



Ellen-Anne O'Donnell BA LLB

Integrity Commissioner

Integrity Commissioner
Report of
Findings and Recommendations

To: Calgary City Council

Re: Councillor Dan McLean

I - THE COMPLAINT

A complaint was submitted to the Integrity Commissioner on July 27th, 2023, alleging that Councillor McLean attended the Council Meeting on July 26, 2023, remotely, while participating in a golf tournament, and that his actions were in violation of the *Code of Conduct for Elected Officials Bylaw 26M2018* (the “Code of Conduct”).

The Complainant, who was at the Meeting, alleged that during the Council Meeting a video appeared on Councillor McLean’s feed showing two persons on a moving golf cart. Furthermore, the Complainant alleged that Councillor McLean appeared to be distracted during the Meeting as he did not respond to roll call and failed to vote on a motion. The Complainant alleged his conduct was not in the best interests of the City and showed disrespect for his duties and responsibilities as an elected official.

The Complainant alleged that Councillor McLean did not follow the protocol for attending Meetings remotely. He did not advise the Meeting when he was stepping away or absent.

The Complainant submitted that Councillor McLean attended the golf tournament with the full knowledge that the Council Meeting was scheduled at 1:00 pm. that day. The Complainant submitted that this conduct was unacceptable as it undermined the public’s confidence in City governance.

Initial Assessment

During my initial assessment of the complaint under section D of the *Code of Conduct*, Councillor McLean was asked to confirm that he was participating in

a golf tournament during the Council Meeting, which he did. I concluded that there was sufficient evidence to believe a violation of the *Code of Conduct* had occurred and a formal investigation was warranted.

II - FORMAL INVESTIGATION

Councillor McLean was served with a Notice of Investigation on August 8, 2023, for alleged violations of the following sections of the *Code of Conduct*:

1. A - Representing the City, Sections 9, 10(a), 10(d) and 11
2. C - Respecting the Decision-Making process, sections 15, and 16
3. D - Adherence to Policies, Procedures and Bylaws: 18(d) and (e)

On August 28, 2023, Councillor McLean was advised that the investigation was expanded to include the following:

4. Failure to vote, section 174(1)(f) of the *Municipal Government Act* (the "MGA"), and section 118 of the Procedure Bylaw.

Councillor McLean was given the opportunity to respond to the complaint, and the Complainant replied to his position. Councillor McLean was given an additional opportunity to make submissions after the Complainant's reply, as the additional allegation of "failure to vote" was added to the investigation.

Evidence about the Council Meeting, including the voting policies, procedures and practices for Council Meetings, was obtained from City Clerk Katarzyna Martin, and Deputy Clerk Jeremy Fraser.

The video recording of the Meeting was reviewed.

Both the Complainant and Councillor McLean were provided with copies of all the evidence collected, as well as a chronology of how the incident unfolded, which I prepared, to ensure I accurately understood the sequence of events.

The Evidence

The July 26, 2023, Council Meeting was a continuation of the July 25, 2023, Meeting. On the agenda was item no 7.2.15 (LOC2023-0005) with a motion which required a Council vote.

The Complainant was a participant in the Meeting, along with 30 or more people from various City departments in Council chambers or on Microsoft Teams. Members of the public, including media, were purportedly present.

Councillor McLean was participating in the Shane Homes Golf Tournament at the Heritage Point Golf Course.

According to the video recording of the meeting, it began at 1:05 p.m. Councillor McLean was absent from the roll call. He joined the Meeting remotely at 1:12 p.m. He stated his late participation was due to technical problems.

At 2:40 p.m., Councillor McLean's video feed displayed a moving golf cart with 2 people in it, (it showed two sets of knees), and one of the individuals wearing a golf glove. I assume that one of the individuals was Councillor McLean, as he does not deny this.

Councillor McLean gave the following reason for attending the golf tournament, instead of attending City Hall for the Council Meeting:

"I was invited to the event as Councillor for Ward 13, and I felt it was important to attend this event as many of the attendees were Calgary business leaders who were doing development and business in Ward 13."

A review of the Meeting's video recording shows that when the motion was made on Report CPC2023-0607, Councillor Chabot asked for a roll call vote. Deputy Clerk Jeremy Fraser called the roll, and there was no reply from Councillor McLean at time stamp 20:39:28. The Clerk called Councillor McLean for a second time, at timestamp 20:39:39 with no response. At time stamp 20:39:44: Mayor Gondek stated, "mark him absent" and Mr. Fraser marked him absent.

Subsequently, during Councillor Wong's turn to vote, Councillor McLean interrupted him at time stamp 20:40:04 and stated, "I am a yes I am sorry". Mayor Gondek then stated, "It's not your turn to speak. Please carry on with the roll".

Councillor McLean's late vote was not counted.

On July 27, 2023, a social media post showed a screen shot of a golf cart, stating:

EXCLUSIVE: I've obtained a screenshot of Calgary City Council's Microsoft Teams chat that appears to show @DanWMcLean hanging out at a golf course while attempting to vote out of turn at a public hearing.

As of August 25, 2023, the post had 16,700 views. A news article by an Edmonton journalist was also published, with a link to it on Twitter.

August 22, 2023, McLean response #1

On August 21, 2023, Councillor McLean submitted his first response to the complaint. He acknowledged that he was at the golf tournament on July 26, 2023. He stated it went on longer than expected. At 1:00 pm he decided to attend the Council Meeting remotely. He had a technical issue signing in and used the 'chat feature' to do so instead.

Councillor McLéan stated he had a technical issue with cellular reception at 2:40 p.m., which was approximately when the roll call vote took place.

During the Council break Council McLean stated he returned home for the rest of the Meeting. I am advised that the break occurred between 3:15 and 3:35 p.m.

Councillor McLean stated he had ear buds in the whole time, and that he had read and was familiar with all the documents. He stated he was never distracted or inattentive during the Meeting.

On August 28, 2023, the Complainant replied to Councillor McLean's evidence. From the additional information provided, it was evident that there was an formal allegation that Councillor McLean had failed to vote at the Meeting and I notified Councillor McLean that an additional allegation was being added to the investigation, under section 174(1)(f) of the *MGA* and section 118 of the *Procedure Bylaw*.

September 12, 2023, McLean response #2

In his second response to the complaint, Councillor McLean stated that he joined the Council Meeting at 1:05 p.m., and that he could hear the Meeting but could not be heard, due to technical problem. He entered his attendance in the chat at 1:12 p.m.

He stated that he was present for the roll call vote, and did vote, but the clerks did not record it.

Councillor McLean stated there was a 20 second time lag after he voiced his vote, and it was heard when Councillor Wong was voting. He made submissions about what happened and provided time stamps to illustrate the 20 second time lag.

I reviewed the video and noted the following sequence of events:

Timestamp 20:39:06 Clerk commences the roll call vote on the motion.

Timestamp 20:39: 28 Clerk calls Councillor McLean the first time.

Timestamp 20:39:39 Clerk calls McLean second time

Time stamp 20:39:44 the Clerk marks McLean absent

Timestamp 20:40:04 McLean interrupts Councillor Wong's vote

Councillor McLean's evidence was that at 2:40 p.m. he had a technical issue with cellular reception. He immediately attempted to move to another area with better reception. Councillor McLean stated that during the Council's break, he returned to his residence to participate in the rest of the Council Meeting from there.

Councillor McLean submitted that when he attempted to vote on the motion, voting had not closed. He submitted that normally in such cases, as the vote was still open, the Clerk records the vote.

Councillor McLean again denied that he was distracted during the Meeting. He stated he was wearing earbuds that were always on, and that he had read all the material for the agenda item.

Councillor McLean stated it's a "Common occurrence that at Council Meetings where remote attendees at times have technical difficulties resulting in a delayed vote, sometimes even after vote is closed, a vote is re-opened and recorded to accommodate the remote attendee". He further stated that the only reason he can think of as to why his vote was not recorded was because the Mayor told the Clerk to mark him absent. Councillor McLean alleged that there were other instances where other Council Members attended Meetings remotely for personal reasons, but, he submitted, he was attending the golf tournament to represent his ward, in other words, he was there on City business.

Councillor McLean made an additional submission on September 26, 2023. He stated in part,

"If the vote is closed and someone has a technical difficulty and has a delayed vote, that vote is reopened and redone. This happened multiple times last week during the public hearing Meeting on September 19".

Councillor McLean gave me permission to seek input from the City Clerk and the Deputy Clerk on Council Meeting policies and procedure and what transpired at the July 26, 2023, Council Meeting.

Evidence of City Clerk

The evidence of Katarzyna Martin, City Clerk, can be summarized as follows:

Ms. Martin was not clerking on the day in question.

The roll call vote is not unusual. It is provided for in section 119 of the *Procedure Bylaw*.

It is not unusual for the Mayor to call for someone to be marked absent, after they have failed to respond when called. After two calls to the Member, the Clerk would have the Member marked absent.

It is not unusual for remote attendees to have technical issues.

Ms. Martin could not recall a specific instance when a late voice vote was recorded, after there was no response to roll call but before the voting closed.

Ms. Martin could not recall a specific instance when a vote was recorded after voting had closed.

Ms. Martin could not state why Councillor McLean's vote was not recorded at the Meeting in question, as Mr. Jeremy Fraser was acting clerk that day.

Evidence of Deputy Clerk

The evidence of Acting Clerk Jeremy Fraser is summarized as follows:

Mr. Fraser was the clerk for the July 26th, 2023, Meeting.

Roll call votes have not been common since the implementation of electronic voting system.

It is possible the Mayor has called for a Council Member to be marked absent in the past, but Mr. Fraser could not recall the specific instances.

Section 28(3) of the *Procedure Bylaw* provides that “when the voting process commences, *Members* must cease any distraction from the question until the vote is taken and declared”.

When a Council Member does not respond to the roll call, the clerk marks them absent and the vote proceeds without their participation.

Mr. Fraser could not recall a Council Member being marked absent from a vote due to technical difficulties. Nor could he recall an instance where someone marked absent still had their vote counted.

III - ANALYSIS

I must decide whether in my opinion, Councillor McLean’s conduct was in violation of the *Code of Conduct*, the *Procedure Bylaw* and/or the *MGA*. The standard of proof is ‘on the balance of probabilities’, in other words, is it more likely that not that the conduct violated the *Act*, *Bylaw* or policies.

Allegation 1 - Representing the City

Section 9 of the *Code of Conduct* states:

A Member must approach their obligations under this Bylaw in good faith, taking into account all obligations imposed on the *Member* by statute or other legal enactment, and by the applicable City Bylaws, policies and procedures, as well as any reports, opinions, guidelines or interpretation bulletins issued by the Integrity and Ethics Office.

Section 10 of the *Code of Conduct* states:

A Member must in the discharge of their office,

(a) act in the best interests of the City taking into account the interests of the City as a whole, and without regard to the Member’s personal interests.

(d) act competently and diligently

Section 11 of the *Code of Conduct* states:

A Member must respect and comply with the law and avoid conduct that, in the eyes of a reasonable Calgarian, undermines, or has the potential to undermine, public confidence in City Governance.

In my opinion, Councillor McLean's participation in a golf tournament during a Council Meeting, was, on the balance of probabilities, not in the best interests of the City, as it had the potential to undermine public confidence in City Governance.

The conduct caused some disruption to the Meeting, which was witnessed by the attendees, including Council, City administrative staff, and the public.

Cellular connectivity disruption could have been reasonably anticipated on the golf course. Furthermore, as soon as there were connectivity issues when the initial roll call was made at 1:05, Councillor McLean should have anticipated that connectivity was likely to continue to be a problem on the golf course and should have moved off the golf course to well-connected location.

Councillor Mclean's belief that he could start his golf round at 9:00 a.m. and be in position to participate in the Council meeting at 1:00 p.m was, in my opinion, somewhat unrealistic.

I do not accept Councillor McLean's submission that attending the golf tournament was in the realm of conducting City business. This was leisure/ social event that was not as important as attendance and participation at Council Chambers for the Council Meeting.

Councillor McLean's conduct offended this particular Complainant, who is a City employee, and potentially others who were required to attend the Meeting and give their full attention to it.

Indeed, attending the Council Meeting from the golf course had the potential to send a message to reasonable Calgarians that the Council Member was invited to attend an event by a builder who may bring applications to City Council, and he was deriving a personal benefit from the event. A negative inference could be drawn about the relationship.

I reject Councillor McLean's position that he was never distracted during the Meeting. Just the focus required to hit the ball, so to speak, would undermine anyone's ability to concentrate on such a Meeting. In my opinion, being on a golf course, participating in the game, socializing, driving a golf cart, and keeping track of one's score would have caused significant distraction from the Council Meeting.

This conduct was, on the balance, contrary to the best interests of the City, reflected poorly on the Meeting process, and was an example of this Councillor putting his own interests ahead of the City's interests.

The allegation that Council McLean's attendance and participation at the golf tournament during a public City Council Meeting, was a violation of section 9, 10, and 11 of the *Code of Conduct*, has been proven.

Allegation 2 - Failure to Respect the Decision-Making Process – and

Allegation 3 - Failure to adhere to Adherence to Policies, Procedures and Bylaws

Section 15 of the *Code of Conduct* states:

A Member must respect the decision-making process of Council and all its boards, commissions and committees.

This section is commonly interpreted to mean that once Council has voted on a matter, Council Members will respect the outcome, even if they disagree with it, by complying with it, and not undermining the decision. I cannot find, on the balance of probabilities, that Councilor McLean intended to disrespect the decision-making process. He exercised poor judgment in the mode of his participation; however, he did attempt to vote to support the motion and there is no evidence he did anything to undermine the outcome.

Section 16 of the *Code of Conduct* states:

A Member must respect and comply with the *Procedure Bylaw*.

According to the *Bylaw* the intent is to ensure the orderly conduct of business, facilitate progress, and is to be applied in the spirit of fairness, equality and common sense.

Section 18 of the *Code of Conduct* states:

A Member must respect and comply with all obligations imposed on the *Member* by statute, or other legal enactments, and by the City's policies and procedures...(list follows and includes the (d) *Procedure Policy*)

Section 28 of the *Procedure Bylaw* states:

(1) *A Member* who wishes to speak or make a motion at a Meeting shall do so only after being recognized by the *Chair*. Recognition must ordinarily be on a first-come-first serve basis.

(2) *A Member* must not interrupt another person who was duly recognized to speak, except on a *Point of Order* (pointing to a violation of a specific rule) or a *Question of Privilege* (pointing to an issue that affects the comfort of *Members*, such as noises, uncomfortable room temperature, and other distractions).

(3) When the voting process commences, *Members* must cease any distractions from the question until the vote is taken and declared.

In my opinion, Councillor McLean failed to follow the spirit and intent of these sections of the *Bylaw*, in that he was distracted during the Meeting and when the vote was being taken, disrupted the Meeting, and interrupted the vote. In my opinion, he was aware he was interrupting someone during the vote, when he stated, "I'm a yes I am sorry". His conduct lacked the decorum that Council, administration, and the public are entitled to expect from a Council Member. I find that on a balance of probabilities, Councillor McLean was in breach of section 16 and 18 of the *Code of Conduct* and section 28 of the *Procedure Bylaw*.

Allegation 4 - Failure to Vote

Section 10 of the *Code of Conduct* requires Members to vote in accordance with the *MGA*.

Section 174 (1) (f) provides for the disqualification of a Member from Council if they fail to vote on a matter at which the Councillor is present unless the Councillor is required or permitted to abstain from voting under this or any other enactments. Councillor McLean's evidence was that he did not ask for an abstention.

Section 184 of the *MGA* allows for abstention from voting if the Council Member is absent for all or part of the Meeting.

Section 118 of the *Procedure Bylaw* states:

Every Member present at a Meeting of Council or a Council Committee must vote on every matter put to a vote unless the Member declares a pecuniary interest or has abstained from voting on a matter due to absence from the public Meeting.

Despite attending the Meeting remotely, if Councillor McLean was not 'connected' to the Meeting when his turn to vote arose, and he was marked absent by the Clerk, then on my interpretation of the section, he was absent for the purposes of this section and therefore did not fail to vote while present at the Meeting.

Councillor McLean was not 'online' so to speak during the two calls for his vote, and he did attempt to vote, albeit out of turn. There was no intention to not cast a vote.

Disqualification for failing to vote is a serious matter, which in my opinion, is intended for a clear intentional refusal to vote on a matter a Councillor is required to vote on, contrary to the *MGA* and *Bylaws*. There is insufficient evidence upon which I could conclude, that on a balance of probabilities, to conclude that Councillor McLean failed to vote when required to so. The allegations under the section 10 of the *Code of Conduct*, section 174 (1)(f) of the *MGA* and *Procedure Policy* are dismissed.

Summary of Findings

Allegation 1

Councillor McLean's attendance and participation at the golf tournament during a public City Council Meeting, was a violation of section 9, 10, and 11 of the *Code of Conduct*.

Allegation 2-3

Councillor McLean was in breach of section 16 and 18 of the *Code of Conduct* and section 28 of the *Procedure Bylaw*.

Allegation 4

There is insufficient evidence to conclude that Councillor McLean failed to vote when required to do so. The allegations under section 10 the *Code of Conduct*, section 118 of the *Procedure Bylaw*, and section 174(1) (f) of the *MGA* are dismissed.

IV - SANCTION RECOMMENDATIONS

Section 90(b) of the *Code of Conduct* provides that the *Integrity Commissioner* will make sanction recommendations in their report to Council.

Under section 91(2) of the *Code*, City Council must decide whether to adopt the *Integrity Commissioner's* recommendations as to sanction or whether to substitute a different lesser or greater sanction. The list of sanctions is set out in section 92 of the *Code of Conduct*, but it is not exhaustive.

When considering sanctions, I consider the seriousness of the violation, as well as the mitigating and aggravating factors that apply in the circumstances.

Mitigating factors

It is my opinion that Councillor McLean did intend participate in the Council Meeting as best as he could while golfing and I accept that he had technical difficulties.

Councillor McLean participated willingly and was cooperatively with the investigation. He answered all questions posed to him during the investigation. He provided detailed evidence, and he agreed I could seek information from City administration.

While the remote attendance in and of itself was not the gist of the complaint, I have observed that since the beginning of the pandemic, and in its aftermath, the number of remote attendees has been high. I have observed Council Meetings where less than half of Council Members attended in person, the rest by remote attendance. This has become a systemic issue, which I believe contributed to the incident's occurrence.

Aggravating factors

In person attendance at Council Meetings should, in my interpretation of section 153 of the *MGA*, be the priority for all Council Members, including Councillor McLean. It is an obligation that is pivotal, if not the foremost responsibility in a Councillor's role as an

elected official. Council can only act on motions or bylaws it passes at Council Meetings. The public is entitled to expect attendance in person, decorum, and meaningful engagement from its Council Members at Council and Committee Meetings.

It was Councillor McLean's personal decision not to attend for social reasons, which is not the same as being excused due to a personal or family emergency.

Council Meetings are an opportunity to show leadership to administration and to the public. Instead, the incident reflected poorly on City Council as well as the Council Member.

I must consider that this is the second complaint involving Councillor McLean leading to a Report to Council pursuant to the *Code of Conduct*. In the first complaint, Councillor McLean was found to be in breach of a City and Provincial Bylaws for not wearing a mask when required to do so during the pandemic.

In my opinion, this incident falls into the moderate category of seriousness, in that Councillor McLean put his own interests before the City's interests, his conduct offended employees, the meeting was public, and it undermined public confidence in City Governance.

Recommendation

I recommend a moderate sanction for Council's consideration as follows:

- 1) A letter of reprimand addressed to Councillor McLean from the Mayor on behalf of City Council.
- 2) A letter signed by Councillor McLean, accepting responsibility for the poor decision that had a negative impact on City Council, and containing an apology from Councillor McLean to City Council and to City Administration. The letter is to be delivered by Councillor McLean to the Chief Administrative Officer for internal publication, within 30 days.

I request that Councillor McLean inform me when the sanctions imposed by City Council have been fulfilled.

This report was completed and signed by me at Calgary, Alberta on December 10, 2023.

"Ellen-Anne O'Donnell"

Integrity Commissioner

City of Calgary.

¹ The Complainant's identity is protected pursuant to section 67 of the *Code of Conduct*.