

**SUMMARY REPORT TO
CITY OF NEW WESTMINSTER COUNCIL**

**IN THE MATTER OF
AN ETHICS COMMISSIONER INVESTIGATION
UNDER THE CORPORATION OF THE CITY OF NEW WESTMINSTER
BYLAW NO. 8408, 2023**

Submitted by Jennifer Devins
Ethics Commissioner
City of New Westminster

October 2024

I. OVERVIEW

1. Councillors Fontaine and Minhas (the “Complainants”) filed a complaint (the “Complaint”) against Mayor Johnstone (the “Respondent”) under the City of New Westminster’s (the “City”) Bylaw No. 8408, 2023: The Code of Conduct for Council Members (the “Code of Conduct”).
2. The Complaint alleged that the Respondent breached the Code of Conduct and section 105 of the *Community Charter*, S.B.C. 2003, c. 26 (the “*Community Charter*”) in attending at a conference in December 2023 and receiving complementary travel, meals, and accommodation in order to do so.

II. ISSUES FOR DECISION

3. The issues to be decided in this Complaint are:
 - (a) Did the Respondent receive a “fee, gift or personal benefit that is connected with [his] performance of the duties of office” within the meaning of section 105 of the *Community Charter*?
 - (b) If so, was the “gift or personal benefit received as an incident of the protocol or social obligations that normally accompany the responsibilities of office” within the meaning of section 105(2)(a)?
 - (c) If not, did the Respondent act “inadvertently or because of an error in judgment made in good faith” within the meaning of section 105(3)?
 - (d) If the Respondent received a gift or benefit within the meaning of section 105(2)(a), did he file a timely disclosure statement as required within the meaning of section 106 of the *Community Charter*?
 - (e) If the disclosure statement did not meet the requirements of section 106 of the *Community Charter*, was the failure to meet those requirements done inadvertently or because of an error in judgement made in good faith?

III. FACTS

4. In November 2023, the Respondent’s office received an invitation for the Respondent to attend the COP28 Local Climate Action Summit (“LCAS”) from December 1-2, 2023 in Dubai.
5. After obtaining further information, the Respondent determined that there would be value to the City in attending the conference. The Respondent notified the CAO that he would be attending the conference.
6. The Respondent attended the conference and related events from December 1-6, 2023, and returned home on December 7, 2023.
7. The costs of the Respondent’s attendance were borne by C40 Cities Climate Leadership groups, as was any cost of the Respondent’s attendance at the conference events itself.

8. The Respondent's attendance at the conference was made known to Council during the conference and was publicized by the Respondent on his personal social media accounts.
9. Following his return, the Respondent received advice regarding section 105 of the Community Charter. External counsel advised him that his attendance at the conference likely constituted a gift or personal benefit but fell within the exception under section 105(2)(a) for things "received as an incident of the protocol or social obligations that normally accompany the responsibilities of office".
10. On December 21, the Respondent submitted to the City's Corporate Officer a disclosure statement as contemplated by section 106 of the *Community Charter*.

IV. LEGAL PRINCIPLES

11. Division 6 of the *Community Charter* addresses conflicts of interest. Sections 105 and 106 deal specifically with gifts.

Restrictions on accepting gifts

105(1) A council member must not, directly or indirectly, accept a fee, gift or personal benefit that is connected with the member's performance of the duties of office.

(2) Subsection (1) does not apply to

(a) a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office,

(b) compensation authorized by law, or

(c) a lawful contribution made to a member who is a candidate for election to a local government.

(3) A person who contravenes this section is disqualified from holding office as described in section 108.1 [*disqualification for contravening conflict rules*] unless the contravention was done inadvertently or because of an error in judgment made in good faith.

Disclosure of gifts

106(1) This section applies if

(a) a council member receives a gift or personal benefit referred to in section 105

(2) (a) that exceeds \$250 in value, or

(b) the total value of such gifts and benefits, received directly or indirectly from one source in any 12 month period, exceeds \$250.

(2) In the circumstances described in subsection (1), the council member must file with the corporate officer, as soon as reasonably practicable, a disclosure statement indicating

(a) the nature of the gift or benefit,

(b) its source, including, if it is from a corporation, the full names and addresses of at least 2 individuals who are directors of the corporation,

(c) when it was received, and

(d) the circumstances under which it was given and accepted.

(3) A person who contravenes this section is disqualified from holding office as described in section 108.1 [*disqualification for contravening conflict rules*] unless the contravention was done inadvertently or because of an error in judgment made in good faith.

12. These requirements are incorporated into the Code of Conduct.

V. ANALYSIS

A. *Did the Respondent Receive a Gift or Personal Benefit?*

13. C40 Cities provided the Respondent with paid travel, lodging, and meals to attend the LCAS taking place during COP28. To the extent that there were fees associated with conference attendance, those fees were waived for the Respondent.

14. Section 105 of the *Community Charter* stipulates that a council member must not accept a fee, gift, or personal benefit that is connected with the member's performance of the duties of office.

15. The travel, meals, lodging, and conference attendance were plainly connected with the Respondent's performance of his duties of office. The Respondent was invited to attend, and did attend, in his capacity as Mayor of the City.

16. For the following reasons, I find that the travel, meals, lodging, and conference attendance constituted a gift or personal benefit.

17. The Respondent received an all expenses paid trip to Dubai to attend a conference. He did not provide any consideration in exchange for the trip. The trip qualifies as a gift that falls under the ambit of section 105 of the *Community Charter*.

18. It also meets the definition of a personal benefit.

19. Through the gifted travel, the Respondent was able to attend a prestigious conference, visit Dubai, and receive free meals and lodging throughout. I also note that the Respondent has written extensively about his attendance at the conference on his personal blog.

20. Although the conference may have provided benefit to the City, the publication of this information on a personal blog also has the potential to personally benefit the Respondent as increasing his stature within the climate action community.

21. The fact that COP28 may have been attended by other Canadian politicians does not negate the character of the trip as gift or personal benefit. While the trip may have been beneficial to both the Respondent and the City, that does not mean it is exempt from the definition of a gift or personal benefit under the *Community Charter*. Similarly, the fact that the funds were received from an organization that has views that are aligned with the City's goals in reducing global emissions does not change the character of the gift.

22. I find that the conference attendance, including travel, lodging, and meals, provided by C40 Cities to the Respondent falls under the definition of gifts or personal benefits outlined in section 105(1) of the *Community Charter*.

B. Was the Gift or Personal Benefit Received as an Incident of the Protocol or Social Obligations that Normally Accompany the Responsibilities of Office?

23. Section 105(2)(a) of the *Community Charter* provides that the prohibition on the receipt of gifts outlined in section 105(1) does not apply if the gift or benefit is received as an incident of the protocol or social obligations that normally accompany the responsibilities of the office.

24. COP28 and the LCAS are a conference involving multiple nations and governments, arguably for the purpose of managing or establishing relationships which will further climate goals. However, the Respondent was only attending the conference. He was not a member of an official delegation, he was not invited as a guest presenter, and he had no previous relationship with C40 Cities. The City is not a member of C40 Cities. He was under no obligation to accept the invitation, and had he declined it, there was no risk that he would damage a relationship. As a result, there was no protocol or occasion that would qualify under this exception.

25. I accept, however, that COP28 and the LCAS may be of importance or interest to the City. The City has declared a climate crisis and implemented various goals and policies to try and reduce greenhouse gas emissions.

26. I accept that the Respondent's attendance at the conference was a genuine fact-finding mission to become better informed about subject matter that is closely related to a public duty. The Respondent's attendance at the conference was consistent with taking action in furtherance of the City's 2019 declaration and commitment.

27. I separate, however, the Respondent's attendance at the conference (and any associated waiver of conference fees) from the meals, travel, and lodging associated with attending at the conference.

28. While the Respondent's attendance at the conference was, I find, a gift or personal benefit received as an incident of the social obligations that accompany the office of Mayor and consistent with his duties, I reach a different decision regarding the meals, travel, and accommodations provided to the Respondent to facilitate that attendance. I find that the travel and accommodations provided to the Respondent do not fall within the exception in section 105(2)(a).

29. In this respect, I note that the Respondent was provided with luxury travel (business class flights) and accommodations. The level of luxury suggests that attendance was more of a personal benefit than the fulfillment of a social obligation.

30. C40 Cities have the stated goal of "influencing the Global Agenda". While they may not be lobbyists in the traditional sense, particularly as it is reportedly a global network of mayors, they have the stated goal of influencing government policies. The fact that its goals align with the City's current stated objectives does not remove this potential conflict. Public perception, rightly or wrongly, may be that by accepting the trip, the Respondent

could be more easily influenced to implement climate change initiatives if approached by C40 Cities.

31. For the reasons set out above, I accept that attendance at this conference was consistent with the Respondent's social obligations that accompany the office of Mayor where the City has made commitments to climate action.
32. Receiving luxury travel, accommodation, and meal expenses to attend an international conference, however, is outside the scope of the ordinary social obligations that accompany the office. The language of section 105(2)(a) refers to what may "normally" accompany the office. There is no evidence before me to suggest that the travel and accommodation package provided to the Respondent here falls within the scope of what would "normally" be provided to attend a conference of an organization of which the City is not a member. Unlike attendance at the conference, these gifts lack a connection to the Respondent's duties as a member of council and as Mayor.
33. I find that the travel package provided to the Respondent here was not "normal" and therefore the travel, accommodation, and meals were gifts or personal benefits that are not covered by the exclusion in section 105(2)(a) of the *Community Charter*.

C. *Did the Respondent Act Inadvertently or Because of an Error in Judgment Made in Good Faith?*

34. If the gift does not fall under the 105(2)(a) exception of the *Community Charter*, then the Respondent will not be disqualified from office if the decision to accept the gift was made inadvertently, or because of an error in judgment made in good faith.
35. I find that the Respondent here acted in good faith. Upon receiving the invitation, he took steps to investigate whether the conference would provide a benefit to the City, and he was satisfied that it would provide such a benefit. He informed the CAO and Acting Mayor of his intention to attend.
36. The Respondent did not try to hide his acceptance of the gift. He posted publicly about the trip to his Instagram page on December 3, 2023. He further posted about the trip on his blog beginning December 21, 2023. Although these communications are not official City communications, they do evidence an intention to share the learnings from the conference. He also spoke about the conference with Council while he was attending the conference.
37. I find that the Respondent was motivated in his acceptance of the gift to further the City's goals relating to climate action.
38. Once the Respondent became aware that other councillors were concerned about the trip, he sought legal advice. He was initially advised that the trip likely did not constitute a gift or personal benefit. He was later advised that it likely did constitute a gift or personal benefit but fell within the exception in section 105(2)(a). Upon receiving advice to file a disclosure statement, he immediately did so.
39. Although I have reached a different conclusion than the advice received by the Respondent, there was no reason for the Respondent to doubt the soundness of the advice that he received. It was reasonable for him to act in accordance with that advice.

40. Although the Respondent did not seek legal advice until after he had accepted the gift, he nonetheless acted in good faith and his breach was inadvertent, as he did seek advice and information regarding the conference and its benefit to the City, and he informed the CAO of the offer.
41. I find that the Respondent acted in good faith in his acceptance of the gift, and that his breach of section 105 of the *Community Charter* was occasioned out of inadvertence.

D. If the Gift did fall under 105(2)(a) of the Community Charter was the Disclosure Statement Filed as soon as Reasonably Practicable?

42. As set out above, I have found that a portion of the gift – the conference attendance itself – fell within the scope of section 105(2)(a) of the *Community Charter*. As such, the Respondent was required to file a disclosure statement if the value of that attendance exceeded \$250. Although there is no evidence regarding the value, if any, of the conference attendance, for the sake of completeness, I will consider this issue.
43. The Respondent confirmed his acceptance of the invitation on November 14, 2023. On December 21, he filed a without prejudice disclosure statement regarding the gift.
44. Under section 106 of the *Community Charter*, if a councillor receives a gift under section 105(2)(a) with a value which exceeds \$250 in value, they must file a disclosure statement with the city's corporate officer "as soon as reasonably practicable". As soon as practicable is not synonymous with as soon as possible. It means "within a reasonable time in view of all the facts and circumstances".
45. The Respondent filed his statement several days after returning from the conference, approximately one-month after accepting the invitation. I find that this passage of time was due to him not realizing that the offer may constitute a gift for which disclosure was necessary. He filed a disclosure statement one day after being advised that he should do so.
46. In the circumstances, I find that the disclosure statement was filed in a timely manner, and the requirements of section 106 of the *Community Charter* were met.

E. If the Disclosure Statement was Not Filed as Soon as Reasonably Practicable, was the Contravention Inadvertent or done in Good Faith?

47. As a result of my finding above, I do not need to determine whether the disclosure statement was filed late out of inadvertence or good faith. Had such a finding been necessary, however, I would have determined that the Respondent acted in good faith.
48. In this respect, I note that the Respondent filed the disclosure statement within one day of receiving advice that he should file such a statement out of an abundance of caution. Prior to that time, the Respondent was acting on advice, as set out above, that he had not received a gift or personal benefit within the meaning of the *Community Charter*.

VI. RECOMMENDATIONS

49. Pursuant to section 74 of the Code of Conduct, having found that the Respondent breached the Code of Conduct, I am required to make recommendations as to appropriate sanctions.
50. Although under section 74(a)(iv), having found above that the Respondent's acted in good faith, I may determine that no sanctions are appropriate, in these circumstances, I find that it is appropriate to make a recommendation.
51. It was apparent from the submissions that there is not a clear understanding of the limitations imposed by section 105 of the *Community Charter*. In the circumstances, I recommend that the Respondent receive training or coaching in the relevant provisions of the *Community Charter*. Such training or coaching should include identifying when an offer may constitute a gift or personal benefit and what gifts or personal benefits may fall within the exclusions of section 105.
52. Council may determine that such training would be beneficial for all Council members in order to avoid any similar issues in the future.

VII. CONCLUSION

53. I find that the Respondent received gifts or personal benefits connected with the performance of the duties of his office, including attendance at the COP28 conference, travel, accommodations, and meals, within the meaning of section 105 of the *Community Charter*.
54. I find further that the only portion of this gift that falls within the exception in section 105(2)(a) is the conference attendance. The travel, accommodations, and meals were not "received as an incident of the protocol or social obligations that normally accompany the responsibilities of office".
55. I find that the Respondent's contravention of section 105 was inadvertent and the result of an error in judgment made in good faith.
56. To the extent that the Respondent was required to file a disclosure statement under section 106 of the *Community Charter*, I find that he met those requirements and did not breach section 106.
57. Although I have found that the Respondent acted in good faith and out of inadvertence, I recommend that the Respondent receive coaching or training regarding section 105 of the *Community Charter*.



Jennifer Devins
Ethics Commissioner
City of New Westminster

October 2024