



This is the second Affidavit of Guillermo Ferrero in this case and was made on March 10, 2022

S21-2694
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

RAMONA ERIKA JOHANSON

PETITIONER

AND:

CITY OF WHITE ROCK

RESPONDENT

AFFIDAVIT

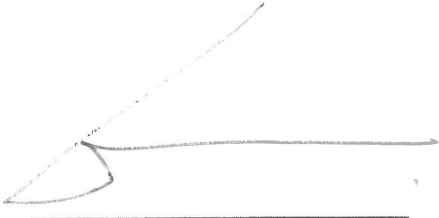
I, GUILLERMO, FERRERO, Chief Administrative Officer, of 15322 Buena Vista Avenue, White Rock, B.C., MAKE OATH AND SAY AS FOLLOWS:

1. I am the Chief Administrative Officer (“CAO”) of the City of White Rock (the “City”) and as such I have personal knowledge of the facts and matters deposed to in this affidavit, except where stated to be on information and belief, in which case I believe them to be true.
2. On December 13, 2021, legal counsel to the City sent unfiled copies of the City’s Response to Petition and my Affidavit #1 to the Petitioner’s legal counsel. Subsequent to that, to the best of my knowledge, there has been no communication from the Petitioner’s legal counsel to the City’s legal counsel up to the date of this Affidavit.
3. On December 17, 2021, the City received copies of the investigation reports referred to in my Affidavit #1. Exhibit “A” to this Affidavit is a copy of the investigation report relating to the Petitioner’s complaint against me. Exhibit “B” to this Affidavit is a copy of the investigation report relating to Colleen Ponzini’s complaint against the Petitioner (excluding the e-mails attached as Schedule “A” to the report).

4. The final meeting of the City’s Council for 2021 took place on December 13, 2021. The first meeting of the City’s Council for 2022 took place on January 10, 2022. The agenda for the closed portion of the January 10, 2022 meeting was circulated on January 7, 2022, and included both Exhibit “A” and Exhibit “B”. The recipients of the agenda included all members of Council (including the Petitioner) and me. To the best of my recollection, that was when the Petitioner and I first received copies of the reports.

5. Exhibit’s “C” and “D” to this Affidavit are copies of newspaper articles which appeared, respectively, on March 7, 2022 in the Province newspaper and on March 8, 2022 in the Peace Arch News newspaper. On March 9, 2022, the City’s Council resolved to file the City’s response materials.

SWORN BEFORE ME at the City of White Rock)
this 10 day of March , 2022)
)
)
)
)
)
A Commissioner for taking Affidavits for)
British Columbia)



Guillermo Ferrero

Debbie Johnstone,
Deputy Corporate Officer
A Commissioner for taking Affidavits
in the Province of BC (Exp. ~~1/1/2022~~)

City of White Rock
15322 Buena Vista Avenue
White Rock, BC V4B 1Y6 / 604 541 2127

This is Exhibit "A" to the Affidavit of Guillermo Ferrero
sworn before me at White Rock, B.C. this 10 day of
March, 2022



A Commissioner for taking Affidavits for British
Columbia

Debbie Johnstone,
Deputy Corporate Officer
A Commissioner for taking Affidavits
in the Province of BC (~~Exp. = / = /2022~~)

City of White Rock
15322 Buena Vista Avenue
White Rock, BC V4B 1Y6 / 604 541 2127

UKRAINETZ

— WORKPLACE LAW GROUP —

Privileged & Confidential

**Workplace Investigation for
Lidstone & Company re: City of White Rock**

Re: Erika Johanson Complaint

December 14, 2021

Submitted by:

Pamela Connolly

Ukrainetz Workplace Law Group

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Introduction

The following is the report on the results of my investigation into the complaint made by Councillor Erika Johanson against Guillermo Ferrero regarding allegations of a breach of the City of White Rock's Respectful Workplace Policy 405 and/or the Employee Code of Conduct.

Mandate

My mandate was to review the allegations raised by Councillor Johanson, make findings of fact, and provide a legal opinion as to whether the conduct alleged constitutes workplace bullying or harassment or infringes another right or entitlement based on the law, contract, or policy along with any appropriate recommendations. I am a lawyer and during this investigation I acted as an independent, neutral investigator, in order to provide legal advice to the City's legal counsel regarding this matter.

Legal Framework

This investigation was conducted within the framework of the City's Respectful Workplace Policy, Employee Code of Conduct, the B.C. *Workers Compensation Act* and its *Policy Item D3-115-2 RE: Employer Duties - Workplace Bullying and Harassment*.

The City's Respectful Workplace Policy 405 outlines the roles and responsibilities of the City, elected officials and employees in promoting and maintaining a respectful workplace. The conduct prohibited by the policy applies to both employees and elected officials, among others, and the policy confirms that bullying and harassment can occur through communications in writing, including by email.

The Respectful Workplace Policy sets out the City's definition of a respectful workplace, which is "a place free from discrimination, harassment and bullying of any kind and where all Employees are treated with dignity and respect and where diversity and inclusion are valued".

Under the Respectful Workplace Policy, bullying and personal harassment have separate definitions. This is different from WorkSafeBC's approach which combines bullying and harassment as the same action. The City's definitions are:

- *Bullying*: a type of harassment that is marked by the intentional, persistent attempt of one or more persons to intimidate, demean, torment, control, mentally or physically harm or isolate another person(s).
- *Personal harassment*: any inappropriate conduct, comment, display, action, or gesture by another person towards another person that the first person out to have

known would cause the other person to be humiliated or intimidated...Harassment of any kind may be intentional or unintentional.

WorkSafeBC's definition of bullying and harassment is consistent with the City's definition of personal harassment.

Workplace harassment may have some or all of the following components:

- it is generally repetitive, although a single serious incident may constitute workplace harassment if it undermines the recipient's psychological or physical integrity and has a lasting harmful effect
- it is hostile, abusive or inappropriate
- it affects the person's dignity or psychological integrity, and
- it results in a poisoned work environment.

Workplace harassment should not be confused with legitimate, reasonable management actions that are part of the normal work function.

In terms of responsibilities, the Respectful Workplace Policy further provides, in part, that Council, Management and Supervisors have a responsibility to:

- act in a manner that is consistent with a respectful workplace
- not engage in behaviour that constitutes discrimination, bullying or harassment as defined in this policy
- model inclusive and respectful behaviour; and
- lead by example in treating all Employees with dignity and respect.

The City's Employee Code of Conduct requires that employees ensure that:

- (a) their conduct and language meet acceptable social standards;
- (b) they treat employees, Council members, and the public with courtesy, respect and dignity.

Overview of the Investigation

This investigation commenced on September 28, 2021, in conjunction with a related investigation. Based on the allegations, the most reasonable approach was to commence with the interview of Colleen Ponzini, who is the complainant in the other investigation and a witness in this case. Due to Ms. Ponzini's unavailability, her interview could not take place until October 19, 2021. It was necessary for Ms. Ponzini to produce supporting documents, which did not take place until November 15, 2021. Despite efforts to schedule an interview with Councillor Johanson, she ultimately refused to meet. Mr. Ferrero's interview took place on November 30, 2021, and he produced all supporting documents by December 6, 2021.



Consequently, as part of the investigation, I interviewed the following individuals:

- Guillermo Ferrero, CAO
- Colleen Ponzini, former Director of Finance

In addition to the above interviews, I also reviewed the City's policies, numerous emails, letters, and documents provided by the parties, and viewed videos of April 12 and 26, 2021, Council meetings. I declined to interview further witnesses based on the strength of the contemporaneous written records and the parties' verbal evidence.

Summary of the Allegations

As a result of Councillor Johanson's refusal to participate in the investigation, I relied on her July 19, 2021, written complaint letter to Mayor Walker as well as emails exchanged with Mr. Ferrero on June 16, 2021, June 23, 2021, and July 7, 2021, to ascertain the scope and particulars of her allegations.

Councillor Johanson alleged that Mr. Ferrero engaged in workplace harassment and bullying as follows:

- A. he mischaracterized her communications with City staff to make unsubstantiated allegations of bullying and harassment; and
- B. he inappropriately and unfairly sanctioned Councillor Johanson by selectively enforcing City Policy Council-119.

For clarity, with respect to allegation A, my mandate encompasses determining, on a balance of probabilities, if Mr. Ferrero had a reasonable basis to assert that Councillor Johanson's actions towards staff were bullying or harassing. It is not within my mandate in this investigation to determine if Councillor Johanson's actions were, in fact, in breach of the City's Respectful Workplace Policy. Furthermore, with respect to allegation B, it is outside my expertise to determine whether Mr. Ferrero had the authority and justification to censure Councillor Johanson by imposing limits on her communications with staff. However, my mandate is to determine if Mr. Ferrero had a reasonable belief that his actions were within his managerial authority.

Credibility

In order to make findings, it is necessary for me to assess the credibility of the individuals I interviewed. These assessments are outlined below.

I was unable to assess Councillor Johanson's credibility because I did not have an opportunity to conduct her interview.

I found Mr. Ferrero to be credible and believe he presented his evidence sincerely and in good faith. He was direct, consistent and did not seem prone to exaggeration. He was able to recount most events with clarity and detail and provided supporting documents which corroborated much of his evidence. I found his explanations for his behaviour to be both thoughtful and plausible.

I also found Ms. Ponzini to be credible. She was candid and forthright in providing evidence. While she was sometimes repetitive and disjointed, this did not detract from her credibility as her evidence was consistent throughout. At times, she had difficulty providing details of specific interactions and focused on her generalized impressions of Councillor Johanson's behaviour. However, Ms. Ponzini was able to point to numerous interactions by email and at council meetings which supported her allegations. The supporting documents and video evidence corroborated her verbal recollection of events.

Factual Findings

Based on the evidence and findings of credibility, I make the following factual findings, on a balance of probabilities:

A. Mr. Ferrero mischaracterized Councillor Johanson's communications with City staff to make unsubstantiated allegations of bullying and harassment

The Complaint

In terms of understanding Councillor Johanson's complaint, I have relied on two sources. The first is her July 19, 2021, written complaint to Mayor Walker in which she asserted:

Unfortunately, my persistence in seeking the information led to a very public conclusion and condemnation from the CAO that my emails were inappropriate and unacceptable. The CAO went further in this public email to threaten my access to staff if the unilaterally deemed inappropriate or unacceptable behaviour continued.

First and most importantly, I want you to know that I have the utmost respect for city staff and the incredible job they do for the City of White Rock. If my tenacity in representing the citizens and seeking information was misunderstood or ill received then I am happy to issue an unequivocal apology. My intention was never and is never to hurt or disrespect staff rather, it is always to do my utmost to represent our citizens and make White Rock a better place for all.

Unfortunately, the CAO's response was troubling, conclusive, lacked tact or discretion. We should all be able to expect more from our CAO. If indeed the CAO felt strongly about my perceived tone in my email then he should have handled it in the professional manor (sic) demanded by his position. A private communication to myself would have sufficed to both raise and clarify the issue. It is unfortunate that our most senior employee chose to escalate to conflict so publically (sic) and quickly.

In her written complaint, Councillor Johanson referenced several email chains on June 16 and July 7 in which Mr. Ferrero inappropriately interpreted and characterized her communications.

Specifically, on June 16, 2021, Councillor Johanson wrote:

- June 16, 2021, 12:39 p.m. From: Erika Johanson, To: Guillermo Ferrero, Cc: Mayor and Council, Colleen Ponzini, Tracey Arthur, Subject: RE: Department budgets
 - *"...I had already asked the questions regarding a schedule of Colleen. I received no direct response, only an assurance that the information will be in front of Council on time.
As a Project Manager during my career, I'd be fired ASAP if I gave such a response."*

Mr. Ferrero responded:

- June 16, 2021, 2:16 p.m. From: Guillermo Ferrero, To: Erika Johanson, Cc: Mayor and Council, Jacquie Johnson, Subject: RE: Department budgets
 - *"Erika,
Your email is inappropriate and unacceptable, and I will be setting up a meeting to discuss my concerns with you and the Mayor as soon as possible.
I have a great deal of concerns with your inappropriate emails that have been sent and comments made during public Council meetings, which includes attacks on staff such as the email below. Council has a responsibility to act in a manner that is consistent with our Respectful*

Workplace Policy, where communication is positive, and everyone of us considers how our words may impact others. Your comments towards Ms. Ponzini are excessive and unjustifiably critical. This is unacceptable and unwarranted behaviour and is in clear violation of our Respectful Workplace Policy.”

Further, on July 7, 2021, Councillor Johanson wrote:

- July 7, 2021, 12:09 p.m. From: Erika Johanson, To: Guillermo Ferrero, Cc: Mayor and Council, Jim Gordon, Subject: Re: Pickleball
 - *“Here is my issue with communication between Staff and Council that I referenced at one of our recent meetings. Council does get answers to questions asked, but there are more questions/concerns/issues Staff likely know about...that should have been communicated to Council. This little tidbit may have made a huge difference in how Council voted. Please find a way to encourage Staff to be more forthcoming.”*

Mr. Ferrero responded:

- July 7, 2021, 12:34 p.m. From: Guillermo Ferrero, To: Erika Johanson, Cc: Mayor and Council, Subject: RE: Pickleball
 - *“Erika, This email is another example of your communication style that continues to harass and bully staff.... Please direct any comments that criticize staff to me only and not any other staff in the organization.”*

Councillor Johanson responded:

- July 7, 2021, 12:43 p.m. From: Erika Johanson, To: Guillermo Ferrero, Cc: Mayor and Council, Subject: Re: Pickleball
 - *“This was in no way meant to harass or bully staff! It was merely a suggestion. I think you are oversensitive!”*

Mr. Ferrero responded:

- July 7, 2021, 1:02 p.m. From: Guillermo Ferrero, To: Erika Johanson, Cc: Mayor and Council, Subject: Communications via CAO effective immediately, Attachment: 405 – Respectful Workplace Policy – November 2020
 - *“Erika, Despite your intentions, your email was harassment and bullying. It is unfortunate that you declined to participate in the recent in-camera meeting where our Respectful Workplace policy was reviewed, it would have been*

beneficial to have heard the information presented. I would encourage you to review the policy attached...."

Councillor Johanson also indicated in her written complaint that Mr. Ferrero's comments made her *"feel unsafe to communicate in a basic professional way as the CAO may interpret anything I write or do as he deems fit and impose additional sanctions upon me or proceed to attempt to humiliate me in front (sic) of others."*

Mr. Ferrero's description of events

Mr. Ferrero gave evidence that the June 16 and July 7 emails were examples of Councillor Johanson's inappropriate communications towards staff which resulted in his assertions that she was engaging in bullying and harassment. He indicated that, starting in March 2021, Councillor Johanson was engaging in a troubling pattern of increasingly uncivil and critical communications towards City staff, including himself. Prior to February 25, 2021, when an issue with mailouts arose, his relationship with Councillor Johanson was mostly positive and productive.

Mr. Ferrero was greatly troubled by the change in Councillor Johanson's communications towards staff. While he was previously employed with another local government, he had experienced the repercussions of a toxic working environment between Council and staff due to bullying and harassment. This had resulted in great expense, upheaval and, most importantly, staff taking medical leaves of absence to address the mental distress associated with their working conditions. He expressed that he was keenly aware of the impact of bullying and harassment in the workplace and very good at identifying the minor behaviours which would create bullying and harassment when repeated over time. For this reason, he was particularly sensitive to Councillor Johanson's escalating behaviour towards staff and determined to meet his obligation as the City's CAO to protect staff health and safety.

Mr. Ferrero's evidence was that, from March to July 2021, he intervened in emails on behalf of staff when he believed Councillor Johanson's tone or requests were inappropriate. He offered verbal support to staff, including Ms. Ponzini, Jim Gordon, the Director of Engineering and Municipal Operations, and Carl Isaak, the Director of Planning and Development, about Councillor Johanson's problematic behaviour. He also raised his concerns with the Mayor and Jacquie Johnstone, the City's Director, Human Resources, including by email on June 2, 2021.

Mr. Ferrero provided a spreadsheet detailing Councillor Johanson's relevant problematic interactions with himself and staff, along with all of the emails referenced in the spreadsheet. The interactions arose in or after March 2021. Many of these problematic interactions included Councillor Johanson's repetitious questions and criticisms towards Ms. Ponzini and the Finance department in relation to departmental budgets and the 2021

and 2022 financial planning process schedule and Councillor Johanson's issues with staff actions involving mailouts and pickleball courts.

Councillor Johanson also recognized a change in communications with City staff in an email produced by Mr. Ferrero:

- June 2, 2021, 8:58 a.m. From: Erika Johanson, To: Colleen Ponzini, Daryl Walker, Cc: Guillermo Ferrero, Mayor and Council, Jacquie Johnstone, Subject: Re: Financial Planning Process Schedule
 - *"...Communications between the CAO, Staff and Council has changed recently, and I am very concerned that transparency and trust is at stake."*

On April 19, 2021, Guillermo had asked Councillor Johanson to direct emails with criticism and accusatory comments to him without including staff. Councillor Johanson had written a critical email to staff:

- April 17, 2021, 1:43 p.m. From: Erika Johanson, To: Donna Kell, Carl Isaak, Guillermo Ferrero, Subject: Feedback re the flyer
 - *"I feel this whole OCP review has been driven by Staff and not Council. That will not happen again! Council is responsible for policy and it will be policy that will stop this kind of Staff bias in its tracks".*

Mr. Ferrero responded:

- April 19, 2021, 9:04 a.m. From: Guillermo Ferrero, To: Erika Johanson, Cc. Mayor and Council, Subject: RE: Feedback re the flyer
 - *"I would appreciate that this kind of email be sent to me directly without including other staff. I absolutely disagree with you that staff had any bias..."*

Mr. Ferrero indicated that despite his April 19, 2021, request, Councillor Johanson's June 16 and July 7 emails demonstrate that she continued to direct critical comments towards staff. Further, Mr. Ferrero referenced video evidence that Councillor Johanson made a critical comment at the April 26, 2021, Council meeting that the current departmental level budgets were a "mess" that was inherited by Ms. Ponzini. Additionally, Mr. Ferrero indicated that on June 28, 2021, Ms. Ponzini made the following critical comments about staff, particularly Ms. Ponzini, on the Democracy Direct White Rock Facebook page:

- *"Staff are misleading the public by insisting they have department budgets, but say they can't produce them for us...I am now fighting to get department level budget binders where we will see the details for each project. Staff and Helen, Darryl, and Dave are fighting tooth and nail against doing this."*

One of the areas that Mr. Ferrero had significant concerns was related to Councillor Johanson's behaviour towards Ms. Ponzini. Councillor Johanson took issue with the Finance department's departmental budgets and financial planning process. Mr. Ferrero's

evidence was that City budgets had to be approved by May 15, 2021, and Councillor Johanson started asking for information on April 5, 2021, when she had ample opportunity to ask questions and review information prior that date. Councillor Johanson made repeated demands for information that was already provided to her and criticized the existing departmental budgets and processes, which was mostly directed at Ms. Ponzini. Mr. Ferrero recognized that Councillor Johanson's repetitious passive aggressive and overt criticisms were disrespectful and devastating to Ms. Ponzini, since she was a highly experienced and well-regarded professional within the financial industry. Ms. Ponzini's ongoing distress associated with her interactions with Councillor Johanson culminated after receiving Councillor Johanson's June 16, 2021, email about being "*fired ASAP*" and she left on medical leave. This was the outcome that Mr. Ferrero had been so intent on avoiding.

Ms. Ponzini provided evidence which corroborated Mr. Ferrero's version of events. Ms. Ponzini described Councillor Johanson's behaviour as a "*series of jabs*", directly and indirectly. Ms. Ponzini would provide information and answer questions and then Councillor Johanson would repeat her requests in a different way or twist the information to make accusations of incompetency. These repetitious questions and critical remarks were made by email to Ms. Ponzini and Mr. Ferrero and also verbally at Council meetings. Ms. Ponzini believed that Councillor Johanson was "*trying to discredit me. She was attacking what we were doing as finance people and suggesting we didn't have a clue.*" Her evidence was that Councillor Johanson was "*insulting, berating and repeating the same things over and over again in order to prove that I didn't know what I was talking about*". Ms. Ponzini provided copies of the emails between herself and Councillor Johanson and others in which the issues of department budgets and the financial planning process were discussed.

Ms. Ponzini explained that Councillor Johanson would accuse the Finance Department of not having departmental budgets, but that they did not have them the way Councillor Johanson wanted them, line by line. Councillor Johanson would "*take my response and quote me wrongly. She would call us out in meetings. She would say you told me there are no departmental budgets but now you say you do, where are they?*" It was the repetition and implications, and the twisting of the words is which Ms. Ponzini perceived as the harassment. She described it as gaslighting, where "*she just kept harping on it and belittling*" making her feel like she had missed or mis-stated something. Ms. Ponzini's impression was that Councillor Johanson was retaliating against her for exposing her ignorance and getting frustrated with the answers provided because it did not align with her desires and expectations.

Mr. Ferrero's evidence was that he relied on the events between March and July 2021 to form his opinion that Councillor Johanson engaged in bullying and harassment towards City staff, including Colleen Ponzini and Jim Gordon, which he asserted in his June 16 and July 7 emails.



Councillor Johanson's Privacy Concerns

Councillor Johanson took issue with the fact that Mr. Ferrero did not raise his concerns privately. Mr. Ferrero's evidence was that during the period he was witnessing and receiving Councillor Johanson's disrespectful communications, he would have liked to address this privately in person with Councillor Johanson. However, he provided written evidence that Councillor Johanson cancelled their monthly 1-1 meeting scheduled for April 30. Mr. Ferrero indicated that Councillor Johanson refused to attend further 1-1 meetings. In Mr. Ferrero's June 16, 2021, email to Councillor Johanson, he requested that they meet with the Mayor to go through the Respectful Workplace Policy and discuss how her comments affect staff. Councillor Johanson declined to meet. Mr. Ferrero also arranged for an in-camera Council meeting on June 28, 2021, to receive the guidance of the City's legal counsel about respectful workplaces but Councillor Johanson refused to attend. At that meeting, Mr. Ferrero asked Council to recommit to a respectful workplace policy and Council unanimously passed a motion to do so.

Mr. Ferrero stated that he includes the Mayor and Council on every email with individual Council members that is related to the behaviour of Council or responses to questions. He does this because he is the employee of Council and not a single individual. He believes that is the best and most transparent way to let everyone know what is going on. He does not consider communications with the Mayor and Council as being "public" in the way asserted by Councillor Johanson.

Justification for Councillor Johanson's Conduct

In Councillor Johanson's written complaint, she described her communications as showing "*tenacity in representing the citizens and seeking information*", which was in furtherance of her fiduciary obligations as a City Councillor. She offered to apologize if her behaviour was misunderstood or ill received. By email on July 7, 2021, to Mr. Ferrero, she also indicated that "*being critical is part of my job as a Councillor*". In his investigation interview, Mr. Ferrero disagreed that these factors justified Councillor Johanson's conduct. He asserted that although she has a fiduciary duty to protect the interest of the taxpayers, she also must do it in a respectful manner.

Findings

Based on the quality of Mr. Ferrero's verbal evidence and supporting documents, I have no trouble finding that the events occurred as described by Mr. Ferrero. Councillor Johanson did provide any evidence contradicting that the events occurred, only that her communications did not justify an accusation of bullying and harassment.

In particular, I find that during the period of March to July 2021, Mr. Ferrero witnessed Councillor Johanson engaging in repetitious, disparaging, and increasingly disrespectful

communications towards and about several staff members. He reasonably believed that the negative tone of her communications was escalating. I also find that Mr. Ferrero appreciated that his staff were experiencing significant stress as a result of these communications. He understood, correctly, that as CAO, it was his responsibility to protect staff. Consequently, he formed the conclusion that Councillor Johanson had engaged in workplace bullying and/or harassment. He communicated these conclusions to Councillor Johanson on June 16 and July 7 in response to further incidents of uncivil and inappropriate communications from Councillor Johanson towards staff.

B. Mr. Ferrero inappropriately and unfairly sanctioned Councillor Johanson by selectively enforcing Policy Council-119

In her July 19, 2021, written complaint, Councillor Johanson alleged that Mr. Ferrero unilaterally issued a sanction on her ability to communicate with staff without following the proper procedure. She was *"troubled by the selective nature of the policy's enforcement and the use of the policy as clearly a punitive measure"*.

On July 7, 2021, after having asserted that her communications towards Jim Gordon were bullying and harassing, Mr. Ferrero instructed Councillor Johanson as follows:

- July 7, 2021, 1:02 p.m. From: Guillermo Ferrero, To: Erika Johanson, Cc.: Mayor and Council, Jacquie Johnstone, Subject: Communications via CAO effective immediately, Attachment: 405 - Respectful Workplace Policy – November 2020
 - *"...Effective immediately, please direct all questions via email, phone and/or in person to me. I will direct staff not to respond to any emails, phone calls and/or in person meetings from you until further notice."*

Immediately thereafter, Mr. Ferrero sent a similar email to staff with the following message:

- July 7, 2021, 1:03 p.m. From: Guillermo Ferrero, To: Senior Management, Kale Pauls, Donna Kell, Subject: Councillor Johanson
 - *"Hi All,
Effective immediately, please forward all councilor Johanson' (sic) correspondence including emails, phone calls and/or in person requests to me – until further notice, please don't respond to any emails coming from the Councillor."*

Mr. Ferrero explained his actions by confirming it was his belief as of July 7, 2021, that Councillor Johanson was engaging in bullying and harassment based on the rationale in section A of this report. At that point, Ms. Ponzini had left on medical leave and numerous employees, including Jim Gordon, Carl Isaak and Greg Newman, were showing signs of stress because of communications from Councillor Johanson. He understood that it was

his responsibility to protect the health and safety of employees and believed this was a necessary and appropriate response.

Moreover, Mr. Ferrero's evidence was that there was no indication that Councillor Johanson would change her behaviour. She refused to meet to discuss her issues with staff. She was not following Mr. Ferrero's requests to direct criticisms of staff to him and not the employee. Also, her written comments suggested that she did not acknowledge any inappropriate communications and would continue in the same manner. On that subject, Mr. Ferrero provided the following supporting emails:

- June 16, 2021, 3:27 p.m. From: Erika Johanson, To: Guillermo Ferrero, Cc: Mayor and Council, Jacquie Johnstone, Subject: RE: Department budgets
 - *"As far as anything I have said in Council, I would like to know, in advance, what the issues are in writing and the date/time you think the heinous acts occurred....
As I am getting kudos from many residents for speaking up, I doubt I'll change this behaviour that is so abhorrent to you."*
- July 7, 2021, 12:43 p.m. From: Erika Johanson, To: Guillermo Ferrero, Cc: Mayor and Council, Subject: Re: Pickleball
 - *"This was in no way meant to harass or bully staff! It was merely a suggestion. I think you are oversensitive!"*

Mr. Ferrero asserted that he had previously warned Councillor Johanson that if her behaviour continued, he would disallow her communications with staff. By email on June 16, 2021, Mr. Ferrero wrote the following:

- June 16, 2021, 2:16 p.m. From: Guillermo Ferrero, To: Erika Johanson, Cc: Mayor and Council, and Jacquie Johnstone, Subject: Re: Department budgets
 - *"To be clear, if this inappropriate behaviour continues, I will be left with no other choice but to enforce Policy 119, Communication between Mayor and Council and City Staff, where all communication will be sent directly through me and there will be no communication with staff. I have had multiple discussions with Mayor Walker in relation to these troubling emails and he has indicated his support to this approach if necessary."*

Council Policy 119 – Communication between Mayor and Council and City Staff, places limits on Council's ability to communicate with staff. It includes a requirement that:

1. Communication by Mayor and/or a member of Council containing direction to staff and/or request for information that is not readily available or has to be assembled must be sent directly to the Chief Administrative Officer (CAO).

Mr. Ferrero explained that until July 7, 2021, he had encouraged staff to develop a relationship with Council and wanted to foster flexibility and efficiency. Therefore, he allowed Council to ask questions to senior staff provided he was copied on any

correspondence. Staff would also copy the Mayor and Council on all responding correspondence to ensure that Council all received the same information. The events of 2021 ultimately convinced him that this practice was allowing Councillor Johanson to access staff in way that was abusive and damaging. As such, in furtherance of his responsibility as CAO to take all reasonable precautions to ensure a healthy and safe workplace, it was necessary to stop Councillor Johanson from communicating with staff as of July 7, 2021. He felt gratified when he received an email from Mr. Gordon later on July 7 with the message "*Thank you for the support G. Truly appreciated.*"

A couple of weeks after Mr. Ferrero sent his July 7 emails to Councillor Johanson and staff about ceasing communications, he expanded this direction to disallow communications between all Councillors and staff. While Mr. Ferrero acknowledged that he could have initially applied the policy to all Councillors so that Councillor Johanson was not singled out, he did not believe that would have been fair. It was not until he spoke with the City's legal counsel that he extended the policy to all Councillors. Mr. Ferrero indicated that he is prepared to apologize to Councillor Johanson if she was offended.

Findings

On the basis that events surrounding Mr. Ferrero's imposition of Policy Council - 119 are supported by contemporaneous written communications and reliable and consistent verbal evidence from Mr. Ferrero, I find that the events took place as described above. Mr. Ferrero believed that his efforts to address Councillor Johanson's communications with staff were ineffective and that she was causing harm to staff which was unlikely to stop. The tone and content of her communications were becoming increasingly disrespectful and he understood that it was his responsibility to put measures in place to protect staff.

Conclusion

A. Mr. Ferrero mischaracterized Councillor Johanson's communications with City staff to make unsubstantiated allegations of bullying and harassment

Based on the factual findings set out above and after careful consideration of the evidence obtained, I find that Mr. Ferrero had a reasonable basis to assert by email on June 16 and July 7, 2021, that Councillor Johanson had engaged in workplace bullying and harassment. He had sufficient information to believe that Councillor Johanson's behaviour met the definition of personal harassment in the Respectful Workplace Policy. I did not receive any information, verbally or in writing, to suggest that Mr. Ferrero's accusations were made with any sort of malicious or improper intent. As such, I do not substantiate Councillor Johanson's complaint that Mr. Ferrero engaged in workplace bullying or harassment by mischaracterizing her communications as bullying and harassment.

While Councillor Johanson has asserted that Mr. Ferrero should have raised his concerns more privately, it is clear that she refused to meet with him in private. Councillor Johanson characterized Mr. Ferrero's assertions of bullying as "public", whereas, in fact, the only individuals copied on the emails were the Mayor and Council and Jacquie Johnstone. This was consistent with Mr. Ferrero's regular practice of including the Mayor and Council on all email communications with individual Councillors about Council matters. Mr. Ferrero intentionally did not copy staff previously included on the email chain. I do not find that Mr. Ferrero's emails on June 16 or July 7 were public or that it was inappropriate to include the Mayor and Council and Ms. Johnstone as recipients. I further note that Councillor Johanson's request for private communications is inconsistent with her own actions since she failed to afford the same consideration to City staff when levying her criticisms.

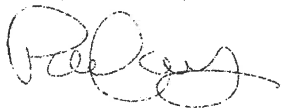
B. Mr. Ferrero inappropriately and unfairly sanctioned Councillor Johanson by selectively enforcing City Policy Council-119

In conclusion, I find that Mr. Ferrero had a reasonable belief that it was within his managerial authority and obligation, in the circumstances, to direct Councillor Johanson to stop communicating with City staff and to direct staff to stop communicating with Councillor Johanson.

Mr. Ferrero had a clear and thorough understanding of the type of behaviours that meet the threshold for workplace bullying and harassment as well as the potential impact of workplace bullying and harassment. He recognized that Councillor Johanson had engaged in a lengthy pattern of inappropriate communications with staff, which was having a harmful effect on those staff members. He correctly understood his obligation as CAO to put measures in place to address workplace safety. His direction to staff was consistent with Policy 119 already in place. While there was no written authority or past practice which supported imposing the policy on only one Council member rather than all, I find that he had a reasonable belief that limiting the application of the policy to Councillor Johanson was the fairest approach. This would continue to support his goal of promoting relationship building, flexibility and efficiency between staff and the majority of Councillors. When he received legal advice to extend the policy to all Councillors, he did so without undue delay. This suggests that he had no intention of inappropriately targeting Councillor Johanson. Further, there is no evidence that Mr. Ferrero acted maliciously or vexatiously.

Thank you for the opportunity to assist with this matter. I remain available should there be any additional questions or issues that require clarification.

Yours very truly,
UKRAINETZ WORKPLACE LAW GROUP



Pamela Connolly



WPLG

Workplace Investigation for Lidstone & Company
Re: Erika Johanson Complaint
December 14, 2021

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This is Exhibit "B" to the Affidavit of Guillermo Ferrero sworn before me at White Rock, B.C. this 10 day of March, 2022


A Commissioner for taking Affidavits for British Columbia

Debbie Johnstone,
Deputy Corporate Officer
A Commissioner for taking Affidavits
in the Province of BC (~~Exp. 1/1/2022~~)
City of White Rock
15322 Buena Vista Avenue
White Rock, BC V4B 1Y6 / 604 541 2127

UKRAINETZ

— WORKPLACE LAW GROUP —

Privileged & Confidential

**Workplace Investigation for
Lidstone & Company re: City of White Rock**

Re: Colleen Ponzini Complaint

December 14, 2021

Submitted by:

Pamela Connolly

Ukrainetz Workplace Law Group

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Introduction

The following is the report on the results of my investigation into the complaint made by Colleen Ponzini against Councillor Erika Johanson regarding allegations of a breach of the City of White Rock's Respectful Workplace Policy 405.

Mandate

My mandate was to review the allegations raised by Ms. Ponzini, make findings of fact, and provide a legal opinion as to whether the conduct alleged constitutes workplace bullying or harassment or infringes another right or entitlement based on the law, contract, or policy along with any appropriate recommendations. I am a lawyer and during this investigation I acted as an independent, neutral investigator to provide legal advice to the City's legal counsel regarding this matter.

Legal Framework

This investigation was conducted within the framework of the City's Respectful Workplace Policy and the B.C. *Workers Compensation Act* and its *Policy Item D3-115-2 RE: Employer Duties - Workplace Bullying and Harassment*.

The City's Respectful Workplace Policy 405 outlines the roles and responsibilities of the City, elected officials and employees in promoting and maintaining a respectful workplace. The conduct prohibited by the policy applies to both employees and elected officials, among others, and the policy confirms that bullying and harassment can occur through any type of communications, including in writing, such as by email.

The Respectful Workplace Policy sets out the City's definition of a respectful workplace, which is "a place free from discrimination, harassment and bullying of any kind and where all Employees are treated with dignity and respect and where diversity and inclusion are valued".

Under the Respectful Workplace Policy, bullying and personal harassment have separate definitions. This is different from WorkSafeBC's approach which combines bullying and harassment as the same action. The City's definitions are:

- *Bullying*: a type of harassment that is marked by the intentional, persistent attempt of one or more persons to intimidate, demean, torment, control, mentally or physically harm or isolate another person(s).

- *Personal harassment*: any inappropriate conduct, comment, display, action, or gesture by another person towards another person that the first person out to have known would cause the other person to be humiliated or intimidated....Harassment of any kind may be intentional or unintentional.

WorkSafeBC's definition of bullying and harassment is consistent with the City's definition of personal harassment.

Workplace harassment may have some or all of the following components:

- it is generally repetitive, although a single serious incident may constitute workplace harassment if it undermines the recipient's psychological or physical integrity and has a lasting harmful effect
- it is hostile, abusive or inappropriate
- it affects the person's dignity or psychological integrity, and
- it results in a poisoned work environment.

Workplace harassment should not be confused with legitimate, reasonable management actions that are part of the normal work function.

In terms of responsibilities, the Respectful Workplace Policy further provides, in part, that Council, Management and Supervisors have a responsibility to:

- act in a manner that is consistent with a respectful workplace
- not engage in behaviour that constitutes discrimination, bullying or harassment as defined in this policy
- model inclusive and respectful behaviour, and
- lead by example in treating all Employees with dignity and respect.

Overview of the Investigation

This investigation commenced on September 28, 2021, in conjunction with a related investigation. Due to Ms. Ponzini's unavailability, her interview did not occur until October 19, 2021. It was necessary for Ms. Ponzini to produce supporting documents, which did not take place until November 15, 2021. Despite efforts to schedule an interview with Councillor Johanson, she ultimately refused to meet. As such, the investigation moved on to Mr. Ferrero's witness interview, which took place on November 30, 2021. He produced supporting documents by December 6, 2021.

As part of the investigation, I interviewed the following individuals:

- Colleen Ponzini, former Director of Finance
- Guillermo Ferrero, CAO

In addition to the above interviews, I also reviewed the City's policies, numerous emails, letters, and documents provided by the parties, and viewed videos of April 12 and 26, 2021, Council meetings. I declined to interview further potential witnesses based on the strength of the contemporaneous written records and the parties' verbal evidence.

Summary of the Allegations

Ms. Ponzini alleged that Councillor Johanson engaged in a pattern of disrespectful and inappropriate conduct towards her in emails and at Council meetings, which were related to departmental budgets and financial planning. She provided examples of verbal and written communications as follows:

- Councillor Johanson made repeated requests for departmental level budgets and restated her concerns about the lack of departmental level budgets at Council meetings on April 12 and 26, 2021, and by email on March 29, June 1 and June 16, 2021;
- Councillor Johanson made repeated requests for details of the schedule for Financial Planning Process activities for the 2022 budget, and restated her concerns about the lack of a schedule, by email on June 1 and June 16, 2021;
- At the Council meeting on April 26, 2021, Councillor Johanson referred to the current departmental level budgets as a "mess" that was inherited by Ms. Ponzini;
- Councillor Johanson unfairly chastised Ms. Ponzini for including the Mayor and Council on her June 1, 2021, 9:59 a.m. email; and
- By email on June 16, 2021, at 12:39 p.m., to Guillermo Ferrero and copied to Ms. Ponzini, the Mayor and Council, and Tracy Arthur, Councillor Johanson indicated that she would have been "fired ASAP" if she had responded similarly to Ms. Ponzini to a request for details of the Financial Planning Process schedule.

As a result of Councillor Johanson's refusal to participate in the investigation, I was unable to obtain her version of events. However, I have relied on her July 19, 2021, written complaint letter to Mayor Walker as well as emails exchanged with Mr. Ferrero on June 16, 2021, June 23, 2021, and July 7, 2021, for additional evidence, including her explanation for her conduct.



Credibility

In order to make findings, it is necessary for me to assess the credibility of the individuals I interviewed. These assessments are outlined below.

I was unable to assess Councillor Johanson's credibility because I did not have an opportunity to conduct her interview.

I found Ms. Ponzini to be credible. She was candid and forthright in providing evidence. While she was sometimes repetitive and disjointed, this did not detract from her credibility as her evidence was consistent throughout. At times, she had difficulty providing details of specific interactions and focused on her generalized impressions of Councillor Johanson's behaviour. However, Ms. Ponzini was able to point to numerous interactions by email and at council meetings which supported her allegations. The supporting documents and video evidence corroborated her verbal recollection of events.

I also found Mr. Ferrero to be credible and believe he presented his evidence sincerely and in good faith. He was direct, consistent and did not seem prone to exaggeration. He was able to recount most events with clarity and detail and provided supporting documents which corroborated much of his evidence. I found his explanations for his behaviour to be both thoughtful and plausible.

Factual Findings

Based on the evidence and findings of credibility, I make the following factual findings, on a balance of probabilities:

Ms. Ponzini's evidence

Ms. Ponzini held the position of Director of Finance with the City and resigned after making her complaint. She commenced work with the City on March 18, 2020. Previously, she held the Director of Finance position with the City of New Westminster. She described her role in relation to Council as providing guidance and information on topics related to finance, helping them figure out how to navigate municipal finance, helping them prepare their budget, and ensuring the City operated within the correct rules and regulations with respect to financial activities.

It was an expectation of Ms. Ponzini's position that she would make presentations and answer questions at Council meetings regarding City finance matters and communicate directly with Council when they contacted her with questions, verbally or in writing. She copied Mayor and Council and Mr. Ferrero on almost all correspondence so that everyone received the same information. At times, she and Mr. Ferrero would carefully prepare

responses together since some questions could be ambiguous and misleading and intended to further a particular Councillor's agenda.

Ms. Ponzini stated that the current City Council lacks experience, which she believed was reflected in their understanding of municipal finance and governance. In particular, the Mayor and four of six Councillors, including Councillor Johanson, were on their first four-year term in Council, which expires in November 2022.

Ms. Ponzini asserted that the general culture within City Council was to say or do what they wanted without regard for whether their behaviour was disrespectful. She described Councillor Johanson's behaviour as a "*series of jabs*", directly and indirectly. Ms. Ponzini would provide information and answer questions and then Councillor Johanson would repeat her requests in a different way or twist the information to make accusations of incompetency. These repetitious questions and critical remarks were made by email to Ms. Ponzini and Mr. Ferrero and also verbally at Council meetings. Ms. Ponzini believed that Councillor Johanson was "*trying to discredit me. She was attacking what we were doing as finance people and suggesting we didn't have a clue.*" Her evidence was that Councillor Johanson was "*insulting, berating and repeating the same things over and over again in order to prove that I didn't know what I was talking about*".

In particular, Ms. Ponzini explained that Councillor Johanson would accuse the Finance Department of not having departmental budgets but the fact was that Finance just did not have the departmental budgets the way Councillor Johanson wanted them, line by line. Councillor Johanson would "*take my response and quote me wrongly. She would call us out in meetings. She would say you told me there are no departmental budgets but now you say you do, where are they?*" It was the repetition and implications, and the twisting of the words which Ms. Ponzini perceived as harassment. She described it as gaslighting, where "*[Councillor Johanson] just kept harping on it and belittling*" making her feel like she had missed or mis-stated something. Ms. Ponzini's impression was that Councillor Johanson was retaliating against her for exposing Councillor Johanson's ignorance and getting frustrated with the answers provided because it did not align with her desires and expectations.

Ms. Ponzini provided copies of the emails between herself and Councillor Johanson and others in which the issues of department budgets and the financial planning process were discussed. The relevant sections which support Ms. Ponzini's allegations are set out below. I have attached the full emails in "Schedule A" to this report. Although Ms. Ponzini was aware that Councillor Johanson was active on social media and might be making negative comments about the Finance Department, she did not read or hear specifics regarding any social media posts.

Email chain #1

- March 29, 2021, 2:02 p.m. From: Erika Johanson, To: Colleen Ponzini, Cc. Guillermo Ferrero, Subject: Budget Binders
 - *"Hi, Colleen!
What is typically included in departments' budget binders?"*
- March 29, 2021, 2:08 p.m. From: Colleen Ponzini, To: Erika Johanson, Cc. Guillermo Ferrero, Subject: RE: Budget Binders
 - *"Hello Councillor:
The departments have to provide us with their operating and capital budgets. This is an iterative process whereby we provide some information in excel to assist them and work with them on determining on how their programs could be funded within the City's resources and determine if increases are necessary. There is no specific "binder"."*
- March 29, 2021, 2:25 p.m. From: Erika Johanson, To: Colleen Ponzini, Cc. Guillermo Ferrero, Subject: Re: Budget Binders
 - *"Thanks, Colleen!
Are the operating and capital budgets in the same format for each department?"*
- March 29, 2021, 2:29 p.m. From: Colleen Ponzini, To: Erika Johanson, Cc. Guillermo Ferrero, Subject: RE: Budget Binders
 - *"Hello Councillor:
No, they are just a bunch of excel files and emails, notes, hand written notes from conversations etc that we then compile into a model that allows us to consolidate and present the information you saw in the reports. It's a very complicated set of excel workbooks and word documents. Can I ask what you're hoping to find?"*
- June 1, 2021, 6:49 a.m. From: Erika Johanson, To: Colleen Ponzini, Cc. Guillermo Ferrero, Subject: Re: Budget Binders
 - *Good morning, Colleen!
Last night, I asked if the City had department budgets. You answered in the affirmative. I was surprised given the emails we have exchanged, particularly March 29 at 2:29 pm. What am I missing?"*
- June 1, 2021, 9:59 a.m. From: Colleen Ponzini, To: Mayor and Council, Cc. Guillermo Ferrero, Subject: FW: Budget Binders
 - *"Hello Councillor Johanson,
The question you asked in this email on March 29, at 2:29pm below was "Are the operating and capital budgets in the same format for each department?" to which I responded no in my email below. As noted in your response, the information you received on departmental budgets was as included in the reports through this past year's financial planning process.*

This does not mean there are no "departmental budgets", it's the format that that they are in which is the question I had responded to...."

- June 1, 2021, 10:23 a.m. From: Erika Johanson, To: Colleen Ponzini, Mayor and Council, Cc. Guillermo Ferrero, Subject: Re: Budget Binders
 - *"Colleen,
I hope the rest of Council received the full set of emails. It will put this lone question into context.
Please remind me, what was the date(s) of the meeting(s) when the department budgets were presented?"*
- June 1, 2021, 10:28 a.m. From: Colleen Ponzini, To: Erika Johanson, Mayor and Council, Cc. Guillermo Ferrero, Subject: RE: Budget Binders
 - *"Hello Councillor Johanson,
Of course the email stream is as you've sent it below. The departments were represented at the meetings with Council. The dates will be in the other email I just responded to regarding the process for last year which I will have by the end of the week."*

Email Chain #2

- June 1, 2021, 7:42 a.m. From: Erika Johanson, To: Colleen Ponzini, Cc. Guillermo Ferrero, Mayor and Council, Subject: Financial Process Planning Schedule budgets
 - *"Good morning, Colleen!
Below is a sample schedule for one municipality's Financial Planning Process. Do we have anything similar? If so, please share it with Council.
We have not had a "Council review of the Financial Plan and Departmental Budget Presentations", but it is common for municipalities to do this once per term...."*
- June 1, 2021, 10:25 a.m. From: Colleen Ponzini, To: Daryl Walker, Erika Johanson, Cc. Guillermo Ferrero, Mayor and Council, Subject: RE: Financial Process Planning Schedule budgets
 - *"Hello Councillor Johanson,
I can certainly put a list together of all the meetings/activities that took place regarding the 2021-225 (sic) Financial Planning process for you...."*
- June 1, 2021, 10:43 a.m. From: Erika Johanson, To: Colleen Ponzini, Darryl Walker, Cc. Guillermo Ferrero, Mayor and Council, Subject: Re. Financial Process Planning Schedule budgets
 - *"Thanks Colleen. I'm only interested in projected activities for 2022....
So my big question here is: what is the schedule for the Financial Planning Process activities for 2022 since it started through to October?..."*

- June 15, 2021, 12:57 a.m. From: Colleen Ponzini, To: Erika Johanson, Subject: FW: Financial Process Planning Schedule budgets
 - *"Hello Councillor Johanson, I believe this email [June 1st chain above] has the reference to the "list" that you mentioned in your email to me today which was the list of activities we did in 2020/2021. I didn't put that list together yet based on your response below that you were only interested in the projected activities for 2022. Wrt departmental budgets, I believe my comment – although I don't remember where I made it – was that departments were at all of the budget meetings for Council to ask questions of and that their figures were included in the information presented."*
- June 15, 2021, 2:19 p.m. From: Erika Johanson, To: Colleen Ponzini, Subject: Financial Process Planning Schedule budgets
 - *"Nonetheless, could you please give me a hint as to which meeting agenda I might find even one department budget?"*
- June 15, 2021, 2:45 p.m. From: Erika Johanson, To: Colleen Ponzini, Subject: Financial Process Planning Schedule budgets
 - *"Colleen, I asked a question in Council a few weeks ago if the City has department level budgets. You said that they were and were part of presentations to Council. What I am looking for is one example – any example."*
- June 15, 2021, 2:58 p.m. From: Colleen Ponzini, to Erika Johanson, Subject: Re: Financial Process Planning Schedule budgets
 - *"I am working on the full list for you and will provide it to you and all of council"*

Email Chain #3

- June 16, 2021, 8:50 a.m. From: Erika Johanson, To: Colleen Ponzini, Cc: Guillermo Ferrero, Mayor and Council, Subject: Department budgets
 - *"Colleen, I am not sure which meeting it was at, but in a recent one, I asked you if the City had departmental level budgets. You answered in the affirmative and claimed that Council has reviewed them with the department heads present. I have looked through all of the F&A agendas from 2020-07-09 and have found nothing remotely resembling a department level budget.... Also, when will a Financial Planning schedule for 2022 be available? This is a standard deliverable for municipal financial planning"*

- June 16, 2021, 9:46 a.m. From: Guillermo Ferrero, To: Erika Johanson, Cc: Mayor and Council, Colleen Ponzini, Subject: RE: Department budgets
 - *"Hi Erika,
I understand your eagerness to get started on this topic and I can assure you that staff has heard your concerns....
At this point we don't have anything else to share with Council."*
- June 16, 2021, 10:30 a.m. From: Erika Johanson, To: Guillermo Ferrero, Cc: Mayor and Council, Colleen Ponzini, Tracey Arthur, Subject: Re: Department budgets
 - *"Colleen indicated at a meeting that her staff are already working on something in anticipation of Council's pending requests. I'm curious to know what that is.
What I wanted to make perfectly clear is that there are no department budgets in a format that Council can review...."*
- June 16, 2021, 10:48 a.m. From: Guillermo Ferrero, To: Erika Johanson, Cc: Mayor and Council, Colleen Ponzini, Subject: RE: Department budgets
 - *"Your concerns are noted as they were the first time you raised them. At this point we don't have anything else to share with Council....."*
- June 16, 2021, 12:39 p.m. From: Erika Johanson, To: Guillermo Ferrero, Cc: Mayor and Council, Colleen Ponzini, Tracey Arthur, Subject: Re: Department budgets
 - *"You are correct that I have already asked the question regarding a schedule of Colleen. I received no direct response, only an assurance that the information will be in front of Council on time. As a Project Manager during my career, I'd be fired ASAP if I gave such a response."*

Council Meetings

April 12, 2021, Council Meeting per Councillor Johanson

- 1:52:08 - I found out recently, however, that it is impossible to provide the budgets at a department level in this municipality.
- 1:52:13 - The fiscal management...process for which this Council is being criticized, was inherited from the previous administration... as follows, they are just a bunch of excel files and emails, notes, handwritten notes from conversations that we then compile into a model that allows us to consolidate the information and report on it.
- 1:52:52 - Fortunately, we have a new CAO taking us in a new direction and who is actually capable of modernizing the way the City does business.

April 26, 2021, Council Meeting per Councillor Johanson:

- 1:59:15 – We need to set the tax rate by May 15 but we do not have the information we need to make an informed decision...specifically departmental budgets that can be reviewed line by line, simply because that level of detail does not exist.
- 2:00:32 - I move that a financial planning policies task force be convened immediately to ensure that Council has the needed information for the 2022 budget cycle...
- 2:08:11 - This isn't a, of course Miss Ponzini is doing a great job, but she inherited a mess.

Ms. Ponzini's evidence was she had become increasingly distressed and upset about Councillor Johanson's behaviour during spring 2021. This culminated on June 16, 2021, when she received Councillor Johanson's 12:39 p.m. email about being "*fired ASAP*". She immediately emailed Mr. Ferrero and Jacquie Johnstone with the message, "*Then fire me*". She subsequently left the office. The following morning, she could not get up. She saw her doctor and sought counselling. She did not return to work and later resigned. Ms. Ponzini's evidence was that her experience with Councillor Johanson caused a severely negative emotional impact.

Mr. Ferrero's evidence

Mr. Ferrero had significant concerns related to Councillor Johanson's behaviour towards Ms. Ponzini. He indicated that Councillor Johanson took issue with the Finance department's departmental budgets and financial planning process. Mr. Ferrero's evidence was that City budgets had to be approved by May 15, 2021, and Councillor Johanson started asking for information on April 5, 2021, when she had ample opportunity to ask questions and review information prior to that date. However, Councillor Johanson made repeated demands for information that was already provided to her and criticized the existing departmental budgets and processes, which was mostly directed at Ms. Ponzini. Mr. Ferrero recognized that Councillor Johanson's repetitious passive aggressive and overt criticisms were disrespectful and devastating to Ms. Ponzini, since she was a highly experienced and well-regarded professional within the financial industry. Consequently, he believed that Councillor Johanson was engaging in bullying and harassment and took steps to discontinue communications between Councillor Johanson and City staff.

Justification for Councillor Johanson's Conduct

In Councillor Johanson's written complaint dated July 19, 2021, she described her communications generally as showing "*tenacity in representing the citizens and seeking information*", which was in furtherance of her fiduciary obligations as a City Councillor. In her investigation interview, Ms. Ponzini disagreed that these factors provided justification for Councillor Johanson's conduct. She indicated that Councillor Johanson can ask

questions but she cannot demand immediate answers that are as comprehensive as she wants. Councillor Johanson must also be willing to listen and learn.

Councillor Johanson's Apology Letter

Councillor Johanson included an apology letter to Ms. Ponzini with her July 19, 2021, complaint letter. She wrote that *"I understand that our recent communications may have been misinterpreted as disrespectful or bullying. I want you to know that in no way was my intent. I have the utmost respect for you and the great work you do on behalf of the city of White Rock. Please accept my apology for any miscommunication and misunderstanding."*

Ms. Ponzini's evidence was that she became aware Councillor Johanson had written an apology letter but she did not want to read it. Ms. Ponzini did not believe that Councillor Johanson was genuinely remorseful and had no interest in reconciling.

Findings

The evidence relied on by Ms. Ponzini to support her complaint of bullying and harassment is found in independent, contemporaneous written and verbal records. There is no conflicting evidence and the evidentiary record is not contradicted by any information received from Councillor Johanson. Based on the quality of the available written and recorded evidence and Ms. Ponzini's verbal evidence, I find that the events occurred as described by Ms. Ponzini.

In particular, I find that Councillor Johanson's email and verbal communications show repetitious questioning and criticism about the lack of detailed departmental budget binders and the financial planning process. On March 29, 2021, Ms. Ponzini explained the format and information in departmental budgets and on April 12 and 26, Councillor Johanson criticized the format at Council Meetings. On June 1, Ms. Ponzini clarified Councillor Johanson's understanding about the format of departmental budgets. Yet, on June 1, 15 and 16, Councillor Johanson continued to press for information and reiterate her concerns that the budget was not in her desired format.

During this period, the tone of Councillor Johanson's communications is increasingly demanding and disrespectful. On June 1, by telling Ms. Ponzini that she *"hope[s] the rest of Council received the full set of emails"*, Councillor Johanson is chiding Ms. Ponzini for copying Mayor and Council when it is evident their entire email stream was included. Further, on June 15, Councillor Johanson used a belittling tone when she asked Ms. Ponzini to *"please give me a hint as to which meeting agenda I might find even one department budget"* and *"what I am looking for is one example – any example"*. Finally, on June 16 at 12:39 p.m., Councillor Johanson continued to indirectly disparage Ms. Ponzini by informing her manager, Mr. Ferrero, that Ms. Ponzini failed to provide

adequate information and suggesting that showed such significant incompetence and neglect of duty that Ms. Ponzini should be fired.

Conclusion

Based on the factual findings set out above and after careful consideration of the evidence obtained, I find that Councillor Johanson engaged in personal harassment towards Ms. Ponzini in accordance with the definitions in City's Respectful Workplace Policy and the *Workers Compensation Act* Policy (referred to as "bullying and harassment" in the *WCA* Policy). Although the individual interactions were relatively minor, Councillor Johanson's communications met the required threshold for harassment due to their repetitious, disparaging and increasingly disrespectful nature, which she either knew, or would be expected to know, was offensive to Ms. Ponzini. The impact of Councillor Johanson's behaviour is significant, as it caused Ms. Ponzini considerable distress would reasonably cast doubt on Ms. Ponzini's competency.

I am unable to substantiate Ms. Ponzini's allegation that she was subjected to bullying by Councillor Johanson, as defined in the City's Respectful Workplace Policy. The definition of bullying requires that the behaviour be an "*intentional*" attempt to "*intimidate, demean, torment, control, mentally or physically harm or isolate another person(s).*" There is nothing in the evidence to suggest that Councillor Johanson intended to harm Ms. Ponzini. In fact, I believe that Councillor Johanson's actions were misguided attempts to fulfill her duties as a City Councillor as a result of poor judgment and ignorance about the City's definition of personal harassment ("bullying and harassment" under the *WCA* Policy) and her responsibility as an elected official to maintain a respectful workplace for City employees.

Recommendations

Based on Councillor Johanson's written communications in which she defended her actions to Mr. Ferrero and apologized to Ms. Ponzini, it appears she does not have an accurate understanding of workplace bullying and/or harassment or her obligations under the City's Respectful Workplace Policy. Her words suggest that she believes she is immune from reproach provided her actions are in furtherance of her Council duties. Additionally, by indicating in her written apology that her actions were "*misinterpreted as disrespectful or bullying*" and that was not her "*intent*", she does not understand that she is responsible for how her behaviour is reasonably interpreted, regardless of her intent. I believe that Councillor Johanson would benefit from receiving comprehensive training on the City's Respectful Workplace Policy specifically geared to elected officials, which establishes standards for behaviour. Without education to combat misinformation, there is little likelihood of Councillor Johanson changing her behaviour.

Thank you for the opportunity to assist with this matter. I remain available should there be any additional questions or issues that require clarification.

Yours very truly,
UKRAINETS WORKPLACE LAW GROUP



Pamela Connolly

Encl. Schedule "A" - Various emails



This is Exhibit "C" to the Affidavit of Guillermo Ferrero
sworn before me at White Rock, B.C. this 10 day of
March, 2022



A Commissioner for taking Affidavits for British
Columbia

Debbie Johnstone,
Deputy Corporate Officer
A Commissioner for taking Affidavits
in the Province of BC (~~exp. = / = /2022~~)

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News / Local News

White Rock councillor takes legal action against city following bullying allegations

White Rock Coun. Erika Johanson is taking legal action against the city over what she claims are false allegations she bullied and harassed staff.

Keith Pinner
Mar 07, 2022 • 1 day ago • 3 minute read • [Join the conversation](#)



White Rock city Coun. Erika Johanson. PNG

A White Rock councillor is taking legal action against the city for measures it took following what she says were false allegations that she bullied and harassed city staff.

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Coun. Erika Johanson, who was elected to council in 2018, claims that the dispute arose from inquiries about budgeting matters she was making last year with the city's then-

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Guillermo Ferrero, the city's chief administrative officer, reprimanding her for alleged bullying and harassment of city staff, and threatening to impose a penalty on her if the alleged conduct continued.

On July 7, 2021, in response to an email sent by Johanson on the same date, Ferrero, the most senior staff member in the city, sent an email concluding that she had engaged in bullying and harassment, says Johanson's petition filed in B.C. Supreme Court.

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Johanson, who denies the allegations and says no formal complaints have been filed against her, says that she was told that she would no longer be allowed to communicate with city staff while at the same time other members of council were allowed to continue to communicate directly with city staff.

"My reputation has been ruined within council," Johanson said Monday. "I am unable to do my job."

The petition notes that before the dispute the city had enacted a policy stating that communications involving the mayor, council and city staff were to be directed through the chief administrative officer but that at the time in question the policy wasn't being enforced.

Johanson's petition, which names the City of White Rock as the respondent, seeks a judicial review of Ferrero's decision to order her to refrain from contacting city staff directly.

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"The City of White Rock failed to act fairly in all the circumstances by making a final administrative decision and imposing a penalty absent procedural fairness and due process," says the petition. "As a result the petitioner did not know the case against her or have an opportunity to respond to it. By doing so, the City of White Rock made a reviewable error and breached the rules of procedural fairness and due process."

An affidavit filed by Johanson reveals increasingly tense email exchanges involving Johanson and Ferrero.

In a June 16 email to then-finance director Colleen Ponzini and cc'ing Ferrero as well as members of council, Johanson notes that she had asked Ponzini if the city had departmental level budgets and Ponzini had answered in the affirmative. Johanson says that she was unable to find anything remotely resembling such budgets.

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"I understand your eagerness to get started on this topic and I can assure you that staff has heard your concerns," replies Ferrero, who adds that such budgets are prepared by staff internally and were provided to council during the 2021 budget cycle as high-level figures in the reports provided.

Johanson replies that she wants to make "perfectly clear" that there are no department budgets in a format that council can review.

In another email she expresses concern about a response she got from Ponzini, saying: "As a project manager during my career, I'd be fired ASAP if I gave such a response."

A short while later, Ferrero said: "Your email is inappropriate and unacceptable, and I will be setting up a meeting to discuss my concerns with you and the mayor (Darryl Walker) as soon as possible."

STORY CONTINUES BELOW

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Ferrero said he had had multiple discussions with Walker, and the mayor had indicated his support for his approach.

Umar Sheikh, Johanson's lawyer, said the case was "extremely unique" in the sense that most city councillors in B.C. have very limited rights when it comes to actions against municipalities.

"She's certainly going through a lot of stress and is doing her best to represent the citizens of White Rock," he said of his client.

No response has yet been filed to the petition, which contains allegations that have not been tested in court.

Amanda Silvers, manager of communications and government relations for the city, said in an email that as the matter was before the courts there would be no comment.

Walker didn't respond to a request for an interview.

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This is Exhibit "D" to the Affidavit of Guillermo Ferrero sworn before me at White Rock, B.C. this 10 day of March, 2022


A Commissioner for taking Affidavits for British Columbia

Debbie Johnstone,
Deputy Corporate Officer
A Commissioner for taking Affidavits
in the Province of BC (~~EXP. / 2022~~)
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15322 Buena Vista Avenue
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'No choice' but to take the city to court, says White Rock council member

Petition cites no chance to refute claims of harassment against city staff

ALEX BROWNE / Mar. 8, 2022 3:02 p.m. / LOCAL NEWS / NEWS



Coun. Erika Johanson is petitioning the BC Supreme Court to order a White Rock council decision penalizing her set aside. Contributed photo

White Rock Coun. Erika Johanson said she was left with no option other than to take legal action against the city, after she was penalized following allegations last year that she bullied and harassed city staff.

"I had no choice," she told *Peace Arch News*. "B.C. is unique in Canada in that there is no provincial oversight of municipal affairs – there's no recourse when things go wrong."

A petition to the Supreme Court of BC was filed on Johanson's behalf on Sept. 1 of last year. It asks that the

court order a July 7 decision of council set aside, under the Judicial Review Procedure Act.

The petition states the city's decision "found that the petitioner engaged in bullying and harassment and imposed a penalty on the petitioner as a result of the findings."

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communicate directly with staff members.

The decision invokes a city policy that says councillors can only communicate with staff through the chief administrative officer. While it had been policy since 2010, Johanson asserts it had not been enforced in the time she served as councillor, since she was sworn in on Nov. 5, 2018.

The petition also states that no complaints of harassment had been filed against Johanson, no investigation took place that involved her, that she was not allowed a hearing prior to a final determination being made and a penalty imposed, and that she was not able to defend herself or refute conclusions of fact.

The allegations, from city CAO Guillermo Ferrero, relate principally to communications between Johanson and then-director of finance Colleen Ponzini last year, while Johanson was determined that staff produce line-by-line, department level budgets for council's perusal in the annual city budgeting process.

"There was a misunderstanding," Johanson said. "They were calling financial plans budgets – they were confusing the two."

But Johanson maintained more detailed information should be available – "even if it's just a list of projects, (staff) should be able to justify every amount spent."

Johanson – who acknowledges she is not a "go along to get along person" – said she also regrets the wording and tone of one email to Ferrero criticizing Ponzini's answers to one of her questions on how information was being compiled.

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"As a project manager during my career, I'd be fired ASAP if I gave such a

"I regret sending it," Johanson said. "I sent it because I knew it to be true. But in hindsight it was not a good idea."

The response from Ferrero, who had earlier reprimanded Johanson for "bullying" staff, was that the email was "inappropriate and unacceptable" – and he went on to say that he was setting up a meeting between himself, Johanson and Mayor Darryl Walker to discuss his concerns.

Johanson said she responded that she was willing to participate in such a meeting, but only if a third party was present. "I never heard back from them," she said.

"(The city has) a respectful workplace policy, but nothing has been filed under that, nobody has approached me about it," she added.

"Apparently I've been harassing and bullying people on multiple occasions, but I don't know when. Certainly not in council. They've never been able to come up with any other cases. To say this happened multiple times – you'd expect the first, second or third time, someone would have pulled me aside and said, 'Hey, Erika, what's going on?' But this was out of the blue."

Johanson said she has since felt isolated within council, and that her reputation has been "ruined" as other councillors have only heard Ferrero and Walker's side of events.

City communications manager Amanda Silvers told *PAN* that, as the matter was before the courts, neither Ferrero nor Walker have any comment for publication.

Meanwhile, at the Feb. 28 regular meeting, council members unanimously backed a motion from Johanson to be forwarded to the Lower Mainland Local Government Association, and the Union of British Columbia Municipalities, calling on the provincial government to create the office of a Municipal Ethics Commissioner.

The office, she said, would “respond to allegations of misconduct by an elected official of a municipal government and conduct an inquiry if warranted” and also “review decisions imposed on an elected official of a municipal government and conduct an inquiry if warranted.

“I believe this is the best way to deal with things that cannot be resolved amicably at the municipal level, so there is somewhere to go for municipalities in B.C.” she said.

Johanson told *PAN* she believes that there are councillors in other municipalities who are facing similar situations and who could benefit from an impartial and independent review.

“Independent is the key thing – otherwise it’s all politics,” she said.

“If we had something like this in place, there wouldn’t have been the need for this petition,” she added.

alex.browne@peacearchnews.com

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CITY OF WHITE ROCK LAWSUIT

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