



Privileged and Confidential

REPORT TO

s. 22(1)

Partner, Young Anderson Barristers and Solicitors
Legal Counsel for the City of Colwood

In this matter of

COMPLAINTS OF MISCONDUCT
ALLEGATIONS, FINDINGS, AND CONCLUSIONS

Submitted by s. 22(1) and s. 22(1)
Southern Butler Price LLP (the “Investigators”)

April 13, 2024



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1. Overview and Mandate

This report is provided to **s. 22(1)**, Legal Counsel for the City of Colwood (the “City”) pursuant to the Retainer Agreement, including Terms of Reference, which are attached at **Tab 1**.

We were asked to conduct an investigation (the “Investigation”) into allegations that City Councillor Kimberly Jordison (the “Respondent”) engaged in conduct in breach of the City’s *Citizen Concerns Policy* (the “Policy”) and the City’s *Code of Ethics* (the “Code of Ethics”). The allegations were advanced by **s. 22(1)** (the “Complainant”), a resident of the City, in three written complaints dated August 23, September 12, and October 2, 2023, which are appended to the Terms of Reference at **Tab 1**.

We were also retained to investigate a related complaint made by the Respondent against another City Councillor. Our investigation into this secondary complaint is the subject of a separate report.

In this report, consistent with the Terms of Reference, we provide a summary of the allegations and evidence considered, make findings of fact, and make a determination as to whether there has been any breach of the Policy or the Code of Ethics.

2. Process

Interviews were conducted virtually with the Complainant, the Respondent, and five Witnesses on December 18, 2023, January 15, 16, 19, 25, and 29, 2024, and February 1, 5, 6, and 9, 2024. We also attempted to meet with the Respondent on January 22, 2024, but rescheduled to February 1, 2024 as the Respondent experienced technical difficulties joining the call. All participants were given the opportunity to have a support person attend the interview with them, and none elected to do so.

The Respondent was provided with Particulars of Allegations prior to their first interview. A copy of the Particulars of Allegations is attached at **Tab 2**.

At the beginning of each interview, the participants were advised of the need for honesty, their obligation to maintain confidentiality of both the information that was shared and the fact that the Investigation was occurring, and the prohibition against retaliation. Each participant acknowledged their understanding of these obligations.

The participants were provided with an opportunity to submit documents they wished to have considered. We have reviewed and considered all documents provided, and we have referred to the content in this report where relevant. Quotes from documents in this report are reproduced as in the originals, except where square brackets are used to indicate text we have inserted.



The names of the Complainant, the Respondent, and the s. 22(1) are used in this report. Otherwise, Witness names have not been used, although job titles /role descriptions have been included where important to provide context to the evidence.

We note that during our interviews, the Respondent asserted there was no legal authority for the Investigation, arguing the Investigation constituted a delegation of Council's powers, duties, and functions, and that such a delegation could only be done by bylaw pursuant to section 154(1) of the *Community Charter* (the "Charter"). We explained our understanding that the Investigation was being directed by Council pursuant to the general authority under section 114 of the Charter, particularly section 114(4). Section 114(4) provides the following:

- (4) *A council has all necessary power to do anything incidental or conducive to the exercise or performance of any power, duty or function conferred on a council or municipality by this or any other enactment.*

Section 114(4) can also be read in light of section 4 of the Charter which states that the powers conferred on municipalities and their councils by the Charter "must be interpreted broadly in accordance with the purposes of those Acts and in accordance with municipal purposes."

3. Summary of Allegations

The Complainant alleged that the Respondent:

- 1) Engaged in unprofessional and disrespectful communications with s. 22(1) two other members of the public on social media after the 2023 Colwood Eats and Beats Beach Party, held on July 29, 2023 (the "Event"); and
- 2) Engaged in retaliatory actions against the Complainant in response to s. 22(1) complaint to the City about these communications, including:
 - a. Seeking personal information about the Complainant and s. 22(1) family, including about s. 22(1) identity, employment information, and personal family information with the intent of intimidating s. 22(1);
 - b. Making a complaint against the Complainant to the s. 22(1), the Complainant's employer; and
 - c. Making a request for the Complainant's shift records from the s. 22(1) under the *Freedom of Information and Protection of Privacy Act*.



4. Summary of Evidence

4.1. Background

The following facts are not in dispute.

The Complainant and [REDACTED] family are residents of the City. The Complainant is employed as a police officer with [REDACTED] (1). The Respondent is a Councillor for the City having been elected to Council in the 2022 local government elections. The Respondent is a long-term resident of the City.

4.2. Complainant's Evidence

4.2.1. Social Media Interactions After the Event

The Complainant explained [REDACTED] attended the Event, which was a food and music festival, and had a great time. [REDACTED] said, on July 30, 2023, the day after the Event, starting at approximately 9:20 PM, the Complainant and two other individuals engaged in a Facebook and Facebook Messenger exchange with the Respondent about the Event (the "FB Exchange").

The FB Exchange began with a post asking how the Event went. The Respondent, who the Complainant said [REDACTED] knew to be a Councillor with the City, replied with the comment, "What about parking?" The balance of the messages that followed were about concerns the Complainant and the other two members of the public had regarding parking for the Event, and the Respondent's responses to those concerns. At 9:46 PM, the Complainant sent a message over Facebook Messenger directly to the Respondent, resulting in a further exchange of messages.

The following are excerpts from the FB Exchange between the Complainant, the Respondent, and two members of the public:

Respondent: *What about parking?*

Member of the Public 1: *I just heard there was not very much.*

Respondent: *for the event yesterday? There was extreme planning that went into ensuring there was lots of parking. Shuttles were also available to get people to the site and golf carts were used as well. Parking on site was limited because it is currently undeveloped land. However, there was even accessible parking all along the main road down to the site that had been roped off for that purpose. Nothing is ever perfect but I can assure you parking was not a challenge.*

Complainant: *there was tons of people parking contrary to the posted signage within Royal Bay. Causing the roads to be narrowed down to single lane traffic. Willet St was completely lined with vehicles along the curb, contrary to the "Park in Bays Only" signage laid out.*



Member of the Public 2: *it was for those who tried to shop at Quality Foods. Lots of people parked there who attended the event. I just don't understand why someone would think that's okay.*

Respondent: [Member of the Public 2] *for one day, I just don't know [Member of the Public 2]. I guess we couldn't plan for everything. You know the saying, you just can [sic.] please everyone and this is a prime example. People always have to complain about something.*

Respondent: [Complainant] *I guess you can see what all the people that live in the Lagoon area experienced in previous years then. It's a one day event, held once a year. For one day people should be able to manage a little bit of inconvenience for the greater good.*

Member of the Public 2: [Respondent] *we specifically drove to that store to buy food but we couldn't get any parking. I think that's a legitimate complaint and I don't appreciate your comment. That's really uncalled for. A more appropriate response would be that something we weren't aware of and we will plan accordingly next time.*

Respondent: [Member of the Public 2] *the event was well marketed so maybe plan accordingly next time. There are many grocery stores in the Westshore, and even another Quality Foods, so you probably didn't have to drive far. Also regardless where you ask people to park, people will park where they park. Again for one day most reasonable people would understand.*

Complainant: *I can't imagine being an elected official and telling a Colwood Taxpayer who contradicted you what you should just deal with it for the greater good. I'm not even saying that I was upset over it just pointed out that despite you saying there were no issues, there in fact was. You should take some training in Public Relations if you're going to put yourself on Social Media and participate in direct conversations with people in the community.*

Respondent: *I was waiting for this comment, it was only a matter of time. If I don't say what you want to hear, this is where it always ends up. Please remember I'm a taxpayer too. There are always going to be issues, and not everyone is going to be happy, that's just the reality, and as an elected official or not, I'm entitled to say it. I never signed up to be fake. Next year how about you volunteer to ensure everyone an every issue is tended to and then let's have a post party chat and see how well you did.*

The Complainant said s. 22(1) expected that the Respondent, as a Councillor for the City, would have responded by acknowledging the concerns being raised by s. 22(1) and the other two members of the public and the fact s. 22(1) had legitimate concerns about people parking on the roadside around the Event, contrary to the posted signage as it brought the road down to single lane only for traffic. Instead, the Complainant said the Respondent replied in a manner s. 22(1) considered unprofessional and rude. The Complainant stated that the Respondent continued to "double down" in her responses to criticisms expressed regarding parking at the Event.



The Complainant recalled, later that evening, [REDACTED] directly messaged the Respondent through Facebook Messenger and encouraged her to remember why she ran for Council – “to try to ground her” – and recommended she take media training because she seemed to have taken the discussion “personally,” which was not productive. The following are the direct messages the Complainant and the Respondent exchanged on Facebook Messenger:

Complainant: *Hi [Respondent], I'll encourage you re-read your statements you made to the Times Colonist prior to running for Council. Specifically I'll highlight this, taken from the article which I will post below for reference.*

“Why are you running? What’s your motivation? The motivation behind my decision to run in this election is quite simply that I want our community to feel listened to. I truly believe that community engagement is not only desirable, but necessary and worthwhile as it can lead to more equitable, sustainable public decisions and improve the liveability of a community. The residents in our community matter and we need to ensure that the issues that are impacting their everyday lives are heard and that we all collaborate together for improved outcomes.”

You asked a question and when two members of the community you represent, responded. You immediately went on the defensive and made some very unprofessional and quite frankly rude statements back. I'll be making a formal complaint to the Mayor and the CAO in regard to your comments as well as to s. 22(1) [REDACTED] as you openly speak about your employment with them, therefore representing another Government Agency. As an elected official, your job is to be professional and listen to the people in your community that you were elected to represent. You need to do better at this. [link to Times Colonist article].

Respondent: *Certainly that’s your right. Thank you for telling my [sic] what I need to do better at. Sometimes non elected members of the community need to do better too. Most of Council unless retired works at other careers, so I’m not sure what that has to do with anything. I don’t represent my employer in any way however it’s not a secret that I have a job. We can declare a “conflict of interest” when something comes before Council if necessary but that hasn’t been the situation yet. I’m not sure what your concern is. Like I stated no one is perfect and I am quite professional but everyone has a limit. Sometimes you just expect adults to act like adults. It’s my choice to try to assist on social media with answers to questions and what not, it’s not a requirement. However, I don’t know why I bother quite frankly because it’s very rare that people say good or nice things, it’s almost always negative and actually quite mean. I think when you have issues or complaints about city things, you should go to the city with those because they don’t know about them by you posting on social media. I didn’t organize the Eats and Beats event but I do know that it took a lot of work to pull it off especially with a new venue and I think city staff should be proud of what they accomplished.*

Complainant: *Sorry I don’t think your [sic] quite understanding the basis of the responses you got tonight. Nobody said that city staff didn’t do a great job. You were made aware of two areas that were affected by the parking situation from the large amount of people who attended the event for consideration for next year. My suggestion, had you been*



willing to listen, would have been increased temporary signage and perhaps extended hours for Bylaws enforcement. In regard to your own responses and the basis of what I stated above, is that your responses have been very unprofessional and accusatory. Now you're calling me a child, by stating that you expect adults to act like adults. In no way were any of the comments mean or rude and I would actually encourage you to read your own comments if that were the case for comparison. Again, you stated during your campaign that you wanted your community listened to. After your response tonight I don't believe that's the case and I've lost faith in your ability to represent this community. As you're aware, what we say online is always captured somewhere and the contents of our messages never go away. Unfortunately when you represent yourself on a platform like Facebook while representing your workplace, your actions need to be even more professional. Tonight they were not and the public expects more from it's elected officials.

Respondent: *Usually when representing yourself online most people use a real name. I was not soliciting public input on Facebook today, I was trying to defend it. Telling Facebook does not help address issues you may have with a city event. There is a process for that. I don't represent anyone on FB except for myself. My ability to represent the city is not an issue and certainly not over social media banter. I'm happy to take feedback about anything when addressed to me as an elected official or address, any concerns you may have. My FB account for city related things is not my personal account. Please don't message me anymore on this account. I can be reached at [Respondent's email] if you have city related concerns. Thanks and have a nice evening.*

The Complainant explained that [§ 87(2)(b)] told the Respondent [§ 87(2)(b)] would be making a formal complaint to the Mayor and to her employer, [§ 87(2)(b)], as "anything you say on social media reflects on the organizations you are associated with" and the Complainant was of the view that because the Respondent had publicly indicated she worked for [§ 87(2)(b)], she was putting the reputation of that body at risk as well. The Complainant stated that the Respondent did not take any accountability for what she did and tried to "shame" [§ 87(2)(b)] for using an alias on Facebook (the name on [§ 87(2)(b)] Facebook profile was "[§ 87(2)(b)]"). [§ 87(2)(b)] explained [§ 87(2)(b)] had begun using an alias on social media when working as a [§ 87(2)(b)], and [§ 87(2)(b)] kept doing so when working in [§ 87(2)(b)] and now as a police officer, stating that in these positions [§ 87(2)(b)] dealt with vulnerable individuals who were "not always friendly," and "dangerous people ... who would threaten me and my family."

The Complainant said [§ 87(2)(b)] respected the request from the Respondent at the end of her final message and did not contact her any further.

The Complainant stated, after the FB Exchange [§ 87(2)(b)] spoke with the Manager of Corporate Services of the City (the "CO"), about how to make a complaint against the Respondent [§ 87(2)(b)] said the CO indicated she would pass [§ 87(2)(b)] complaint to the Mayor. The Complainant stated, shortly after speaking with the CO, [§ 87(2)(b)] submitted [§ 87(2)(b)] first complaint with the City on August 23, 2023 (the "Original Complaint") attaching screenshots of the FB Exchange. [§ 87(2)(b)] said [§ 87(2)(b)] then had a phone call with the Mayor in which they discussed a meeting with the Complainant, the Respondent, and the Mayor to discuss it further. The Complainant



said [§ 22(1)] was “happy to do this” and was looking for an apology from the Respondent and to possibly discuss her taking some social media training.

4.2.2. Seeking Personal Information About the Complainant

The Complainant recalled, a few days after making the Original Complaint, [§ 22(1)] received a call from another City Councillor (“Councillor A”), who told [§ 22(1)] the Respondent had “heard about your complaint and is asking about who you are” and to “be careful.”

The Complainant indicated, on September 2, 2023, [§ 22(1)] received a message from a former co-worker on Instagram who stated the Respondent had contacted [§ 22(1)] and asked whether the individual knew the Complainant and “where [§ 22(1)] works” (the “Instagram Exchange”). The following is the Instagram Exchange between the former co-worker and the Respondent, which the Complainant said the former co-worker forwarded to [§ 22(1)] a copy of which [§ 22(1)] provided to us:

***Respondent:** Hi [former co-worker], I hope you’re doing well. Hey can I ask you a question in confidence? Who is [Complainant]? Is [§ 22(1)] a police officer? Thanks.*

***Former co-worker:** Played [§ 22(1)] together. I’m not sure*

***Respondent:** Okay thanks*

***Respondent:** [§ 22(1)]*

***Former co-worker:** We lost touch I’m not sure what [§ 22(1)] does work*

***Respondent:** Oh sorry I was telling you that I found out [§ 22(1)] is a [§ 22(1)].*

The Complainant stated, during [§ 22(1)] time as a [§ 22(1)], working in [§ 22(1)] and working as a police officer, [§ 22(1)] had never “had anyone look me up to try to get information about me. I have over 11 years in this line of work and have never experienced this” and, “It’s unnerving that it’s an elected official.” The Complainant said this prompted [§ 22(1)] to file a further complaint on September 12, 2023 (the “Second Complaint”) which stated the following:

It has now come to my attention that [the Respondent] has now begun to inquire about my personal information from people in the community. I know for a fact that my full name has been disclosed to her and this has now caused me and my family to fear for our safety as she has been asking former coworkers and personal acquaintances about personal information such as my employment and who knows what else. I’d like an update on the status of my complaint as well as any and all communications between city staff including yourself to [the Respondent] regarding this complaint.

[§ 22(1)] said that in mid-September – possibly September 13, 2023 – [§ 22(1)] spoke to the Mayor again to express [§ 22(1)] concerns the Respondent was seeking personal information about [§ 22(1)]



4.2.3. Complaint to the s. 22(1) Police Department

The Complainant stated, on October 2, 2023, s. 22(1) received a call from s. 22(1) at the s. 22(1) Police Department (the “s. 22(1) Staff Sergeant”), who advised s. 22(1) the Respondent had filed a “Question and Concern” about s. 22(1) with the Office of the Police Complaint Commissioner (the “OPCC Concern”). This was referred to the s. 22(1) Police Department’s Professional Standards Division for handling.

The Complainant indicated that as the OPCC Concern named s. 22(1) was entitled to view it, although s. 22(1) did not retain a copy. s. 22(1) explained s. 22(1) reviewed the document, saw it had been submitted by the Respondent, alleged s. 22(1) had abused s. 22(1) authority as a police officer, stated s. 22(1) “had an ego,” and the Respondent was “concerned that someone like myself has a gun.”

The Complainant indicated s. 22(1) provided the Professional Standards Division with copies of the FB Exchange, and the OPCC Concern was subsequently closed without any finding of misconduct on the part of the Complainant.

The Complainant stated s. 22(1) had a further conversation with the s. 22(1) Staff Sergeant, after s. 22(1) had spoke with the Respondent about the OPCC Concern. s. 22(1) recalled the s. 22(1) Staff Sergeant told s. 22(1) the Respondent “was aware that I had s. 22(1) s. 22(1) and where my s. 22(1) works,” and “this got my radar up, and made me concerned for my safety ... she knows my life details. She said something like, ‘Yeah, I know s. 22(1) has a s. 22(1) as well.’ Which I do. I began to fear for my safety because she’d gone to these lengths to find out who I was.” The Complainant added s. 22(1) took these comments as an attempt to intimidate s. 22(1). s. 22(1) said that after telling s. 22(1) about these statements, they changed their work schedules so one of them would always be at home s. 22(1) giving up overtime at work and taking time off to coordinate this.

The Complainant indicated, in this conversation, the s. 22(1) Staff Sergeant told the Respondent had also told s. 22(1), “I’m only making this complaint because [the Complainant’s complaints] cost Colwood money and I want to cost s. 22(1) money. What’s good for the goose is good for the gander.” As such, the Complainant understood the OPCC Concern had been brought by the Respondent in retaliation for s. 22(1) filing s. 22(1) complaints with the City; as a result, s. 22(1) filed a further complaint on October 2, 2023 in relation to the Respondent bringing the OPCC Concern to s. 22(1) employer (the “Third Complaint”). A copy of the Third Complaint states the following:

Good Afternoon Your Worship,

I wish I was writing this email to say that the matter had been concluded but unfortunately I am not.



I have just been informed that [the Respondent] has made a complaint against me to the Office of the Police Complaints Commissioner (OPCC). [The Respondent] has alleged that I have abused my Authority as a Police Officer.

She's also notified my supervisors that she is now aware that my s. 22(1) is s. 22(1) with s. 22(1)

I'm curious what actions have and will be taken to address this and when it will stop. [The Respondent's] continued actions to attempt to intimidate me after making a complaint against her actions are completely out of line and continuing to cause myself and my family to fear for our safety. Quite frankly this is nearing the stages of Breach of Trust by a Public Official.

At this point, I'll be making a formal request for [the Respondent] to be relieved of her duties as a Colwood Councillor.

On December 4, 2023, the Complainant recalled s. 22(1) met again with the s. 22(1) Staff Sergeant, who told s. 22(1) the Respondent stated it was her understanding that, if the Complainant dropped the Colwood Complaint, the Respondent would drop the OPCC Concern.

4.2.4. FOI Request

The Complainant stated, in early December 2023, s. 22(1) received an email from the s. 22(1) Police Department informing s. 22(1) the Respondent had made a request for s. 22(1) shift records under the *Freedom of Information and Protection of Privacy Act* (the "FOI Request"). The Complainant said the request "pushed up" s. 22(1) "risk assessment level"; s. 22(1) stated, "Why does she want to know when I'm not at work? Who requests a police officer's schedule?" The Complainant explained s. 22(1) had never been "stalked or intimidated to this level by a person in government" and s. 22(1) family had considered moving away from Colwood as a result: "How are we to stay here when she's so determined to get personal information about me?"

4.3. Respondent's Evidence

4.3.1. Social Media Interactions After the Event

The Respondent said she went onto Facebook the day after the Event because she was interested to see "how the community felt" about it. She said it had been a long day and she was tired, but she decided to engage in the FB Exchange, as she disagreed there had been a lack of parking at the Event. The Respondent stated the City had worked hard to accommodate a change in location for the Event, she had been impressed by the work of City staff and adequate parking had been provided, but some people attending the Event had chosen to park outside of designated areas.

The Respondent initially stated firmly that she engaged in the FB Exchange out of her own interest, and she was not soliciting feedback on behalf of the City. The Respondent provided us with a copy of her



Facebook homepage which lists her as **s. 22(1)** and includes a disclaimer indicating: “This is my personal account and all info, comments and opinions expressed are of my own”. Later in her interview, the Respondent mentioned part of her interest in the feedback around parking for the Event came from the fact she was on the City’s “accessibility committee” and she was curious about accessible parking for the Event.

The Respondent stated, as she wasn’t soliciting feedback in the FB Exchange, it would have been more appropriate for people to “follow the City’s process” instead of giving her feedback about parking at the Event over Facebook. When pressed, she reiterated she was not engaging in the FB Exchange as a City Councillor, but despite this the Complainant and other members of the public were giving her feedback “as a Councillor”, which she felt was not appropriate. She said her comments regarding the fact City staff did a good job were just her own view that the Event had gone well, and she initially engaged in the FB Exchange because she was genuinely concerned “maybe something serious came up with parking.”

The Respondent provided comments on specific portions of her comments made in the FB Exchange, as follows:

- In response to her statement, “For one day, I just don’t know ... I guess we couldn’t plan for everything. You know the saying, you just can [sic] please everyone and this is a prime example. People always have to complain about something,” the Respondent agreed it could be read as sarcastic and she didn’t mean to have a “tone” in her response. She clarified she was answering a question and trying to explain there is a lot that goes into planning and there are always things that could be done better. The Respondent said she didn’t think the post was disrespectful, but acknowledged, “Maybe I could have been nicer, maybe it’s questionable tone, but not too much,” and she tries “to be respectful of my constituents ... there was no intention to be disrespectful.”
- In response to her post, “For one day, people should be able to manage a little bit of inconvenience for the greater good,” the Respondent indicated she was not trying to be disrespectful. Further, she explained, in her post, “Again for one day most reasonable people would understand,” she was not insinuating the other member of the public was not being reasonable, but “it was just a play on words ... just a general statement ... I would think most people would understand. It wasn’t intentional,” while acknowledging, “I could have left the ‘reasonable’ word out.”
- Regarding her comment, “Sometimes non-elected members of the community need to do better too,” the Respondent said she was thinking, “Who is [the Complainant] to tell me that I need to do better? Just because I’m elected?” The Respondent stated that in conversation with the Chief Administrative Officer (the “CAO”) and Mayor about this exchange, she gave the analogy that it



felt like someone coming up and spitting in her face, and if she did this “it would be all over the news.”

When asked whether, on reflection, she would word her statements differently in the FB Exchange, and whether she understood the concerns of the Complainant and other members of the public about her posts, the Respondent stated:

No. I mean, does everything you write, is it always perfect? I wasn't unprofessional or disrespectful. If someone took something from it ... it's neither here nor there. I don't go on to social media very much any more ... if something like this that's so minor can blow up.

Maybe the word choice, or use a better word, I could have written [it] better so there was less ways for interpretation.

I read it now and see all the different angles it could be read. But it's not horrible. I didn't call anyone vicious names or tell them to move out of Colwood or anything.

Regarding the subsequent private messages with the Complainant and her statement, “Sometimes you just expect adults to act like adults,” the Respondent indicated she was thinking, “[REDACTED] private messaging me now?,” that this was inappropriate, and the Complainant should have “given it a rest.” She said she felt there was nothing else she could do, “this was so much drama for something so small,” and she started to wonder who the Complainant was and what was motivating [REDACTED] to “dig into this” with her. The Respondent explained she perceived the Complainant’s comments to be condescending, and it seemed inappropriate to her that the Complainant would reach out to her privately and this “crossed a line.”

The Respondent stated she noted the Complainant was using an alias in the FB Exchange, which she recalled thinking was “really weird” and it “became a bit creepy.” However, later it occurred to her the Complainant must have been using an alias for a reason – either [REDACTED] was using a fake profile or was in a line of work where [REDACTED] would want to obscure [REDACTED] identity.

The Respondent recounted she thought the Complainant contacting her privately via Facebook Messenger and threatening to make a complaint was “extreme,” and the “punishment seemed really heavy, [REDACTED] was piling it on, and I didn't understand why and who this person was.” She stated, after her comment, “Please don't message me anymore on this account ... Thanks and have a nice evening,” she did not receive any further communication from the Complainant, and she concluded from this the Complainant was “being respectful.”

The Respondent indicated she contacted the Mayor probably the next day to advise him a complaint might be made against her. She said the Mayor called her on or about September 1, 2023 to advise a complaint had indeed been made against her (the Original Complaint), he was going to call the Complainant to discuss it, and asked whether she was interested in meeting with the Complainant to attempt to resolve



the matter. The Respondent indicated she said she “would love to” but shortly after this, the Mayor was directed by the CAO not to proceed with the meeting which would have led to the Original Complaint being resolved in September, 2023.

4.3.2. Seeking Personal Information About the Complainant

The Respondent stated, she received the Original Complaint from the Mayor, which was unredacted and included the Complainant’s name, email address, home address, and telephone number. However, she said she “already had all that information” except for the Complainant’s phone number and address. She explained all of the information was “in the public domain” and she had begun “looking into who [the Complainant] was even before the complaint came in.” She said she wanted to know “who [she was] talking to, to understand who they are, where they’re coming from” and “who this person was and why they were so upset with [her].”

The Respondent stated she began looking for information about the Complainant starting with [§ 22(1)] Facebook page and, by looking at posts on [§ 22(1)] page and following links to other pages, she was able to find out the Complainant’s name, the fact the Complainant was a [§ 22(1)] police officer, was [§ 22(1)] the identity of [§ 22(1)], that [§ 22(1)] had [§ 22(1)] a [§ 22(1)], and lives in [§ 22(1)] area of the City. Later in her interview, the Respondent indicated she did not know when or how she became aware the Complainant was a police officer and did not believe she learned this from her internet research, except the fact the Complainant had a [§ 22(1)] might have been a hint as to [§ 22(1)] occupation as this [§ 22(1)] with police work.

The Complainant provided a copy of a webpage she had found that indicated the Complainant had previously worked as a [§ 22(1)] she stated, “Employment isn’t personal information. Especially when you’re in the paper. [§ 22(1)] is clearly a [§ 22(1)].”

The Respondent also recounted an interaction with Councillor A where she discussed the Original Complaint with [§ 22(1)]. She said she was driving with another Councillor (“Councillor B”) to attend a community event; they drove by Councillor A’s home, so they stopped and Councillor A got into the back seat of the car (the “Car Meeting”). The Respondent recalled, by that point she was “pretty sure” the Complainant was a police officer with the [§ 22(1)] and she knew Councillor A [§ 22(1)], and so she asked Councillor A whether [§ 22(1)]. She stated she asked this because she continued to be curious about who the Complainant was and [§ 22(1)] motivation for making the complaint: “It seemed like such a very minor thing to get jacked up about” and she also hoped to receive advice from her colleagues. The Respondent said, in response to her question, Councillor A “didn’t commit either way.” The Respondent stated this was the only time she engaged in a conversation with Councillor A about the Complainant.



The Respondent indicated, on or about September 14, 2023, the Mayor called her and stated the Complainant had made another complaint against her on September 12, 2023 (the Second Complaint), related to the Respondent enquiring about the Complainant's personal information. The Respondent stated she concluded Councillor A had spoken with the Complainant about their conversation in the Car Meeting and that this had led to the Second Complaint.

When asked whether she recalled contacting the Complainant's s. 22(1) on Instagram, the Respondent initially stated she did not recall whether she did or not. The Respondent subsequently stated she "guess[ed]" she had when showed a copy of the Instagram Exchange during her interview. She explained she may have linked the former co-worker and the Complainant through the s. 22(1) community; she was not friends with the former co-worker on social media, but her s. 22(1) "might be." The Respondent said she asked the former co-worker whether the Complainant was a police officer in order to find out "who I was dealing with. What had this person [become] so angry? What can I learn about them that would help me understand."

She stated, in researching the Complainant, she found comments the Complainant had made toward a s. 22(1) municipal Councillor s. 22(1) which she found disrespectful. She stated the Complainant's comments were critical of the Councillor's support for s. 22(1) s. 22(1) specifically, the Complainant "said something like, s. 22(1) s. 22(1) s. 22(1) s. 22(1)". When asked about the s. 22(1) Comment, the Respondent agreed it was similar in character to a comment she made to the Complainant in the Facebook Exchange where she had suggested that s. 22(1) volunteer to help with planning for the next Eats and Beats festival specifically saying, "Next year how about you volunteer to ensure everyone and every issue is tended to and then let's have a post party chat and see how well you did."

4.3.3. Complaint to the s. 22(1) Police Department

The Respondent stated she filed the OPCC Concern because she was worried the Complainant might be "targeting s. 22(1) Councillors" given the comments towards her in the FB Exchange and the s. 22(1) Comment. She added she did not want to "take anything further than it needed to be, but [she] thought there was something to this s. 22(1) Councillor thing."

The Respondent provided us with the first two pages of the OPCC Concern. The Respondent said she thought she had saved the whole document but when she went to retrieve it she had only saved the first two pages. We were unable to obtain the rest of the document despite a request to the s. 22(1) Police Department. In the OPCC Concern the Respondent says the following:

I am a Councillor for the City of Colwood. I am filing a complaint against [the Complainant] for what I believe is misconduct on s. 22(1) part. I posted on a "s. 22(1)



s. 22(1) " facebook (fb) page after an "Eats and Beats" event in Colwood on July 30, 2023. I asked another fb member a question about the parking comment she was referring to and from there provided a response. Then a fb member of this group by the name of s. 22(1) also commented to my response, although I was not there soliciting feedback for the city. I'm sure you can see where this is going. In the end there was some comments made back and forth while on my own personal fb account, under the name Kimberly s. 22(1) that has a disclaimer that reads "Disclaimer: This is my personal account and all info, comments and opinions expressed are of my own."

Then at 9:46 pm that same evening I received a message from s. 22(1) effectively calling me out for how I commented, answered, responded to the fb post and advising that s. 22(1) would be making a formal complaint to the Mayor and the CAO of the City of Colwood in regard to my comments and as well to s. 22(1) where I am employed. s. 22(1) advised that as an elected official, my job is to be professional and listen to the people in the community that I was elected to represent and that I needed to do better at this. And s. 22(1) continued to message me.

At 11:57pm I advised for s. 22(1) not to message me anymore and if s. 22(1) had further concerns, to send them to my city e-mail where I could be reached for city related concerns. You would think that most police officers would know that complaining to fb isn't going to resolve concerns and that there is a process to provide comments to the city about things that concern you as a resident. Fb is the last place to find a resolution!

Some time after this, [the Complainant] contacted the City of Colwood and filed a complaint about me and provided the fb messages which I'm happy to provide as well. Currently this is being investigated within the city but I believe it will be found that this is just about a simple disagreement and difference of opinion and the ego of a police officer. This was simply "a conflict of opinion." I was elected to represent the community, not just one person and I never signed up to be "fake" and we are all entitled to our opinions and to agree to disagree – that's a democracy.

The reason why I am initiating this complaint is because I believe this is an "abuse of authority" on [the Complainant's] part. s. 22(1) appears to be directly targeting politicians like myself as s. 22(1) has also commented unprofessionally to a post made by s. 22(1), Councillor for the s. 22(1), on the s. 22(1) fb page where she was discussing the s. 22(1). [The Complainant] responded with this comment, Should this be s. 22(1) s. 22(1) s. 22(1) If s. 22(1) can comment strongly as such, then how are my comments wrong? Oh, wait, s. 22(1) hiding behind a fake name however s. 22(1) photo is attached to the account and a little research shows that.

The Respondent indicated, after filing the OPCC Concern, she received a call from the s. 22(1) Staff Sergeant. She stated s. 22(1) confirmed s. 22(1) had received the Respondent's complaint and they discussed it. When asked whether she said she was making the complaint because "Colwood is spending resources, so should yours," and, "What's good for the goose is good for the gander," the Respondent denied using those words. She qualified she did not specifically remember all the words she used in the conversation,



but she “did not and would not say that I’m only making this complaint to cost them money.” However, she stated she would have alluded to the fact the complaints against her were costing the taxpayers of the City money.

The Respondent said she shared the information about the Complainant she had gathered (including the Complainant’s s. 22(1) and s. 22(1) employment) with the s. 22(1) Staff Sergeant because it could be a “teachable moment” for s. 22(1) to understand how much of s. 22(1) personal information was accessible through Facebook or otherwise. She stated she did not agree it was “reasonable” that the Complainant or the s. 22(1) Staff Sergeant would be concerned the Respondent had s. 22(1) personal information, including details about s. 22(1) close family members.

The Respondent stated the s. 22(1) Staff Sergeant suggested s. 22(1) meet with the Complainant and “have a word with s. 22(1), that this is not on, and that s. 22(1) to drop s. 22(1) complaint”, and direct “that you won’t have anything to do with each other anymore.” The Respondent said she told the s. 22(1) Staff Sergeant this proposed outcome sounded acceptable to her.

4.3.4. Conversation with the CO

The Respondent indicated she spoke with the City’s CO on November 29, 2023, who told her the Complainant’s “three complaints” were going to be discussed at an in-camera Council meeting in December. The Respondent stated she was not aware of a third complaint and requested a call with the City’s solicitor. The Respondent indicated, after speaking with the City’s solicitor, the CO provided the Respondent with copies of the Original Complaint, the Second Complaint, and the Third Complaint.

When asked whether she remembered meeting with the CO the evening of November 29, 2023, the Complainant indicated she did not recollect any meeting, but if she did meet with the CO, it would have likely been to ask that all three complaints be provided to her. When asked whether she told the CO she had made the OPCC Concern, and for retaliatory purposes, the Respondent said she “would never have spoken to [the CO] about that ... I have never sat in her office and spoken about this. I would never have said this.” She said her relationship with the CO was professional, and this was “not even something I would have said because it’s not true.”

4.3.5. Follow up with s. 22(1) Staff Sergeant

The Respondent stated, on November 30, 2023, she emailed the s. 22(1) Staff Sergeant to ask about the status of her complaint against the Complainant. After our first interview with the Respondent, she provided us with the following email response from the s. 22(1) Staff Sergeant:

Thank you for your email [Respondent],



I want to reassure you that we take complaints seriously, and we work hard to be transparent and accountable to the people in our community. My investigation revealed that no misconduct occurred.

If you prefer to deal directly with the OPCC, their website allows people to submit complaints on-line, or by telephone (1-877-999-8707 email: info@opcc.bc.ca).

Between the Respondent's first and second interview the **s. 22(1)** Staff Sergeant provided us with the full email exchange between the Respondent and the **s. 22(1)** Staff Sergeant on November 30, 2023, which included emails both before and after the email the Respondent shared with us. The full email exchange reads as follows:

Respondent, 12:19AM: *I left you a voicemail near the end of the day and would like to follow up with you on this complaint and perhaps a further one in how you have allegedly handled this situation.*

*I understood when we spoke last that you would be meeting with [the Complainant] and instructing that **s. 22(1)** stand down with regard to the erroneous complaint **s. 22(1)** had made against me at the City of Colwood and that this would resolve this situation on both ends. In any event, this is what I agreed to would be a good resolution.*

It would seem reasonable to me that if that after our conversation and your meeting with [the Complainant] that if this was not the end resolution that you would have followed up with me in this regard. As I heard nothing until today, I assumed this had been resolved.

*However, I now understand that in the meeting you had with [the Complainant] that **s. 22(1)** has filed another complaint in regard to information that I shared with you of which has been completely taken out of context and only amplified this situation further.*

*[The Complainant] has stated that you made **s. 22(1)** aware that I know where **s. 22(1)** works and that **s. 22(1)** and that **s. 22(1)** fears for the safety of **s. 22(1)** family and **s. 22(1)** now because I know that. I've been accused of many things before but certainly no one has been concerned for their safety in my presence, especially one that carries a firearm. I mean how ridiculous does this sound?*

*The context of which I stated that information to you was to show you that any average person could have put that information together upon looking at [the Complainant's] Facebook profile because **s. 22(1)** **s. 22(1)** photos and that of **s. 22(1)** and whoever else are all connected to **s. 22(1)** Facebook page along with where **s. 22(1)** works and what **s. 22(1)** does for a living, I didn't need to be a private investigator to piece it all together. I told you that to explain how I felt **s. 22(1)** was by attempting to hide behind a "fake" Facebook name and how easy it was for me to know the information and that I knew it prior to the **s. 22(1)** unintentional breach of sharing **s. 22(1)** complaint with me without the **s. 22(1)** having received adequate instruction from the CAO and/or city staff to first redact **s. 22(1)** personal cell phone number and full name.*

*I certainly didn't share that information with you for you to share it with **s. 22(1)** and I'm not understanding what your thought process was in that, but I certainly wouldn't have thought it needed to be mentioned because it certainly hasn't helped the situation.*



Is it time for me to forward my complaint onto the Office of the Police Complaint Commissioner? Please advise how you would like me to proceed?

s. 22(1) Staff Sergeant, 8:40AM: Thank you for your email [Respondent],

I want to reassure you that we take complaints seriously, and we work hard to be transparent and accountable to the people in our community. My investigation revealed that no misconduct occurred.

If you prefer to deal directly with the OPCC, their website allows people to submit complaints on-line, or by telephone (1-877-999-8707 email: info@opcc.bc.ca).

Respondent, 12:38PM: Thank you for your response **s. 22(1) Staff Sergeant]**

Regardless to the outcome of your investigation, did you not ask me how I would like to proceed and what I would consider as a satisfactory resolution to close this complaint? Was the conflict resolved in the manner as you described it would be? Should I not have been informed one way or another? I'm just trying to understand your complaint/investigation process.

s. 22(1) Staff Sergeant, 1:00PM: I resolved the complaint exactly as I said I would to you. The agreement being that you and [the Complainant] would stop communicating going forward with one another. This conclusion was approved by the OPCC.

*If you were unaware that this was the result, this could be a miscommunication from me. It was my belief we agreed that I would speak to [the Complainant] as **s. 22(1)** supervisor, and you were satisfied with that, and that is what I did.*

Respondent, 12:19AM: **s. 22(1) Staff Sergeant]**, that was not the agreement because [the Complainant] and myself were not communicating nor had been since that time over Facebook. My concern was about the complaint and what I agreed to was for you to speak with [the Complainant] in which you were going to request **s. 22(1)** stand down on **s. 22(1)** complaint and have no further interactions with me. I assumed this had occurred however that is not the case and in fact whatever was discussed between yourself and [the Complainant] has now led to a formal complaint against me at the city.

In my opinion, this complaint is still very much unresolved and there has been a lack of communication at your end and no closure of this file with me.

I will file the complaint with the OPCC.

The Respondent stated she disagreed with the **s. 22(1)** Staff Sergeant's statements in the email exchange and reiterated, in her initial discussion with **s. 22(1)** it was **s. 22(1)** who suggested **s. 22(1)** could speak to the Complainant and ask **s. 22(1)** to drop **s. 22(1)** complaints against the Respondent and, in return, the Respondent would drop her OPCC Concern against the Complainant. She said she had not proceeded to file a complaint with the OPCC.



4.3.6. FOI Request

The Respondent stated she made the FOI Request for the Complainant's shift records in order to find out whether the Complainant was working when [§ 22(1)] engaged in the FB Exchange. She did not initially recall whether her request was also for records related to other dates. When shown the request was also for shift records in August, September, and October 2023, the Respondent said she must have been asking about the dates the Complainant was speaking with the City as those dates corresponded with the dates the three complaints with the City were made. When told the Complainant interpreted the FOI request as another attempt to get personal information about [§ 22(1)] and to intimidate [§ 22(1)], she responded the requests were not related to that, but to whether the Complainant was pursuing [§ 22(1)] complaints against her on work time.

4.3.7. Council Orientation on the Policy and Code of Ethics

The Respondent indicated that she did not remember receiving any orientation regarding the Policy or the Code of Ethics on being elected. She stated that she remembered some "training in the beginning" using a video series about "all the things to think about when you're a Councillor" and that she was aware of the Code of Ethics. The Respondent provided us with a screenshot of the policies that Council was onboarded with after the 2022 municipal elections. The screenshot shows that those policies included the Code of Ethics but not the Policy. In fact, the Respondent said she had not heard of the Policy until the Investigation and had never seen a copy of it and noted it dated back to 2014.

4.4. Witness Evidence – [§ 22(1)] Staff Sergeant

4.4.1. Complaint to the [§ 22(1)] Police Department

We interviewed the Complainant's supervisor who said [§ 22(1)] is a Staff Sergeant with the [§ 22(1)] Police Department and the Complainant's supervisor (the "[§ 22(1)] Staff Sergeant"). [§ 22(1)] recounted how, on September 26, 2023, [§ 22(1)] was forwarded a copy of the OPCC Concern regarding the Complainant. [§ 22(1)] explained it was forwarded to [§ 22(1)] by the OPCC for handling as part of the usual process for "questions and concerns" against police officers, which are referred to the officer's Police Department with the findings shared with the OPCC who provides oversight and sign off on the review process led by the local Police Department. The [§ 22(1)] Staff Sergeant indicated the OPCC Concern recounted the FB Exchange and the Respondent's belief the Complainant's comments were unprofessional and asked for an investigation into whether the Complainant had breached any of the [§ 22(1)] Police Department's policies.

The [§ 22(1)] Staff Sergeant said [§ 22(1)] called the Respondent on September 27, 2023, left a message, and the Respondent called [§ 22(1)] back shortly afterwards to discuss the OPCC Concern. [§ 22(1)] stated the Respondent



told s. 22(1) she had brought the OPCC Concern because “Colwood is spending resources, so should yours,” and, “What’s good for the goose is good for the gander.”

The s. 22(1) Staff Sergeant also recounted the Respondent stated she couldn’t understand why the Complainant was so passionate about the issue discussed in the FB Exchange, and she wanted the Complainant to “cease contact” and stated, “s. 22(1) needs to stop.” The s. 22(1) Staff Sergeant said s. 22(1) indicated to the Respondent s. 22(1) would investigate the OPCC Concern and speak with the Complainant, and the online messaging between the Complainant and the Respondent “would stop.” s. 22(1) provided us with a copy of s. 22(1) notes from the September 27, 2023 conversation which included the following:

- s. 22(1) said I said – Our department is spending resources so should yours – good for goose is good for gander
- cease contact. Sit down – never met s. 22(1)
- s. 22(1) needs to stop

The s. 22(1) Staff Sergeant said s. 22(1) spoke to the Complainant on October 2, 2023 and they reviewed the FB Exchange; s. 22(1) told the Complainant to be aware of what s. 22(1) was posting, and the Complainant agreed to stop any online messaging with the Respondent. The s. 22(1) Staff Sergeant said s. 22(1) concluded the Complainant “wasn’t doing anything wrong” as s. 22(1) was being professional and not being rude.” The s. 22(1) Staff Sergeant provided the results of s. 22(1) investigation to the OPCC, and in s. 22(1) report stated that s. 22(1) found the Complainant had engaged in the FB Exchange during s. 22(1) private time, s. 22(1) had not represented s. 22(1) as a police officer but rather as a resident of the City, and s. 22(1) could not find any evidence the Complainant had acted unprofessionally. The s. 22(1) Staff Sergeant provided us a copy of s. 22(1) report to the OPCC, which included the following comments:

In conclusion, [the Respondent] could not provide me with any evidence to support any off-duty misconduct from [the Complainant] and wished for me as s. 22(1) s. 22(1) to ask s. 22(1) to stop commenting on public forums directly to her regarding issues involving the City of Colwood.

On October 2, 2023, I had an in-person conversation with [the Complainant] reminding s. 22(1) to be aware of what s. 22(1) posts on social media. We both agreed that s. 22(1) would cease all online messaging with [the Respondent] in the future, which was supported by [the Respondent] from the conversation I had with her on September 27.

The s. 22(1) Staff Sergeant indicated that, on November 21, 2023, s. 22(1) received an email from the s. 22(1) Police Department’s Professional Standards Division stating that the OPCC were satisfied with s. 22(1) investigation and had closed their file regarding the OPCC Concern.

The s. 22(1) Staff Sergeant confirmed s. 22(1) received an email from and responded to the Respondent on November 30, 2023, regarding her complaint, excerpted above.



4.4.2. Seeking Personal Information About the Complainant

The s. 22(1) Staff Sergeant stated that during the September 27, 2023 telephone call with the Respondent, she told him, “I managed to track [the Complainant] down,” and identified who s. 22(1) was, where s. 22(1) worked (stating, “s. 22(1) a cop”), where s. 22(1) worked and s. 22(1) name, and said she was able to find this information on Facebook or online. The s. 22(1) Staff Sergeant recalled that the Respondent also told s. 22(1) the Mayor had accidentally disclosed the Complainant’s personal information, but she had been able to find this information prior to the Mayor’s disclosure. s. 22(1) stated the Respondent told s. 22(1) she was bringing the fact that she had this information to s. 22(1) attention as the ease with which she had found the information indicated the Complainant was not careful in terms of s. 22(1) online presence as a police officer which she thought the s. 22(1) Staff Sergeant might want to bring to the Complainant’s attention.

The s. 22(1) Staff Sergeant indicated the fact the Complainant had this amount of personal information about the Respondent made s. 22(1) “feel weird, it was odd. I wasn’t worried about [the Complainant] but was concerned enough that I wanted s. 22(1) to have the information.” The s. 22(1) Staff Sergeant explained, in s. 22(1) October 2, 2023 conversation with the Complainant, s. 22(1) told the Complainant about the Respondent’s comments regarding s. 22(1) personal information because s. 22(1) was “a little concerned” and “I wanted s. 22(1) to have the information.”

4.5. Witness Evidence – Councillor A

Councillor A advised s. 22(1) is a long-term resident of Colwood and is currently a City Councillor, having been s. 22(1) in the 2022 municipal elections. s. 22(1) explained s. 22(1) and the Complainant were s. 22(1) at the s. 22(1)s. 21, and were s. 22(1) but had not worked together as they were s. 22(1). Councillor A stated s. 22(1) and the Complainant spoke “maybe monthly,” with the Complainant reaching out to s. 22(1) about issues in the community. Councillor A said s. 22(1) and the Complainant did not socialize, stating, “I knocked on s. 22(1) door inadvertently during the election ... s. 22(1) never been to my house,” and they once “tried to play s. 22(1) together but it didn’t work out.”

4.5.1. Seeking Personal Information About the Complainant

Councillor A stated the Complainant called s. 22(1) in the days after the Event and expressed s. 22(1) concern about the FB Exchange, sharing s. 22(1) had spoken to the CO about bringing a complaint. Councillor A indicated the Complainant called s. 22(1) again “a number of weeks later” to say s. 22(1) was concerned about the Respondent “doing a deep dive” for personal information about the Complainant and the Respondent was reaching out to people the Complainant knew on social media and was trying to “figure out who s. 22(1) was and where s. 22(1) lived.” Councillor A stated the Complainant asked whether the Respondent had contacted s. 22(1) for information about the Complainant, and Councillor A indicated s. 22(1) had not.



Subsequent to this, Councillor A recalled two interactions with the Respondent where s. 22(1) asked s. 22(1) whether s. 22(1) knew the Complainant and for information about s. 22(1). Councillor A was not able to recall the specific dates or chronology of these interactions, and described them as follows:

- At some point after Councillor A's initial conversation with the Complainant, possibly a few days later, Councillor A said the Respondent called s. 22(1) and asked if s. 22(1) knew the Complainant and where s. 22(1) lived. Councillor A said s. 22(1) and the Complainant worked for the s. 22(1) employer. Councillor A indicated it was clear to s. 22(1) the Respondent knew the Complainant was a police officer with the s. 22(1) Police Department. s. 22(1) stated the call was "an overt attempt to get information about [the Complainant]" and "it was very purposeful. It wasn't a general call, but the call was about this and this alone." s. 22(1) also recalled the Respondent saying, "I know [the Complainant] used to work for s. 22(1)." s. 22(1)
- In early September 2023, Councillor A was in the Respondent's car with the Respondent and Councillor B. Councillor A recalled the Respondent and Councillor B had been driving somewhere and stopped by s. 22(1) house; s. 22(1) got into the back seat of the car and, at some point, the Respondent asked s. 22(1) whether s. 22(1) knew of a complaint against her "that involves social media." Councillor A explained s. 22(1) and the Respondent had engaged in conversations before about the Respondent's activity on social media and s. 22(1) again suggested she refrain from posting online "as it doesn't add value to get controversial on social media." Councillor A stated, at this time, s. 22(1) knew about a complaint against the Respondent, but was not aware of the details.

Councillor A stated, after one of the above conversations with the Respondent, s. 22(1) spoke with the Complainant, although s. 22(1) did not recall whether s. 22(1) called the Complainant or the Complainant called s. 22(1). Councillor A said s. 22(1) told the Complainant the Respondent had asked s. 22(1) for information about the Complainant including where the Complainant lived and whether s. 22(1) was a police officer and had they worked together. Councillor A recalled s. 22(1) also told the Complainant the Respondent said s. 22(1) knew the Complainant used to work in s. 22(1) at s. 22(1).

When asked why s. 22(1) shared this with the Complainant s. 22(1) stated that s. 22(1), if someone was doing this to me, I'd want to know." s. 22(1) explained s. 22(1) didn't characterize s. 22(1) concerns as related to the safety of the Complainant, but police officers are protective of their personal information for good reason, and it was "inappropriate, odd, and concerning" to s. 22(1) that the Respondent was seeking personal information about the Complainant.

Councillor A said, sometime after speaking with the Complainant, s. 22(1) received a text message from the Respondent enquiring, "Why did you speak to the Complainant ... you made this worse"; s. 22(1) responded by "neither confirm[ing] nor den[ying]" s. 22(1) had spoken to the Complainant because s. 22(1) thought this might be another attempt to elicit information from s. 22(1).



4.6. Witness Evidence – Councillor B

4.6.1. Seeking Personal Information About the Complainant

Councillor B indicated [s. 22(1)] was a Councillor for the City, having been elected in the [s. 22(1)] municipal elections. [s. 22(1)] stated [s. 22(1)] was generally aware the Respondent had been involved in a conflict on social media, but knew none of the details until the Complainant's complaints came to Council for a decision on whether to refer them to investigation. Councillor B indicated [s. 22(1)] had had conversations with the Respondent that were "vague in context" and the Respondent stated there "could be a complaint" coming to the City because of "dialogue" the Respondent had in the community on social media. Councillor B recalled the Respondent mentioned the potential complainant by name (although [s. 22(1)] did not remember what this was) and commented [s. 22(1)] was a [s. 22(1)] police officer.

Councillor B stated [s. 22(1)] witnessed a conversation between the Respondent and Councillor A about this complaint. [s. 22(1)] could not recall the date, and said [s. 22(1)] and the Respondent were driving around to view an area related to a matter which would be coming before Council. [s. 22(1)] stated they saw Councillor A in [s. 22(1)] driveway, stopped, and Councillor A got into the back of the car. Councillor B recalled the Respondent asked Councillor A if [s. 22(1)] knew who had filed the complaint against her, and Councillor A said [s. 22(1)] might, and they may have briefly discussed the context for the complaint. [s. 22(1)] recalled Councillor A saying something like, "It might be good to let sleeping dogs lie." [s. 22(1)] described [s. 22(1)] recollection of Councillor A's comments as providing "sage advice" to the Respondent about avoiding getting dragged into conflicts online. [s. 22(1)] noted in the past [s. 22(1)] had also given the Respondent the advice to not "engage in social media."

4.7. Witness Evidence – the CO

The CO indicated she is a long-term employee of the City and is currently the Manager of Corporate Services. She stated she was contacted by the Complainant in the first week of August 2023, and the Complainant expressed [s. 22(1)] concerns with the FB Exchange. The CO said she told the Complainant [s. 22(1)] should send her a formal complaint if [s. 22(1)] wanted the City to respond to [s. 22(1)] concerns, and [s. 22(1)] subsequently did so on August 23, 2023.

The CO recalled, after she received the Complainant's initial complaint, she spoke with the CAO about what steps the City should take; the CAO told her to take the complaint to the Mayor, as the Mayor had already dealt with a similar complaint from another resident of Colwood about a social media exchange with the Respondent. The CO said she subsequently spoke with the Mayor who stated he had spoken to this other resident and they were satisfied with a meeting and apology from the Respondent, so the Mayor proposed a similar approach with the Complainant. The CO indicated she then received the Second Complaint on September 12, 2023.



The CO said she was aware the Complainant had brought the Third Complaint on October 2, 2023 and said on November 29, 2023, she published the agenda for an in-camera meeting of Council on December 4, 2023 to discuss the Complainant's three complaints. She stated, later that evening, the Respondent came to her office; the Respondent advised she had spoken to the City's solicitors and wanted copies of the Second Complaint and Third Complaint which she forwarded to her. The CO stated the Respondent told her she was upset she had not received copies of these two complaints until now, and the Respondent said words to the effect of, "Yeah, [REDACTED] contacted my boss, so I contacted [REDACTED] boss, I did it as retaliation." The CO explained she wrote down some notes after the Respondent left her office as the interaction surprised her. She said she specifically recorded the word "retaliation" in her notes as she was particularly struck that the Respondent used that word. She said the Respondent also said words to the effect of, "All this information [about the Complainant] is available ... it's not hard information to find out ... it's not like I went to [REDACTED] house." Subsequent to her interview, the CO provided us with a typed chronology which included her notes from the encounter on November 29, 2023 which reads as follows:

November 29, 2023 – Published agenda for Special In-Camera. [CAO] spoke to [the Respondent], and she advised she would not attend the meeting on Dec 4th. [The Respondent] requested to speak to [the City's solicitor]. Immediately after speaking to [the City's solicitor] [the Respondent] came to my office to request the additional two complaints that were filed. She stated contacting [REDACTED] boss was retaliatory as [REDACTED] had complained to her boss. I forwarded the redacted complaints to [the Respondent] at 6:41 pm that evening.

4.7.1. Council Orientation on the Policy and Code of Ethics

The CO indicated, after the current Council was elected in 2022, the City arranged for "multiple" orientation sessions for all Councillors, including joint orientation sessions hosted by the Township of Esquimalt for all municipal councillors in the Capital Regional District.

4.8. Witness Evidence – the CAO

The CAO indicated that he has worked for the City as Chief Administrative Officer since 2019. He stated that he first heard about the Original Complaint from the CO in August 2023. The CAO stated he discussed the complaint with the Mayor and the Mayor decided to try to resolve the complaint informally by speaking with the Complainant and the Respondent.

The CAO indicated that the next time he heard about the Original Complaint was in October 2023 when the CO informed him that the Mayor had "inadvertently released private information" about the Complainant to the Respondent by sharing a unredacted version of the document and he was involved in responding to this development which delayed the processing of the Original Complaint.



The CAO's office provided us with a copy of the materials used during orientation sessions with Council following the 2022 municipal elections, including agendas for two sessions hosted by the Township of Esquimalt, and five sessions hosted by the City, all held between October and December 2022. The agenda for the November 9, 2022 session included a presentation entitled "City of Colwood – Elected Officials Orientation Seminar" and included material on "Conflict of Interest, Ethical Behaviour and Codes of Conduct". While the CAO's office indicated that they did not keep attendance records for these sessions, staff who attended recall "there was no Councillor unable to attend any of the sessions held here at Colwood City Hall."

4.9. Witness Evidence – Mayor Doug Kobayashi

The Mayor has been Mayor of the City since 2022 and a City Councillor since 2018.

The Mayor stated his involvement with these issues began when he received a copy of a complaint from a member of the public (not the Complainant) shortly after the Event. The Mayor indicated the City had initially planned for 6,000 people to attend the Event which was the historical experience of the City, but instead between 14,000 and 15,000 people attended. The Mayor explained, as a result, parking by attendees spilled over into a local plaza, and this resulted in posts on Facebook afterwards. The Mayor did not recall the name of the complainant but said s. 22(1) complained about an interaction on Facebook with the Respondent, claiming the Respondent's comments towards s. 22(1) were "inappropriate." The Mayor indicated he called this individual, apologized for the parking at the Event, and assured s. 22(1) they would fix this issue in subsequent years. The Mayor stated the individual thanked the Mayor and withdrew s. 22(1) complaint.

The Mayor said he later received the Complainant's Original Complaint, and decided to try to resolve it the same way he did with the first complaint. The Mayor stated he reviewed the FB Exchange between the Complainant and the Respondent, and called the Complainant. The Mayor indicated he apologized to the Complainant, stated that "maybe" the Respondent "shouldn't have spoken [to s. 22(1) that way." He recalled the Complainant "accepted" what the Mayor said, but still wanted a resolution involving the Respondent. The Mayor stated he proposed a meeting between the Complainant, the Respondent, and himself at the Mayor's office, and the Complainant agreed and said if they did this s. 22(1) would drop the Original Complaint.

The Mayor recalled he spoke to the Respondent about the Original Complaint and s. 22(1) proposal for a meeting, which s. 22(1) shared the Complainant had agreed to. s. 22(1) said the Respondent also agreed to this approach and he forwarded a copy of the Original Complaint to the Respondent in preparation for the meeting.



The Mayor stated he arranged for the meeting for the following week; however, he received a call from the Complainant in which the Complainant stated, “The meeting is off.” The Mayor said he asked the Complainant why, and the Complainant stated, “I’m afraid for my life, [the Respondent] is stalking me,” and told the Mayor [REDACTED] knew “for a fact” the Respondent had spoken to two of [REDACTED] s. 22(1), including Councillor A, to seek personal information about [REDACTED] s. 22(1). The Mayor said the Complainant did not raise with the Mayor that the Complainant’s personal information had been shared with the Respondent by way of sharing an unredacted version of the Original Complaint with her.

The Mayor said he was “pretty upset” to learn the Respondent had been speaking to others about the Original Complaint because, when he had spoken to the Respondent about the planned meeting, he told her “this has to stay confidential. It’s the [Complainant], me, and you. That’s it.” The Mayor indicated he asked the Respondent why she had spoken to Councillor A about the Complainant, and the Respondent stated she was “just trying to find out about [the Complainant].” The Mayor said he responded, “It was none of your business and was confidential information.”

The Mayor recalled he then spoke with the CAO and told the CAO his attempts to informally resolve the Complainant’s complaint had “blown up” and he was “handing back” the complaint to the CAO to develop recommendations for how to proceed. The Mayor stated the CAO subsequently developed recommendations for Council to consider at a planned in-camera meeting on December 4, 2023.

The Mayor stated, at some point between speaking with the CAO and the December 4, 2023 meeting, Councillor B told him [REDACTED] s. 22(1) had overheard a conversation between the Respondent and Councillor A about the Complainant’s complaint while in a car with them both. The Mayor said another Councillor also told him the Respondent had spoken to them about the Complainant’s complaint. The Mayor recalled telling both Councillor B and the other Councillor to “stay out of this” and thinking, “What the heck ... [why] is [the Respondent] telling people about this?”

The Mayor stated, on November 29, 2023, the Respondent called the Mayor and through their conversation he told her she had “crossed lines here” by talking to people about the Complainant, and the Respondent replied, “Well, you know I went to [REDACTED] s. 22(1) bosses.” The Mayor said he was shocked she had taken this step. He said the Respondent proceeded to blame Councillor A for “everything,” and stated she was considering making a complaint against Councillor A.

5. Credibility Assessment

On a review of the evidence, only certain material facts are in dispute. The substance of the Original Complaint revolves around the FB Exchange which can be assessed objectively on a plain reading of the posts and messages. There is largely agreement on the main events that took place, such as the Car Meeting, the filing of the OPCC Concern, and the fact the Respondent had a phone call and email exchange



with the s. 22(1) Staff Sergeant. Where the participants differ, however, is on their perspectives regarding those events and, in the case of some verbal conversations, what was specifically said (most notably whether the Respondent told the CO that she had filed the OPCC Concern “for retaliation,” and whether the Respondent made statements to the s. 22(1) Staff Sergeant indicative of the fact the OPCC Concern was retaliatory).

For the material facts in dispute, we have applied the test set by the British Columbia Court of Appeal in the case of *Faryna v Chorny*, [1952] 2 DLR 354, which is as follows:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of the witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In our assessment of the evidence of those interviewed, applying this legal test, and in consideration of the documentary evidence in this case, we make the following findings with respect to credibility.

The Complainant presented in a forthright manner and s. 22(1) evidence was corroborated by the documents and by Witnesses, in particular, the s. 22(1) Staff Sergeant, Councillor A, and the Mayor. s. 22(1) evidence, as it relates to s. 22(1) interactions between the Respondent and s. 22(1) were captured in posts, all of which have been produced, and were not challenged by either the Complainant or Respondent in the veracity of their contents. The documents are conclusive of the exchanges between them. The rest of s. 22(1) evidence relates to s. 22(1) interactions with Witnesses about the events that transpired after the FB Exchange with the Respondent. s. 22(1) accounts were supported by the evidence of those Witnesses, which in the case of the s. 22(1) Staff Sergeant, also included notes that were taken contemporaneously with the events. The Complainant also provided all the documents we requested, including making an FOI request for the OPCC Concern and put us in touch with s. 22(1) s. 22(1) the s. 22(1) Staff Sergeant, even though s. 22(1) understandably had some hesitation in doing so as s. 22(1) did not want our process to have any further impact on s. 22(1) employment.

In contrast, the Respondent presented her evidence in a meandering manner, that was coloured by her stated view that the Complainant and Councillor A were possibly collaborating and the Complainant’s and Councillor A’s actions were politically motivated and, but for, the unreasonable delays in processing the Original Complaint, the matter would have been resolved and the Second and Third Complaints would never have been brought. These theories were not supported by the evidence. For example, there was no evidence that Councillor A had any input or role in the FB Exchange or the filing of the Original Complaint which the Complainant was initially willing to resolve informally. The Mayor corroborated that



the Complainant was willing to pursue an informal resolution and the evidence shows that it was actually the Respondent's actions that escalated matters in seeking out information about the Complainant, and referencing the information she had obtained in a way which the former work colleague in the Instagram Exchange and the s. 22(1) Staff Sergeant found concerning and which got back to the Complainant.

However, more compelling than the absence of evidence to support conspiracy by various participants against her in bad faith, was the positive evidence that demonstrated that she had, in fact, engaged in wrongdoing, which she failed to, credibly, refute.

The Respondent's evidence was inconsistent with other evidence. For example, she explained that she filed the OPCC Concern because she thought the Complainant had misused s. 22(1) authority as a police officer in the FB Exchange; however, the Complainant never said s. 22(1) was a police officer in those posts and messages and the Respondent later acknowledged this was information she learned sometime after the FB Exchange.

The Respondent also used amplified language to describe the actions of others, in particular regarding the Complainant and Councillor A while, at the same time, minimizing the impact of her own conduct even where the conduct, objectively assessed, was similar in nature. For example, she compared the Complainant's posts in the FB Exchange to "someone coming up and spitting in my face" and s. 22(1) was "badgering" her by following up with her via direct message which felt "a bit creepy." In contrast, when discussing the Complainant's concerns regarding the reconnaissance she had done on s. 22(1) and her statements to the s. 22(1) Staff Sergeant that she knows who the Complainant's s. 22(1) is, where s. 22(1) works, that s. 22(1) has s. 22(1) she said: "Sorry to chuckle because I do take this seriously, but the s. 22(1) carries a firearm and s. 22(1) says s. 22(1) afraid of me? I'm not the mafia," explaining, while she had s. 22(1) home address and could go to s. 22(1) house if she wanted to, that's not something she would do and therefore s. 22(1) concern was unjustified.

The Respondent described her motivation for filing the OPCC Concern being triggered when she saw the s. 22(1) Comment where the Complainant told the s. 22(1) Councillor from s. 22(1) s. 22(1) "s. 22(1) s. 22(1) s. 22(1) s. 22(1) It was only after being questioned about the similarity, she admitted this comment was similar in nature to the comment she had made to s. 22(1) in the FB Exchange, stating, "Next year how about you volunteer to ensure everyone and every issue is tended to and then let's have a post party chat and see how well you did," in relation to the Event.

We also note the Respondent initially presented a selective version of the November 30, 2023 email exchange with the s. 22(1) Staff Sergeant, at first providing us only with one of the s. 22(1) Staff Sergeant's responses and not including her initial email or the balance of the exchange which contained statements in which she was critical of the CAO and Mayor's handling of the complaints including that the Mayor had



inadvertently disclosed the Complainant's personal information to her. She was also initially selective about the scope of her FOIPPA request regarding the Complainant's work schedule.

We found the Witnesses were balanced and credible, noting deficiencies in their evidence where they existed.

The key material facts in dispute relate to conversations between the Respondent and the s. 22(1) Staff Sergeant and the Respondent and the CO that relate to the allegations of retaliation with respect to the OPCC Concern. On this key issue, both the CO and the s. 22(1) Staff Sergeant gave clear and detailed evidence about their interactions with the Respondent which were backed up by contemporaneous notes that were provided to us. The CO said she had a clear memory of the conversation with the Respondent on November 29, 2023, as she was "shocked" the Respondent said she had filed the OPCC Concern "for retaliation" and she noted it down right away. The s. 22(1) Staff Sergeant's notes record the specific phrases the Respondent used in their conversation on September 27, 2023 which s. 22(1) said stood out to s. 22(1), including, "Our department is spending resources so should yours," and, "Good for goose is good for gander." The s. 22(1) Staff Sergeant's account that s. 22(1) never suggested or agreed to such an outcome was more consistent with the preponderance of probabilities. s. 22(1) had no authority to order or compel the Complainant to drop s. 22(1) complaints against the Respondent.

For the reasons set out above, where there is a conflict in the evidence, we have considered the totality of the evidence, and prefer the evidence of the other participants to that of the Respondent.

6. Policies and Law

The Code of Ethics outlines the standards expected of members of City Council (referred to as "Council Members or "members" throughout) as well as employees of the City in terms of ethical conduct. The Code of Ethics provides in the section "Purpose," in part that:

The Code of Ethics expresses standards of ethical conduct expected for all employees and members of City Council.

Council Members have the primary responsibility to assure that these ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of the governance of the City.

The Code of Ethics also sets out the following obligations for City Councillors:

Act in the Public Interest

Recognizing that the City seeks to maintain and enhance the quality of life for all City residents through effective, responsive and responsible government, members will conduct their business with integrity, in a fair, honest and open manner, while respecting



the confidentiality requirements of the municipality and obligations under the Freedom of Information and Protection of Privacy and Personal Information Protection Act.

...

Conduct of Members

The conduct of members in the performance of their duties and responsibilities with the City must be fair, open and honest. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, committees, the staff or the public. All members should familiarize themselves with Workers Compensation Amendment Act, 2011 (Bill 14), which addresses bullying and harassment in the workplace, the City's "Harassment in the Workplace Policy HAR 001 (which is based on the B.C. Human Rights Act), and the B.C. Human Rights Act.

Respect for Process

Members shall perform their duties to the best of their abilities in accordance with the policies and procedures and rules of order established by the City Council governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the Council by City staff.

...

Positive Work Place Environment

Members shall treat other members, the public and City staff with respect and shall be supportive of the personal dignity, self-esteem and well being of those with whom they come in contact with during the course of their professional duties. Members shall be aware of and act in accordance with the City's Harassment in the Workplace Policy and Workers Compensation Amendment Act, 2011 (Bill 14).

Finally, the Code of Ethics contains a section entitled, "Breach of Code and Consequence," which sets out the process for dealing with complaints and potential remedies Council may impose on Councillors found to have breached the Code of Ethics. This section emphasizes the role of Councillors in ensuring the ethical standards set out in the Code of Ethics are understood and met, to ensure "the public can continue to have full confidence in the integrity of the governance of the City."

During the course of the Investigation, it became clear from the evidence of participants that there was a lack of awareness of the Policy and neither the Mayor nor senior City staff considered the Policy in processing the complaints. As such, we determined that the Policy did not apply in the circumstances and did not consider it further in this Investigation.

6.1. Expectations of Ethical and Respectful Conduct

Decisions addressing the dynamic between elected officials and members of the public assist in considering what constitutes ethical and respectful conduct in the unique environment of a municipality.



Decisions from multiple Integrity Commissioners have found situations where the manner in which an elected official engaged with members of the public was intimidating and therefore unethical.

For example, in *Karygiannis (re)*, 2016 ONMIC 5, the Integrity Commissioner for the City of Toronto found that a Councillor had engaged in “discreditable conduct” in breach of the city’s Code of Conduct, meaning he failed to treat the public appropriately and in accordance with his status as a public office holder which required him to behave respectfully and not engage in bullying, harassment, intimidation, and abuse. In this case the Councillor was found to have acted in an intimidating manner towards a family in relation to a parking issue. The Councillor engaged with members of the family on multiple occasions at their home and at a public bar over how they were parking their vehicles outside their home, which he considered to be illegal. His actions “led to the reasonable impression” the Councillor had more authority to penalize the family than he had. The Councillor was free to report the issue to police, which he did, but his further actions led to the family believing they were being bullied by the Councillor and were intimidating and harassing. The Integrity Commissioner provided the following reasoning:

I find that the Councillor was frustrated by the Complainant’s decision to tweet the initial confrontation and her unwillingness to accept his warning about the parking bylaw. His repeated visits and singular focus formed a pattern of actions that quite understandably surprised the Complainant’s family and caused them to feel intimidated.

The Complainant and her family view the Councillor as a powerful political figure in their community and at the City, and they had a reasonable, albeit mistaken, belief that the Councillor had more of a role with respect to parking enforcement than he did. The Councillor bears full responsibility for this misunderstanding.

In this case, the Councillor should not have engaged in further direct dealings with the Complainant and her family after the May 3 confrontation. He was free to report the issue to [the police], which he did. His further actions were not necessary and caused the Complainant to believe that the Councillor was bullying her and her family with parking tickets as a result of their confrontation, a reasonably held belief.

Although the Councillor did not direct the issuance of tickets (he could not), his vigorous pursuit of this issue by repeatedly contacting the family, taking pictures and reporting parking infractions resulted in tickets being issued.

Article XIV of the Code of Conduct states that all members of Council have a “duty to treat members of the public, one another, and staff appropriately and without abuse, bullying or intimidation...” The Code of Conduct must be interpreted in consideration of the key statements of principle set out therein. One such principle is that “Members of Council are expected to perform their duties in office ... in a manner that promotes public confidence and bear close public scrutiny.”

Councillor Karygiannis’ repeated efforts to inform the Complainant and her family about the bylaw were intimidating and harassing. In this case, his actions have been counter to one of the key principles of the Code of Conduct. Rather than promoting public confidence, the Councillor’s actions have regrettably and likely irreparably undermined the trust and



confidence that the Complainant and her family have in their elected representative. His actions were contrary to Article XIV of the Code of Conduct.

6.2. Retaliation

As the Complainant alleges the OPCC Concern was filed in retaliation for [REDACTED] bringing [REDACTED] complaints, it is pertinent to consider what constitutes retaliation at law. While dealing with the interpretation of the anti-retaliation provision in the BC Human Rights Code, the BC Court of Appeal's decision in *Gichuru v. Pallai*, 2018 BCCA 78, assists in assessing what may constitute retaliation generally. In *Gichuru v. Pallai*, the Court of Appeal endorsed the following three-part test for establishing retaliation at paragraph 58:

- *That a previous complaint has been made under the Code and that the respondent was aware of the complaint;*
- *That the respondent engaged in or threatened to engage in retaliatory conduct; and*
- *There must be a sufficient connection between the impugned conduct and the previous complaint. This connection may be established by proving that the respondent intended to retaliate, or may be inferred where the respondent can reasonably have been perceived to have engaged in that conduct in retaliation, with the element of reasonable perception.*

Since retaliation will rarely be acknowledged as such by a respondent, and will most often need to be inferred from a review of all the evidence, the Court in *Gichuru* at paragraph 59 offered some guidance as to how to deal with evidence offered by respondents by way of explanation or justifications for their actions:

... explanations offered by respondents must be considered together with all of the evidence in assessing whether the requisite connection has been established. In particular, in assessing the reasonableness of the perception that a respondent has engaged in retaliatory conduct, the respondent's evidence, together with all of the evidence, informs the point of view of the reasonable complainant, who is taken to be apprised of the facts at the time of the impugned conduct.

7. Summary of Findings of Fact and Analysis

On a review of all the evidence, taking into consideration our assessment regarding credibility for material evidence in dispute, we make the following findings of fact:

- The Complainant engaged in the FB Exchange as an individual resident of the City. At no point did [REDACTED] reference the fact [REDACTED] is a police officer.
- The Respondent engaged in and wrote the messages in the FB Exchange, at least in part, in her capacity as a City Councillor. While she may have initially intended to review feedback on the Event out of personal interest, this quickly shifted to her providing her perspective as a City Councillor. An assertion that she participated in the FB Exchange in her personal capacity is not



reasonable based on the content of the Respondent's own words which show she was defending the actions of staff and referenced her role as an elected official repeatedly.

- Once made aware of the Original Complaint, the Respondent made various attempts to ascertain personal details about the Complainant including:
 - Investigating [§ 22(1)] Facebook page and [§ 22(1)] connections on Facebook to determine who [§ 22(1)] close family members were and ascertained the fact [§ 22(1)] [§ 22(1)], and lived in [§ 22(1)];
 - Seeking information about the Complainant through a mutual friend via the Instagram Exchange, including whether [§ 22(1)] was a police officer; and
 - Asking Councillor A whether [§ 22(1)] knew the Complainant and if the Complainant was a police officer.
- The Complainant's former co-worker and Councillor A shared with the Complainant that the Respondent was seeking to learn personal details about [§ 22(1)]. After learning of this, the Complainant was no longer interested in pursuing an informal resolution to the Original Complaint and, instead, added the concerns about this conduct on the part of the Respondent to [§ 22(1)] complaints with the City.
- The Respondent determined that the Complainant was employed as a police officer with the [§ 22(1)] and filed the OPCC Concern with the Complainant's employer regarding the FB Exchange.
- The Respondent took this action in retaliation against the Complainant for filing [§ 22(1)] complaints. In a phone call with the [§ 22(1)] Staff Sergeant regarding the OPCC Concern, the Respondent said she made the OPCC Complaint because "Colwood is spending resources, so should yours," and, "What's good for the goose is good for the gander." In addition, she identified who the Complainant was, where [§ 22(1)] worked, she knew who [§ 22(1)] was and where [§ 22(1)] worked, and the fact they had [§ 22(1)]. The [§ 22(1)] Staff Sergeant shared the details of this phone call with the Complainant.
- The Respondent told the CO that she filed the OPCC Complaint "for retaliation."
- The Respondent wrote to the [§ 22(1)] Staff Sergeant seeking an explanation as to why [§ 22(1)] had not directed the Complainant to withdraw [§ 22(1)] complaint against her.
- The Respondent sought the Complainant's shift records pursuant to an FOI request to [§ 22(1)] [§ 22(1)] Police.



With respect to the analysis of the facts, we turn to a review of the language of the Code of Ethics and the law to consider whether these findings demonstrate a breach of the Code of Ethics.

The Respondent's comments in the FB Exchange are not on their own serious enough to constitute a breach of the Code of Ethics. Elected officials are afforded leeway in their public communications and Codes of Conduct for elected officials must be interpreted in light of the freedom of expression protections under the *Canadian Charter of Rights and Freedoms*. Municipal councillors are entitled to hold and express controversial opinions subject only to justifiable limitations on open debate in a free and democratic society such as limitations on hate speech (see *Re VanLeeuwen*, 2021 ONMIC 13 and *Monforts v. Brown*, 2021 ONMIC 10). None of the Respondent's communications engage any of these limitations.

Similar to the behaviour at issue in *Karygiannis*, the Respondent's actions in repeatedly seeking personal information about the Complainant, in pursuing the OPCC Concern, and in seeking the Complainant's shift records can reasonably be seen as harassing and intimidating and a failure to treat a member of the public appropriately and in accordance with her status as a public office holder.

Although the Code of Ethics does not specifically prohibit retaliatory conduct, it does require Council Members to act "with integrity, in a fair, honest and open manner" and "refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, committees, the staff or the public." Retaliatory conduct is abusive conduct, and as such, is captured by the Code.

Taken as a whole, we find the Respondent filed the OPCC Concern in retaliation against the Complainant for filing ^{s. 22(1)} complaint under the Code of Ethics. Her actions, in seeking out personal information, filing of the OPCC Concern when ^{s. 22(1)} online comments had no connection to ^{s. 22(1)} employment, and ^{s. 22(1)} used an alias to separate ^{s. 22(1)} personal communications from ^{s. 22(1)} work and profession, were unreasonable and unjustified. Most compelling, though, of the retaliatory nature of her actions is found in her statements and admissions to the ^{s. 22(1)} Staff Sergeant and the CO. Her actions, in seeking retribution in answer to ^{s. 22(1)} complaint, were abusive and retaliatory and constitute an obvious violation of the Code of Ethics.

8. Conclusion

In conclusion, we find:

- 1) The Respondent's messages in the FB Exchange did not breach the Code of Ethics;
- 2) The Respondent's conduct in seeking personal information about the Complainant and seeking the Complainant's shift records was intimidating and harassing conduct towards a member of the public, and breached the Code of Ethics; and



- 3) The Respondent's actions in making the OPCC Concern were abusive and retaliatory and a breach of the Code of Ethics.

All of which is respectfully submitted.

s. 22(1)

s. 22(1)

Dated: April 13, 2024