

VIA EMAIL

September 5, 2013

The Mayor and Council of the City of Victoria  
City Hall  
1 Centennial Square  
Victoria BC V8W 1P6

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**RE: Agenda Item 9, Governance and Priorities Committee  
“Motion to Adopt a Code of Conduct for meetings of Council,  
Standing Committees and Public Advisory Committees”**

Your Worship, Councillors,

It has come to our attention this morning that the Governance and Priorities Committee of Council will be considering a Motion to adopt a code of conduct for city councillors.

We understand that other municipalities have adopted similar codes of conduct. However, we see some potentially significant problems in this Code that, in our opinion, may run afoul of the City’s constitutional obligations to respect freedom of expression, and more generally, the City’s duty to protect the integrity of the democratic process.

The BC Civil Liberties Association thinks that it is a laudable goal to aspire to civility and respect in our democratic debates and in our legislative bodies – of which Council is one. However, this aspiration cannot take the form of rules that prohibit certain kinds of expression with penalties attached.

As your meeting is in just under an hour from now, we have time to only briefly canvas some of our serious concerns with the proposed Code of Conduct. Our failure to comment on other sections of the Code does not necessarily signify our agreement or disagreement with the contents of those sections.

## **Section 8 – Respect for process**

The admonition that

“It is important that once Council agrees upon a Council decision-making process that Council members not cast aspersions about the process if they disagree with the subsequent outcome.”

is problematic from our perspective. While we understand that some may find it preferable that elected representatives not criticize their own processes after the fact, it is unreasonable to expect that a Councillor not level such criticism if he or she feels it important to do so. Councillors are the guardians of these processes on behalf of constituents and they must have absolute latitude and freedom to comment on them – whether this is done for political expedience or as a matter of genuine concern or both. It is the job of the electors to decide whether a Councillor is being unreasonable in his or her characterization of democratic decision-making at the City, not the job of Council to police such statements. Additionally, it is unclear, as this is not worded as an imperative, whether the Code’s penalties might apply where a Councillor makes a statement deemed not to respect the spirit of this admonition.

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## **Section 9 – Inter-Personal Communication**

This section states that councillors “must not use disrespectful or offensive language” or “gestures”, and “must not intimidate, nor make disparaging remarks as to the character or motives of other Council Members, staff or members of the public.” While Council certainly has some obligations by virtue of its position as the ultimate employer of City staff, and while fostering a respectful workplace is clearly a legitimate goal to be sought by the City of Victoria, this rule is terribly overbroad and virtually impossible in practice for any Councillor to observe. It is the job of elected politicians to speak their minds and to represent the views of their constituents. Political debate, by its very nature, can involve heated discussions on matters of great contention. It can involve polemics and diatribes. This may, again by its nature, result in people being offended. It may involve people having their motives questioned and that is as we would expect in any truly open and democratic process. The accountability of Councillors for their conduct in these regards is to electors. To impose a mandatory prohibition on certain types of expression by elected officials, and to further back that up by the possibility of very serious penalties to be imposed by the City, is a violation of the freedom of expression that the City has a constitutional obligation to uphold under the *Charter of Rights and Freedoms*. Moreover, it is a serious affront to the very spirit of deliberative democracy. Councillors should not have to chill their expression and carefully parse their public remarks for fear of serious penalties like a stripping of public resources from their work on behalf of constituents, stripping of offices, or other sanctions.

In addition, the wording of the Code is vague to the point of being nearly useless – and this is not to suggest that we support a tightening of the wording in this section. It is often difficult to know for certain in advance what might be considered “disparaging” or subjectively “offensive”? The vagueness makes it impossible to comply with this rule and renders the rule extremely unfair.

### **Section 10 – Respectful Workplace**

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The BCCLA supports the City aspiring towards its councillors and staff creating a respectful workplace atmosphere, and we support respect for personal dignity. However, we think it is overreaching to require an elected councillor to, in all cases, be “supportive of the personal dignity, self-esteem and well-being of those with whom they come into contact during the course of their official public duties,” failing which the councillor may be punished. Again, this provision is likely to chill the expression of councillors who may have reason to be pointedly and harshly critical of other elected officials, staff, individuals, policies, plans, groups and so forth. A mandatory requirement not to offend against self-esteem, backed by a potential punishment, is contrary to the constitutional guarantee of freedom of expression and is a violation of the democratic spirit.

Again, BCCLA does not represent that it supports or opposes other aspects of the Code that we have not commented on here, and we reserve the right to make further submissions or take other actions in future as we deem necessary.

Thank you for your attention to this matter,

Sincerely

A handwritten signature in black ink, appearing to read 'Josh Paterson', with a long horizontal line extending to the right.

Josh Paterson  
Executive Director