



CONFIDENTIAL

**CITY OF MEDICINE HAT
INVESTIGATION REPORT**

Complainant: 17(4)(d), 17(4)(f)
Respondent: 17(4)(d), 17(4)(f)
Type of Complaint: Council Code of Conduct Bylaw No. 4492
Investigator: Michael Solowan
Report Date: February 27, 2024

TABLE OF CONTENTS

I. INTRODUCTION 3

II. COUNCIL CODE OF CONDUCT BYLAW NO. 4492 4

III. INVESTIGATION SCOPE and PROCESS..... 4

IV. CHRONOLOGY OF INVESTIGATIVE STEPS 6

V. COMPLAINANT’S INFORMATION..... 9

VI. TRANSCRIPT OF EXCHANGE DURING AUGUST 21, 2023, REGULAR MEETING OF COUNCIL..... 14

VII. RESPONDENT’S INFORMATION 18

VIII. DISCUSSION AND ANALYSIS..... 26

IX. GOOD FAITH REQUIREMENT..... 34

X. SUMMARY OF FINDINGS..... 34

XI. APPENDIX A – JANUARY 31, 2024 WRITTEN SUBMISSIONS OF THE RESPONDENT 35

XII. APPENDIX B – FEBURARY 13, 2024 FURTHER WRITTEN SUBMISSIONS OF THE RESPONDENT 36

I. INTRODUCTION

1. This is the confidential investigation report of Michael Solowan of Kingsgate Legal (the “investigator”). The investigator was retained by the City of Medicine Hat (the “City”) to investigate the formal complaint submitted by the Complainant, dated August 22, 2023, against the Respondent alleging breaches of the City’s Council Code of Conduct Bylaw No. 4492 (the “Complaint”).
2. The Complainant and the Respondent are both members of Council and their conduct is governed by the City’s Council Code of Conduct Bylaw No. 4492 (the “Code”).
3. On August 21, 2023, Council held a regular meeting, during which the following agenda item was discussed: New Business 11.3 City of Medicine Hat – Divisional Realignment. The stated purpose of this agenda item was to approve the divisional realignment, consisting of four defined divisions: Corporate Services, Development & Infrastructure, Energy, Land & Environment, and Public Services. During the public discussion of this agenda item, the Respondent engaged with the City Manager, questioning the reorganization process followed and quoting from a legal opinion the Respondent had personally obtained on the matter.
4. Following the Respondent’s exchange with the City Manager, Council approved the divisional realignment as presented and passed Bylaw 4794 to Amend the Administrative Organization Bylaw to align the Administrative Organization Bylaw No. 4662 (the “AO Bylaw”) with the new corporate reorganization.
5. The Complainant alleges 17(4)(d), 17(4)(f)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

II. COUNCIL CODE OF CONDUCT BYLAW NO. 4492

7. Below are relevant excerpts from the Code:

4. Representing the Municipality

4.1. Members shall:

[...]

(b) perform their functions and duties in a conscientious and diligent manner with integrity, accountability and transparency;

(c) conduct themselves in a professional manner with dignity and make every effort to participate diligently in the meetings of Council, committees of Council and other bodies to which they are appointed by Council;

[...]

8. Respectful Interactions with Council Members, Staff, the Public and Others

8.1 Members shall act in a manner that demonstrates fairness, respect for individual differences and opinions, and an intention to work together for the common good and in furtherance of the public interest.

[...]

8.2. Members shall treat one another, employees of the Municipality and members of the public with courtesy, dignity and respect and without abuse, bullying or intimidation.

[...]

8.6. Members must not:

[...]

(c) maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of employees of the Municipality.

III. INVESTIGATION SCOPE AND PROCESS

8. The investigator was satisfied there were grounds for conducting an investigation into some, but not all, of the allegations in the Complaint and that the Complaint was neither frivolous nor brought in bad faith. The scope of this investigation is limited to assessing whether the Respondent's decision to obtain a personal legal opinion on the corporate reorganization and/or the Respondent's exchange with the City Manager during the August 21, 2023 Council meeting breached the Code. Additional concerns regarding the

Respondent's conduct were determined to be without merit or beyond the scope of this investigation.

9. Only a "Member" may file a formal complaint under the Code. "Member" is defined in the Code to mean "a member of Council and includes a councillor or the Mayor." The investigator confirmed that the Complainant was filing the Complaint on their own behalf and not on behalf of any other person, including the City Manager.
10. The Complainant and the Respondent were interviewed for this investigation. As the August 21, 2023 Council meeting was available on YouTube, there was no need to interview witnesses.
11. All participants were told that their interviews were being audio recorded. All were told they must keep the investigation confidential and there is no tolerance for retaliation against anyone who brings forward a good faith complaint or participates in an investigation.
12. Interview statements were prepared based on the interviews. The participants were given an opportunity to review, add to and edit their statements.
13. Information in this report was edited for relevancy, confidentiality, length, and clarity, where appropriate.
14. The investigator reviewed and considered all records and background information provided before making findings in this investigation.
15. When considering the credibility of the participants, the investigator may consider the following factors depending on the circumstances:
 - External evidence
 - Corroborating information
 - Motivation to be dishonest
 - The plausibility of what they said
 - Whether their information was rational and logical
 - Noting what they failed to say
 - Contradictions and inconsistencies in what was said or discovered
 - Whether they were being evasive, vague, deflecting or exaggerating
 - Whether their memory was poor when it suited them
16. The investigator's findings were made on a balance of probabilities as follows:
 - **Substantiated** – there was sufficient evidence to make the finding

- **Unsubstantiated** – there was insufficient evidence to make the finding
- **Unfounded** – there was sufficient evidence that the allegation was not true

IV. CHRONOLOGY OF INVESTIGATIVE STEPS

17. On September 11, 2023, the investigator sent individual introductory emails to each of the Complainant and the Respondent, informing them that the investigator had been retained and was in the process of reviewing the Complaint to determine whether to proceed to investigate or not, in accordance with Section 16.1(e) of the Code.
18. On September 11, 2023, the Complainant acknowledged receipt of the investigator's introductory email by reply email.
19. On September 13, 2023, the Respondent acknowledged receipt of the investigator's introductory email by reply email and requested an opportunity to 17(4)(d), 17(4)(f) prior to the investigator making its decision whether to proceed to investigate the complaint or not, pursuant to section 16.1(e)."
20. On September 13, 2023, the investigator replied to the Respondent via email indicating the Respondent could forward any information relevant to the initial assessment of the Complaint and clarified that at this stage the investigator was only considering the following threshold questions, namely, whether: (a) the complaint falls within the jurisdiction of Code; (b) the complaint is being brought in good faith; and (c) there are sufficient grounds for conducting an investigation.
21. On September 22, 2023, the Respondent forwarded to the investigator a "preliminary statement of facts in relation to the [Complaint]", stating that "[t]he facts and information presented are in relation to the investigator's decision whether to investigate...."
22. On September 26, 2023, the investigator emailed the Complainant to advise that the investigator will be proceeding to investigate the Complaint and to request an interview with the Complainant to review and discuss the Complaint.
23. On September 26, 2023, the investigator emailed the Respondent to advise that the investigator will be proceeding to investigate the Complaint and that once the investigator has interviewed the Complainant (and any other witnesses, if applicable), the investigator will be in touch to schedule the Respondent's interview.
24. On September 29, 2023, the investigator interviewed the Complainant, in person, in Edmonton while the Complainant was in the city attending a municipal convention.

25. On October 3, 2023, the Respondent emailed the investigator requesting clarification of the investigator's decision to investigate the Complaint, inquiring as to "which of the allegations being made, if proven true, would constitute a breach of which provision(s) of the Code of Conduct?"
26. On October 5, 2023, the investigator emailed the Complainant their draft interview statement for their review, editing and signature.
27. On October 6, 2023, the Complainant emailed their signed interview statement to the investigator.
28. On October 6, 2023, the investigator emailed the Respondent to advise that the investigation

...is primarily focused on whether your questioning of the City Manager in open session during the August 21st Council meeting, 17(4)(d), 17(4)(f)

A secondary issue is 17(4)(d), 17(4)(f)

As you pointed out in your "Preliminary Statement of Fact, received on September 25th (and as 17(4)(d), 17(4)(f) has subsequently acknowledged to me) the August 14, 2023, "strategy/performance management meeting" was not a regular (or special) Council meeting and no Council decisions (i.e. resolutions) had been made in relation to the reorg prior to the Aug 21 adoption of certain amendments to the AO Bylaw.

29. On October 10, 2023 the Respondent emailed the investigator to request 17(4)(g)

30. On the same day, by reply email, the investigator 17(4)(g) that the focus of the investigation was on "the actual events that transpired at the August 21st Council meeting, specifically, your questioning of the City Manager and the presentation

of the legal opinion in open session.” Further, the investigator requested the Respondent’s availability for an interview.

31. On October 18, 2023, the Respondent emailed the investigator to confirm their availability on the afternoon of November 10th for an interview. Following the investigator’s request for any earlier available dates, the Respondent confirmed November 7th at 4pm for her interview.
32. On November 7, 2023, the investigator interviewed the Respondent, virtually, on the Microsoft Teams platform.
33. On November 10, 2023, the investigator emailed the Respondent their draft interview statement for their review, editing and signature.
34. On November 27, 2023, the investigator sent a follow-up email to Respondent to inquire as to the status of her interview statement.
35. On November 28, 2023, the Respondent emailed the investigator to request additional time to review her draft interview statement 17(4)(d), 17(4)(f)
36. On November 29, 2023, the investigator emailed the Respondent to advise that if her signed interview statement was not received by the end of next week, the investigator would need to inform the Chair of the City’s Administrative and Legislative Review Committee that the investigation will be postponed to the new year.
37. On December 11, 2023, the investigator emailed the Chair of the City’s Administrative and Legislative Review Committee to advise that the investigator has not heard back from the Respondent or received her signed interview statement, and the investigation would need to be postponed until the new year as the investigator 17(4)(d), 17(4)(f)
38. On January 2, 2024, the investigator emailed the Respondent to follow up regarding her interview statement and 17(4)(d), 17(4)(f)
39. On January 9, 2024, the investigator sent a further email to the Respondent to follow up regarding her interview statement and 17(4)(d), 17(4)(f)
40. On January 10, 2024, the Respondent emailed the investigator to advise that 17(4)(d), 17(4)(f)
The Respondent said “I will do my best to provide you with the written statement by Friday. I do apologize for the delay.”

- 41. On January 12, 2024, the Respondent emailed the investigator to advise that she was unable to finalize her interview statement and requested an extension to Monday.
- 42. By reply email on the same date, the investigator acknowledged the Respondent's request for a further extension and advised that the investigator would pass this along to the Chair of the City's Administrative and Legislative Review Committee, who was scheduled to update Council on the status of the investigation.
- 43. On January 15, 2024, 17(4)(d), 17(4)(f) [REDACTED]
- 44. By reply email on the same date, the investigator acknowledged 17(4)(d), 17(4)(f) [REDACTED] and request for an extension.
- 45. By separate email on the same date, the investigator advised the Chair of the City's Administrative and Legislative Review Committee that the Respondent 17(4)(d), 17(4)(f) [REDACTED] and they have requested an extension of a week to 10 days to assess the case.
- 46. On January 31, 2024, the 17(4)(d), 17(4)(f) [REDACTED] a copy of which is attached as **Appendix A**.
- 47. On February 5, 2024, the investigator attended, virtually, before Council in closed session to provide a status update on the investigation.
- 48. On February 13, 2024, the Respondent's 17(4)(d), 17(4)(f) [REDACTED] a copy of which is attached as **Appendix B**.

V. COMPLAINANT'S INFORMATION

- 49. Below are relevant excerpts from the Complaint:


17(4)(d), 17(4)(f) [REDACTED]

[REDACTED]

I am referencing Bylaw 4492, (which was amended by Bylaw 4694 on February 23 2022.) The code of conduct for members of council.


Section 4.1 (b) of the code states that members shall perform their functions and duties in a conscientious and diligent manner, with integrity, accountability, and transparency.

17(4)(d), 17(4)(f)




Furthermore, Section 4.1 (c) states that members should conduct themselves in a professional manner with dignity and make every effort to diligently participate in council meetings.

17(4)(d), 17(4)(f)




Section 5 of the code of conduct pertains to communicating on behalf of the council. Specifically, section 5.5 states that no member shall make a statement with the intent to mislead council or members of the public.

While reviewing the video of the August 21 council meeting, 17(4)(f), 17(4)(d)



[...] 17(4)(d), 17(4)(f)



17(4)(d), 17(4)(f)

[...]

Section 8 of the code of conduct pertains to respectful interactions with council, staff, and the public. Subsection 8.1 emphasizes the importance of acting in a manner that demonstrates fairness, respect for individual differences and opinions, and an intention to work together for the common good.

17(4)(d), 17(4)(f)

Subsection 8.2 states that members should treat fellow employees, members of the municipality, and the public with courtesy, dignity, and respect, without engaging in abuse, bullying, or intimidation. 17(4)(d), 17(4)(f)

[...]

Furthermore, subsection 8.6 (c) explicitly states that members must not maliciously or falsely damage the professional, ethical reputation, or prospects for the practices of employees of the municipality. 17(4)(d), 17(4)(f)

50. Below are excerpts from the Complainant’s interview statement:

- I filed this formal complaint on my own behalf, not on behalf of the City Manager or anyone else.
- In February the City Manager moved the City Clerk from the City Solicitor to report directly to the City Manager. 24(1)(a), 20(1)(b) Within days of doing this the City Manager realized that process to amend the Administrative Organization Bylaw hadn’t been followed and no one on Council, including the Mayor,

spoke up when City Manager apologized for that.

- August 14th was the annual performance appraisal of the City Manager. It was not a regular or special council meeting, but I'm pretty sure it was advertised. It was not a Council meeting.
- 17(4)(d), 17(4)(f), 23(1)(b)
[REDACTED]
- 17(4)(d), 17(4)(f)
[REDACTED]
- [REDACTED] Mayor said in a public meeting that she got a personal legal opinion.
- The morning after the Council meeting (Aug 22) I tried to talk to the Mayor and ask her how do we fix this. The Mayor told me 17(4)(d), 17(4)(f)
[REDACTED]
- I go back and watch the video of our Council meetings sometimes and one time I realized I had spoken inappropriately to a Managing Director during the meeting. So, I went and apologized to them and then apologized publicly at next Council meeting. I 17(4)(d), 17(4)(f)
[REDACTED]
- On Aug 21 when the Mayor spoke, the idea that the City Manager failed to inform Council is simply not true. We knew what the City Manager was doing. Council said thanks, yes that sounds good. 17(4)(d), 17(4)(f)
[REDACTED]
- The Administrative Organization Bylaw has been under review for the last 6 months.
- The City Manager came to Council and asked if people are good with what she was doing. 24(1)(a), 24(1)(b)(i)
[REDACTED]

- 17(4)(d), 17(4)(f) [REDACTED] The next day people on social media were asking how Council could be so deceptive; we've taken a beating from a very small minority. My credibility is key as is my integrity. I don't lie.
- The City Manager has something like 40 years of service. Even if every word the Mayor said was true it should have been said in private as a confidential personnel matter. We can deal with it behind closed doors. There was opportunity to do that. 17(4)(d), 17(4)(f) [REDACTED] Personnel is a closed item under FOIP. Performance issues are not appropriate discussion in public.
- From my perspective this investigation is not about the Administrative Organization Bylaw. 17(4)(d), 17(4)(f) [REDACTED] If the AO Bylaw was breached it is on Council to raise the issue.
- Council never met to discuss issues with the AO Bylaw and how the City Manager was handling the reorganization.
- The Mayor's conduct at the Aug 21 meeting 17(4)(d), 17(4)(f) [REDACTED]
- The Mayor never brought her concerns to Council in advance. She never said we need to get a legal opinion on this. 17(4)(d), 17(4)(f) [REDACTED]
- 17(4)(d), 17(4)(f) [REDACTED]
- The City Manager had come to Council in-camera to 23(1)(b) [REDACTED] 23(1)(b) [REDACTED]
- Making resolutions to ratify decisions isn't new. We are doing a resolution on Oct 3 to approve 3 letters that were already sent to the Minister. So, what's the difference here?

VI. TRANSCRIPT OF EXCHANGE DURING AUGUST 21, 2023 COUNCIL MEETING

51. Below is a transcript prepared by the investigator of the exchange that took place during the discussion of agenda item 11.3 City of Medicine Hat – Divisional Realignment.
52. The following discussion occurred between time marks 1:52:38 and 2:03:44:

Respondent: I have several questions. This reorg already happened, and people have already lost their job, why are you bringing it to Council now?

City Manager: There was a conversation with Council on July 4th so Council was aware of this, if the process happened out of order that was my issue.

Respondent: When did the reorg start? So, the City Clerk moved to report directly to you, when did that happen?

City Manager: I'd have to go back for that with regards to a memo went to Council on July 19th then Council was discussed about the reorg on July 4th and then the actual reorg itself happened on July 10th.

Respondent: Ok, so the financial report that came through Audit Committee on April 4th, 2023, does say there that the City Clerk was reporting to you at that time, it actually says as of December 31st, 2022, which of course was not the case, so approximately 5 months ago, does that sound about right?

City Manager: I'd have to check that.

Respondent: Ok. So, my concern obviously is that this is a Council decision, and it says in our AO Bylaw that Council shall determine by resolution the departments and business units and energy and infrastructure division, all of the divisions and, in addition, the departments and business units reporting directly to the City Manager. And our Procedure Bylaw outlines that the City Clerk is appointed by the City Solicitor and the appointment is revoked by the City Solicitor so that's a significant period of time where you had done things that were not consistent with our Bylaws. So, I'm just wondering how that happened?

City Manager: That happened because I missed a process and if anything, that's my fault. I did advise Council and Council was aware of what was happening. This AO Bylaw also says there should be 5 divisions and that hasn't been the case for quite some time so that was missed previously as well too. Not excusing me, just saying it got missed before.

Respondent: Yeah, I mean presumably you consulted the AO Bylaw before you did a reorganization, I'm just wondering how Council wasn't, didn't have the opportunity to follow the Bylaw.

City Manager: Council was informed.

Respondent: It has to be a resolution, is what, Section 6 says, Council shall by resolution. And I understand that I, we've discussed this, and I think your position was that Section 6 shouldn't be in our Bylaw but I'm wondering if you considered the consequences of making these changes without having proper authority.

City Manager: I have, and we have discussed it.

Respondent: What are those consequences?

City Manager: The consequences are that Council was advised and that this is how it happened previously under other City Managers as well.

Respondent: It isn't.

City Manager: I'm not saying it's right, but it did.

Respondent: It didn't so, when the City Solicitor was moved under the City Manager at that time, Council made that decision on December 19th, actually they made that decision on August 19th, 2019, and then an AO Bylaw was brought forward and then the next reorg., same thing, a briefing note came forward to get authority to do the reorg. and then the AO Bylaw was amended. So, regardless of even how it even happened before, I'm just wondering how it is, like, what structurally you said you consulted ELT and all of that, I know Managing Director Eggert was here during that period, Managing Director Panko, City Solicitor Bullock, what got missed? Like how did that get missed?

City Manager: The process got missed from me and it wasn't until after we made the decision about it that I was advised that I had to go through and change this AO Bylaw, which I wasn't aware of. No excuses on anybody but me though.

Respondent: I mean, I did bring it up with you several times but.

City Manager: I believe that was after the fact.

Complainant: Excuse me, point of order, I think this is starting to be an inquisition versus Council asking Administration question so, you know, I don't know exactly all the Roberts Rules of Orders but with all due respect, we've already talked about this, we talked about it at our strategic meeting on Monday, I believe Councillor Hirsch and Councillor

Dumanowski both corrected us and let us know that this is exactly the process that was taken in the past. So, we all moved forward. I am not happy that this is happening the way it is, and I will ask for a recess if this continues.

Respondent: Ok, well, I do honestly find it quite disappointing that no one else really cares about the exercise of a Council power. I did, because what I was being told didn't seem consistent with the MGA or the Bylaw, I did personally get a legal opinion from Guy Giorno and he is with Fasken and he is the head of their Government Ethics Department and there are consequences. I'll just read the conclusion:

"A decision made without authority is a nullity. So too is a decision made contrary to the provisions of the governing bylaw. In our opinion, the following aspects of the reorganization are null or in other words void and have no effect:

- Changes to the names, number and structure of the divisions that have been fixed by the Bylaw.
- Changing the reporting relationship of the City Clerk, which has been set by the Bylaw.
- Reassignment of departments and business units to the Divisions without the approval of Council.
- Reassignment of departments and business units reporting directly to the City Manager without the approval of Council.

The changes described in the first and second bullets may, if Council so desires, be implemented by enacting a bylaw that amends Bylaw No. 4662. The reassignment described in the third and fourth bullets may, if City Council so desires, be implemented by Council resolution.

We note that those aspects of the reorganization that did not usurp Council's authority or contravene the Bylaw were valid and continue to have effect."

Respondent: So, one of the concerns of course is that I feel that my role wasn't respected as an elected official, but the other problem is that all of the decisions that were made were null and void. So, they have no effect. Which those are the consequences I'm wondering if you thought you had discussed with ELT.

City Manager: I think this is highly inappropriate and I would like to stop this discussion right now.

Councillor Robins: Mayor Clark, there was a point of order from Councillor Sharps that was never ruled upon. We should have a ruling on that.

Respondent: I didn't ask any more questions.

Complainant: No, you're right, you're going on a diatribe. So, I have a point of order in and if you choose not to respond to it, I will just ask for a recess and ask for a seconder.

Councillor Hider: I'll second that, Shila.

Respondent: So, what is the, so the point of order is that I just stop talking about this?

Complainant: With all due respect, this has already been talked about and I don't believe anybody around the table is actually in agreement with you. So, we had a strategic meeting, and you did bring this up and I'll be honest, I was under the impression that when City Manager came to us weeks ago, that was giving us the thumbs up, I have no intention of getting into her weeds. I have got my own business to run. We are not Administration. I can apply for a job if that's what I want to do. Not applying, not getting involved. She did come to us, she gave us the "hey, this is what I'm doing, what do you guys think?" and we're like "yeah, go for it". So, you know what, to me that was done. We shouldn't have to discount each other's credibility when we're around this table and the question was asked, and we answered it. You might not have agreed, it does not change the answer.

Respondent: But, now it is before Council and we're being asked to approve something.

Complainant: I don't feel like you are, so ok I would, I'm not sure City Clerk if you could advise me here, I would like to go straight to vote, because this isn't a question period, this is a diatribe and I'm actually, probably more offended than you are, so don't worry.

Councillor McGrogan: Should we put the motion on the floor?

[Unidentified Speaker]: That would be really nice.

Respondent: Is the motion that I just stop talking about this?

Councillor McGrogan: No, the motion is that I move that Council approves the divisional realignment as presented.

Complainant: Second.

[Unidentified Speaker]: We could vote by show of hands.

Respondent: And that passes. The next item on the agenda is Bylaw 4794 to amend the Administrative Organization Bylaw.

VII. RESPONDENT'S INFORMATION

53. Below are excerpts from the Respondent's interview statement:

- During the August 21st Council meeting, I know that everyone in the room was upset. It was very clear they were gesturing while I was talking, and it was a very tense situation for sure. But I had tried to provide this information repeatedly to the City Manager in our one-on-one meetings and I did do it at our July 4th Council meeting, which was the first time Council met to discuss this reorganization.

- 17(4)(d), 17(4)(f), 27(1)
[Redacted]

- The layoffs had already occurred and no one else on Council seemed to really be interested in what I believe is doing our job. 17(4)(d), 17(4)(f)
[Redacted] 17(4)(d), 17(4)(f)

- In the community it was obvious that layoffs had occurred without Council first passing a resolution, which was Council's authority to do. I wanted to understand how that happened so it wouldn't happen again in the future. I was very clear with Council on both July 4th and during the August 16th workshop that the AO Bylaw had been violated. That shouldn't have been a surprise to them regardless of who was saying it. I had been very clear about that the entire time. I wish that my words would've been believed, but at the August 16th gathering it was, well, this is how we did it before. 17(4)(d), 17(4)(f)
[Redacted] And it also hadn't been done that way before.

- 17(4)(d), 17(4)(f) I mean it is clear in the community. I didn't cause it to be the case that our bylaw was violated. I just said that it was, and 17(4)(d), 17(4)(f)

17(4)(d), 17(4)(f) And it was clear because the layoffs had already happened, and the reorg. had already happened. All staff knew that the reorg. had happened, they had been notified. It was clear that Council didn't approve that reorg. and it was clear in the documents that were provided to us that we were currently in violation of our AO bylaw. I didn't cause that to be the case. I just wanted to understand how that happened and how we can prevent it in the future.

- I didn't get this far during the August 21st Council meeting, but if we are making these changes, we need to understand the risks. We must understand what this reorg. means for the City.
- If something is Council's decision to make, we're asking the right questions and making sure we're satisfied with the answers before just rubber stamping something. 17(4)(d), 17(4)(f)

[REDACTED]

- It feels like it almost seems like people think I created that situation. I didn't. I was just trying to make sure that it was understood how we got here, what could have been done better so that maybe in the future we need to have a different process.
- 17(4)(d), 17(4)(f)

I think that as the Mayor and a politician, the public needs to believe that the municipality has integrity and just sweeping things under the rug doesn't do that. If we would've just rubber stamped it, why would the community trust us to do our jobs?

- My job is to ask questions. My job is to get to the bottom of things. 17(4)(d), 17(4)(f)
17(4)(d), 17(4)(f)

It would be different if this was someone from Parks presenting before Council, but 17(4)(d), 17(4)(f)

17(4)(d), 17(4)(f)

- But it had already decided and done before it came to Council. 17(4)(d), 17(4)(f)

- The City's gone through multiple reorgs., lots of change. Employees are very fatigued. So, we need to think carefully about reorganizing everything. Mental health scores are very low in our organization. 17(4)(d), 17(4)(f)
Even retention is something that we need to consider before doing a reorg. Obviously, it has to be based on the advice of the City Manager and Administration and Legal, but it was Council's decision to make. And that should have happened before the layoffs, the reorg., the announcing to staff, announcing to the public.

- The City Manager reports to Council. Council provides direction as per the MGA. Previously though, the mayor was full-time and they just had more discussions, weekly meetings and exchange of information with the City Manager. 17(4)(d), 17(4)(f)

- It was in these one-one-one meetings, when the 17(4)(d), 17(4)(f)

- 17(4)(d), 17(4)(f)
[Redacted]
- The City Solicitor wasn't present for the July 4th closed session, which is unusual.
- 24(1)(a), 24(1)(b)(i)
[Redacted]
- The City Manager called it a legal opinion from the City Solicitor, but I don't know if it was a written opinion. 17(4)(d), 17(4)(f)
[Redacted]
- The City Solicitor reports to the City Manager. 17(4)(d), 17(4)(f)
[Redacted]
- There was never any discussion about Council seeking an external legal opinion regarding the AO Bylaw and the reorg.
- No one else on Council really had concerns. 17(4)(d), 17(4)(f)
[Redacted]

17(4)(d), 17(4)(f)

- 17(4)(d), 17(4)(f)

- We're supposed to follow our bylaws. It's a Council decision until Council approved it. 17(4)(d)

- In the City Solicitor's briefing note, which came forward to Council on August 21st 17(4)(d), 17(4)(f)

- I contacted Guy Giorno to obtain a legal opinion. Yes, I paid for it personally. But then on August 22nd, 17(4)(d), 17(4)(f)

- By the August 21st Council meeting everything was already public. The reorg. had already been announced. It was public. 17(4)(d), 17(4)(f)
17(4)(d), 17(4)(f)

- 17(4)(d), 17(4)(f)
[Redacted]
- The August 21st Council meeting was the first time I disclosed to Council that I had obtained an external legal opinion. I don't know that I intended necessarily to mention it during the meeting. I had it with me. I thought depending on how the conversation goes, I had it with me, but it obviously wasn't my go-to, 17(4)(d), 17(4)(f)
[Redacted]
- But it seemed to me during my questioning of the City Manager, it 17(4)(d), 17(4)(f)
[Redacted]
- I don't know what all the risks were. 17(4)(d), 17(4)(f)
[Redacted]
- What I said in the public meeting on August 21st are just facts. That is the case. That's truth. Whether I say it out loud or not, the fact is, in the section that I read from the opinion, if Council approves it now, then it resolves those risks or at least the risks that I knew about or I had considered.
- 17(4)(d), 17(4)(f)
[Redacted]
• Council has now done its piece. 17(4)(d), 17(4)(f)
[Redacted]
- 17(4)(d), 17(4)(f)
[Redacted]

17(4)(d), 17(4)(f)

- 17(4)(d), 17(4)(f)

- 17(4)(d), 17(4)(f)
17(4)(d), 17(4)(f)

- 17(4)(d), 17(4)(f)

- 17(4)(d), 17(4)(f)

- I asked Guy Giorno if it would be acceptable for me to disclose the legal opinion, and he said, because it was my legal opinion that I could disclose it and that he didn't see an issue with it. Even in the context of the code of conduct, he didn't see any reason why that would be unacceptable.

- 17(4)(d), 17(4)(f)

- 17(4)(d), 17(4)(f)
[Redacted]
- The public knew what had happened. 17(4)(d), 17(4)(f)
[Redacted]
- I'm answerable to the public.
- We're not doing our jobs and we have obligations to be oversight in government governance and actually do our job. It's a very serious criticism about the last Council.
17(4)(d), 17(4)(f)
[Redacted]
- 17(4)(d), 17(4)(f)
[Redacted]
- 17(4)(d), 17(4)(f)
[Redacted]
- 17(4)(d), 17(4)(f)
[Redacted]

VIII. DISCUSSION AND ANALYSIS

54. Findings in these investigations are made objectively, taking into account context and the surrounding circumstances and whether there is sufficient evidence on a balance of probabilities that a breach of the Code has occurred.

Allegation #1: 17(4)(d), 17(4)(f)

55. Section 4.1 of the Code requires Council members to perform their functions and duties in a conscientious and diligent manner with integrity, accountability, and transparency, and conduct themselves in a professional manner with dignity, making every effort to participate diligently in the meetings of Council.

56. The Complainant alleges 17(4)(d), 17(4)(f)

[Redacted]

57. In response, the Respondent's 17(4)(d), 17(4)(f)

[Redacted]

58. Contrary to the Complainant's assertions, the Respondent says 17(4)(d), 17(4)(f)

[Redacted]

59. The Respondent's 17(4)(d), 17(4)(f)

[Redacted]

60. The investigator notes that the Fasken Opinion says the Respondent reached out to Mr. Giorno on July 14th to seek advice on the reorganization, that oral advice was provided to the Respondent on July 28th and the written legal opinion is dated August 17, 2023.

61. The investigator declines to make any findings in relation to any legal opinion that may or may not have been prepared by the City Solicitor or regarding what specifically was discussed during the July 4th Council meeting. It is the investigator's determination that such matters are not relevant to making a finding on this allegation.

62. The Respondent's 17(4)(d), 17(4)(f) [Redacted]

63. 17(4)(d), 17(4)(f) [Redacted]

64. 17(4)(d), 17(4)(f) [Redacted]

65. 17(4)(d), 17(4)(f) [Redacted]

66. 17(4)(d), 17(4)(f) [Redacted]

17(4)(d), 17(4)(f)

67. 17(4)(d), 17(4)(f)

68. 17(4)(d), 17(4)(f)

69. 17(4)(d), 17(4)(f)

70. 17(4)(d), 17(4)(f)

71. 17(4)(d), 17(4)(f)

FINDING:

17(4)(d), 17(4)(f)

Allegation #2: 17(4)(d), 17(4)(f)

72. Section 8 of the Code addresses the requirement for Council members to engage in respectful interactions with their Council colleagues, City employees and members of the public. More specifically, section 8.1 speaks to the need to demonstrate fairness, respect for individual differences and opinions with an intention to work together for the common good, in the public interest. Section 8.2 impose a duty to treat others with courtesy, dignity and respect and prohibit all forms of workplace harassment, such as abuse, bullying and intimidation. Section 8.6(c) prohibits a Council member from maliciously or falsely injuring the professional or ethical reputation of a City employee.

73. While each provision cited above addresses a discrete form of misconduct, in this case the allegations falling under section 8 of the Code all arise from the same exchange between the Respondent and the City Manager and are intertwined. In the investigator's view, it is appropriate to consider these allegations collectively.

74. The Complainant alleges 17(4)(d), 17(4)(f)

75. The Complainant alleges 17(4)(d), 17(4)(f)

76. The Complainant further alleges 17(4)(d), 17(4)(f)

77. The Respondent says 17(4)(d), 17(4)(f)

17(4)(d), 17(4)(f)

78. The Respondent's 17(4)(d), 17(4)(f)

79. The Respondent 17(4)(d), 17(4)(f)

80. In closing, the Respondent's 17(4)(d), 17(4)(f)

81. In reviewing what transpired during the Respondent's exchange with the City Manager, the investigator considered the entirety of what was said, in context, without placing undue emphasis on any specific word or phrase expressed. The investigator also observed

the tenor and tone of the exchange, while mindful of the inherent challenges when assessing a person's demeanour.

82. The investigator finds 17(4)(d), 17(4)(f) [REDACTED]
83. The Respondent's exchange with the City Manager 17(4)(d), 17(4)(f) [REDACTED]
84. The investigator 17(4)(d), 17(4)(f) [REDACTED]
85. The investigator notes that the Respondent had previously raised her concerns regarding the lack of formal Council approval of the reorganization with Council during their July 4th, 2023 meeting. Further, inclusion of items 11.3 City of Medicine Hat – Divisional Realignment and 11.4 Bylaw 4794 to Amend the Administrative Organization Bylaw on the agenda for the August 21, 2023 meeting clearly indicate that Council was already aware that formal Council approval was required in order to ratify the City Manager's actions.
86. Further, the City Manager is accountable to Council (and the Minister of Municipal Affairs pursuant to the *Municipal Government Act*), not the public or any individual member of Council. The City Manager is not an elected official, but is appointed by Council, and while the City Manager is most certainly in a public-facing position, perhaps *the* most public-facing among all City employees, the individual holding that office is accountable to Council as a whole for their conduct and performance.
87. As such, the investigator 17(4)(d), 17(4)(f) [REDACTED]

17(4)(d), 17(4)(f)

88. The investigator finds 17(4)(d), 17(4)(f)

89. It is the investigator's finding 17(4)(d), 17(4)(f)

90. The Respondent submits 17(4)(d), 17(4)(f)

91. The Respondent's 17(4)(d), 17(4)(f)

92. Further, the Respondent's exchange with the City Manager also 17(4)(d), 17(4)(f)

93. The Respondent, 17(4)(d), 17(4)(f)

94. The Respondent’s first question to the City Manager during their exchange at the August 21st meeting was: “This reorg already happened, and people have already lost their job, why are you bringing it to Council now?” 17(4)(d), 17(4)(f)

[REDACTED]

95. During the exchange the Respondent goes on to reference and explain certain aspects of the AO Bylaw and Procedure Bylaw and state “that’s a significant period of time where you had done things that were not consistent with our Bylaws. So I’m just wondering how that happened?” 17(4)(d), 17(4)(f)

[REDACTED]

96. The Respondent goes on to question the City Manager on whether she “considered the consequences of making these changes without having proper authority” and then asks how this process got missed. 17(4)(d), 17(4)(f)

[REDACTED]

97. The investigator 17(4)(d), 17(4)(f)

[REDACTED]


98. The investigator concludes 17(4)(d), 17(4)(f)

[REDACTED]

FINDING:

The investigator finds there is sufficient evidence to establish that the Respondent violated the Code by failing to treat the City Manager with courtesy, dignity and respect and maliciously injuring the professional or ethical reputation of the City Manager during their exchange at the August 21, 2023 Council meeting. This allegation is **substantiated**.

IX. GOOD FAITH REQUIREMENT

99. Section 16.1 of the Code provides that any Council member who makes an allegation of misconduct must do so in good faith. In each investigation, the investigator will consider whether there is sufficient information to establish whether the allegations are brought in bad faith. The Respondent may not have information of a bad faith motive, but such a motive may be uncovered during the investigation. It is also notable that even if allegations are found to be unsubstantiated, that does not automatically mean they were made in bad faith.
100. Here, the Respondent did not expressly allege the Complaint was brought in bad faith, however, the 17(4)(d), 17(4)(f) 
101. The investigator did not obtain or perceive any information that this was a bad faith complaint. Council members are entitled and expected to have situations reviewed that may be a breach of the Code. The investigator finds that the Complaint was not brought in bad faith.

X. SUMMARY OF FINDINGS

The investigator finds:

- There is insufficient evidence to establish that the Respondent violated the Code by obtaining a personal legal opinion and disclosing it to Council, in public, during the August 21, 2023, Council meeting. This allegation is **unsubstantiated**.
- There is sufficient evidence to establish that the Respondent violated the Code by failing to treat the City Manager with courtesy, dignity and respect and maliciously injuring the professional or ethical reputation of the City Manager during their exchange at the August 21, 2023 Council meeting. This allegation is **substantiated**.
- The Complaint was not brought in bad faith.

XI. APPENDIX A – JANUARY 31, 2024 WRITTEN SUBMISSIONS OF THE RESPONDENT

XII. APPENDIX B – FEBURARY 13, 2024 FURTHER WRITTEN SUBMISSIONS OF THE RESPONDENT