same set of facts and they were all not. I was corresponding with the Acting CFO and, just to give you a flavour of the issue, one of my exchanges read as follows:

Carla

Thank you for your additional note. We are making progress on my questions. Just for further clarification on the facts. By making this request for further clarification, be clear I do not wish to enter into any blame game. I am simply trying to find out what was actually done as opposed to what should have been done as it appears there may be a difference. If possible, please confirm for me what was actually paid to the Councillors over the period in question. I assume once the actual number is on the table one could easily determine from historical data what method was used to calculate that number. Whether that number is what should have been paid is obviously the issue of interpretation everyone is grappling with. I am not concerned about the answer to that question others may be who wish to blame someone else. I simply want to know what happened as a factual matter. Good luck at the meeting today.”.

Council did ultimately resolve their remuneration issue. However, it is important to note that, in fact, the statement posted by Councillor Farkas may have been partially correct. But the issue of the posts remained. Given the confusion on the facts, I was concerned that issue was now misplaced. Councillor Farkas posted a sheet from a vote pad which on its face is misleading - no such vote took place. The post does have a disclaimer but all that does is potentially confuse the reader. If no vote took place, and you say that, why in the same post show a photo of a sheet from a vote pad suggesting to the reader a vote did take place and you were outvoted 14-1?

For context, at the time all of this was transpiring the position of Ethics Advisor was vacant as Alice Woolley had been appointed to the Court of Queen’s Bench and I was new in the position. It is my belief, that an attempt at resolution of complaints is always advisable.

The Ethics Advisor is able to assist in that regard, but there was no Ethics Advisor so we were in uncharted waters.

As part of my review process, I always provide the Councillor with an opportunity to respond. As part of my review of this complaint, I did meet with Councillor Farkas. We reviewed what had occurred and discussed what should happen going forward. In our meeting, Councillor Farkas, indicated that by his post he did not wish to harm the others. The meeting ended.

Shortly thereafter, I received a letter from legal Counsel for Councillor Farkas. It appears that since there was no Ethics Advisor with whom he could seek advice and who might assist in a resolution he approached the General Counsel for the City. She authorized him to retain outside Counsel at City expense. He did. As you would expect, the circumstances of the complaint were discussed as well as resolution with the Counsel he retained. While all that was going on, a few of the Councillors approached me to discuss how the matter might be resolved. Some also said it was time to move on and wanted their names taken off the complaint.

Counsel for Councillor Farkas raised another issue. It was not the first time the issue was raised. Councillor Farkas had raised the same issue when he and I met. It was his expulsion from the meeting. In this regard, the Chair of a meeting, in this case the Mayor, has the ability to enforce rules and make rulings respecting the conduct of a meeting. A motion for his expulsion was made, seconded and carried. The motion that was passed is clear. It was from the meeting. It did not, as had been suggested on social media, extend beyond that meeting.

What became very clear to me with the confusion over the remuneration facts, no Ethics Advisor in place, now outside Counsel acting for Councillor Farkas, some City Councillors who signed the complaint now of the view resolution should be pursued, it was not practically possible for this complaint to be dealt with by me in the 90 days contemplated by my Terms of Reference.

During the year, an Ethics Advisor was appointed and his Counsel left the scene. When she came on the scene, more discussions took place as to how the matter might be resolved. If that were not enough on the discussion of resolution front, at this time a debate in the public was occurring about a Council that was dysfunctional and couldn't get along. That discussion, for me was yet another reason to, if possible, again have Council resolve this issue internally if they could. That being said, all attempts at resolution have failed, which is unfortunate, but that is where we are. I understand from the news Councillor Farkas provided a letter to the Mayor and the other members of Council and that he believes the matter is resolved. I have not seen that letter and, other than as stated above, no one else has withdrawn their complaint. Therefore, it is hard to conclude that this matter is resolved. As a result, I am obligated to rule.

Ruling on this matter is quite straight forward. As I said, the post is misleading on its face and the disclaimer does not really help to eliminate the graphic impact of the vote sheet. Providing misleading information to the public particularly when it misrepresents actions taken, or in this case not taken, by the members of Council, in my view undermines public confidence in City governance. As such, I am of the view Councillor Farkas breached Article 11 of the Code of Conduct by so doing. The real issue here is what the sanction should be. That to me is quite straight forward. He should remove the post, which he has already done, which makes that suggestion moot and he should apologize unequivocally. As I said already, in our meeting he said that he did not intend to hurt the Mayor and the other members of Council. If that were a true assertion, apologizing will be the easiest thing in the world for him to do.

That being said, I wish to address how that apology might be made. In addressing this point, I wish to reference Section 18 of my Terms of Reference. It reads:

"If the Commissioner determines that although a contravention of the Code of Conduct occurred the member took all reasonable steps to prevent it, or that it was trivial or committed

through inadvertence or a genuine error of judgment, the Commissioner shall so state in his or her decision and shall recommend that no sanction be imposed. “

This provision contemplates the finding of a breach and a recommendation of no sanction in certain circumstances. Due to the circumstances of this case, I intend to apply some of the rationale behind this provision. First, by providing the disclaimer, Councillor Farkas took a step to prevent it from being misleading, so some effort was made to prevent it from being misleading. I do not think it was trivial or advertent. However, I do believe it reflected a genuine error of judgment. Why? He had acted diligently in obtaining information from City staff. He assumed as any reasonable person would that the information he had obtained was accurate. However, as noted, there was conflicting information before the meeting. His had come from staff. The Acting CFO of the City had presented to the meeting different information. Two things were clear: there was conflicting information and none of it was final. As a result, no decision could be made. It was time for the matter to be put on hold until the facts were known (which is ultimately what occurred), not for a hardening of positions and the posting of a voting sheet for a vote that did not occur. If that had happened, we likely would not be here.

When I consider that he was ejected from the meeting and his stated position that he did not intend to hurt anyone, my recommendation on the appropriate sanction becomes more tempered. He has already been partially sanctioned by the ejection. My finding of misrepresentation should cause some food for thought in how Councillors act in the future. To put this matter to rest, my recommendation on sanction is that Councillor Farkas meet privately with each of the Councillors who signed the complaint and apologize. Given that he was ejected from the meeting, I do not see any need for a public display.

Sal LoVecchio

Integrity Commissioner