

SECO ANNUAL REPORT 2020-2021

Reece Harding, Ethics Commissioner

August 30, 2021

Message from the Ethics Commissioner

On July 13, 2020, I was appointed by the City of Surrey's Mayor and Council as British Columbia's first local government ethics commissioner. I am proud to be in this role as we navigate bringing the Surrey Ethics Commissioner's Office (SECO) to life.



I want to acknowledge Mayor and Council for their confidence in SECO as we carry out our duties. Mayor and Council should be congratulated for taking the bold step of creating the first independent ethics commissioner's office to both advise on and oversee their activities.

The City of Surrey senior management team have been a pleasure to work with as Ethics Commissioner. Although SECO is independent from the City, City staff have provided an extraordinary level of support to SECO when requested.

To all those that have so far engaged SECO to investigate concerns, thank you for doing so. This type of Office does not work without input and any person with a concern is always encouraged to continue this engagement.

This is an important Office – one that deserves the continued support of the entire City of Surrey community moving forward. As the City of Surrey continues to grow in population, importance and relevance, within the Province and nationally, SECO will become more important in bringing a level of confidence to the public and the City's elected officials themselves that ethics and governance will become embedded as a part of the City's culture.

I also want to recognize the SECO team at my office that support me. It would not have been possible to get through our first year without their support and hard work. A great deal of work was required to get SECO up and running and to create policies and protocols to keep it running. As the first of its kind in BC, everything we are doing is new and had to be created from scratch.

While I consider SECO's first year to be a success, it has not been without its challenges.

There were 2 main reasons for these challenges.

The first was the COVID-19 pandemic. My approach to this Office is to create relationships with the elected officials. For obvious reasons, the pandemic created an unexpected barrier that restricted my requisite face-to-face interactions with Mayor and Council. In my view, face-to-face interactions with members of Council is essential to forging positive relationships – this is something that is difficult to achieve effectively via a virtual environment, especially when dealing with sensitive matters. Moving forward, and pending improvement to the pandemic situation, my goal is to increase my face-to-face interactions with Council.

Second, as noted below, much of SECO's time and effort in its first year was taken up with processing nearly 3-dozen complaints, many of which were dismissed summarily. I attribute this significant number of complaints in part to the newness of SECO as an Office. As the role and function of SECO becomes clearer to both members of the public and members of Council, who become conversant with the *Council Code of Conduct Bylaw, 2020, No. 20020* (Code of Conduct), I expect that this number will decrease.

I also attribute this high volume of complaints to the fact that, at this time, the City of Surrey and its elected officials are engaged in some truly generational public issues. These issues have sparked significant debate within the community and Council chamber. This is democracy at work and it must be respected. While SECO is not immune to the effects of the heated public debate, it must always remain impartial and act only in accordance with its delegated authority.

In its first year of operation, SECO received 33 filed complaints and processed 31 of these complaints to closure in the same timeframe. We are very proud of this 94% closure rate, however, the implications of processing this number of complaints, and the effort required to obtain such a high closure rate, was that I did not have the time to focus on providing the level of proactive advice and

education as I had anticipated when appointed to this position. The provision of advice and education should be paramount for SECO. Everyone involved is better served when education and advice are the focus, which will lead to fewer Code of Conduct complaints. My hope and goal in SECO's second year of operation will be to advance the educational and advisory goals of SECO. I truly hope this is achievable.

With all of this said, SECO's first year has been successful and I remain committed and encouraged in moving SECO into its second year. I look forward to growing SECO with the support of Mayor and Council, City staff and City residents.

A handwritten signature in black ink, appearing to read "R.H.", with a large, loopy flourish underneath that extends to the right and loops back under the text.

Reece Harding

Ethics Commissioner

Table of Contents

Introduction..... 6

SECO’s Establishment Bylaw, Council Code of Conduct, Policies and FAQs..... 6

SECO Overview 2020-2021 8

 (i) Complaints and Investigations..... 8

Key statistics for 2020-2021:..... 9

 (ii) Council Member Advice..... 9

 (iii) Policies and Procedures..... 9

 (iv) Code of Conduct Amendments..... 10

 (v) SECO Training 11

 (vi) Interactions with Mayor and Council, Public and Media..... 11

SECO Goals for 2021-2022 12

Closure..... 12

Introduction

Section 12(a) of the *Ethics Commissioner Establishment Bylaw, 2020, No. 20018* (Establishment Bylaw) permits the Ethics Commissioner to prepare and deliver an annual report to Mayor and Council containing a summary of the Ethics Commissioner's activities.

This is the first annual report of the Ethics Commissioner covering July 13, 2020 to July 31, 2021. While we recognize that section 12(a) of the Establishment Bylaw contemplates an annual report that reflects SECO's activities during the calendar year, we felt it appropriate to release this report after the first full year of operations. Moving forward, we recommend that the next annual report cover the timeframe of August 1, 2021 to December 31, 2022, and subsequent reports each cover one calendar year.

SECO's Establishment Bylaw, Council Code of Conduct, Policies and FAQs

SECO operates under its Establishment Bylaw and only has the jurisdiction it has been given by Mayor and Council under that bylaw. As per section 11 of the Establishment Bylaw:

11. The Commissioner is authorized to:

(a) Provide advice to Council Members on behaviour that would be consistent with the Council Members' ethical obligations under the Code of Conduct;

(b) Deliver training, as part of orientation or on an annual basis, on any aspects of ethical conduct that the Commissioner determines may be valuable for Council Members, which includes the ability to compel attendance of the Council Members;

(c) Receive, review, investigate and adjudicate complaints related to the conduct of a Council Member and violations of the Code of Conduct;

(d) Decide whether the matter is within the jurisdiction of the Commissioner;

(e) Adopt procedures, policies and protocols designed to ensure that Formal Complaints are fully and fairly investigated;

(f) Determine whether to proceed to investigate a Formal Complaint or dispose of the Formal Complaint in a summary manner;

(g) Subject to the requirements of the Code of Conduct respecting procedural fairness, identify records and documentation received and reviewed during an investigation as confidential; and

(h) Provide advice and recommendations to Council regarding amendments to the Code of Conduct and any other policies, procedures or protocols governing Council Members' ethical behaviour.

SECO's jurisdiction has, in the first year of operation, been the subject of substantial misunderstanding – complainants often allege that SECO can investigate anything or anyone if their behaviour is alleged to be “unethical”. This is not accurate. One of the more common errors seen, particularly from members of the public, is the view that SECO can investigate the City or its employees. This is not the case. SECO has jurisdiction over 9 individuals – Mayor and Council – and nobody else.

SECO is specifically limited to accepting complaints relating to, and initiating investigations regarding, Mayor and Council, as per the Code of Conduct. At Part 1 of the Code of Conduct, expectations are set out for all of Mayor and Council; however, if other expectations are not articulated in the Code of Conduct, SECO has limited jurisdiction to accept the complaint or investigate. SECO would be limited, in such circumstances, to educational or advisory functions.

To assist in administering both the Establishment Bylaw and the Code of Conduct, SECO has drafted and adopted four formal policies. These are the *Complaint Intake Policy; Formal Review Policy; Records & Information Policy* and *Confidentiality and Anonymity Policy*. These are explained in more detail below.

SECO has also drafted and posted on its webpage a comprehensive Frequently Asked Questions (FAQ) document, as well as a digital intake form used to commence complaints with SECO.

Additionally, City Council has adopted two policies that affect SECO. These are the *Payment of Reasonable Legal Fees to Respond to Complaints* and *Council Procedures for Ethics Commissioner Investigation Reports*.

All of these bylaws, policies, intake forms, FAQs and other important background information can be found on the SECO webpage [here](#). Of note, SECO is now providing general complaint statistics on its webpage. These have been updated to August 15, 2021.

SECO Overview 2020-2021

As noted above, it has been a busy first year for SECO. The following is a general summary of SECO's activities.

(i) Complaints and Investigations

As per sections 11(c),(d),(f) and (g) of the Establishment Bylaw, SECO received 33 formal complaints from July 13, 2020 to July 31, 2021 and processed 31 to closure. As noted above, this is a 94% closure rate. SECO is proud of its work in regard to this intake, processing, investigating, and adjudicating to file closure in its first year.

The average timeframe for SECO to process these 31 files from opening to closing was 60 days. Again, SECO is proud of this accomplishment having built the SECO processes from the ground up starting July 13, 2020.

Of the 31 complaints processed, SECO dismissed 25 on either summary dismissal or lack of jurisdiction grounds, while 6 complaints went to a formal investigation for submission to Mayor and Council under the Code of Conduct.

Several themes became apparent in processing these complaints. In no particular order the complaints most commonly related to: breaches of the City's Procedure Bylaw; Council Member decorum concerns; public hearing conduct concerns; closed meeting breaches; and, failure to accurately communicate Mayor and Council's decisions.

Key statistics for 2020-2021:

- Complaints Received: 33
- Complaints Processed and Closed: 31
- Average Time from Opening to Closing: 60 days
- Formal Investigations Conducted: 6
- Summary or Jurisdictional Dismissals: 25

(ii) *Council Member Advice*

As per section 11(a) of the Establishment Bylaw, SECO provided on-going advice to Council Members. Given confidentiality expectations, SECO will not disclose any details of the Council Member advice sought or given. These discussions are between SECO and the Council Member.

Section 11(a) authorizes SECO to provide advice to Council Members on behavior that would be consistent with the Council Members' ethical obligations under the Code of Conduct. This provides SECO with broad authority to assist Council Members in a proactive and forward-looking manner that can help Council Members avoid complaints under the Code of Conduct.

SECO has also provided on-going written advice to Mayor and Council on an *ad hoc* basis. This advice included: summaries of both Parts 1 and 2 of the Code of Conduct; advisory bulletins; commentary on important BC case law that affects governance issues; legislation from other Canadian jurisdictions of note; and, proactive advice on conflict resolution prevention tools.

(iii) *Policies and Procedures*

As per section 11(e) of the Establishment Bylaw, and in an effort to fill in policy and procedure gaps within the Establishment Bylaw and Code of Conduct, it became necessary for SECO to adopt several guiding policies and procedures. We provide a general summary of each of these below.

Complaint Intake Policy – adopted October 27, 2020, this policy addresses how SECO receives and processes Complaint Forms received through the SECO intake portal. It also clarifies that Council Members only receive notice of complaints where they are accepted by SECO.

Formal Review Policy – adopted on November 5, 2020 and amended January 27, 2021, this policy provides timelines and communications protocols on how Formal Reviews under sections 66 to 73 of the Code of Conduct are to proceed. It also provides guidance on SECO’s decision-making process as regards the decision to refer a complaint to Formal Review or informal processes.

Records & Information Policy – adopted December 10, 2020, this policy sets out SECO’s expectations on the management, retention and transfer of records, as well as on privacy, confidentiality and custody of records. Mayor and Council may wish to note that SECO considers itself independent from the City of Surrey. As a result, the records SECO maintains are, in our view, not subject to disclosure under the *Freedom of Information and Protection of Privacy Act*, with the exception of those records which are provided to the City.

Confidentiality and Anonymity Policy – adopted December 10, 2020, this policy lays out the confidentiality expectations when dealing with SECO in an advisory or investigatory role. Of note, this policy makes it clear that SECO will not accept anonymous complaints. This is to ensure procedural fairness for Council Members.

Interview Procedure – this procedure was adopted on November 5, 2020, and is intended to give those interviewed by SECO as part of a formal investigation some guidance on how such interviews will be conducted.

(iv) *Code of Conduct Amendments*

At section 11(h) of the Establishment Bylaw, SECO is to provide advice and recommendations on amendments to the Code of Conduct. Working with the City Solicitor, SECO has provided a comprehensive report to the City on proposed amendments to the Code of Conduct.

If adopted by Mayor Council, the amendments will clarify certain procedural concerns in the current Code of Conduct and provide several new important authorities that benefit SECO, Mayor and Council, and the public.

(v) *SECO Training*

SECO continues to reach out to learn from others. In the course of our first year, we reached out to several Integrity Commissioners in Ontario and Manitoba for guidance on how best to establish this Office. That input has been invaluable. The Ethics Commissioner attended as a guest invitee before the Municipal Integrity Commissioners of Ontario, the organization that represents all Integrity Commissioners in Ontario, and attended a two-day ethics seminar entitled “Ethics Essentials in the Municipal Sector” as a student at the Bloom Centre for Municipal Education. Hearing from other experts in the area assists in guiding the standards to be set by SECO. Lastly, the Ethics Commissioner continues to appear before and communicate with several provincial groups to discuss and advocate for ethics and governance in BC local government circles, including an appearance before the Local Government Leadership Academy in January 2021.

(vi) *Interactions with Mayor and Council, Public and Media*

In October and November of 2020, the Ethics Commissioner met with each Council Member either in person or via teleconference. These meetings were introductory in nature in an effort to get to know Mayor and Council and also to understand their concerns and views with ethics and governance.

As part of SECO’s role, we have had on-going communications with members of the public who are trying to understand the role of the Office. We believe it is part of our duties to discuss the role and function of SECO with members of the public. Inquiries from several media outlets have also been made of SECO, and the Ethics Commissioner has provided multiple radio and print interviews to explain the work of SECO.

SECO Goals for 2021-2022

As noted above, much of SECO's efforts in its first year were focused on creating the necessary policies and procedures to intake, process, and investigate complaints. We anticipate fewer complaints in 2021-2022.

In its second year, SECO would like its education and advisory functions to be central for Mayor and Council. To ensure this happens, SECO suggests that several predetermined dates be set with Mayor and Council for educational and advisory sessions on topics of interest to both SECO and Mayor and Council.

Other goals of SECO in 2021-2022 are: 1) to continue to streamline the intake and investigation processes so as to shorten the timeframes from opening to closing of complaints; 2) to enhance transparency and public understanding of SECO; 3) to improve the webpage; 4) to conduct a review of, and ultimately to make recommendations around, the Lobbyist Registry policy; and, 5) to further consider efforts to expand local government jurisdiction regarding ethics and governance, including a consideration of legislative amendments to the *Community Charter*.

Of note, the City of Vancouver has also established an Office of the Integrity Commissioner which should be in operation later in 2021. SECO hopes that, once the Vancouver Integrity Commissioner is appointed, the two Offices can learn from each other, work collaboratively on big issues, and ultimately enhance ethical and transparent governance for all British Columbians.

Closure

SECO's first year was eventful, busy, and successful. Along with our other duties, SECO developed complaint and investigation policies and protocols from scratch, while simultaneously processing nearly 3 dozen complaints. With this experience now behind us, dealing with future complaints and investigations will be more streamlined and become more routine. This will be enhanced with proposed amendments to the Code of Conduct for Mayor and Council's consideration.

In short, we are hopeful that advice and educational opportunities will take center stage for our second year of operation. We will look forward to our continual work with the City, its elected officials and the public.