

# Investigation Report

## INVESTIGATION REPORT re 2023-004

### INTRODUCTION

1. In August of 2023, Young Anderson was retained as an “Investigator” under the City of Kamloops Code of Conduct Bylaw No. 53 (the “Code”) in relation to four complaints, submitted by a member of the public. This complaint, against Councillor Neustaeter, was one of those four.
2. This report is prepared and submitted pursuant to section 4.31 of the Code and has therefore been delivered to the complainant, respondent, and Corporate Officer. Given that no breach has been found, the report contains no recommendations with respect to censure, sanctions, or corrective actions.

### THE COMPLAINT

3. The complaint alleges that, at the May 2, 2023 regular meeting of Council (the “May 2 Meeting”), Councillor Katie Neustaeter contravened sections 2.1, 3.3, 3.11, and 3.14 of the Code of Conduct in relation to statements that she made in response to questions from a member of the public. In particular, the complaint alleges that she gave a misleading answer when asked whether there was a quorum of council members present to draft a statement prior to its public release on March 17, 2023.
4. More particularly, the complaint relates to a series of text messages and emails exchanged between several councillors, including Councillor Neustaeter, discussing the drafting of a statement to be read at a council meeting to criticize the decision of Mayor Hamer-Jackson to disband several standing committees (the “Statement”).
5. The complaint alleges that, based on the conclusion that a quorum of council members had been present during these exchanges, and therefore, a “council meeting” had occurred in relation to the Statement. The complaint further alleges that by answering “no” to a member of the public who had asked her whether there was a meeting held to draft the Statement, Councillor Neustaeter breached the Code of Conduct.
6. While the complaint refers to several provisions of the Code, as noted above, I have determined that it is best characterized as engaging with section 3.11(a):

3.11 Without limiting the ability of a Member to hold a position on an issue and respectfully express an opinion, a Member must ensure that:

- (a) their communications relating to City, Council, or Committee business are accurate, and must not issue, or allow to be issued on their behalf, any communication that the Member knows, or ought to have known, is false or misleading;

...

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## INVESTIGATION PROCEDURES

7. The following is a summary of the investigative steps leading up to the production of this report:

**August 1, 2023:** The complainant files the complaint with the City.

**August 4, 2023:** The Investigator writes to the complainant to provide confirmation that the complaint had been received and was being processed (section 4.8(a) of the Code).

**August 4, 2023:** The Investigator writes to Councillor Neustaeter to notify her of the complaint (section 4.8(b) of the Code).

**August 11, 2023:** The Investigator writes to the complainant seeking documents referenced in the complaint.

**August 12, 2023:** The Investigator writes to the complainant following up on the document request.

**August 24, 2023:** The Investigator writes to the complainant, who indicates that a third party is in control of the requested documents, and that the third party declined to share them.

**September 12, 2023:** The Investigator makes a document request to the City.

**September 13, 2023:** The City provides the documents requested by the Investigator.

**September 29, 2023:** The Investigator writes to the complainant, providing notification that the complaint had been accepted for formal investigation (section 4.22 of the Code).

**September 29, 2023:** The Investigator writes to Councillor Neustaeter advising her of the decision to accept the complaint for a formal investigation and to seek an initial response to the complaint (section 4.23 of the Code).

**October 13, 2023:** The Investigator writes to Councillor Neustaeter, requesting an initial response to the complaint on or before October 18.

**October 13, 2023:** Councillor Neustaeter responds to the Investigator's inquiry, copying her legal counsel and noting that an initial response would come from him.

**October 16, 2023:** The Investigator has a telephone conversation with legal counsel for Councillor Neustaeter, and follows up with a written request for Councillor Neustaeter's written response to the complaint (to be provided on or before October 26).

**October 26, 2023:** Councillor Neustaeter's legal counsel seeks an extension of time to respond until October 31, which request is granted.

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**November 1, 2023:** The Investigator writes to legal counsel for Councillor Neustaeter, informing him that, having not received a written response, he would be advancing the investigation without it.

**November 25, 2023:** The Investigator writes to legal counsel for Councillor Neustaeter, asking whether he would be providing a written response to the complaint.

**December 6, 2023:** Legal counsel for Councillor Neustaeter provides a written response to the complaint.

**December 11, 2023:** The Investigator provides Councillor Neustaeter’s written response to the complaint to the complainant (section 4.24 of the Code).

**December 15, 2023:** The complainant provides the section 4.24 response.

### SUMMARY OF EVIDENCE

#### **(A.) The May 2 Meeting**

8. I have reviewed the video footage of the May 2 Meeting and determined that the conduct alleged to have occurred did take place. A member of the public asked Councillor Neustaeter whether there was a quorum of Councillors present when the Statement was drafted, referring to a report from the Office of the Ombudsperson entitled “Open Meetings; Best Practices Guide for Local Governments”. Councillor Neustaeter responded “no.” Councillor Neustaeter, in her initial response, admits that this conduct took place. There is no dispute as to these events.

#### **(B.) The Statement**

##### **Timeline of events:**

I have reviewed the FOI package provided by the City which is the basis of which the complaint was made (the “FOI Evidence”). It consists of multiple email threads, as well as a text chain. While it is helpful to read each of these individual documents in isolation, I found it useful to read each communication in chronological order. Therefore, for ease of reference, and rather than attaching the FOI package to this report, I have created a timeline of events that I have gleaned from the relevant documents. I have colour coded each communication as per the table below which helps identify the nature of each individual communication.

<b>Email Threads organized by subject line:</b>	<b>Email Participants:</b>
1. “Amended Council Committee”	1. Emails groups “ALL-City Council”
2. “Will this work”	“Legislative Services” and “Corporate
3. “RE:”	Leadership”; David Trawin; Maria

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<p>4. "Fwd: [Redacted under ss. 12(1)(3); 13.1: s. 14 of the FOIPPA<sup>1</sup>]/ PRIVILEGED RE: [Redacted under ss. 13.1: s. 14 of the FOIPPA]"</p> <p>5. "Private and Confidential"</p> <p>6. No subject line/unknown thread</p> <p><b>Text Threads:</b></p> <ol style="list-style-type: none"> <li><b>Text thread:</b> Councillors Dale Bass, Mike O'Reilly, Bill Sarai and Katie Neustaeter</li> <li><b>Text thread:</b> Bill Sarai, Dale Bass, Kelly Hall, and Katie Neustaeter</li> <li><b>Text thread:</b> Mayor Hamer-Jackson and David Trawin</li> </ol>	<p>Mazzotta; Chrissy Cossentine, "Corporate Leadership", Mayor Hamer-Jackson; Amanda Passmore</p> <ol style="list-style-type: none"> <li>Councillors Dale Bass, Stephen Karpuk, and CAO David Trawin</li> <li>Mayor Reid Hamor-Jackson, David Trawin, Maria Mazzotta and the email group "ALL-City Council"</li> <li>Email groups, "ALL-City Council" and "ALL-Directors", David Trawin, Maria Mazzotta, Kristen Rodrigue, and Amanda Passmore</li> <li>Councillors Katie Neustaeter, Bill Sarai, Kelly Hall, Dale Bass, Nancy Bepple, Mike O'Reilly, Margot Middleton and Stephen Karpuk</li> <li>Chrissy Cossentine, Nancy Bepple and Maria Mazzotta</li> </ol>
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**March 16, 2023:**

**Sometime before 12:19pm:** Mayor Hamer-Jackson asks his executive assistant Chrissy Cossentine to email council members a new list of committee memberships.<sup>2</sup>

**12:19pm:** Chrissy Cossentine sends the following email to the email groups titled "ALL-CityCouncil" and "Legislative Services" as well as David Trawin and Maria Mazzotta: "Good morning, the mayor has made revisions to the Standing Committees. Please see attached. Thank you".

**12:25pm:** Maria Mazzotta, Corporate Officer, sends the following reply-all response, cc'ing the email group "Corporate Leadership": "Chrissy and all – the guidance I gave to the Mayor on this is that any changes to Standing Committees should be announced publicly in the context of a Regular Council meeting. Such changes to Standing Committees will necessitate updates to their respective Terms of Reference, which Council has the authority to approve. The earliest opportunity for Council to consider said updates would be at the Mar 28 Regular Council Meeting."

**12:30pm:** Chrissy Cossentine sends the following response to Maria Mazzotta, cc'ing the mayor: "Maria, Mayor is asking for a copy of [Redacted: s.14 and s. 12(1)(3) of FOIPPA]. He was under

<sup>1</sup> Freedom of Information and Protection of Privacy Act, RSBC 1996, c. 165.

<sup>2</sup> See "ROTHENBURGER: Anatomy of how council formed a 'unified team' against the mayor", <https://cfjctoday.com/2023/05/27/rothenburger-anatomy-of-how-council-formed-a-unified-team-against-the-mayor/>.

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the understanding he was able to make these changes, although maybe the means to present this wasn't clarified as much as should have been. He is asking if this is a Community Charter rule or Municipal Bylaw rule? Thank-you"

**12:34:** Deputy Mayor Hall sends the following reply-all response: "Question . Is this a public document. I see the media having a hay day with these changes to standing committees. Agreed that all changes need to be in council. Open meeting . Thoughts Kelly"

**12:54pm:** Councillor Bass sends the following text message to Councillors O'Reilly, Sarai and Neustaeter: "Maria says [Redacted: 13(1) and 14 of FOIPPA]. There is a community relations committee scheduled for Tuesday. She is going to ask David if it has to happen".

**Sometime after 12:54pm:** Councillor Neustaeter sends the following text message response to the group: "Should also state that no member of council has ever expressed that we are overwhelmed or wanted a decreased workload. We have been effectively working through the committee structures on issues related to our strategic plan, regular city business, and issues brought forward by the community. I think we should state that it's inappropriate to hand pick individuals who worked on campaigns and believe an equitable application process should exist if a new committee structure is implemented. Equal opportunity. And concerns around confidentiality."

**12:55pm:** Maria Mazzotta sends the following to Chrissy Cossentine, cc'ing "Council-Mayor", the email groups "Corporate Leadership", "ALL-City Council", "Legislative Services" and Amanda Passmore: "Thanks Chrissy. Copying all of Council, senior management, and my team so everyone is on the same page. Section 141 of the Community Charter does give the Mayor the authority to establish standing committees and appoint members: [Link] As standing committees are subject to statutory requirements and governance principles related to transparency and public notice, members of the public have a fundamental right to notice if those who have not been democratically elected are to be acting as their representatives in the context of statutory committees. Hence, our Council's practice has always been to make announcements regarding Committees and their respective appointments, in open, public Council meetings. As you're all aware, this is also the precedent that was set by this Council in the December 2022 announcement of the City's current Standing Committees and their respective appointees. As also previously noted, the Terms of Reference for these Committees were designed for a membership of three, consisting exclusively of Council members. Should this be altered, new Terms of Reference would need to be approved by Council. For reference, the Terms of Reference for the current Standing Committees were initially approved by Council on February 5, 2019. The related Council resolution can be found on p. 4 of those minutes: [Link] I have not received a final legal opinion on this, and as previously noted, legal opinions are subject to solicitor-client privilege, with the staff member requesting them being the client. The Mayor is of course free to obtain his own independent legal advice."

**1:48pm:** Councillor Beppe sends the following reply-all response: "Maria Can you also comment on the TNRD alternate. Already at least once, two directors were absent at the same time."

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Historically all council members not on the TNRD were alternates to ensure coverage. I notice in the current list there is only one alternate. Thank you Nancy”

**1:52pm:** Chrissy Cossentine sends following reply to Councillor Beppe, cc'ing Maria Mazzotta: “Hi Nancy, I only just added Cllr Karpuk as I sent him on-boarding info to him recently. If there is a second I would be happy to work on having them added. Maybe lets wait to see how this plays out in the near future? Thank-you,”

**1:49pm:** Councillor Karpuk sends the following response to Chrissy Cossentine, “All-City Council”, “Legislative Services”, David Trawin, cc'ing Maria Mazzotta: “I am more than a little concerned about these changes. Wondering how Development and sustainability committee chair would interact with staff and report to council? How would closed meetings work more public members? Seems like this should be at a lower engagement level.”

**2:10pm:** Maria Mazzotta sends the following reply-all response: “Thanks Nancy. For clarification, the TNRD is not a Standing Committee. Council as a whole, therefore has authority over its appointees to TNRD. Council passed a resolution on November 15, 2022 regarding its TNRD appointments. It can be found on page 8 of those minutes – I’m away from my desk so I’ll send the link under separate cover. That resolution stands until and unless it is rescinded and revisited by Council.”

**2:13pm:** Mayor Hamer-Jackson sends the following text message to David Trawin “Hi David, someone on council must have leaked the standing committee list to the media as I am getting calls and they even have the list. Do you know who this could be. Thanks. Reid.

**Sometime after 2:13pm:** David Trawin sends the following response to Mayor Hamer-Jackson: “Have ideas but nothing concrete.”

**2:33pm:** Councillor Karpuk sends the following reply-all response: “Is this a public document now? Does the media have it? I want to be prepared to say no comment if needed.”

**2:37pm:** Councillor Sarai sends the following reply-all response: “Direct all media request to the Mayor. Kukwstsetsemc/Thank you”.

**2:56pm:** Councillor Sarai sends the following text message to Councillors Bass, Hall, and Neustaeter: “This is what the Mayor told Levi! Says he’s “relieving” the workload for you guys”.

**Sometime after 2:56pm:** Councillor Bass sends the following text message response: “But I though we don’t work that hard.”

**Sometime after 2:56pm:** Councillor Sarai sends the following text message response: “[Redacted s. 16(1)(a) and (b) of the FOIPPA]. Also everyone reach out to Acacia and request you don’t want to sit at this table. Unless you do want to sit at this table.”

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**Sometime after 2:56pm:** Councillor Neustaeter sends the following text message response: “I hope “[Redacted s. 16(1)(a) and (b) of the *FOIPPA*] says something.”

**Sometime after 2:56pm:** Councillor Sarai sends the following text message response: “We just cancelled our Committee meeting for next week.”

**Sometime after 2:56pm:** Councillor Bass gives a heart emoji to Councillor Sarai’s message and sends the following text message response: “Good”.

**Sometime after 2:56pm:** Councillor Neustaeter sends a text message response that is redacted under s. 13(1) of *FOIPPA*.

**Sometime after 2:56pm:** Councillor Bass sends two text message responses that are redacted under s. 13(1) of *FOIPPA*.

**Sometime after 2:56pm:** Councillor Neustaeter sends the following text message response: “who is drafting that reply?”

**Sometime after 2:56pm:** Councillor Bass sends the following text message response: “I’m starting the absolute basics and then others should chime in and you should make it perfect. I’m just throwing themes together. Basically thoughts on messaging. Should have that in about an hour.”

**Sometime after 2:56pm:** Someone gives a “thumbs up” emoji to Councillor Bass’s text.

**Sometime after 2:56pm:** Deputy Mayor Hall sends the following text message response: “Ok..media r going be all over us at the dinner tonight to let’s all be singing from the same song sheet K”

**Sometime after 2:56pm:** Councillor Sarai sends the following text message responses:

- “Ask the mayor is what we say tonite, We know as much as you do. First time we saw this document”
- “[Redacted s. 22(1) of *FOIPPA*]. Oops,”
- “He’s coming on NL [sic]”
- “Now”

**3:11pm:** Maria Mazzotta sends the following reply-all response: “And specifically to the question of TNRD alternates, as noted in the Nov 15, 2022 report to Council regarding TNRD appointments, on Oct 24, 2017, the Council of the day passed a resolution which included the following reference to alternates: “the remaining Councillors will act as Alternate Directors on a rotating, alphabetical roster system.” Reference to this can be found on p. 2 of the Nov 15, 2022 report: [Link] As Council has not revisited its 2017 resolution regarding alternates, that resolution stands.”

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**3:53pm:** David Trawin sends the following reply-all response: "Maria and I have had inquiries from the press with regards to what the access and what the mayor can do and what Council can do in terms of the role of committees. I have responded related to that but have not responded at all in what my feelings are".

**4:00pm:** Councillor Karpuk sends the following reply-all response, cc'ing Mayor Hamer-Jackson: "Is there a need to have a meeting next Tuesday the 21<sup>st</sup> to deal with this?"

**4:58pm:** David Trawin sends the following reply-all response "I will be sending you out [Redacted: s.14 and s. 13(1) of FOIPPA]"

**7:04pm:** CAO Trawin sends a reply-all response that is redacted under s. 14 of FOIPPA.

**7:28pm:** Councillor Bass sends the following email to CAO Trawin and Councillor Karpuk: "Councillors Stephen Karpuk and Dale Bass wish to hold a special council meeting on Tuesday, March 22 to review terms of reference for council standing committees."

**7:28pm:** Councillor Karpuk sends the following reply-all response: "I am in agreement with this."

**7:44pm:** Councillor Bass sends the following email to Mayor Reid Hamer-Jackson, cc'ing David Trawin, Maria Mazzotta and the email group "ALL-City Council": "Councillors Stephen Karpuk and Dale Bass wish to hold a special council meeting on Tuesday, March 22 to review terms of reference for council standing committees."

**7:45pm:** Councillor Bass sends the following reply-all response: "Please note the typo. Tuesday, March 21."

**7:47pm:** Councillor Bass sends the following response to Councillor Karpuk only: "fixed the date after the fact. Could you send your agreement to RHJ, DT and Maria?"

**8:38pm:** Councillor Middleton sends the following reply-all response: "I am in agreement with a special council meeting on Tuesday, March 21, 2023".

**8:44pm:** David Trawin sends the following email to the email group "ALL-City Council", with Maria Mazzotta, Kristen Rodrigue and the email group "ALL-Directors" cc'd: "I have received many questions on roles of mayor and council related to standing committees. This includes make up, mandates, terms of reference, etc. [Redacted s. 14 of FOIPPA]. Please feel free to contact Maria and I if you have any questions".

**9:28pm:** Maria Mazzotta sends the following reply-all response: "All – pls note that [Redacted ss. 12(1)(3), 13(1) and 14 of FOIPPA]. If the Special Council meeting proposed for March 21 proceeds, and Council wishes to discuss the [Redacted s. 12(1)(3) of FOIPPA] Council would need to pass a

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resolution to proceed into Closed under the *Community Charter* [Redacted s. 14 of FOIPPA]. As David notes, pls feel free to reach out if you wish to discuss.”

**10:23pm**: Councillor Karpuk sends the following response to Councillor Bass only: “What am I replying too? The original email or should I send a fresh email of request?”

**10:24pm**: Councillor Bass sends the following response to Councillor Karpuk only: “No. You just need to send it to all of council as well as David and Maria.”

### Unknown Date and Time

Councillor Bass sends the following text message to Councillors Karpuk, Beppe and Hall: “[Redacted: s. 13(1) of FOIPPA] I just jotted down themes below. I’m trusting you all to make it a firm statement [Redacted: s. 13(1) of FOIPPA] Katie will do final make it perfect version. Themes: Councillors are taking the difficult but necessary steps to ensure accountability of its elected officials to Kamloopsians [Redacted: s. 13(1) of FOIPPA] The mayor did not consult with any councillors and on his own decided to relieve committee chairs of what he called a heavy workload The Mayor has continued to refuse to work with council, [Redacted: ss. 22(1) and 13(1) of FOIPPA] The eight councillors have been and will continue to work together for the betterment of Kamloops. [Redacted: ss. 13(1) and 17(1) of FOIPPA].”<sup>3</sup>

Deputy Mayor Hall sends the following text message response: “Duties of Mayor attached Provide leadership to council including by recommending bylaws, resolutions and other measures that may assist in the peace, order and good governance of the municipality See what we r missing..K”

Councillor Bass sends the following text messages to Councillors Neustaeter, Bass, O’Reilly and Sarai:<sup>4</sup>

- “I’m going to suggest out table have no knives”.
- “[Redacted: s. 13(1) of FOIPPA] Lots of things we can do. So I’m [Redacted: s. 22(1) of FOIPPA] then starting a quick draft for you all to poke in to be released tomorrow.”

Councillor Sarai sends the following response: “No [Redacted: s. 22(1) of FOIPPA]? I’m disappointed, maybe [Redacted: s. 22(1) of FOIPPA]”

Councillor Bass initiated a FaceTime call.

### March 17, 2023

<sup>3</sup> Based on the contents of this message and other surrounding events, this text was likely sent sometime shortly after 2:56pm on March 16 and before Councillor Neustaeter’s email at 1:51 am on March 17.

<sup>4</sup> Similar to above, this text was likely sent sometime shortly after 2:56pm on March 16 and before Councillor Katie Neustaeter’s email at 1:51 am on March 17.

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**1:51am:** Councillor Neustaeter sends an email to Councillors Sarai, Hall, Bass, Beppe, O'Reilly, Middleton and Karpuk. Contents of the email are set out in **Appendix "A"**.

**4:48am:** Councillor Bass sends the following reply-all response: **[Redacted: s. 22(1) of FOIPPA]**, **[Redacted: s. 13(1) of FOIPPA]** After the intro I wanted to give any of you a chance to speak. Then a ma what mum [sic] three questions because we all have to get back to work. Shall I include we are available to speak to this later? Thank you, Katie. It is great. Me."

**6:50am:** Councillor O'Reilly sends the following reply-all response: "Thanks Katie, It pretty must sums up how I think council feels. My only suggestion is **[Redacted: s. 13(1) of FOIPPA]**. Thanks again for your stewardship on this. Mike".

**6:52am:** Councillor Bass sends the following reply-all response: "Good point. But it is a super message. **[Redacted: s. 13(1) of FOIPPA]**".

**7:00am:** Councillor Beppe sends the following reply-all response: "Thank you Kaite. Thank you Dale. Well done. A clear, well laid out message. *Thank You/Kukwstsetsemc*".

**7:05am:** Councillor Sarai sends the following reply-all response: "Much thanks for making our team even more United. *Kukwstsetsemc/ Thank You*"

**7:09am:** Councillor Karpuk sends the following reply-all response: "I really like the document as a whole, removing the **[Redacted: s. 13(1) of FOIPPA]** do not want any grandstanding, just facts and I do not wish to speak today. Thank you Katie for this and all of you for your work. Stephen".

**7:10am:** Councillor Bass sends the following reply-all response: "You and I can hide in the back. I'm just gonna set out ground rules for pushy reporters and then watch the show."

**7:34am:** Councillor Neustaeter sends the following reply-all response: "Sounds good, everyone. I will remove that. If I had time to write a crisis comms plan, I would **[Redacted: s. 13(1) of FOIPPA]**. We make our statement and get back to work as a united front and stay out of the quagmire for now. Questions will be answered through our work and anyone who wants to can speak with media after the March 21<sup>st</sup> meeting where things will shake out. Thoughts? -k"

**7:36am:** Councillor Bass sends a reply-all response that is completely redacted under s. 13(1) of FOIPPA.

**7:37am:** Councillor Middleton sends the following reply-all response: "Katie. This looks great. Thanks to all for your " holding down the fort" while **[Redacted: s. 22(1) of FOIPPA]**. Thanks Katie for putting together a stellar press release , well written !! We stand together!! Margot"

**7:40am:** Councillor Neustaeter sends the following reply-all response: "I guess the real question is, **[Redacted: s. 13(1) of FOIPPA]** I'm just not sure what it would achieve? -k"

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**7:41am:** Councillor Bass sends a reply-all response that is completely redacted under s. 13(1) of FOIPPA.

**7:44am:** Councillor Neustaeter sends the following reply-all response: "I meant the event is a comms crisis, not the Q's. I see what you're saying and journalists would certainly prefer that [Redacted: s. 13(1) of FOIPPA]. Over to you for perspective, Council. We'll obviously do whatever the majority would prefer. -k"

**7:50am:** Councillor Bass sends a reply-all response that is completely redacted under s. 13(1) of FOIPPA.

**7:51am:** Deputy Mayor Hall sends the following reply-all response: "First off wow...great job. What a unified team. I do like [Redacted: s. 13(1) of FOIPPA]. Unlike the Mayor. Kelly"

**7:55am:** Councillor Bass sends the following reply-all response: "Did you see Foulds column today? He may finally starting to understand what have had to live with."

**8:10am:** Councillor Bepple sends a reply-all response that is completely redacted under s. 13(1) of FOIPPA.

**10:04am:** Deputy Mayor Hall sends the following reply-all response: "As Deputy Mayor . I'd like to thank each one of you for your support in what's become a difficult month as DP . The statement today will give the community an understanding of the challenges we are faced with daily . we all have been in the cross hairs of attack and assaulting commentary. With Bill Mike and I being removed from chairs of our committee. I'll open the news conference and pass the reading of the statement over to Katie to read. I also think we need to let the media we will answer questions after our open council meeting next Tuesday . Giving us all an opportunity to organize and give direction to new terms of reference to potential new committees .. a unified approach today will send a solid message to the people of Kamloops .. Regards Kelly".

**10:25am:** Maria Mazzotta sends the following reply-all response: "All – realizing the link I sent below re 2019 Council approval of Committee ToRs led you elsewhere. My apologies – here is the correct link: [Link]"

**10:27am:** Councillor Bass sends the following reply-all response: "Okay now I'm confused. I was to set the parameters to reporters, Mike was to read it and no questions."

**10:33am:** Councillor Sarai sends the following reply-all response: "Thank you, DM Hall, Great game plan to keep us on point and show a completely unified group. Next Tuesday will be interesting. B *Kukwstsétsemc/Thank you,*"

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**10:39am:** Councillor Bass sends the following reply-all response: “So now we set ourselves up for Reid to turn this personal from Katie because she has been identified as one of his critics. [Redacted: s. 13(1) of FOIPPA]”.

**10:48am:** Councillor Neustaeter sends the following reply-all response: “Whoever does it will be a target for whatever reasons he imagines. I’m willing to do it for the reasons Kelly laid out. There will be a podium and mic, we won’t answer questions, and we’ll be in chambers and stand in front of our desks as advised. -k”

**Around noon:**<sup>5</sup> Councillor Neustaeter delivers the March 17<sup>th</sup> Statement at council chambers. The audio for the statement can be found at the following link: <https://www.radionl.com/2023/03/17/100355/>. I have prepared a written transcript of the statement at **Appendix “B.”**.

### **(C.) Councillor Neustaeter’s Initial Response**

9. Councillor Neustaeter provided an initial response to the complaint on December 6, 2023. I have attached a copy of that response to this report as **Appendix “C”**. While I have considered the whole of Councillor Neustaeter’s submission, in my view it contains three important assertions:

- a. The drafting and editing of the Statement were administrative in nature.
- b. When drafting the Statement, Councillor Neustaeter was cognizant of the need to comply with the open meeting rule. In part, that was why a special open meeting was called as soon as possible after the Statement was complete.
- c. When Councillor Neustaeter told a member of the public that there was no meeting to draft the Statement, she answered honestly, and with full knowledge that the emails thread could be requested via FOI legislation.

### **(D.) Submissions of the Complainant**

10. I received a thorough and helpful written response from the complainant on December 15, 2023. I attach that response as **Appendix “D”**. On the issue of whether the electronic communications were a meeting, the complainant made five points which I will summarize:

- a. The fact that a full quorum of eight councillors was involved in the communications fulfills one criterion for a meeting.

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<sup>5</sup> See “ROTHENBURGER: Anatomy of how council formed a ‘unified team’ against the mayor”, <https://cfjctoday.com/2023/05/27/rothenburger-anatomy-of-how-council-formed-a-unified-team-against-the-mayor/>.

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- b. The nature of the discussion was to deal with subject matter that would be addressed at a council meeting, which strongly indicates that the communications constituted a meeting. The complainant bolstered this submission with reference to cases and a BC Ombudsperson's report (to be discussed later).
  - c. Electronic meetings can constitute meetings. The complainant referred to the electronic meeting rules in the *Community Charter* in support of this submission.
  - d. The fact that the communications were in a closed chain – excluding both the Mayor and members of the public – indicate that they constituted a meeting.
  - e. There was a decision made by way of the electronic communications.
11. The complainant also submitted that Councillor Neustaeter's definite "no" in response to a question from a member of the public indicated that she breached the Code of Conduct. In the complainant's submission, Councillor Neustaeter's "tone of total assurance" was misleading in respect of her answer. The complainant characterized this as "at best...an ignorance of the law and...at the very least misleading".

### **ANALYSIS**

#### **(A.) The Allegations**

12. As noted above, the complaint alleges that Councillor Neustaeter breached section 3.11(a) by inaccurately answering a question posed to her by a member of the public at the May 2 Meeting.
13. In adjudicating this allegation, I am applying a civil standard of proof – the balance of probabilities. The application of this standard means that I must find that the alleged breach under review is more likely than not to have occurred. I apply this standard to my findings of fact as well as my legal determinations.

#### **(B.) The Code of Conduct**

14. As noted above, the underlying facts of the complaint are not in dispute. It is clear that: (1) Councillor Neustaeter told a member of the public that there was no meeting with respect to the drafting of the Statement; and (2) there were a series of electronic communications with a quorum of Council through which the Statement was drafted and edited.
15. What is at issue are the following legal questions, based on those facts. First, did a meeting take place to draft the Statement? Second, if a meeting did take place, does Councillor Neustaeter's answer at the May 2 Meeting constitute a breach of the Code of Conduct?
16. I must now consider and apply this provision of the Code that is engaged by this complaint:

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3.11 Without limiting the ability of a Member to hold a position on an issue and respectfully express an opinion, a Member must ensure that:

(a) their communications relating to City, Council, or Committee business are accurate, and must not issue, or allow to be issued on their behalf, any communication that the Member **knows, or ought to have known**, is false or misleading (emphasis added);

17. There are several key features of section 3.11(a) to which I will return later in my analysis. Before doing so, however, I must attempt to determine whether a meeting took place to draft the Statement, based on my review of the relevant documents. If I find that a meeting did not take place, then it is impossible for Councillor Neustaeter to have breached section 3.11(a) of the Code of Conduct, because her statement would be true.

### *(i) The Law on Meetings*

18. Neither the *Community Charter* nor the *Local Government Act* defines the terms “meeting” or “council meeting”.<sup>6</sup> These terms are also not defined under the City’s *Council Procedure Bylaw No. 59, 2023* (the “*Council Procedure Bylaw*”).

19. Section 89(1) of the *Community Charter*, however, creates a statutory requirement that all meetings, unless lawfully closed pursuant to express authority found in sections 90, must be open:

**89** A meeting of a council must be open to the public, except as provided in this Division.

20. This statutory rule is not unique to British Columbia. Dealing with a similar rule in Ontario, the Supreme Court of Canada described the significance of the open meeting rule in *London (City) v. RSJ Holdings Inc.*, where it stated:

Municipal law was changed to require that municipal governments hold meetings that are open to the public, in order to imbue municipal governments with a robust democratic legitimacy. The democratic legitimacy of municipal decisions does not spring solely from periodic elections, but also from a decision-making process that is transparent, accessible to the public, and mandated by law. When a municipal government improperly acts with secrecy, this undermines the democratic legitimacy of its decision, and such decisions, even when *intra vires*, are less worthy of deference.<sup>7</sup>

21. In *Southam Inc. v. Hamilton-Wentworth (Regional Municipality) Economic Development Committee (“Hamilton-Wentworth”)*<sup>8</sup>, a majority of the Ontario Court of Appeal held that “[i]n the

<sup>6</sup> Or the term “board meeting” in the case of meeting of the board of directors for the regional district.

<sup>7</sup> 2007 SCC 29 (“*RSJ Holdings Inc.*”) at para 38.

<sup>8</sup> 66 O.R. (2d) 213 (ONCA).

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context of a statutory committee, “meeting” should be interpreted as any gathering to which all members of the committee are invited to discuss matters within their jurisdiction.”

22. The case involved a gathering of the members of the Committee of Economic Development of the Regional Municipality, a standing committee of council of the regional municipality which consisted of the chairman of the regional municipality and nine members of the council.

23. The committee had convened an “in camera workshop” that all committee members attended. The workshop occurred in a different room from the regular committee, and members of the media were expressly denied entry. No agenda had been prepared for the workshop, nor was there a subsequent report to council about the workshop. The purpose of the workshop, as noted in resolution passed at a previous committee meeting, was to “review past present and future objectives” and the committees’ terms of reference, which was circulated by the municipality’s clerk prior to the workshop.

24. The Court concluded that workshop constituted a “meeting” within the regional municipality’s procedural bylaw based on these facts.”<sup>9</sup>

25. The Court further held that: “There is no doubt that members of a committee, meeting informally, can discuss questions within the jurisdiction of the committee privately, but when all members are summoned to a regularly scheduled meeting and there attempt to proceed in camera, they are defeating the intent and purpose of council’s by-law which governs their procedure.” (emphasis added)

26. The foregoing passages in *Hamilton-Wentworth* were relied upon in *Southam Inc. v. Ottawa Council (“Southam”)*.<sup>10</sup>

27. In that case, the divisional court provided the following inquiry for determining whether a gathering is a “meeting”:

The key would appear to be whether the councillors are requested to attend (or do, in fact, attend without summons) a function at which matters which would ordinarily form the basis of Council’s business are dealt with in such a way as to move them materially

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<sup>9</sup> In a dissenting opinion, Justice LaCourciere disagreed that the workshop constituted a meeting and viewed the events differently from the majority. In particular, the justice viewed the fact that the bylaw’s procedural steps were not taken and no transaction of business occurred indicated that meeting had not occurred: “None of these procedural requirements were followed. No decisions, recommendations or reports were made and no business was transacted; it was expected that a subsequent meeting of the Economic Development Committee would take place within several weeks, open to the public, at which recommendations concerning policy would be developed... In the words of one member of the committee describing the gathering of the 26th to a reporter of the Hamilton Spectator, it was a “bull session ... kicking around ideas or bouncing ideas off each other”. It was also described by other members of the committee as a “brainstorming session”.”

<sup>10</sup> [1991] O.J. No. 3659.

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along the way in the overall spectrum of a Council decision. In other words, is the public being deprived of the opportunity to observe a material part of the decision-making process?

28. *Southam* concerned a two-day “retreat” at a resort involving city council members. The appellant newspaper requested to attend either one of the days of the retreat and was refused initially by the mayor and subsequently by a vote of the councillors. The appellant applied for a judicial review to quash the decision on the basis that the retreat events were meetings that should have been open to the public.

29. The retreat events emanated from the mayor’s office and were paid for out of Council funds. A number of such events had been held since 1978. All members of council were invited to attend and all did except for one. Staff were also in attendance. One of the day’s events were organized by an agenda and included considerations of a capital expenditure plan, an infrastructure management strategy report and priorities for the next three years by service area. Some meetings were restricted to attendance by the mayor and council members only. The Court also noted that on one of the event days a committee was struck to investigate and report on additional pay for committee heads.

30. The Court concluded that, taken as whole, the events constituted a meeting:

**15** At the very least we have, in respect of the Calabogie events, councillors and the mayor meeting with staff: (i) to discuss in a structured way matters which would ordinarily be the subject of Council business, (ii) it would seem in part to make action-taking decisions (committee head pay committee) and, (iii) to materially move along a number of matters vis-a- vis council: (a) agenda items as reflected in the questions raised which were subsequently answered on matters that were on a critical path, with the next step being a press release of the City's intentions in early February, as well as, (b) the future of the chief administrative officer, as to whom steps were taken shortly thereafter to dismiss before he eventually resigned.

31. *Hamilton-Wentworth* and *Southam* were both relied upon by the Supreme Court of the Northwest Territories in *City of Yellowknife Property Owners Assn. v. Yellowknife (City)*.<sup>11</sup> In that case, the Court concluded that regularly scheduled “briefing sessions” conducted between the City’s aldermen and the senior administrative officer were improperly convened in camera meetings.

32. These sessions occurred on a weekly basis in a basement boardroom. The senior administrative officer had prepared and circulated notices and agendas in advance of the briefings. He also admitted that he used the briefing sessions to receive directions from council about many issues and to consider confidential matters that might otherwise require an in camera council meeting under the municipality’s

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<sup>11</sup> 1998 CanLII 6961 (NWT SC).

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governing statute, the *Cities, Towns and Villages Act*, R.S. N.W.T. 1988, and the council procedure bylaw. Votes were also taken during the briefings.

33. The Court, in reliance of the tests articulated by *Hamilton-Wentworth* and *Southam*, concluded the briefings constituted a meeting under the City's governing statute:

24 Applying these cases, it is clear that briefing sessions held in Yellowknife were meetings within the jurisdiction of council (the test applied in the *Southam Inc. v. Regional Municipality of Hamilton-Wentworth* (supra) case) and that they dealt with matters which form the basis of the council's business and were dealt with in such a way as to move them materially along in the overall spectrum of the council's decision (the test applied in the *Southam-Ottawa* (supra) decision).

34. Surprisingly, the issue of what constitutes a council meeting has not been extensively considered by British Columbia courts.

35. The BC Supreme Court briefly considered the issue in *3L Developments Inc. v Comox Valley (Regional District)*.<sup>12</sup> In that case, the petitioner had sought a judicial review of the CVRD's decision to reject an amendment to its regional growth strategy bylaw. One of the orders sought by the petitioner was a declaration that the CVRD's chair and vice-chair had conducted an illegal in camera meeting when they conducted a "sidebar" with staff at the board meeting where the amendment was rejected. The chair and vice-chair had discussed with staff the petitioner's request to withdraw its application for the amendment. The Court rejected this argument and its reasoning relied upon many of the same factors noted in the foregoing cases:

[156] Counsel for the CVRD does not disagree that meetings of the Regional Board must be open to the public unless the meeting is properly closed, but takes the position that the definition of "board" in the Schedule of the LGA means the "board of directors for the regional district". The sidebar between the Chair, the Vice-Chair and staff was not a meeting of the board of directors. There was no quorum, which is prescribed in s. 10(1) of the Procedure Bylaw as at least half of the number of members of the board or committee. There was no motion to vote on and nothing passed.

[157] I agree with counsel for the CVRD that the recess taken by the Chair and Vice-Chair to get procedural advice from CVRD staff was not, by definition, a meeting of the Board. It did not offend s. 89 of the Community Charter. It was a step taken by the two Board officials within their mandate of being in charge of procedure.

(emphasis added)

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<sup>12</sup> 2019 BCSC 1342 ("*3L Developments*").

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36. In 2012, the Office of the Province's Ombudsperson released Special Report No. 34 – "Open Meetings: Best Practices Guide for Local Government" (The "BC Ombudsperson's Report")<sup>13</sup> to outline best practices for open meetings and to provide definitions for local government meetings.
37. The report also outlines the Ombudsperson's assessment on when a gathering may be considered a council meeting. In providing the information and recommendation, the Ombudsperson's cited to, among other sources, *Hamilton-Wentworth*, *Southam*, and *Yellowknife*.
38. The report does not have the force of law, but it does represent a persuasive source given its reliance on existing case law and the Ombudsperson's role and authority to investigate illegal closed meetings.
39. The following are relevant passages from the Ombudsperson's Report.

### **On the factors that determine whether a gathering is a meeting:**

There are several factors that should be considered by local governments when they are determining whether their gathering is indeed a meeting and is subject to the open meeting requirements. The Ministry of Community, Sport and Cultural Development provides useful information on this topic on its website. It states that some courts have determined "a council meeting is any gathering to which all members of council have been invited; and that is a material part of council's decision-making process." Accordingly, "[c]ouncil gatherings where all council members could be seen to be making decisions, or moving towards making decisions, would meet this two-part definition."

### **On the nature of the group:**

The composition of any gathering is one of the two key factors in determining whether the gathering is a meeting. The presence of a quorum or the full membership of a council or other body is more likely to constitute a meeting, while a gathering of smaller groups will be less likely to constitute a meeting. Recognized groups, such as committees, are more likely to have their gatherings regarded as meetings than random congregations of elected officials. Similarly, groups that exercise a decision-making authority are more likely to have their gatherings considered meetings than groups who study issues or recommend action.

### **On the nature of the discussion:**

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<sup>13</sup> Province's Ombudsperson released Special Report No. 34 – "Open Meetings: Best Practices Guide for Local Government" (The "BC Ombudsperson's Report"): <https://bcombudsperson.ca/assets/media/Special-Report-No-34-Open-Meetings-Best-Practices-Guide-for-Local-Governments.pdf>

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The other key factor in determining whether a gathering constitutes a meeting, and is therefore subject to the open meeting requirements, is the nature of the discussion. This depends on whether a gathering involves discussing matters within a local government's jurisdiction in a capacity that deprives the public of "the opportunity to observe a material part of the decision-making process". Any real progress in the decision-making process of a matter within the local government's jurisdiction strongly indicates that a gathering is a meeting. This does not necessarily mean however that if progress towards a decision is not made that the gathering is not a meeting. It may still be one if the meeting was for that purpose even though the desired progress or result was not achieved.

### **On the nature of the gathering:**

Where and how a meeting is conducted are less significant but relevant factors in determining whether a gathering is a meeting. Generally speaking, if a gathering shares some of the common features of a regular meeting, this may indicate that the gathering is in fact a meeting. For example, gatherings that occur regularly are more likely to be seen as meetings, as are gatherings that are planned in advance. Procedural matters can also strongly indicate whether a gathering is a meeting. Gatherings that follow an order of proceeding, obey rules of order, have an agenda, or record minutes are more likely to be meetings, and the presence of a chair or corporate administrator is also indicative of a meeting. Gatherings that are held at a local government body's normal meeting place are more likely to be seen as meetings. However, even if the meeting location is irregular, gatherings in areas completely under the control of the group — such as a private meeting room — will be more likely seen to be meetings than those held in open, public settings. A vote of any sort indicates that a gathering is in fact a meeting. The "heart of the matter" cannot be seen to have been decided at a gathering, shielded from the view of the public. Instead, local governments should allow for public discussion and consideration of the matter before holding any final vote.

### **On electronic meetings:**

The most important thing for local governments to recognize is that the same key factors determining whether an informal gathering is a meeting also apply to electronic communications. If members of a local government are, through electronic communications, advancing matters within their jurisdiction, all of the rules about open meetings apply. For example, the content of instant messaging and group emails between local government members, whether the emails are sent from or to public or private accounts, may unwittingly transition from topics that do not need to be discussed in an open meeting to matters that must be discussed in an open meeting.

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Local governments need to be conscious that all meetings of council members, not simply those that take place in an official setting, are subject to the open meeting requirements.

(emphasis added)

### On factors that determine whether a gathering is or isn't a meeting:

A gathering is less likely a meeting if:	A gathering is more likely a meeting if:
<ul style="list-style-type: none"> <li>• there is no quorum of board, council or committee members present</li> <li>• the gathering takes place in a location not under the control of the council or board members</li> <li>• it is not a regularly scheduled event</li> <li>• it does not follow formal procedures</li> <li>• no voting occurs and/or</li> <li>• those in attendance are gathered strictly to receive information or to receive or provide training</li> </ul>	<ul style="list-style-type: none"> <li>• a quorum of council, board or committee members are present</li> <li>• it takes place at the council or board's normal meeting place or in an area completely under the control of the council or board</li> <li>• it is a regularly scheduled event</li> <li>• formal procedures are followed</li> <li>• the attendees hold a vote and/or</li> <li>• the attendees are discussing matters that would normally form the basis of the council's business and dealing with the matters in a way that moves them toward the possible application of the council's authority</li> </ul>

### ***(ii) Application of Law to Facts***

40. My analysis begins with the premise that a council "meeting" in law can certainly occur electronically through email and text messaging. Although I have not found case law expressly affirming

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this position, support can be found in the BC's Ombudsperson's Report<sup>14</sup> and in investigations conducted by the Office of the Ombudsperson of Ontario.<sup>15</sup> In my view, the current legislation governing electronic meetings in BC, which allows for meetings to "be conducted by means of electronic or other communication facilities" also supports this interpretation.<sup>16</sup>

41. Further, the cases and secondary sources I have reviewed all indicate to me that the "medium" of the meeting is not determinative of whether one occurred. Rather, the approach taken by the courts and ombudspersons indicates that the analysis is a contextual one, generally depending on the following factors:

- a) The nature of the group;
- b) The nature of the gathering; and
- c) The nature of the business discussed.

42. It is this framework that I will apply.

### **Nature of the Group**

43. The BC Ombudsperson's Report notes that the presence of a quorum or the full membership of a council or other body is more likely to constitute a meeting, while a gathering of smaller groups will be less likely to constitute a meeting.

44. In *3L Developments*, the BC Supreme Court found that the sidebar between the Chair, the Vice-Chair and staff of the CVRD was not a meeting of the board of directors in part because of the absence of a quorum, which under the CVRD's procedure bylaw was at least half of the number of members of the board or committee.<sup>17</sup>

45. As submitted by the complainant, the presence of a quorum of council members as an indicator of whether a meeting occurred is also consistent with the rule that a quorum is a prerequisite to the exercise of statutory powers,<sup>18</sup> and the City's *Council Procedure Bylaw*, which prevents a meeting from

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<sup>14</sup> BC Ombudsperson's Report at page 11.

<sup>15</sup> *Amherstburg (Town of)*, 2016 ONOMBUD 9 ([CanLII](#)), paras 34 – 46.

<sup>16</sup> See ss. 128-128.3 of the *Community Charter*.

<sup>17</sup> In *Hamilton-Wenworth*, the Court held that a committee meeting was "any gathering to which all members of the committee are invited to discuss matters within jurisdiction" [Underling Mine]. However, the case has not been interpreted as holding that a meeting cannot be found where less than all of members of political body are present.

<sup>18</sup> Ian MacFee Rogers Q.C., "Law of Canadian Municipal Corporations", 2nd ed. (Toronto, Thomson Reuters Canada: 2022) (Online) at §6:31 – "Proceedings—Quorum".

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being called to order in the absence of quorum prior to the scheduled time for the council meeting, and requires the adjournment of meetings where quorum is lost at any point during a meeting.<sup>19</sup>

46. Under s. 1 of the City's *Council Procedure Bylaw* (which mirrors section 129 of the *Community Charter*) a "quorum" is defined as "five Members of Council for Regular, Special, and COTW meetings, and for Public Hearings, pursuant to Section 129(1) of the Community Charter".

47. The available evidence indicates that a quorum of council members was assembled to discuss the Statement on March 17 at 1:51am, when Councillor Neustaeter emailed seven other council members, representing all other council members except the Mayor, the email that attached a draft of the Statement.

48. It seems likely that the objective of preparing the Statement, and its potential contents, was likely discussed prior to that point amongst several council members. For example, in one text message exchange on March 16 sometime after 2:56pm, Councillor Neustaeter sent a text asking "who is drafting that reply", to which Councillor Bass replied "I'm starting the absolute basics and then others should chime in and you should make it perfect. I'm just throwing themes together. Basically thoughts on messaging. Should have that in about an hour". However, those texts were sent amongst a message group consisting of only three council members, being Councillors Neustaeter, Bass, and Sarai.

49. Similarly, in another text exchange (the date and time of which cannot be precisely determined from the FOI Evidence provided but which likely occurred on March 16) Councillor Bass sent a text message stating "...I just jotted down themes below. I'm trusting you all to make it a firm statement [Redacted: s. 13(1) of FOIPPA] Katie will do final make it perfect version [sic]". Again, however, that text was sent to a group consisting of four council members: Councillors Bass, Beppe, Karpuk, and Hall.

50. The FOI Evidence furthers indicate that the quorum convened by Councillor Neustaeter's initial email was maintained throughout the discussion that occurred on that email thread. Each communication sent through the thread was sent to each of the receipts to Councillor Neustaeter's initial email.

51. Furthermore, each of the Councillors included on the thread responded to Councillor Neustaeter's initial email, indicating their participation in the gathering.

52. These facts clearly indicate that at least one recognized criterion of a council meeting was present in this case – that being, a quorum of Council was engaged in the dialogue.

### **Nature of the Gathering**

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<sup>19</sup> *Council Procedure Bylaw*, ss. 4.3(a), (b).

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53. The complainant referred me to the BC Ombudsperson Report, and specifically to its statement that a gathering in a space that is “completely under the control of the group — such as a private meeting room — will be more likely seen to be meetings than those held in open, public settings.”

54. The idea of “control” over a gathering, and more specifically, the ability to restrict others from attendance was also considered by the courts in *Hamilton-Wentworth* and *Southam*. In both cases, the courts took notice of the fact that media members were expressly denied entry to the gatherings of members.

55. In this case, the gathering was under the control of the involved council members. By virtue of communicating through email, each Council member on the email chain could control who was added and excluded to the thread. Presumably, the decision to exclude Mayor Hamer-Jackson was a deliberate choice, as was presumably the choice to exclude City management and staff, who were included in other email threads surrounding the Mayor’s decision around standing committees.

56. The BC Ombudsperson Report further notes that a vote of any sort indicates that a gathering is in fact a meeting, noting that “the “heart of the matter” cannot be seen to have been decided at a gathering, shielded from the view of the public. Instead, local governments should allow for public discussion and consideration of the matter before holding any final vote.”

57. Here, the council members did not take a formal “vote” but the nature of the communications lends itself to an interpretation that an “approval of some sort” occurred to draft and make the Statement. In her initial email, Councillor Neustaeter states “Hi Team, attached in a document with a proposed statement for tomorrow. While we have not been able to discuss collectively, I hope it accurately reflects what I heard from those of you I was able to connect with 1:1”. Later in the email she also states “If you see anything inaccurate, please let me know...but please be aware that making major/many changes will be challenging considering our very limited time and the TNRD start planning tomorrow AM.”

58. These statements can be interpreted as putting the proposed statement up for approval before the other council members. Similarly, the responses provided by other council members can be interpreted as support for the statement. The following are some of the responses provided by council members to Councillor Neustaeter’s proposed statement:

- **Councillor Mike O’Reilly:** “Thanks Katie, It pretty much sums up how I think council feels. My only suggestion is [Redacted: s. 13(1) of FOIPPA]. Thanks again for your stewardship on this. Mike.”
- **Councillor Dale Bass:** “Good point. But it is a super message. [Redacted: s. 13(1) of FOIPPA]”.
- **Councillor Nancy Bepple:** “Thank you Kaite. Thank you Dale. Well done. A clear, well laid out message...”

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- **Councillor Bill Sarai:** “Much thanks for making our team even more United. *Kukwstsétsemc/ Thank You*”
- **Councillor Stephen Karpuk:** “I really like the document as a whole, removing the [Redacted: s. 13(1) of FOIPPA] do not want any grandstanding, just facts and I do not wish to speak today. Thank you Katie for this and all of you for your work. Stephen”
- **Councillor Margot Middleton:** “Katie. This looks great. Thanks to all for your “ holding down the fort” while [Redacted: s. 22(1)of FOIPPA]. Thanks Katie for putting together a stellar press release , well written !! We stand together!! Margot”
- **Deputy Mayor Kelly Hall:** “First off wow...great job. What a unified team. I do like [Redacted: s. 13(1) of FOIPPA]. Unlike the Mayor. Kelly”.

59. In my view, although these communications fall short of a formal vote, they do support an interpretation that an approval was sought and given on the decision to make a public statement regarding the Mayor’s decision. This seems to be somewhat supportive of another criterion identified by BC Ombudsperson Report as indicative of a council meeting.

### **Nature of the Business Discussed**

60. In my opinion, in this particular case, the nature of the business discussed is both the most difficult and the most important criterion. In determining whether the subject-matter discussed rendered the discussion a meeting, the main question is whether the purpose and subject-matter was such that the public ought to have seen it.

61. In *Hamilton-Wentworth*, the Court expressly defined a meeting as “any gathering to which all members of the committee are invited to discuss matters within their jurisdiction”.

62. In *Southam*, the Court similarly defined a meeting as being a “function at which matters which would ordinarily form the basis of Council's business are dealt with in such a way as to move them materially along the way in the overall spectrum of a Council decision.”

63. In reliance of these cases, the BC Ombudsperson noted in her report that: “any real progress in the decision-making process of a matter within the local government’s jurisdiction strongly indicates that a gathering is a meeting”.

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64. The Ontario's Ombudsperson has gone further and offered the following working definition for a "meeting": "The "coming together" must be for the purpose of exercising the power or authority of the council or for the purpose of doing the groundwork necessary to exercise that power or authority."<sup>20</sup>

65. Each of the foregoing definition offers a slightly different threshold for determining whether the subject matter of gathering would qualify the gathering as a meeting. The court in *Hamilton-Wentworth* did not describe what it meant by "jurisdiction", however, the Ontario's Ombudsperson has taken the position that the fact that a matter is *ultra vires* council's jurisdiction does not preclude a gathering from being a meeting so long as the purpose of the meeting was to exercise a power or authority of council or to lay the groundwork for such an exercise.

66. Similarly, the Court in *Southam* did not elaborate on how to determine what it meant by "matters which would ordinarily form the basis of Council's business".

67. The email thread can be summarized as a discussion about the following matters:

- a) whether to deliver the statement proposed in Councillor Neustaeter's initial email;
- b) the contents of the proposed statement; and
- c) how the statement was to be delivered and related presentation matters.

68. However, it should be noted that the initial draft of the Statement attached to Councillor Neustaeter's initial email was not included in the FOI Evidence. Furthermore, some of the emails exchanged on the "Private and Confidential" email thread were either partially or completely redacted under various sections of the FOIPPA. Some of the redactions appear directly related to the contents of the Statement, for example, the following exchange between Councillors Karpuk and Neustaeter:

- **7:09am:** Councillor Stephen Karpuk sends the following reply-all response: "I really like the document as a whole, removing the [Redacted: s. 13(1) of FOIPPA] do not want any grandstanding, just facts and I do not wish to speak today. Thank you Katie for this and all of you for your work. Stephen".
- **7:34am:** Councillor Neustaeter sends the following reply-all response: "Sounds good, everyone. I will remove that. If I had time to write a crisis comms plan, I would [Redacted: s. 13(1) of FOIPPA]. We make our statement and get back to work as a united front and stay out of the quagmire for now. Questions will be answered through our work and anyone who wants to can speak with media after the March 21st meeting where things will shake out. Thoughts? -k"

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<sup>20</sup> See, Ombudsman of Ontario, "[Investigation into City of Greater Sudbury Council Closed Meeting of February 20, 2008: Don't Let the Sun Go Down on Me: Opening the Door on the Elton John Ticket Scandal](#)" (April 25, 2008).

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69. The Statement as presented is a critique of Mayor Reid-Jackson's decision to change the structure and composition of existing standing committees. The Statement offers a rebuke to the Mayor's reasons for the changes, and additionally criticizes the process by which new committee members were appointed.

70. The statement also included the following comments:

"Council will be holding a special meeting on Tuesday, March 21<sup>st</sup>, 2023, to discuss a resolution to this unfortunate disruption of our work on your behalf and hopes to remedy yesterday's troubling changes to committee structure.

The nature of the meeting, *i.e.*, whether it will proceed in open or closed format, will depend on legal counsel's advisement for the best interest for the City of Kamloops and the Corporation."

71. I am cognizant of Councillor Neustaeter's submission that the email exchanges were administrative in nature, and that it was always recognized that the Statement would be read to the public in an open meeting, to be convened quickly. Those points are well taken. It makes practical sense that not every item that ultimately makes its way into an open meeting can be subject to public debate and discussion.

72. Further, I note that the Statement was not in relation to a matter that was the subject of *Council* decision-making authority. While Council members all have an interest in the composition of each standing committee, the authority to actually make the decision regarding that composition is reserved exclusively to the *Mayor*. The fact that the Councillors were not deliberating regarding the exercise of a power that they themselves had also militates against considering the nature of their discussion be such that it rendered the discussion a meeting.

73. There is a counter-argument to this point, however, which is that when the Statement is examined in its entire context, it can be seen as a decision that "laid the groundwork" for an exercise of power or authority of Council. Specifically, if the Statement can be seen laying the groundwork for three resolutions that were adopted in the special meeting on March 21, which were as follows:

- a) that Council establish a Select Committee to: a) study the Standing Committees' Terms of Reference; and b) provide recommendations to Council on updates to the Terms of Reference and proceedings of Standing Committees
- b) that Deputy Mayor Hall identify members of Council to serve on the new Select Committee that will provide recommendations on Standing Committee terms of reference; and
- c) that Council suspend the activities of the Standing Committees from this point forward.

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## Investigation Report

74. The last resolution is particularly significant because of its likely impact on the functioning and effectiveness of the standing committees.

75. Had the council members waited until the special meeting on March 21 to discuss the draft statement and the criticisms contained in it, as opposed to doing so over email on March 17, a discussion on the criticisms of the Mayor's decision would have occurred in an open public setting where it would have been subject to public comment and scrutiny.<sup>21</sup>

76. Depending on the engagement and feedback received, council members may have come to a different decision on whether to put forward and adopt the resolution to suspend the activities of standing committees. Thus, it is arguable that, by holding a closed meeting to discuss criticism of Mayor Hamer-Jackson's decision, the council members had denied the public an opportunity to observe an important part of the process that ultimately led them to pass a resolution to suspend the activities of standing committees.

77. However, it is clear that the public did have an opportunity to observe the decision-making process behind the three foregoing resolutions. After all, the special meeting was open to the public and any interested member of the public presumably could have posed questions relating to the resolutions prior to their vote and adoption.

78. I also take Councillor Neustaeter's point that the editing of a political statement is not the kind of thing that generally happens in Council meetings. Although not an easy decision, on balance, I find that the administrative and editorial nature of the email discussions militate against a finding that the electronic communications constituted a meeting. The Statement was made public and by the same eight elected officials who participated in its creation. Again, in this sense the public was not denied anything other than the mundane editing of a political statement.

### ***(iii) Conclusion on Meeting Issue***

79. In sum, while there are legitimate arguments both for and against characterizing the email drafting and editing of the Statement as a "meeting", I am inclined on the basis of the above analysis to find that it did not constitute a meeting, due largely to the nature of the emails and the Statement. I do not believe that the public was, in this case, deprived of seeing debate and deliberations that ought to have occurred in an open meeting. As I will explain below, however, there is another, and perhaps, more fundamental reason why the Code was not breached in this circumstance.

### ***(iv) Section 3.11(a) of the Code of Conduct***

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<sup>21</sup> In my opinion, it seems unlikely that Council could have conducted a closed meeting to discuss the statement under the grounds enumerated under s. 90(1) or (2).

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## Investigation Report

80. For convenience, I reproduce again the text of section 3.11(a) of the Code of Conduct:

3.11 Without limiting the ability of a Member to hold a position on an issue and respectfully express an opinion, a Member must ensure that:

(a) their communications relating to City, Council, or Committee business are accurate, and must not issue, or allow to be issued on their behalf, any communication that the Member **knows, or ought to have known**, is false or misleading; (emphasis added)

81. I first note that this section is explicitly limited in its application, beginning with the proviso that it does not intend to limit “the ability of a Member to hold a position on an issue and respectfully express an opinion”. I take this proviso as an express recognition that it is inherent in the role of an elected official to express opinions about difficult political issues. It is not the role of a code of conduct to stifle such expressions by creating an unduly high standard to which the speech of elected officials is held.

82. Second, subsection (a) is further limited to apply only to “communications relating to the City, Council, or Committee business”. Such communications must be “accurate”.

83. Third, the standard of accuracy in respect of such communications is that the Member must “know or ought to have known” that the communication is false or misleading.

84. Accounting for the text of the section, as well as its purpose, I find that Councillor Neustaeter did not breach section 3.11(a) when she told a member of the public that there was no meeting to draft and edit the Statement.

85. In making this determination, I accept her evidence (and it is by its nature the only evidence available to me) that she did not believe the drafting and editing of the Statement constituted a meeting. I cannot, therefore, find that she “knew” she was issuing a communication that was false or misleading as per section 3.11(a).

86. That leaves one question – was the communication by Councillor Neustaeter one that she “ought to have known” was false? In my view, given the complex analysis with respect to the application of the open meeting rule, set out above at paragraphs 12 to 79 of this investigation report, and the credible arguments both for and against the characterization of the communications between councillors leading to the Statement as a meeting, I cannot find that she breached section 3.11(a) on the “ought to have known” standard. Councillor Neustaeter was, in my view, entitled to hold and express the reasonable opinion that the electronic communications described above did not constitute a meeting at law.

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## Investigation Report

87. Section 3.11(a), as with all provisions in the Code of Conduct, is intended to govern serious ethical lapses. It is not an invitation to investigators to parse and police speech for the truth of its contents.

88. I specifically do not agree with the submission of the complainant that Councillor Neustaeter's unequivocal "no" was a breach of the provision because it indicated lack of care or an intent to mislead. To the contrary, I believe that the complainant's submission as to whether the electronic communications were a meeting holds Councillor Neustaeter's conduct to a standard that is higher than the Code of Conduct could reasonably contend. As noted above, I accept Councillor Neustaeter's evidence that she honestly believed that no meeting took place and, given that there are credible arguments going in both directions, I cannot find that she ought to have done anything other than expressed her honest belief when interacting with a member of the public.

89. In situations dealing with Council conduct, one can often ask whether there was an alternate course of action available to a councillor. In this case, given her honest belief, what alternate path was there for Councillor Neustaeter? Should she have declined to answer the question, for fear of giving a misleading answer? I do not believe the Code of Conduct places that obligation on her. Should she have stated that communications occurred via email to draft the Statement but that, in her view, those communications did not constitute a council meeting? While she could have said as much, again, I do not believe that the Code of Conduct places such an obligation on her.

90. Rather, given the circumstances, I believe that the Code of Conduct placed an obligation on Councillor Neustater to answer the question honestly and to the best of her ability. There is nothing in the evidence before me to suggest she did anything other than this.

91. I refer to the decision of Commissioner Guy Giorno in his decision in *Montforts v. Brown*, 2021 ONMIC 10, with which I agree:

...I wish to observe that not everything is an Integrity Commissioner issue. Not all issues need to be handled under the Code of Conduct.

This is particularly true of issues related to political speech. As the Honourable Donald Cameron, a former Superior Court judge, wrote when he was the Integrity Commissioner of Brampton: "I cannot and will not be a referee of free speech in a political arena provided it stays within the bounds... of the Code"

It has been said that if someone uses political speech to make unfair or misleading comments, then political speech itself offers a remedy... In a democracy, political speech offers the opportunity to call out, to correct, and to criticize inaccuracy and unfairness – usually in a manner that is direct, immediate, and proportionate to the original speech.

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## Investigation Report

92. I think these comments are apt in this circumstance. I do not mean to suggest that the complaint was frivolous in any way – it was clearly not, given the complex analysis above. I also do not believe it was filed in a direct attempt to curtail Councillor Neustaeter’s speech. However, I am of the view that enforcing section 3.11(a) in the manner suggested by the complainant, by finding a breach in this circumstance, would have the effect of curtailing elected officials from answering questions from the public to the best of their ability.

93. As such, I am dismissing this complaint.

94. I wish to thank Councillor Neustaeter for her forthrightness and cooperation in our investigation of this matter, and the complainant, for his thoughtful submissions. Both the Councillor and the member of public should be commended for their interest in resolving this complex governance issue.

### **RECOMMENDATIONS**

95. Given that I have determined that no breach of the Code of Conduct took place, I decline to make any recommendations in this report.

All of which is respectfully submitted this 8<sup>th</sup> day of January, 2024.



Reece Harding,  
Young Anderson

# Appendix A

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From: Katie Neustaeter <kneustaeter@kamloops.ca>  
 Sent: March 17, 2023 1:51 AM  
 To: Bill Sarai <bsarai@kamloops.ca>; Kelly Hall <khall@kamloops.ca>; Dale Bass <dbass@kamloops.ca>; Nancy Beppe <nbeppe@kamloops.ca>; Mike O'Reilly <moreilly@kamloops.ca>; Margot Middleton <mmiddleton@kamloops.ca>; Stephen Karpuk <skarpuk@kamloops.ca>  
 Subject: Private and Confidential

Hi team,

Attached in a document with a proposed public statement for tomorrow. While we have not been able to discuss collectively, I hope it accurately reflects what I heard from those of you I was able to connect with 1:1.

It times out to approx 3:30. Seeing as the Mayor had oodles of minutes of press coverage yesterday, this does not seem like an unreasonable length of time to take for our counterpoints, rationale, and explanation of next steps.

Obviously we are not making any decisions about the actions of Council outside of legislated process, so it does not include anything about what we might consider doing to resolve this issue.

**S.13(1) Policy advice/recommendations, S.16(1)(a)(b) harmful to intergovernmental relations or negotiations**

If you see anything inaccurate, please let me know (ie. no committee only had "2-3 meetings all year" scheduled, right?), but please be aware that making major/many changes will be challenging considering our very limited time and the TNRD strat planning tomorrow AM.

I earnestly feel that we have done all we can to avoid this kind of public statement, but it's no longer possible because of his actions. It's an important moment and we need to be very honest and clear with the public about our realities. Folks need to be reminded that we aren't some premeditated group that campaigned together and rallied against the Mayor, but instead a diverse team of previous strangers who are doing our best in an impossible situation.

I'm grateful for each of you and am so thankful that none of us need stand alone.

Hope you're all sleeping soundly as I hit "send".

See you way too soon.

-k

**Katie Neustaeter**

Kamloops City Councillor | City of Kamloops

7 Victoria Street West, Kamloops BC, V2C 1A2

P: 236-579-6400 | [Kamloops.ca](http://Kamloops.ca) | [LetsTalk.Kamloops.ca](http://LetsTalk.Kamloops.ca)

## SCHEDULE "B" – Transcript of Councillor Katie Neustaeter's Statement on March 17, 2023

1 While we, all eight Kamloops City Councillors would prefer to be performing the jobs that we've  
2 been elected to do by our citizens, we instead find ourselves again combatting the chaotic and  
3 unpredictable behavior of our mayor that leads to confusion and misinformation.

4 This team, mostly strangers only months ago, remains united in our commitment to honest and  
5 transparent accountability to the citizens of Kamloops, which is why we're here today to  
6 collectively address the sudden changes made to our committees' structure and appointments.

7 Counter to public comments made by Mayor Reid Hamer-Jackson yesterday, no councillor you  
8 see before you today has ever expressed a desire to be quote "relieved of our workload", no  
9 councillor has ever expressed that they were quote "kind of overwhelmed", no chair has shown  
10 any quote "lack of commitment" or has any conflict; no committee has only quote "two or three  
11 meetings booked for a whole year", nor are we making changes to the job descriptions to quote  
12 "relieve the Deputy Mayor of some duties".

13 These are examples of blatant untruths.

14 Although we had heard the Mayor was considering adding members of the public to standing  
15 committees and had repeatedly requested input about process, or at least an overview if this  
16 was to happen, no councillors were consulted before these unilateral changes were made.

17 Additionally, no meetings with the Mayor have taken place or concerns about performance as  
18 chairs were discussed or expressed.

19 In fact, no member of this Council has been invited by the Mayor to participate in any meaningful,  
20 consultative, team building, or respectful conversation in many months.

21 While we as councillors have been subjected to repeated disrespect, violations of personal and  
22 professional boundaries, belittling, and constantly disruptive behavior by the Mayor, we've been  
23 willing to absorb the impact in service to our community and in an attempt to have City business  
24 comprised as little as possible.

25 But we must draw a line when this erratic behavior directly obstructs our ability as your  
26 democratically elected representatives to do our job.

27 We want to make it clear that our concerns are not a reflection of our views of the individuals  
28 that the Mayor has hand-picked to serve on committees.

29 In addition to disrespecting Council, our great unease is primarily with the lack of an equitable  
30 application process; indifference for due diligence and best practice; a disregard for the impact  
31 to sensitive community partner requests; an absence of reassurance around confidentiality; and  
32 a neglect of unbiased vetting.

33 This is all in direct opposition to the concept of a transparent, accountable and open governance  
34 and gives unfair access to select members of the public that are not available to all.

35 Therefore, this Council cannot remain silent.

36 Council will be holding a special meeting on Tuesday, March 21<sup>st</sup>, 2023, to discuss a resolution to  
37 this unfortunate disruption of our work on your behalf and hopes to remedy yesterday's  
38 troubling changes to committee structure.

39 The nature of the meeting, *i.e.*, whether it will proceed in open or closed format, will depend on  
40 legal counsel's advisement for the best interest for the City of Kamloops and the Corporation.

41 Your elected councillors stand as diverse individuals, united in purpose to unwaveringly serve  
42 you, despite the extraordinary challenge we continue to face.

43 We remain committed to you, Kamloops.

44 Thank you.

**Harper Grey LLP**

BARRISTERS & SOLICITORS  
3200 • 650 West Georgia Street  
Vancouver BC Canada V6B 4P7  
Tel. 604 687 0411 • Fax 604 669 9385

DANIEL J. REID  
DIRECT LINE: 604 895 2877  
dreid@harpergrey.com  
www.harpergrey.com

File Number: 157160

December 6, 2023

**BY EMAIL:**

[harding@younganderson.ca](mailto:harding@younganderson.ca)

Young Anderson  
Barristers and Solicitors  
1616-808 Nelson Street  
Box 12147 – Nelson Square  
Vancouver, BC V6Z 2H2

Attention: Reece Harding

Dear Mr. Harding:

**Re: Code Complaint 2023-004 Initial Decision**


---

I write further to our email correspondence.

Enclosed is a copy of the response letter prepared by my client in response to the Code of Conduct Complaint. If there is any additional information that you require, or should you have any questions or concerns, feel free to contact the undersigned.

Yours truly,

**HARPER GREY LLP**

  
Per: Daniel J. Reid

DJR/DJR

*Encl.*

November 3, 2023

Reece Harding  
Barrister & Solicitor/Mediator  
Young Anderson  
Barristers and Solicitors  
1616-808 Nelson Street  
Box 12147 – Nelson Square  
Vancouver, BC V6Z 2H2

Dear Mr. Harding,

Further to the questions you posed resulting from a Code of Conduct Complaint against me as a Kamloops City Councillor I am providing my written response c/o Daniel Reid, Associate Counsel, Harper Grey LLP.

As I understand the complaint related to questions about whether Councillors held a meeting in contravention of the Community Charter, I can confirm that we did not. Our Council is very cognizant of the importance of following the Community Charter mandated regulations around quorum and Council meetings. We take this responsibility seriously and it requires discretion and discernment. We regularly hold one another accountable and maintain a high expectation of ethical practice in this area. To that end, when crafting the statement of all Councillors in response to Mayor Reid Hamer-Jackson replacing members of Council on standing committees with his friends, unsuccessful candidates, and election donors, we were very careful not to conduct anything that could be considered a meeting and to operate entirely "above board".

While we did exchange an email thread that pertained to the tweaking of the finalized language to be used in the public, collective statement, this was purely administrative in nature. Councillors never met as a group (only one-on-one conversations were conducted to inform the content) and we intentionally held an Open Special Council meeting as soon afterward as legislatively possible (as said in the statement) where all decision-making could occur with transparency. While we regularly act in our official capacity with multiple members of Council present (both in person, virtually, and in correspondence), not everything we do constitutes a Council meeting. As comparable discussions via email thread with all of Council concerning things that are administrative in nature routinely occur and often include the Mayor's participation (ie. scheduling, event coordination, letters of support and associated language, whether a special meeting should take place, meal choices and preferences, approvals, information sharing, how correspondence with the public should be handled and the specifics related to that, wording in communications, back-and-forth with staff, etc) the email thread about the language of the statement to be made did not in any way approach the necessary requirements to constitute a meeting any more than any of those examples. While all eight Councillors were included in the email thread, none believed it constituted a meeting. I am confident that if there was a shred of

concern on anyone's part correspondence would have been immediately halted as that is our mutual and conscientious practise.

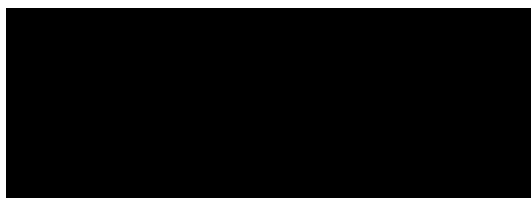
The second element of the complaint, as I understand it, is if I misrepresented whether Council had a meeting regarding these proceedings to a constituent who asked during an Open Council meeting. I believe I was accurate at the time when I answered that no meeting took place and still firmly believe that to be true.

In the recording of the Open meeting in question, you can see that I carefully considered and then volunteered to answer directly and honestly in order to be transparent and set the citizen's concerns at ease. I did so with the full knowledge that the email thread could be FOIed because I knew that it in no way constituted a meeting. We had conducted ourselves ethically, professionally, and in alignment with the Community Charter.

While it could be said that I'd save myself trouble by not answering at all when asked these kinds of questions by the public, I believe it's my responsibility to provide the most accurate information to counter any misconceptions and to help our residents to feel confident in the knowledge that Council is both aware of our responsibilities and eager to fulfill them. To lie knowingly and voluntarily, especially under these circumstances, would have not only been foolhardy and out of character, but also absolutely unnecessary as I was not compelled to answer. I believed that remaining silent would have been misleading as it would have appeared that we were hiding something, so I chose to answer honestly, accurately, and simply. No, we did not have a meeting.

Thank you for the opportunity to offer my perspective and supporting information, as well as your consideration. Please let me know if I can be helpful in any other way.

Kindly,



Katie Neustaeter,  
Kamloops City Councillor  
250.597.6400

# Appendix D

**Sent:** Friday, December 15, 2023 10:37 AM  
**To:** Reece Harding <harding@younganderson.ca>  
**Subject:** RE: Code Complaint re 2023-004

December 15, 2023

Reece Harding  
Barrister & Solicitor/Mediator  
Young Anderson  
Barristers and Solicitors  
1616-808 Nelson Street  
Box 12147 – Nelson Square  
Vancouver, BC V6Z 2H2

Dear Mr. Harding,

Re: Coun. Neustaeter’s Code of Conduct Complaint response filed November 3, 2023.

My reply to Coun. Neustaeter’s response follows:

**(1) Whether there was a meeting to draft the March 17/23 councillors’ media statement:**

Coun. Neustaeter stated, “when crafting the statement of all Councillors . . . we were very careful not to conduct anything that could be considered a meeting. . . . While all eight Councillors were included in the email thread, none believed it constituted a meeting.”

However, Coun. Neustaeter cannot know this for certain. It is only inferred, since it seems the councillors did not discuss it. She wrote, “I am confident that if there was a shred of concern on anyone’s part, correspondence would have been immediately halted.”

Coun. Neustaeter’s argument that the email exchange to draft the March 17/23 Statement did not constitute a meeting because nobody involved raised the issue has no logical value. Whether participants choose to discuss the rules or not has nothing to do with the actual circumstances that define whether a meeting was held.

I believe that the e-mail communications leading up to the March 17, 2023 presentation of a Statement to media in city council chambers constituted a meeting for the following five reasons:

(a) The discussion involved a quorum of all eight councillors:

[Open Meetings: Best Practices Guide for Local Governments \(bcombudsperson.ca\)](#) states the two primary factors determining whether or not a meeting is taking place are the nature of the group (whether or not a majority of the council has gathered), and the nature of the discussion (advancing matters within their jurisdiction).“

Further, BC municipal law expert Raymond Young, founding partner of Young Anderson, one of B.C.’s best-known firms specializing in municipal law, warned that “Councillors cannot meet together when they have a quorum without holding those meetings in public or under rules that limit in camera closed-door meetings to a narrow list of legitimately confidential issues” ([Councillors who meet privately likely breaking the rules, says lawyer | Vancouver Sun](#)).

The fact that not just a majority but a full quorum of all eight councillors was involved seems to fulfill the ‘nature of the group’ criterion of a meeting.

j(b) The ‘nature of the discussion’ for the Statement, and the special council meeting held the next business day, was common to both. Their identical subject matter worked in tandem to advance the councillors’ desire to address the mayor’s standing committees.

According to Coun. Neustaeter, “the statement of all Councillors [was] in response to Mayor Reid Hamer-Jackson replacing members of Council on standing committees. . . .We intentionally held an Open Special Council meeting as soon afterward as legislatively possible.”

This refers to an official special council meeting, filed the day before the Statement event on March 16/23 and scheduled to be held the following Monday, March 20, 2023.

The business of this special meeting was also in response to Mayor Reid Hamer-Jackson replacing members of Council on standing committees.

The BC Ombudsperson’s *Open Meetings Guide* states, “Any progress in the decision-making process would strongly indicate an informal gathering is, in fact, a meeting.”

Further, the BC Ministry of Community, Sport and Cultural Development defines an official meeting as any “gatherings where all council members could be seen to be making decisions, or moving towards making decisions.”

Finally, case law (largely from Ontario) has held that a gathering of elected officials “for the purpose of discussing and acting upon some matter or matters in which they have a common interest” – the definition of a meeting from Black’s Law Dictionary – constituted a meeting for the purposes of the Ontario municipal legislation. For example, in one case, “The court held that any meeting of a ‘critical mass’ of council necessary to advance the decision making process may be characterized as a ‘meeting’ where council members discuss and move forward with discussions of council’s business” ([Municipal Councillors Handbook 2012 \(sms.bc.ca\)](#)).

The shared purpose of both the March 17/23 Statement and the March 20/23 special council meeting moved identical agendas forward, culminating in a vote at the special council meeting. Discussions around drafting and presenting the Statement were a part of this process.

(c) Electronic communications can count as a meeting:

Electronic meetings are still meetings. Municipal law expert Raymond Young cautioned, “Even when councillors email, text or call each other serially, or sequentially, they could be considered to be having a meeting” ([Councillors who meet privately likely breaking the rules, says lawyer | Vancouver Sun](#)).

Whether or not a quorum of public officials gathers in person or on-line does not affect either of the two primary factors, quorum and business, that determine whether or not a meeting is taking place.

The BC Community Charter contains a section governing electronic meetings for this reason.

(d) The electronic email discussion was inclusive of just the eight councillors:

The BC Ministry of Community, Sport and Cultural Development states that “Even if the meeting location is irregular, gatherings in areas completely under the control of the group—such as a private meeting room—will be more likely seen to be meetings than those held in open, public settings.”

Coun. Neustaeter’s Nov. 3/23 acknowledgement of an email discussion and a media report based upon an FOI request both demonstrate that there was a private email exchange among a full quora of councillors to discuss the wording and approval of the Statement and its presentation to media ([ROTHENBURGER: Anatomy of how council formed a ‘unified team’ against the mayor | CFJC Today Kamloops](#)).

This closed, intra-councillor email discussion regarding the Statement event seems to fit the ‘inclusive’ criterion of what may constitute a meeting.

(e) A decision made during the email discussion counts as an informal vote:

The Ministry of Community, Sport and Cultural Development states that “A vote of any sort indicates that a gathering is in fact a meeting.”

Coun. Neustaeter contends that “While we did exchange an email thread that pertained to the tweaking of the finalized language to be used in the public, collective statement, this was purely administrative in nature.”

This begs the question of how the councillors knew that they were all in accord with the general content and tone of the Statement. Unless there was another meeting for them to agree on the content, the Statement email exchange must have been at least partially concerned with getting the participating councillors’ approval of the general wording, as well as soliciting their specific comments and concerns, which Coun. Neustaeter dismisses as “administrative.”

In summary, the electronic discussion regarding drafting and presenting the Mar. 17/23 Statement contained five criteria that constitute a meeting since it:

- (a) Involved all eight councillors;
- (b) Advanced the councillors’ desire to address the mayor’s standing committees and thus discussed upcoming city business in such a way as to move toward the special council meeting vote;
- (c) Can be classified as a meeting even though held electronically via a back-and-forth email thread aimed at coming to a consensus or majority opinion regarding standing committees;
- (d) Was a closed electronic discussion forum completely under the control of the eight participating councillors;
- (e) Involved an informal vote by soliciting the participating councillors’ approval of the Statement content and wording.

I therefore contend that the electronic communications between the councillors in order to adjust and approve a public Statement regarding official special council meeting business constituted a meeting.

**(2) Whether Coun. Neustaeter was untruthful when she told a citizen “no,” when Council was asked if there was a meeting to draft the March 17/23 media statement:**

Coun. Neustaeter’s emphatic “One word: No,” left little room for doubt that she was certain “no meeting took place.”

The BC government publication, [foundational principles responsible conduct 2022.pdf \(gov.bc.ca\)](#), states that elected municipal officials must “Behave in a manner that promotes public confidence, including actively avoiding any perceptions of conflicts of interest, improper use of

office, or unethical conduct.”

Her assertion that she could have saved herself trouble by not answering at all is not in the spirit of public accountability. As reader of the Statement in public on behalf of herself and all of her fellow councillors, she must ensure that due process was followed in “crafting” it.

[Forging the Path to Responsible Conduct.pdf \(ubcm.ca\)](#) states that “Every elected official is accountable for their own conduct and must make sure they are always acting ethically and responsibly.”

The fact that none of her fellow councillors raised concerns does not exonerate Coun. Neustaeter from making her own inquiries and thus being able to answer a public query based on sound research and knowledge.

The term “meeting” has a specific legal definition and Coun. Neustaeter’s definite “No” seemed designed to lead a member of the public to believe that Coun. Neustaeter possessed sufficient knowledge and/or expertise regarding the issue to definitively answer the citizen’s question in the negative.

At the very least, the circumstances of the Statement draft communications should have raised a reasonable doubt and a desire to be absolutely sure of ethical behaviour. The circumstances should have warranted Coun. Neustaeter obtaining a legal opinion, discussing the issue with her fellow councillors, or researching the ramifications of the electronic discussion. In any case, her tone of absolute assurance was misleading.

I maintain that the many arguable factors around the draft Statement communications make declaring whether those communications constitute a meeting problematic at best.

In no way did they warrant Coun. Neustaeter’s unequivocal “No,” which implied that there was no room for doubt whatsoever. She made her adamant avowal that no meeting took place when she could not possibly have been 100% or even 50% certain that she was telling the truth.

This at best showed an ignorance of the law she was pronouncing on and was at the very least misleading. It was not “honest” and it was not “accurate.”

Further, Coun. Neustaeter’s sin of omission—neglecting to express any doubt to the citizen where doubt existed—is a primary ethical fallacy. It was disingenuous and not up to the standard of ethical conduct as required by provincial and municipal law, and thus had no place in public service.

Sincerely,