

Office of the Integrity Commissioner

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CONFIDENTIAL

**REPORT REGARDING
COUNCIL CODE OF CONDUCT COMPLAINT 2201
BY JAMIE PYTEL
INTEGRITY COMMISSIONER for
THE CITY OF EDMONTON**

Report Date: February 23, 2022

Re: *Council Code of Conduct Bylaw 18483*

Complainants: Sgt. Michael Elliott, on his own behalf and on behalf of
The Edmonton Police Association

Respondent: Councillor Michael Janz

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I. INTRODUCTION

1. The Respondent Councillor was elected to The City of Edmonton's City Council on October 18, 2021. The Individual Complainant makes this complaint as a member of the Edmonton public. He also makes this Complaint on behalf of the Edmonton Police Association in his capacity as President of the Association (collectively the "Complainants").
2. The Complainants allege that since being elected to Council, the Respondent has made a series of social media posts that have violated the *Council Code of Conduct, Bylaw 18483* (the "Code").
3. The Complainants also allege that the Respondent:
 - a. Has made decisions as a Councillor that are biased, not impartial, not fairly considering all relevant facts, opinions and perspectives;
 - b. Has made social media posts that are offensive and disrespectful of and to EPS members who are City employees;
 - c. Made misleading posts about members of the EPS.
4. The Complainants say:
 - a. The Respondent is required to carry out his duties with decorum, respect and professionalism;
 - b. The Code requires the Respondent to obtain all relevant facts before commenting on an issue; and
 - c. The Respondent must be fair, unbiased and respectful.

The Complainants say this is required of the Respondent generally as a Councillor for the City of Edmonton and specifically in communications about EPS members. The Complainants say the Respondent's conduct should benefit the City as a whole, including EPS members, and their families who live and work in the City of Edmonton.

5. The Complainants provide the following "facts surrounding the allegations":

In December 2021, I learned that [the Respondent] had made, retweeted, and/or "liked" a series of social media posts about the Edmonton Police Service

and its members, as well as police officers generally. The social media posts contain statements, language, and commentary that is completely inappropriate for a City of Edmonton Councillor.

Many of the posts show a serious lack of understanding of issues around and involving the Edmonton Police Service and its members. Further, the posts are not impartial and do not fairly consider all relevant facts, opinions, and perspectives as required by the Code, the posts are often offensive and very disrespectful of and to City employees (Edmonton Police Service members), and some of the posts are misleading in respect of the Edmonton Police Service and its members.

[The Respondent] is not a private citizen who is simply sharing his views on social media. He is now an elected official of the City of Edmonton and he is required to follow the Council Code of Conduct with an appropriate level of decorum, respect, and professionalism.

The Code of Conduct requires that [the Respondent] is accurate in his comments, that he obtains **all** the relevant facts before commenting, that he conducts himself in a **fair, unbiased and respectful manner** both generally as a Councillor but also specifically in respect of his communications about City employees including members of the Edmonton Police Service, and that he conducts himself in a way that is respectful of and that benefits the people of Edmonton **as a whole** including the thousands of Edmonton Police Service employees and their families who live and work in the City of Edmonton.

Unfortunately, [the Respondent] has repeatedly violated his obligations under the Council Code of Conduct through his recent social media posts...”

6. The Complainants then make a series of allegations regarding 24 of the Respondent’s social media posts from November 4, 2021 to January 2, 2022 (collectively the “Social Media Posts”), the particulars of which are contained in **Appendix A** of this Report.

II. CODE OF CONDUCT PROVISIONS

7. The Complainants cite the following sections of the Code as relevant to this Complaint:

Part A: Representing the Municipality

1. While carrying out their duties, Councillors must:

- a) act in the best interests of the City as a whole;

- b) consider all decisions and issues thoughtfully, consistently, impartially and fairly by considering all relevant facts, opinions, and perspectives;...
- e) communicate respectfully with members of the public, Councillors, City employees, and Councillor's employees.

Part B: Communications

1. Without limiting the ability of a Councillor to hold a position on an issue and respectfully express their opinions, Councillors will:
 - a) ensure their communications accurately reflect the facts of Council's decisions;
[...]
 - c) ensure that all communications are accurate and not issue any communication that the Councillor knows, or ought to have known, to be false;
 - d) ensure that all communications issued by, or on behalf of, the Councillor, including social media, are respectful and do not discriminate, harass, or demonstrate disrespect toward any person; and
 - e) not issue any communications that mislead Council or the public about any matter.

Part C: Decision-making Processes

1. Councillors will exercise their authority to make decisions in a manner that demonstrates fairness, respect for differences, and an intention to work together for the common good and in the public interest.

Part E: Respectful Interactions

1. Councillors will conduct themselves with decorum at all times, including while attending meetings, interacting with City employees and Councillor's employees, and engaging with the public.
[...]
3. Councillors must not use any harassing, offensive, discriminatory, disrespectful, or unparliamentary language about Council, a Councillor, City employees, Councillor's employees, or the public.

III. PROCESS AND SCOPE

1. Upon receipt and review of the Complaint, I provided a copy of the Complaint to the Respondent.
2. I sought and received clarity in writing from the Complainants with respect to the details of the Complaint, including which allegations related to which post.
3. I asked the Complainants and Respondent if there was an interest in resolving the issues raised in the Complaint informally, either through confidential direct dialogue, facilitated discussions or mediation. The Complainants expressed an interest in informal resolution. The Respondent declined, citing concerns that the Complaint was not brought in good faith.
4. I undertook a review of all of the allegations to determine whether they were within the jurisdiction of the Code and whether I should investigate. I made findings in this report on a balance of probabilities - was it more likely than not that the Code has been violated.

IV. REVIEW OF ALLEGATIONS AND JURISDICTION

A. Is the Complaint submitted within the 60-day Code requirement?

8. This Complaint was received by my office on January 10, 2022. The Code provides that a complaint must be received “not later than 60 days after the person became aware of the conduct giving rise to the complaint.” I may use my discretion to grant extensions if:
 - a) The delay occurred in good faith
 - b) It is in the public interest to conduct an investigation or to give consideration whether to conduct an investigation; and
 - c) No substantial prejudice will result to any person because of the delay.
9. The Complainants say in their written complaint that “in December 2021” they learned of the Respondent’s Social Media Posts. Four of the Social Media Posts [Allegations 1, 2, 3 and 4 respectively in Appendix A] were possibly outside of the 60-day period for making this Complaint, as they occurred in early November.
10. When asked, the Complainants confirmed that they first learned of the existence of these posts sometime between December 8 and 15, 2021. They do not recall the exact date, but they reviewed the posts after December 15, 2021 and then made the decision to submit this complaint.

11. One post, noted on page 18 of the posts in the Complaint was not dated, but for reasons later explained, the allegation related to this post was dismissed.

Finding: The Complaint was submitted within the 60-day requirement of the Code.

B. Can the general public make a Code complaint?

12. The Code provides that if “any person believes that a Councillor has contravened this code of conduct, that person may make a written complaint to the Integrity Commissioner.”
13. The Code is in the public interest. Members of the general public may make complaints about Council Members, even if they are not the direct recipient of the alleged conduct. They have the ability to hold Council Members accountable to the Code and to raise concerns if they feel Council Members are not meeting the standards of the Code.

Finding: The Individual Complainant can make a Code complaint.

C. Can an entity or organization make a Code complaint?

14. The Code provides that “any person” can make a complaint under the Code. There is no interpretative provision or definition in the Code for what “person” means. The *Interpretation Act of Alberta* applies to bylaws passed in Alberta and defines “person” to include a corporation and the heirs, executors, administrators or other legal representatives of a person. I would extend this to organizations such as the EPA.

Finding: Based on the language in the Code and the *Interpretation Act*, I find that the Complaint was filed by a “person” and is therefore permitted by the Code.

D. Can a Union whose members are funded by the City make a complaint?

15. Council sets the mandate for collective bargaining for the EPS. In my view, there are many organizations throughout the City who depend on funding by the City, are impacted directly by Council decisions or are considered stakeholders. That does not preclude them from making Code complaints.

Finding: There is nothing in the Code that precludes the EPA from making a Code complaint.

E. Are the Chief of Police and EPS Members “City employees” for the purposes of the Code?

16. The Complainants allege that the Respondent’s Social Media Posts are often offensive and very disrespectful of and to Edmonton Police Service members who are City employees. They also allege that the Respondent Retweeted posts calling the Chief of Police a “bureaucrat”, accusing the Chief of “fearmongering”, and calling the Chief’s comments about potential budget cuts “predictable” and “disgusting”. They cite the sections of the Code dealing with conduct of Council Members toward City employees and allege these Code sections have been breached.
17. The Definitions in the Code say:

2(2)(b) “**City employee**” means an individual that reports to the City Manager or City Auditor and provides services to the City under an employment agreement, personal services agreement, or in the capacity of agent, student or volunteer;
18. Under the City of Edmonton’s Bylaw 14040 and *Police Act* R.S.A. 2000 c. P-17, the City establishes and maintains a municipal police force under the general supervision of the Edmonton Police Commission. Council prescribes rules governing the operations of the Commission and appoints the Commission’s members. The Commission appoints the Chief of Police, subject to the ratification of Council. The Chief of Police is accountable to the Edmonton Police Commission. Neither EPS employees nor the Chief of Police report to the City Manager or the City Auditor. Police officers are required to obey the directions of the Commission, which directions must go through the Chief of Police.
19. In developing a budget, Council may obtain information from the Commission that may be necessary to enable it to assess the efficiency and financing requirements of the police service. Council is responsible for establishing the total budget for the purposes of the police service, and the Commission is responsible for allocating the funds provided for under the budget.
20. Council shall not, except as permitted under the *Police Act* or the *Police Officers Collective Bargaining Act*, perform any function or exercise any power in respect of the police service that the Commission is empowered to perform or exercise, or issue any instructions to a police officer. [*Police Act*, Section 31(5)]
21. Council is, for the purposes of the *Police Officers Collective Bargaining Act*, the employer of police officers, and for the purposes of the *Labour Relations Code*, the employer of persons other than police officers, who are employed for the police service. [*Police Act*, Section 31(6)]

Finding: While individuals who work for the Edmonton Police Service (EPS) are technically City of Edmonton employees, as they do not report to the City Manager or the City Auditor, for the purposes of the Code, they are not “City employees”.

F. Were the Social Media Posts misleading and lacking in decorum and respect?

22. Even if EPS members are not technically City employees, the Code requires a level of decorum and respect by Council members towards the general public. Part E requires Council Members to act with decorum at all times, and they must not use any harassing, offensive, discriminatory, disrespectful, or unparliamentary language about the public.
23. Generally, a Council Member commenting on matters of accountability and efficiency in policing is part of Council’s oversight. Both the Chief of Police and Council Members may find themselves publicly commenting on such a topic. I would expect it to be done with a level of passion and vigour, but also agree that the Code expects Council Members to demonstrate a level of decorum.
24. As seen in Allegation 7 in Appendix A, the Respondent was sharing a post by a known political commentator in the City of Edmonton who is expressing his opinions about the Chief of Police. While on balance I do not find this breaches the Code in these circumstances, I do generally caution that sharing and liking posts can indirectly violate the Code if used as an indirect way to harass someone. This post came close to breaching the Code in my opinion.
25. While I have advocated for decorum and for elected officials to remember that this is a working environment for administrative staff, those who choose roles in the political arena must understand that arena and appreciate that elected officials wear the hat of a politician, and of a council member representing their constituents and the City. There is a balance between them fulfilling these roles and going beyond what is required of them under the Code.
26. With respect to the comments made about the Chief of Police, I do not have a complaint directly from the Chief wherein he feels he is being harassed in his role. In my view, when taking on these roles and advocating publicly for budgets for the employees he leads, he can expect that Council Members will make comments on these issues, especially at this time in history when the topic of policing has attracted many and varied comments and opinions. The Respondent is entitled to hold an opinion on a matter of public interest, particularly policing, which falls under Council’s mandate.

27. The Complainants also allege a lack of “professionalism” which is not a term used in the Code. Overall, regardless of terminology, I did not find breaches of the Code in the information provided by the Complainants.
28. When making findings with respect to the Social Media Posts, I took into account that the role of a Municipal Councillor is complex and includes being both a politician and a legislator. This is sometimes referred to as a “hybrid function”. As stated in *Geatrix v. Williams*¹:

The Courts have confirmed that municipal councillors have hybrid political and legislative functions². That they are representatives of the communities that elect them,³ and that members of the public have the right to address their municipal representatives on issues of concern⁴...

It is part of the role of a Council Member to communicate with members of the public about municipal issues. This includes both initiating communication and responding to communication initiated by members of the public. In doing so, a Council Member is not limited to explaining and defending what the municipality is already doing. As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give effect to those views.⁵ Some of those views may involve a change in law or a change in direction. Provided that a Council Member proceeds lawfully and in a manner consistent with the *Municipal Act*, the Code and other legislation and by-laws, nothing prevents a Council Member from taking, defending and seeking to implement a position that advocates change. Indeed, the Courts have clearly stated that as an elected representative of the public a municipal councillor is entitled to take “an open leadership role” on an issue.⁶

While politicians must respect the independence of law enforcement officers, there are many aspects of law enforcement on which they can and do engage.

¹ By Integrity Commissioner Guy Giorno for the Town of Orangeville in Ontario, 2018 ONMIC 6 at paras 132-140, and 180-187.

² *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1179 at 1196.

³ *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc.* note 13, at 1193.

⁴ *Re McGill and City of Brantford* (1980), 111 D.L.R. (3d) 405 (Ont. Dist. Ct.) at 411, cited with approval by *Old St. Boniface Residents Assn. Inc.*, note 13, at 1193-4.

⁵ *Re Cadillac Development Corp. Ltd. and City of Toronto* (1973), 1 O.R. (2d) 20.

⁶ *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, (1989), 58 Man. R. (2d) 255 (C.A.) at 264, affirmed [1990] 3 S.C.R. 1170.

Accountability, for example, is not incompatible with independence.⁷ Accountability of law enforcement covers a range of topics (including policy, efficiency, finances, administration, use of authority and ethics)⁸ all of which elected officials may properly address...A Council Member (at the “macro” level) is entitled to engage on policy, on accountability...

A Council Member is entitled to communicate with members of the public, both by initiating communications and by responding to communications initiated by others. A Council Member is not restricted to explaining and defending what is already happening, but is entitled to promote, to advocate, to defend and to seek to implement change.

The social media postings were communications with the public about matters of public interest. I find that employees would be aware of those postings; they are members of the public, too. At the same time, I find that social media postings (though the staff was aware of them) were not directed at the staff in the performance of their duties and obligations.

29. As well, as stated in *Jeffrey v. Sprovier*⁹:

Political commentary must comply with the Code, but otherwise an Integrity Commissioner has no jurisdiction over it. As Integrity Commissioner Cameron noted in this case:

I cannot and will not be a referee for free speech in a political arena provided it stays within the bounds of...the Code.

Subsequently, Mr. Randy Pepper, the delegate of Integrity Commissioner Cameron, expanded on the same principle in Investigation Report No. BIC-33-1112:

Freedom of expression is a fundamental right in Canada so the Code must be interpreted in a manner consistent with this fundamental right. Based on the law set out below, I cannot find that the Code should be interpreted to appoint the Integrity Commissioner as a speech referee in the political arena.

As the Supreme Court of Canada noted in the *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139:

⁷ Darren Caul, “Municipal Police Governance in Canada: An Examination of the Relationship Between Board Structure and Police Independence” (2009) at 30.

⁸ Herman Goldstein, *Policing a Free Society*, Univ. Of Wisconsin Legal Studies Research Paper No. 1349 (Cambridge, Mass. Ballinger Pub. Co., 1977) at 131, online <https://ssrn.com/abstract+2596883>.

⁹ 2018 ONMIC 21, Guy Giorno, as Integrity Commissioner for the City of Brampton, at paras 86.

Freedom of expression, like freedom of religion, serves to anchor the very essence of our democratic political and societal structure...Hence, the justification for the widest freedom of political speech stems not only from some abstract search for truth, but also from the tangible goal of preserving democracy...I find that the Integrity Commissioner has a very limited role in relation to the freewheeling debate on matters of public interest...

30. The *Code of Conduct* provides that while preserving the value of fair comment and differences of opinion, Councillors must ensure their communications accurately reflect the facts of Council's decisions, that all communications are accurate and not issue any communications that mislead the public about any matter. Here, nothing was alleged that relates to the Respondent being inaccurate about a Council decision. Nothing was specifically alleged about misleading the public.
31. This can be distinguished from previous reports I have issued where, when expressing a view, the Council Member published misinformation about decisions of Council (which is a direct violation of the Code). The nuances need to be understood: (1) it is fine to hold an opinion on a matter of public interest, even to do so vigorously, with passion and in a manner that some may feel is unformed; (2) it is not okay if while expressing that opinion, the Council Member publishes misinformation about Council's decisions. The present Complaint did not reveal anything that misinformation about Council decisions.
32. I am of the view that it is not the role of the Integrity Commissioner to censor or interfere with political debate and commentary. It is not my role to decide whether views expressed by Members of Council are meritorious or properly held.
33. Within Appendix A, I have made individual findings about each of the Social Media Posts. Generally, I did not find the communications in the posts went beyond the requirements of the Code, nor did I find there was support for the contention that they were misleading. On balance, they fall within the realm of expressing an opinion on a topic of public interest.

Findings: I find that the Respondent was not commenting about City employees, but was commenting on matters of public interest and debate relating to policing and accountability. There was nothing identified that was misleading about Council decisions or City business. These allegations are dismissed.

G. Did the Respondent obtain all relevant facts before commenting on an issue?

34. The Complainants assert that the Respondent must obtain all relevant facts before commenting on a topic. The section of the Code they refer to is Part A 1(b) which I find deals with Council Members carrying out their duties and making decisions in Council. It is not the Integrity Commissioner's role to determine whether a Council Member has thought of all relevant facts when making social media posts and before commenting on a topic. This would stretch the interpretation of the Code far beyond what was intended or practical.

Finding: This allegation is dismissed.

H. Was the Respondent unfair, disrespectful, biased and lacking impartiality when making decisions?

35. The Complainants refer to the Social Media Posts and communications within those posts with respect to these allegations. There is nothing specifically within the Complaint that points to a decision made by the Council or the Respondent.
36. Part A (1) of the Code states that "While carrying out their duties, Councillors must...consider all decisions and issues thoughtfully, consistently, impartially and fairly by considering all relevant facts, opinions, and perspectives..."
37. I find that Part A (1) of the Code specifically refers to Council Members carrying out their duties and making decisions in Council chambers. Note, that under sections 180 and 181 of the *Municipal Government Act*, Council may act only by resolution or bylaw.
38. Even if a decision is made by a Council Member, presumably about police funding, the intent of the Code is not for the Integrity Commissioner to make findings on whether a decision made by Council was tainted due to bias.
39. For guidance, I refer to the commentary by Mary Dawson (Federal Conflict of Interest and Ethics Commissioner)¹⁰ where she found that when someone wishes to challenge a decision based on alleged bias in the broader administrative law context and where a private interest is not an issue, the proper recourse is generally to the tribunal itself [here Council], and ultimately to the courts through an application for judicial review.
40. The remedies available arising out of Codes of Conduct cannot impact decisions made by Council. I interpret Section A (1) narrowly, in the sense that it cannot be interpreted

¹⁰ "Referrals from the Public Sector Integrity Commissioner: The Heinke and Charbonneau Report", page 9:

that as Integrity Commissioner I should be determining impartiality of Council decisions. The more appropriate venue for such a challenge is the court system.

41. However, if I am wrong on this conclusion, I note the Alberta Court of Appeal's comments in *Atkins v. Calgary (City)*, 1994 ABCA 385 at para 8:

Parliament is the paradigm of the political process. Public hearings, and indeed public debate, are but a part of the decision-making process. Private discussion also occurs, and also private submissions and even negotiation. Public commitment to a course of action before any hearing or debate is not frowned upon, on the contrary, it is an accepted part of the practice of politics. While some may view modern democratic politics with disdain, Professor Bernard Crick described it thus:

Politics arises from accepting the fact that the simultaneous existence of different groups, hence different interests and different traditions, within a territorial unit under a common rule...But the establishing of political order is not just any order at all; it marks the birth or the recognition, of freedom. For politics represents at least some tolerance of differing truths, some recognition that government is possible, indeed best conducted, amid the open canvassing of rival interests.

Bernard Crick: *In Defence of Politics*, (London: Weidenfeld and Nicolson, 1962) at 14.

The Court goes on to draw a distinction between judicial hearings and council decisions, stating at paragraphs 21 to 23:

...in the case of a public-policy fight, the councillor may arrive at the hearing with a publicly stated position. Indeed, she may have been elected precisely because she took that position. To the extent, then, that the process under review moves down the spectrum from a purely judicial mode to something more political, one cannot equate fairness with the *tabula rasa* mentality expected of a juror.

This was the precise issue in the *Old St. Boniface* case. Rejecting the approach earlier taken by it in *Wiswell v. Metropolitan Corporation of Greater Winnipeg*, [1965] S.C.R. 512, the Supreme Court held that, where political and legislative duties are engaged, fairness requires only that the pre-disposition of the legislators not be so firm that submissions are futile because minds are utterly closed. That is quite different from a claim that fairness commands that minds must be utterly open....

The point, I think, of the *Old St. Boniface* rule is that courts should respect the political process. The rule catches only the rare (I hope) case where the political process has descended to farce.

42. Further, I take guidance from prior decisions of Integrity Commissioner decisions in Canada, as we as a group attempt to move towards a consistent application of Codes of Conduct where appropriate.
43. Integrity Commissioner for the Town of Orangeville, Guy Giorno, in *Wilson (Re)*, 2017 ONMIC 13 refused to accept jurisdiction over a complaint that a municipal council member should be disqualified from making a decision due to reasons of bias, the “prejudgment (closed-mind) rule” and a non-pecuniary conflict of interest. Integrity Commissioner Giorno made the following comments on this point, at paragraphs 124 to 129:

As a final comment on an integrity commissioner’s jurisdiction to introduce and to apply the common law prejudgment (closed-mind) bias rule and non-pecuniary conflict of interest rule, I note that the common law remedy is to disqualify the individual from participating in the decision...I do not have authority to give effect to the common law remedy of disqualifying a Council Member. On the other hand, common law rules that carry no penalty cannot simply be imported into the Code as new rules enforceable by penalty...

The test for a closed mind must be applied in the context of a municipal councillor’s role. As the Divisional Court recently held in the case of a Toronto councillor:

First, Councillor Perks is a City Councillor. His primary duty is to advocate for the interests of his ward. As a result, the test for bias is significantly lower than it would be in the case before an administrative tribunal or a Court...

In this case, Councillor Perks is entitled to form a view about the appropriateness of the proposed variance, and he is entitled to advance his views. He is the Councillor for the ward, and it is his responsibility to represent the interests of his constituents.

As noted in *Save Richmond Farmland Society v. Richmond (Township)* 1990 CanLII 1132 (SCC), [1990] 3 S.C.R. 1213 at paragraph 24, a municipal Councillor will not be disqualified from adjudicating a matter such as this on the basis of a reasonable apprehension of bias unless he or she has prejudged the matter to be decided to the extent that he or she can no

longer be persuaded to change his or her mind. In this case, there is simply no evidence that Councillor Perks has this level of bias....

Again, it is not objectionable for a Council Member to come to a decision with a point of view – even a strongly held point of view. As the Courts have noted on several occasions, a municipal councillor is not subject to the same standard as a judge. For example, the Ontario Divisional Court has held that:

The members of the Council are elected representatives who, in a democracy, are responsive to the concerns of their constituents, who have given them their mandate. It goes without saying they are not Judges. The process of governing and legislating is not a judicial process; it is a political function the ultimate sanction of which lies in the electorate. To put the matter shortly, it would manifestly be impossible for a legislative body, such as a municipal council, to govern on the basis that each decision affecting some citizens adversely had to be made judicially, as if it were a Court. To the contrary, its collective decisions are political, based on the fundamentals of responsible Government, reflecting the needs and mandates of the electorate as a whole. [*Re McGill and Brantford (City)* (1980), 28 O.R. (2d) 721 (Div. Ct.) at 727].

44. In this Complaint, the Complainants generally allege bias with respect to the Social Media Posts, not with respect to a specific decision made by the Respondent. I find that it is fair game for Council Members to let the public know their views on a matter that is coming before Council. This happens all the time and is part of transparent government. That does not mean they are not fulfilling their duties as a Councillor. In fact, in this instance, it is expected that Council will weigh in on issues of accountability and efficiencies in policing, which the *Police Act* confirms is within their mandate.

Findings: The Complainants did not identify what decision the Respondent made in Council that lacked impartiality or was tainted by bias. Regardless, I do not have jurisdiction to make findings of bias in council decision-making, including findings of a lack of impartiality. Even if a Council decision is being challenged on the basis of bias, in my view, the proper remedy is judicial review and not the Code, for which there is no remedy. These allegations are dismissed.

I. Did the Respondent fail to act in the best interests of the City as a whole?

45. The Code, Part A, Representing the Municipality, says that while carrying out their duties, Councillors must act in the best interests of the City as a whole.
46. The Complainants say that the Code requires the Respondent to conduct himself in a way that is respectful of and that benefits the people of Edmonton as a whole

including the thousands of Edmonton Police Service employees and their families who live and work in the City of Edmonton.

47. An objective interpretation of the Code does not lead me to the interpretation being put forward by the Complainants. I understand that the purpose of this section is to encourage Council Members to take a global and not necessarily narrow, ward-centric approach when carrying out their duties and making decisions on Council. This does not specifically extend to particular groups within the community, such as Police Service employees and family members, but quite the opposite, it is meant to be a more global perspective.
48. Regardless, I am of the view that the Social Media Posts on balance reflect an approach or series of opinions for which not all members of the community will agree. This does not amount to the Respondent violating the general requirement to act in the best interests of the City as a whole.

Finding: This allegation is dismissed.

V. THIN BLUE LINE FLAG AND THE “PROUD BOYS”

49. Some of the allegations relate to the Respondent’s comments and images on social media relating to the Thin Blue Line Flag being flown, sometimes at EPS sites. Generally, the issues around whether the Thin Blue Line Flag has been co-opted by groups such as the Proud Boys or still stands for what is seen as the original intent of this flag is one of public debate. It is not the role of the Integrity Commissioner to settle that debate, but to determine whether, when commenting on the flying of that flag, the Respondent breached the Code.
50. The Complainants allege a Code violation as on November 7, 2021 [Allegation 4 in Appendix A], the Respondent published information about the “Thin Blue Line” flag which the Respondent says is atop the EPA office [not the EPS as alleged] and says it was “recently used by the Proud Boys in Calgary (Aug 2020).” This is the only post that mentions the “Proud Boys”. As stated, the issue of whether this flag has been co-opted by other organizations such as the Proud Boys and whether it should still be flown is a live issue for which members of the public and Council may have opinions. It is not appropriate for me to suppress those opinions.

51. I find that that the comments made by the Respondent about flying the flag fall within the realm of expressing an opinion on a matter of public interest and debate. The Code upholds the Councillor's ability to hold an opinion on a matter of public interest, but within the limits of the Code.

Finding: There is nothing in the Social Media Posts that violate the Code on this topic. These allegations are dismissed.

VI. GOOD FAITH REQUIREMENT

52. The Respondent expressed concerns that this Complaint was an attempt to silence him and to politicize the Code of Conduct. He expressed concern that the Complainants had published the existence of the Complaint in a newsletter to the EPA before due process was permitted. The Respondent suggests that this confirms the bad faith aspect of the Complaint.

53. The Complainants deny making the Complaint in bad faith or abusing the process. The Complainants confirmed that they did not publish the actual complaint, but did advise EPA members about the Code requirements as they understand them, and confirmed that a complaint had been submitted.

54. When I find that there is no jurisdiction over a complaint or no breaches of the Code, it does not automatically mean that the complaint is brought in bad faith. I acknowledge and share the concern that this process not be politicized by anyone. The role of Integrity Commissioner is a politically neutral role where decisions are made on principles, neutrally and in the public interest.

55. While complaints under the Code are to be dealt with confidentially by my office, I have no power or control over Complainants who choose to publish the fact that they have made a complaint. I would hope that both Complainants and Respondents respect the confidentiality of this process and the right to due process. However, I also appreciate that the Complainants in this instance are acting on behalf of and reporting to their membership. The mere publication of the existence of the Complaint is not enough to lead me to a conclusion that this particular Complaint was made in bad faith.

56. Issues related to Codes of Conduct and how they are interpreted are evolving and are sometimes complex. Each decision is determined based on the context and facts. Members of the general public and entities are entitled to bring their concerns forward,

have me impartially review them, determine if they are within the jurisdiction of the Code and, if so, if they comply with the Code.

57. In my view, the issues in this Complaint were complex and understandably needed to be reviewed by me. Now that I have interpreted the Code as such, I expect future activities surrounding the Code will be guided by these interpretations.

Finding: The Complainants were entitled to bring their concerns to me for review and consideration. I do not find the Complaint was brought in bad faith.

VII. SUMMARY OF FINDINGS AND FINAL COMMENTS

58. I made the following findings in this report:

- (a) The Complaints were made within the 60-day time period required by the Code;
- (b) The Individual Complainant and the EPA can make Code complaints;
- (c) EPS members are not City employees for the purposes of the Code;
- (d) It is outside of my jurisdiction to make findings of bias, pre-judgement or lack of impartiality with respect to Council decisions;
- (e) Council Members should use caution when sharing commentary on social media as this could be deemed an indirect means of violating the Code;
- (f) The Respondent did not breach the Code, as alleged by the Complainants;
- (g) The Complaint was not brought in bad faith.

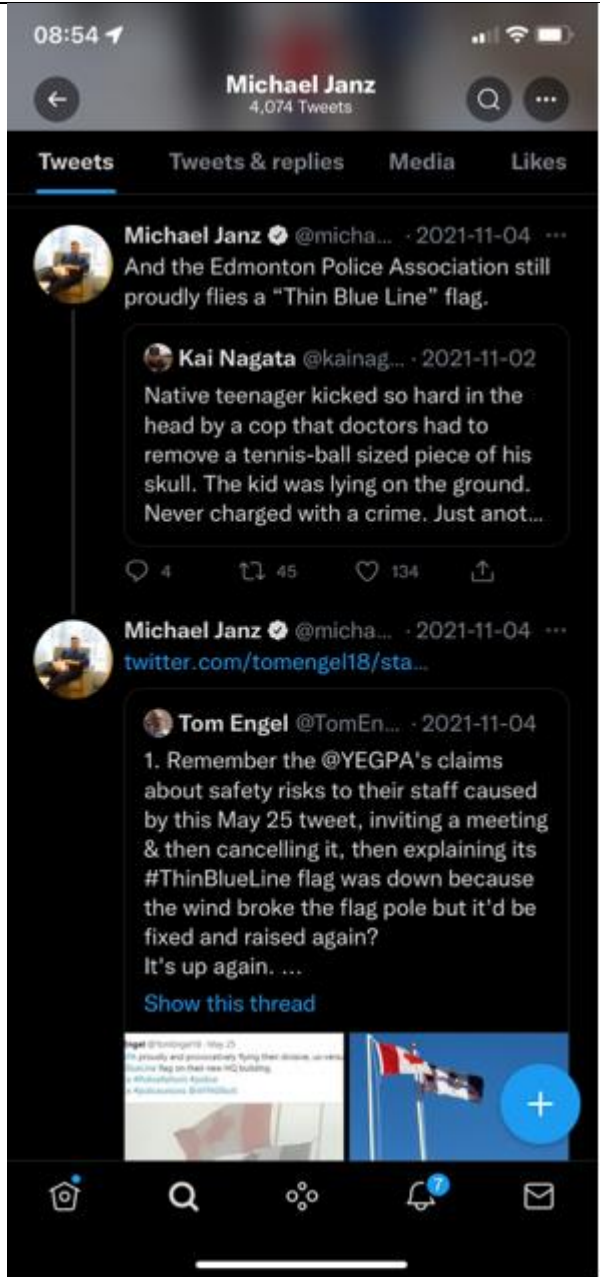
59. Following the conclusion of an investigation, I encourage restorative steps to be taken to prevent future complaints or investigations. The outcomes are not to be viewed as wins or victories. Both the Complainants and the Respondent appear passionate in their views on these matters which is entirely understandable, but there were no winners, hopefully just some clarity.

60. I objectively determined whether matters fell within the Code or were, for instance, examples of a Council Member expressing their views on a matter of public interest. In these complex times, opinions can be expressed while still abiding by the requirements of the Code.

61. I thank the parties for their patience while I worked through the issues and prepared this report.

VIII. APPENDIX A – Individual Findings on Social Media Posts

The individual findings in this Appendix A should be read in conjunction with the commentary and findings in the main part of this report.

DATE Page #	ALLEGATION	SOCIAL MEDIA POST
<p>Nov 4 2021 Page 16</p>	<p>Allegation 1</p> <p>Implying that members of the EPS may somehow be associated with the “Proud Boys” because of an event in the City of Calgary in 2020.</p> <p>IC Comments:</p> <p>There is no reference in this post to the Proud Boys. There is the depiction of the Thin Blue Line Flag within another person’s Tweet.</p> <p>See discussion in main body of the report regarding the Thin Blue Line flag.</p> <p>Finding:</p> <p>Dismissed. Not a breach of the Code.</p>	

Nov 4
2021
Page
17

Allegation 2

Implying that members of the EPS may somehow be associated with the “Proud Boys” because of an event in the City of Calgary in 2020.

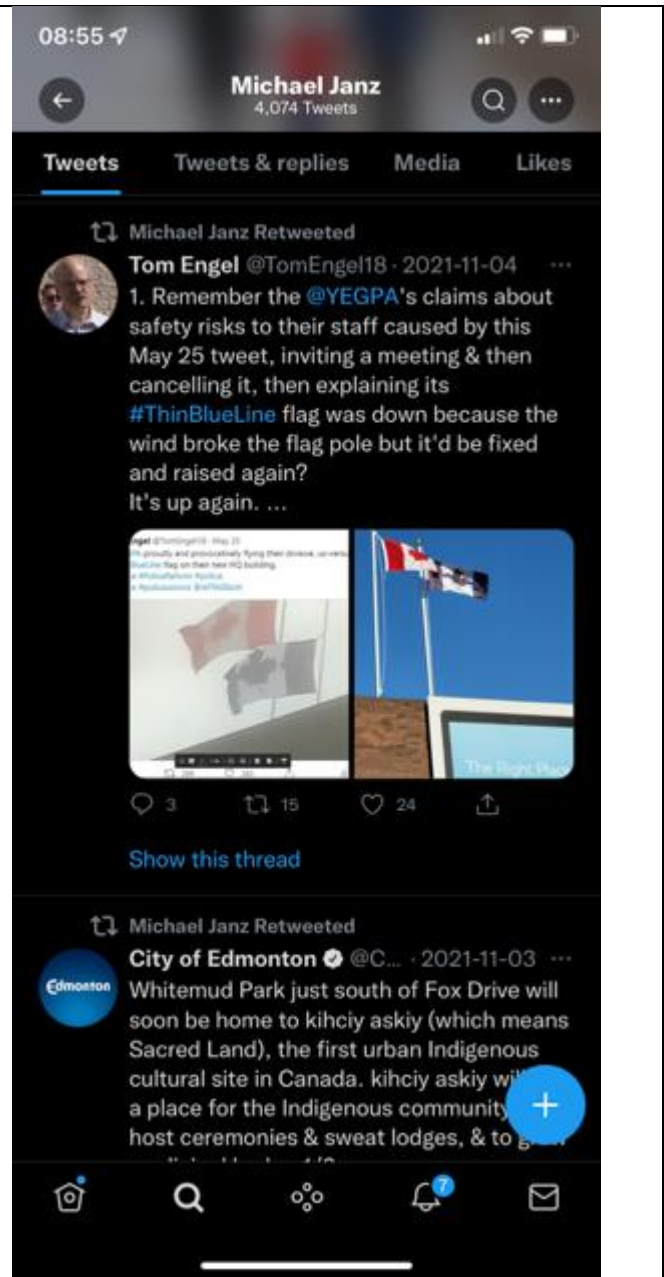
IC Comments:

There is no reference in this post to the Proud Boys. There is the depiction of the Thin Blue Line Flag within another person’s Tweet.

See discussion in main body of the report regarding the Thin Blue Line flag.

Finding:

Dismissed. Not a breach of the Code.



Nov 7
2021
Page
14

Allegation 3

Accusing members of the EPS of “egregious police brutality” based on unproven and disputed allegations in a civil lawsuit.

IC Comments / Questions:

Only the social media post was provided as depicted. The Respondent is not making the allegation, but is reporting that a lawsuit has been filed containing these allegations. Appears to relate to policing which is a matter of public interest.

Finding:

Dismissed. Not a breach of the Code.



Nov 7
2021
Page
15

Allegation 4

Implying that members of the EPS may somehow be associated with the “Proud Boys” because of an event in the City of Calgary in 2020.

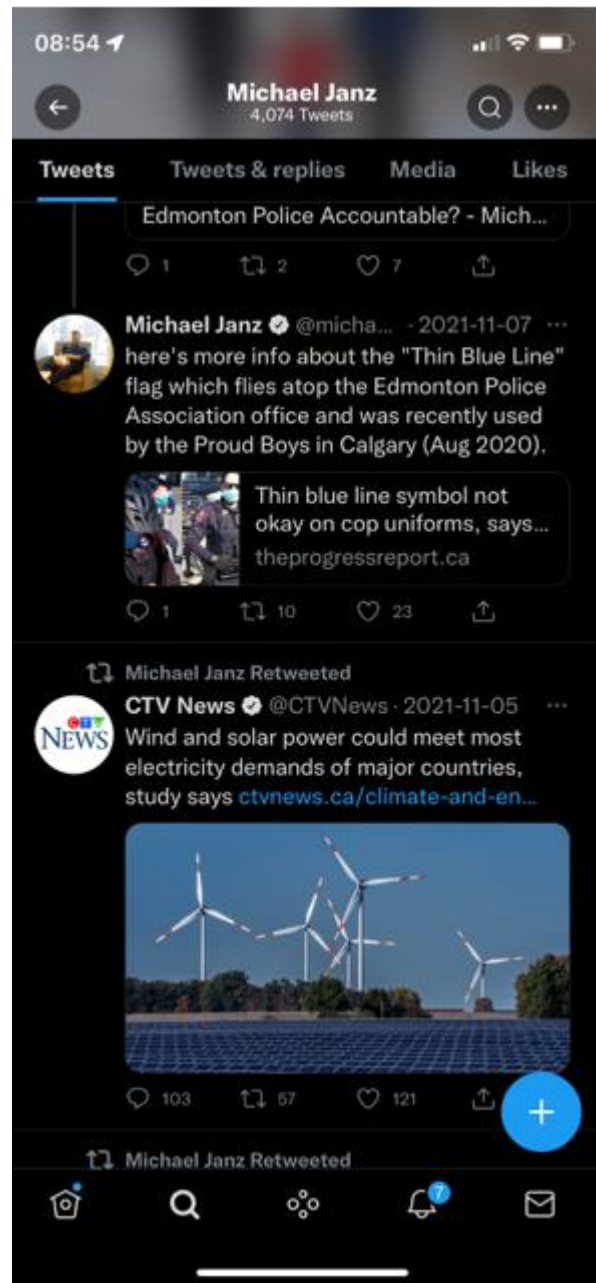
IC Comments / Questions:

The Respondent says in this post that the flag is atop the EPA office [not the EPS as alleged] This is the only post that mentions the “Proud Boys”.

See comments in main report. The issue of whether this flag has been co-opted by other organizations such as the Proud Boys and whether it should still be flown is a live issue for which members of the public and Council may have opinions.

Finding:

Dismissed. Not a breach of the Code.



Dec 3
2021
Page
12

Allegation 5

Retweeting social media posts from other municipalities (Lethbridge and Calgary) that accuse police officers of “malevolence” and “political bias”, and imply that police officers in general are not held accountable for their actions.

IC Comments:

Retweeting what others have said and others have reported. Allegation is generally about a matter of public interest – police accountability - for which the Respondent has the right to express an opinion.

Finding:

Dismissed. Not a breach of the Code.



Dec 6
2021
Page
11

Allegation 6

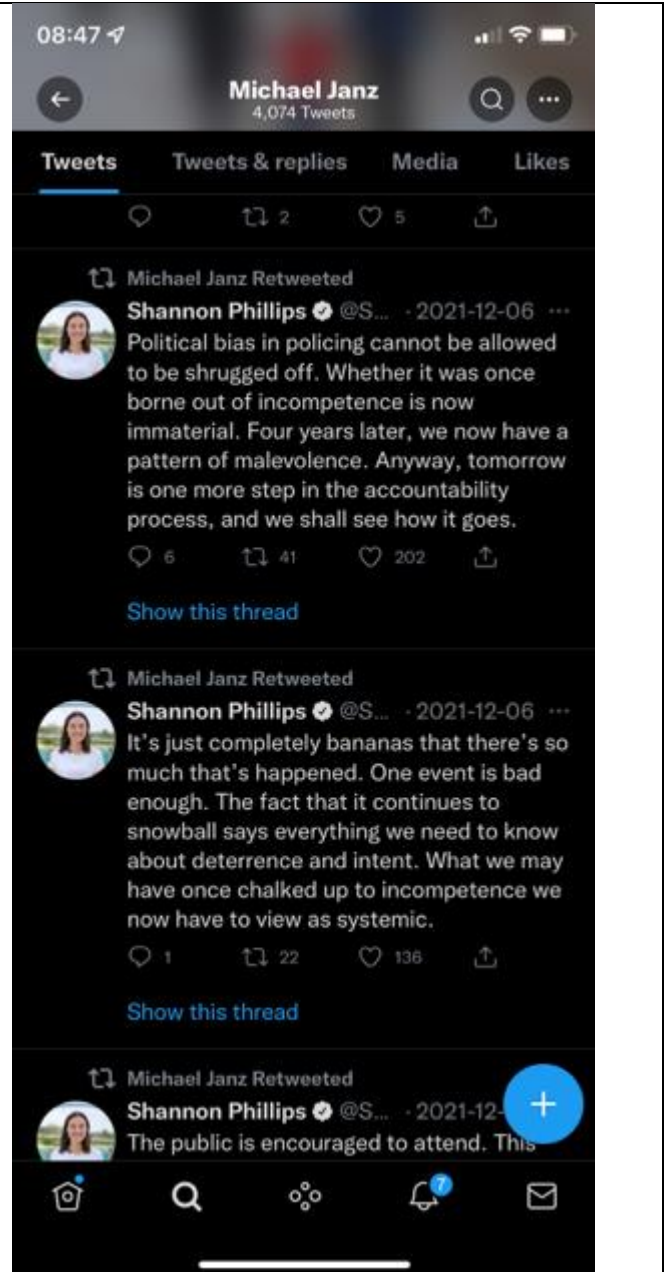
Retweeting social media posts from other municipalities (Lethbridge and Calgary) that accuse police officers of “malevolence” and “political bias”, and imply that police officers in general are not held accountable for their actions.

IC Comments:

Retweeting someone else’s views. Allegation is generally about a matter of public interest – police accountability - for which the Respondent has the right to express an opinion or retweet commentary on the topic.

Finding:

Dismissed. Not a breach of the Code.



Dec 8
2021
Page
10

Allegation 7

Retweeting a post that called the Chief of Police a “beurocrat”, accused the Chief of “farmongering”, and called the Chief’s comments about potential budget cuts “predictable” and “disgusting”.

IC Comments:

Respondent is Retweeting someone else’s views who is a known political commentator. This falls within the ability to hold an opinion on a topic of public interest, including supporting views held by others. As stated in the main report, this is not about a City employee, but caution should be used when re-Tweeting information to not indirectly violate the Code.

Finding:

Dismissed. Not a breach of the Code.



Dec 9
2021
Page 9

Allegation 8

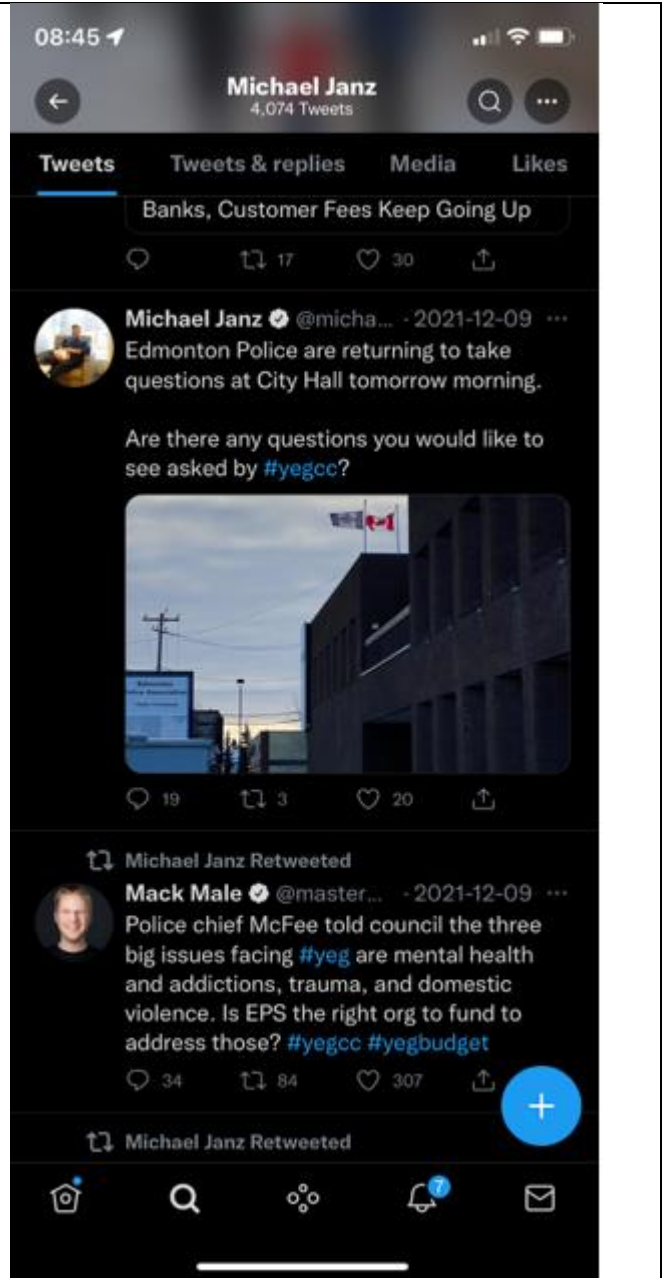
Implying that members of the EPS may somehow be associated with the “Proud Boys” because of an event in the City of Calgary in 2020.

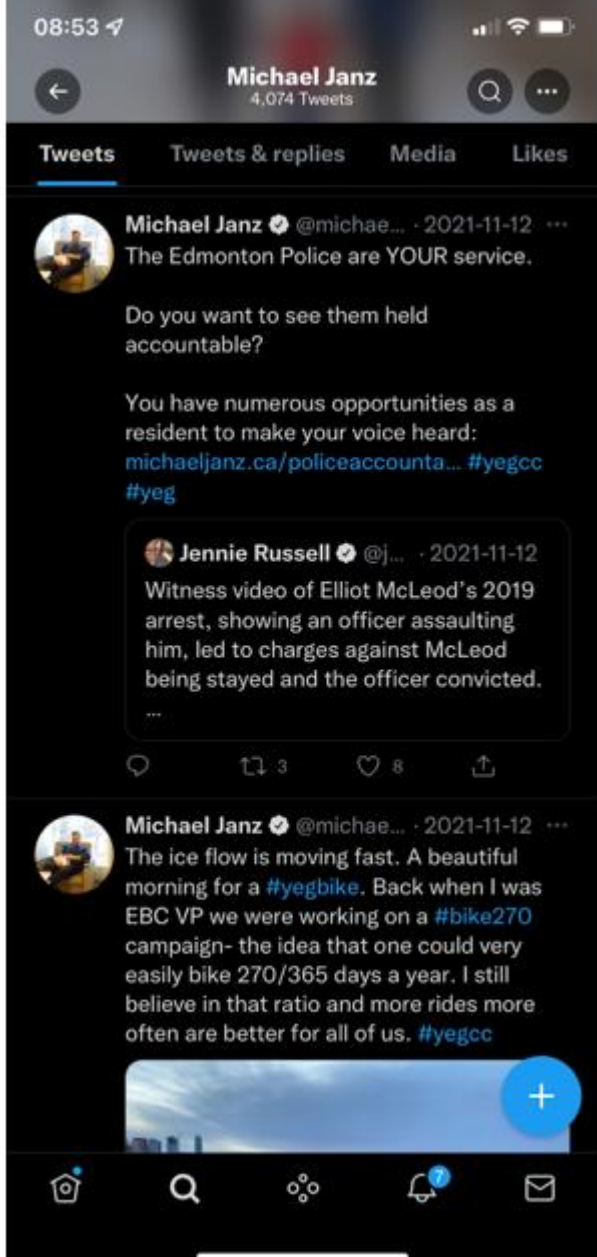
IC Comments:

No reference to the Proud Boys in this post. A photo of Thin Blue Line flag depicted. May be linked to previous comment about the “Proud Boys” on November 7, 2021, but that post also not found to be a violation of the Code.

Finding:

Dismissed. Not a breach of the Code.



<p>Dec 11 2021 Page 13</p>	<p>Allegation 9</p> <p>Posting his own Tweets that falsely state or imply that police officers in Edmonton are not held accountable for their actions.</p> <p>IC Comments:</p> <p>Post is generally about a matter of public interest – police accountability - for which the Respondent has the right to express an opinion.</p> <p>Finding:</p> <p>Dismissed. Not a breach of the Code.</p>	 <p>08:53</p> <p>Michael Janz 4,074 Tweets</p> <p>Tweets Tweets & replies Media Likes</p> <p>Michael Janz @michae... · 2021-11-12 ... The Edmonton Police are YOUR service. Do you want to see them held accountable? You have numerous opportunities as a resident to make your voice heard: michaeljanz.ca/policeaccounta... #yegcc #yeg</p> <p>Jennie Russell @j... · 2021-11-12 Witness video of Elliot McLeod's 2019 arrest, showing an officer assaulting him, led to charges against McLeod being stayed and the officer convicted. ...</p> <p>Michael Janz @michae... · 2021-11-12 ... The ice flow is moving fast. A beautiful morning for a #yegbike. Back when I was EBC VP we were working on a #bike270 campaign- the idea that one could very easily bike 270/365 days a year. I still believe in that ratio and more rides more often are better for all of us. #yegcc</p>
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Dec 15
2021
Page 8

Allegation 10

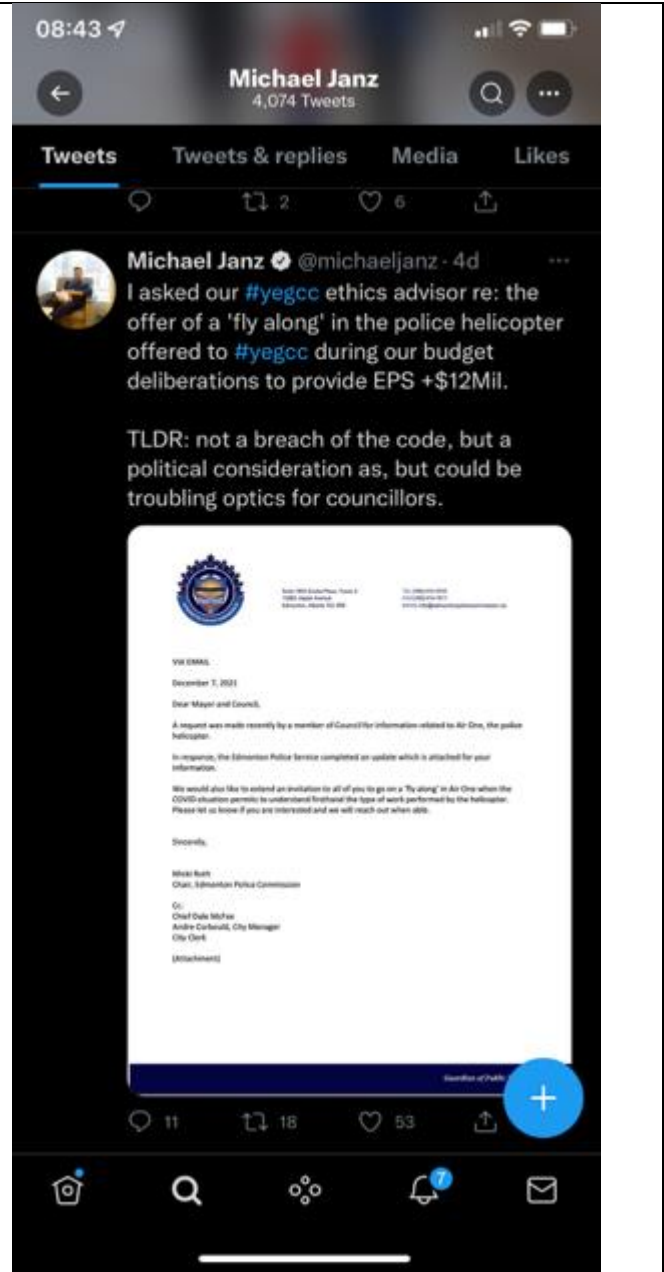
Implying that the EPS was and is negligent in its duties, and that there is no oversight over the EPS budget and expenditures.

IC Comments:

No connection between this post and the allegation. Relates to ethics of Council Member accepting this sort of offer.

Finding:

Dismissed. Not a breach of the Code.



Dec 15
2021
Page 7

Allegation 11

Implying that the EPS was and is negligent in its duties, and that there is no oversight over the EPS budget and expenditures.

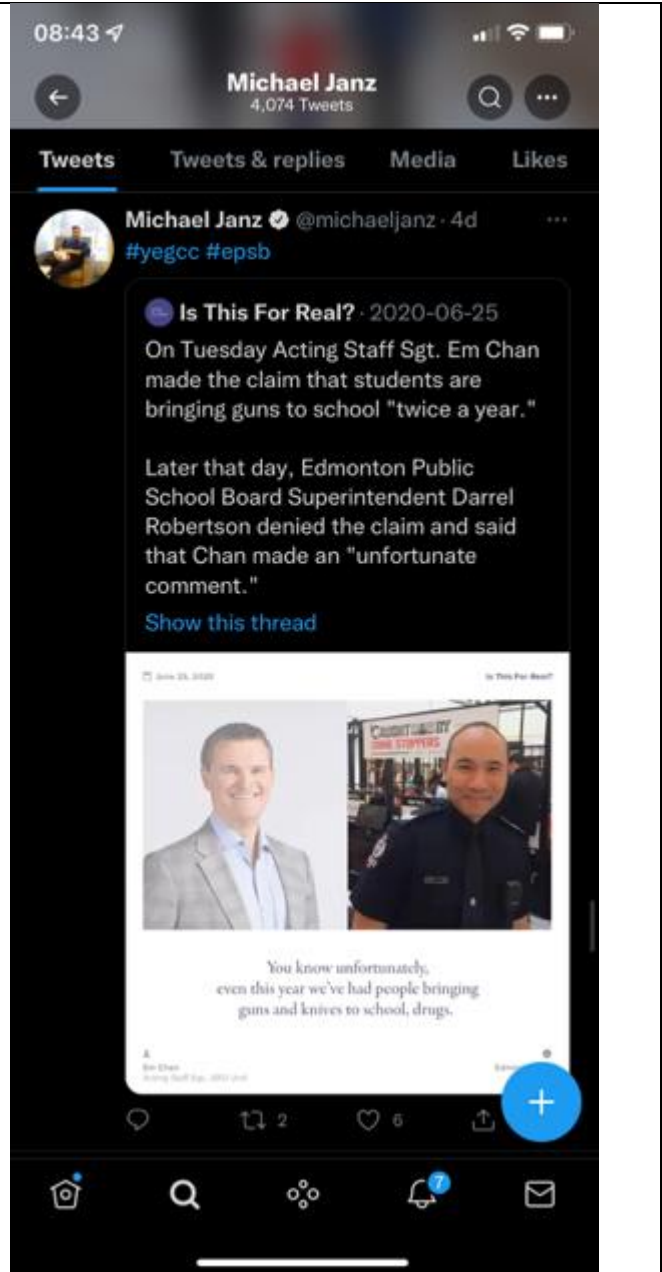
IC Comments:

No nexus between allegation and post.

Regardless, appears to be sharing a news story on a topic of public interest.

Finding:

Dismissed. Not a breach of the Code.



Dec 15
2021
Page 6

Allegation 12

Publicly “liking” social media posts from known critics of the EPS who are known for misrepresenting facts about the EPS and its members.

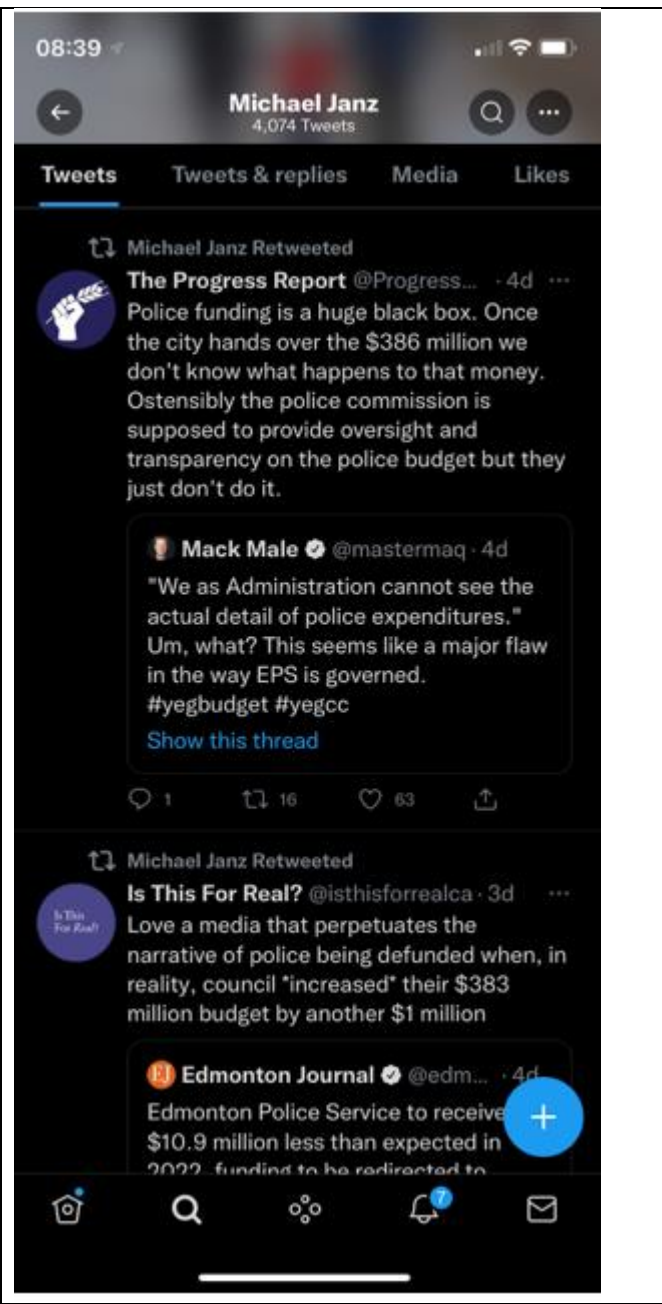
IC Comments:

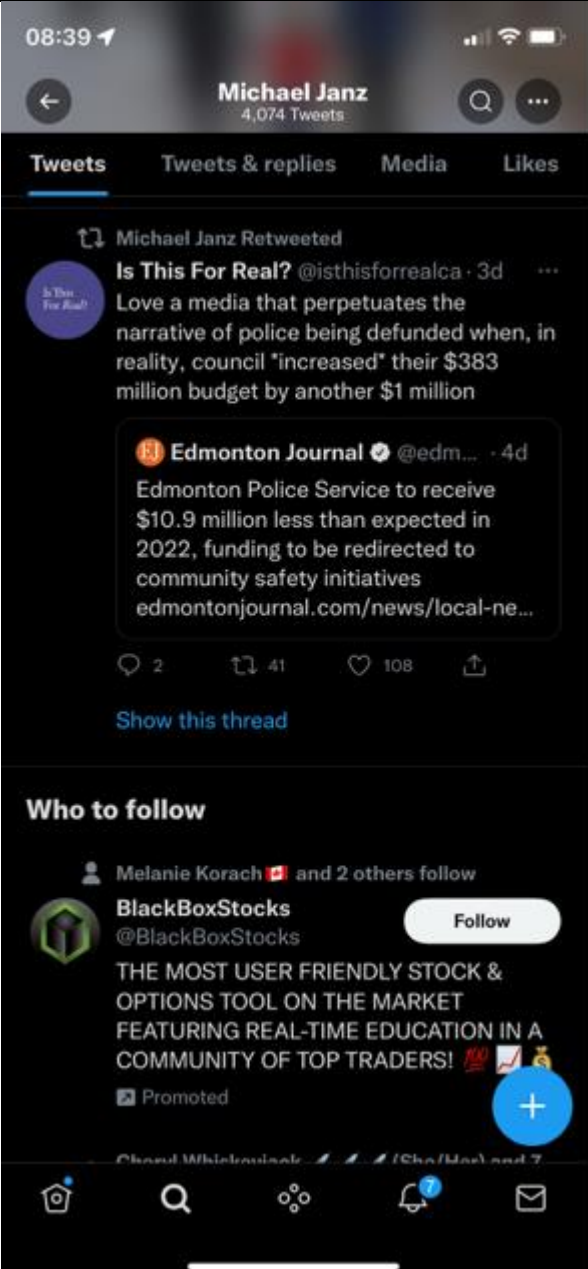
Nothing in the post violates the Code. Liking comments about people who are “known for misrepresenting facts” deficient. No specific allegation of misleading or making false statements.

Finding:

Dismissed. Not a breach of the Code.



<p>Dec 15 2021 Page 1</p>	<p>Allegation 13</p> <p>Implying that the EPS was and is negligent in its duties, and that there is no oversight over the EPS budget and expenditures.</p> <p>IC Comments:</p> <p>Sharing someone else’s views on a topic of public interest. Falls within ability to hold a view on a topic of public interest, including supporting views held by others.</p> <p>Finding:</p> <p>Dismissed. Not a breach of the Code.</p>	 <p>The screenshot shows a Twitter profile for Michael Janz (4,074 Tweets). The profile is set to dark mode. Under the 'Tweets' tab, there are two tweets visible. The first tweet is a retweet of a tweet from 'The Progress Report' (@Progress...) dated 4 days ago. The text of the retweeted tweet reads: 'Police funding is a huge black box. Once the city hands over the \$386 million we don't know what happens to that money. Ostensibly the police commission is supposed to provide oversight and transparency on the police budget but they just don't do it.' Below this tweet is a quote tweet from Mack Male (@mastermaq) dated 4 days ago, which says: 'We as Administration cannot see the actual detail of police expenditures.' Um, what? This seems like a major flaw in the way EPS is governed. #yegbudget #yegcc'. The second tweet is another retweet from 'Is This For Real?' (@isthisforrealca) dated 3 days ago, which says: 'Love a media that perpetuates the narrative of police being defunded when, in reality, council "increased" their \$383 million budget by another \$1 million'. Below this is a quote tweet from the Edmonton Journal (@edm...) dated 4 days ago, which says: 'Edmonton Police Service to receive \$10.9 million less than expected in 2022. funding to be redirected to...'. The bottom navigation bar of the Twitter app is visible, showing icons for Home, Search, Communities, Notifications, and Messages.</p>
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<p>Dec 16 2021 Page 2</p>	<p>Allegation 14</p> <p>Attacking the media for its coverage of a debate and a Council decision regarding the upcoming EPS budget.</p> <p>IC Comments:</p> <p>Retweeting someone else’s views and media coverage on a topic of public interest. Falls within ability to hold a view on a topic of public interest, including supporting views held by others.</p> <p>Plus, the purpose of the Code is not to protect the media from critiques by others, including Council Members.</p> <p>See main report regarding publishing opinions and challenging council decisions in Court, not through the Code.</p> <p>Finding:</p> <p>Dismissed. Not a breach of the Code.</p>	
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Dec 17
2021
Page 5

Allegation 15

Retweeting a post that called the Chief of Police a “bureaucrat”, accused the Chief of “fearmongering”, and called the Chief’s comments about potential budget cuts “predictable” and “disgusting”.

IC Comments:

This is not commentary about a City employee.

It is debatable that calling someone a “bureaucrat” is disrespectful conduct lacking in decorum.

This is commentary on a matter of public interest relating to policing, including funding and efficiencies.

See comments in main body of this report.

Finding:

Dismissed. Not a breach of the Code.



Dec 17
2021
Page 3

Allegation 16

Implying that members of the EPS may somehow be associated with the “Proud Boys” because of an event in the City of Calgary in 2020.

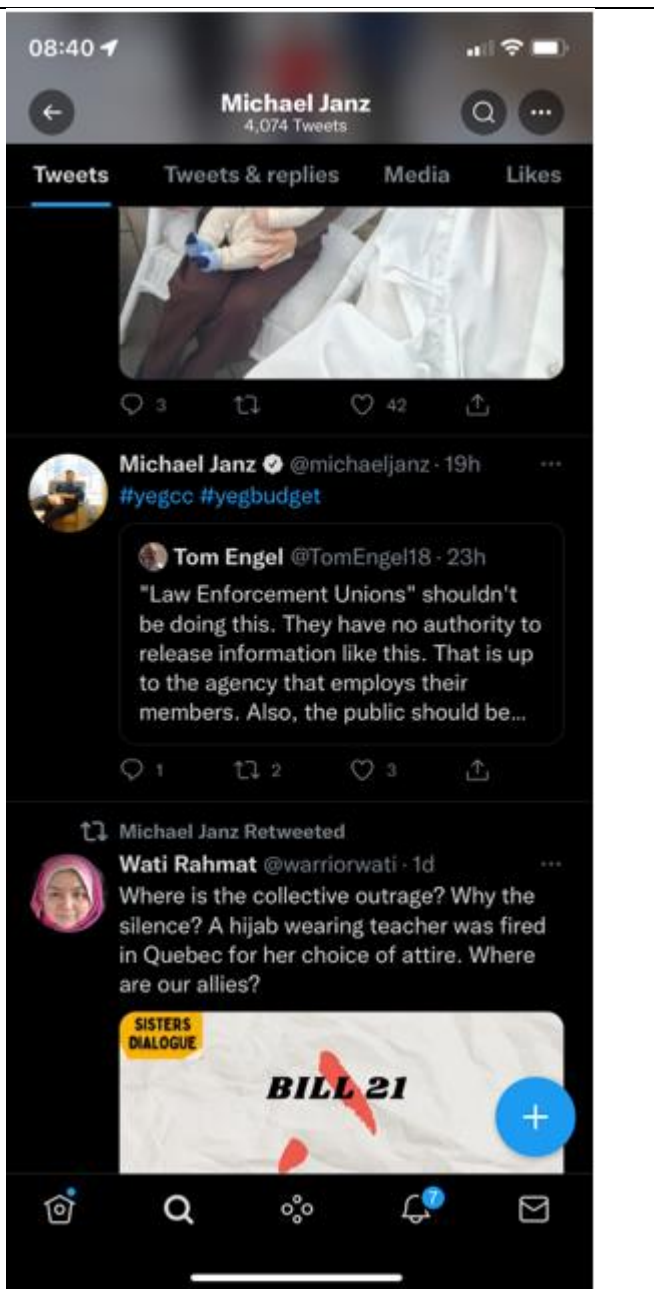
IC Comments:

No reference to the Proud Boys in this post. Photo depicts photo of Thin Blue Line flag. May be linked to November 7, 2021 post that was not found to be a breach of the Code. See comments in main body of report.

Finding:

Dismissed. Not a breach of the Code.



<p>Dec 19 2021 Page 4</p>	<p>Allegation 17</p> <p>Implying that the EPS was and is negligent in its duties, and that there is no oversight over the EPS budget and expenditures.</p> <p>IC Comments:</p> <p>No obvious nexus between allegation and post.</p> <p>Post is a sharing commentary about law enforcement unions and matters of public interest.</p> <p>Finding:</p> <p>Dismissed. Not a violation of the Code.</p>	 <p>08:40</p> <p>Michael Janz 4,074 Tweets</p> <p>Tweets Tweets & replies Media Likes</p> <p>3 42</p> <p>Michael Janz @michaeljanz · 19h #yegcc #yegbudget</p> <p>Tom Engel @TomEngel18 · 23h "Law Enforcement Unions" shouldn't be doing this. They have no authority to release information like this. That is up to the agency that employs their members. Also, the public should be...</p> <p>1 2 3</p> <p>Michael Janz Retweeted</p> <p>Wati Rahmat @warriorwati · 1d Where is the collective outrage? Why the silence? A hijab wearing teacher was fired in Quebec for her choice of attire. Where are our allies?</p> <p>SISTERS DIALOGUE BILL 21</p>
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Dec 27
2021
Page
23

Allegation 18

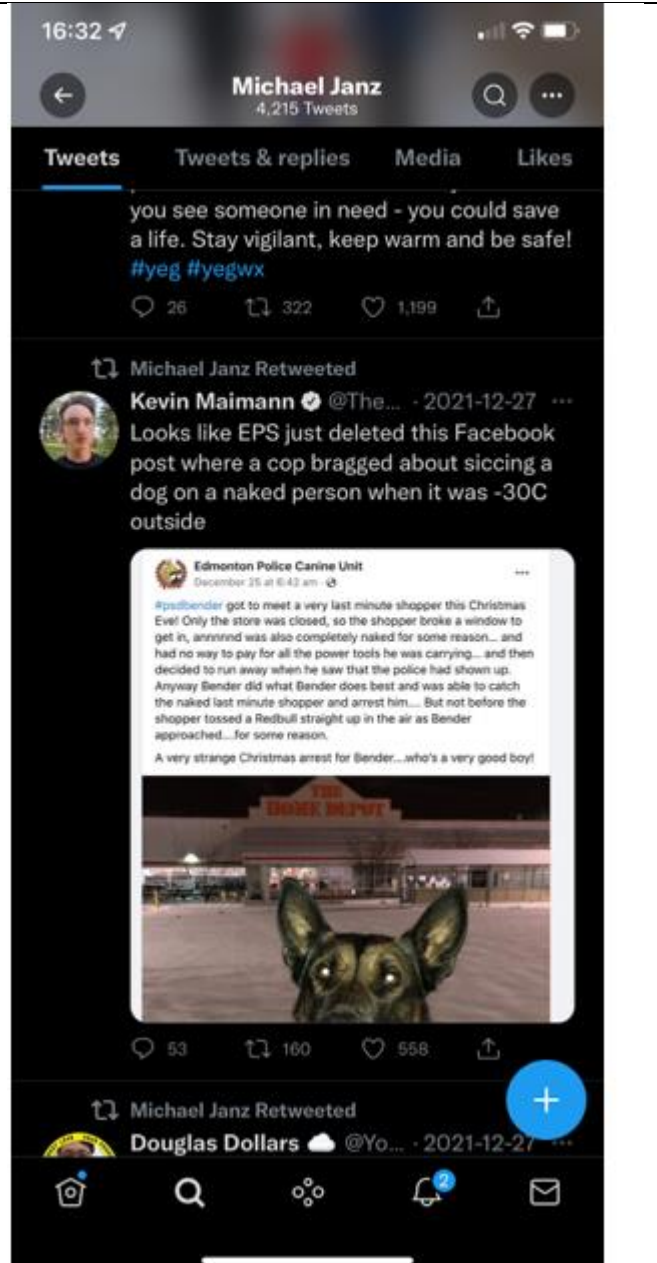
Implying that the EPS was and is negligent in its duties, and that there is no oversight over the EPS budget and expenditures.

IC Comments:

Sharing commentary about law enforcement and matters of public interest.

Finding:

Dismissed. Not a violation of the Code.



Dec 27
2021
Page 24

Allegation 19

Implying that the EPS was and is negligent in its duties, and that there is no oversight over the EPS budget and expenditures.

IC Comments:

This post is a sharing commentary about law enforcement and matters of public interest.

Finding:

Dismissed. Not a violation of the Code.



Dec 29
2021
Page 21

Allegation 20

Publicly “liking” social media posts from known critics of the EPS who are known for misrepresenting facts about the EPS and its members.

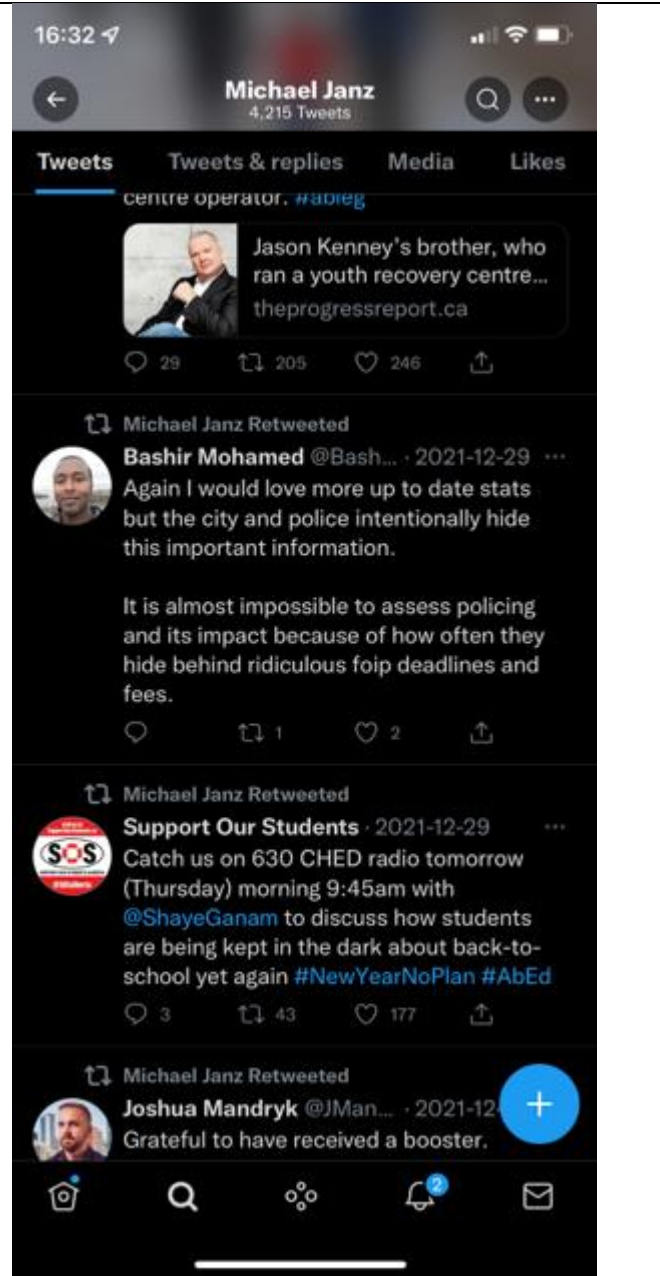
IC Comments:


Nothing in the post violates the Code. Liking comments about people who are “known for misrepresenting facts” deficient. Invalid allegation.

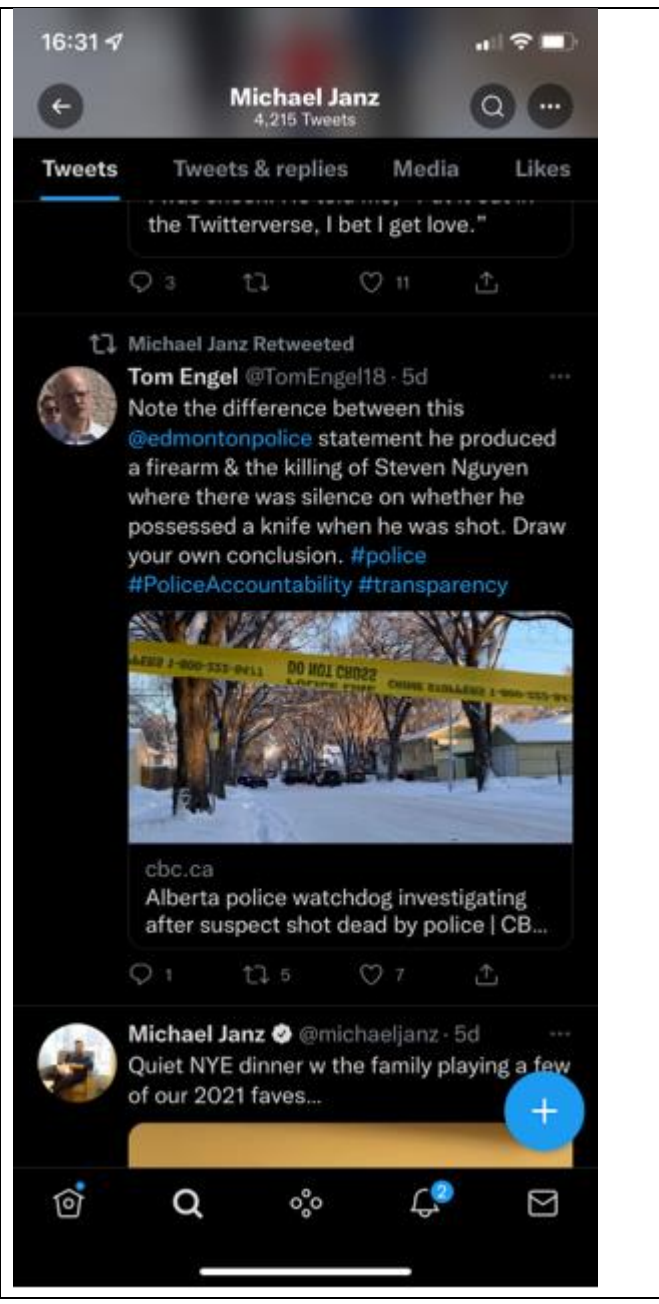
This post is sharing commentary about transparency in law enforcement and matters of public interest.

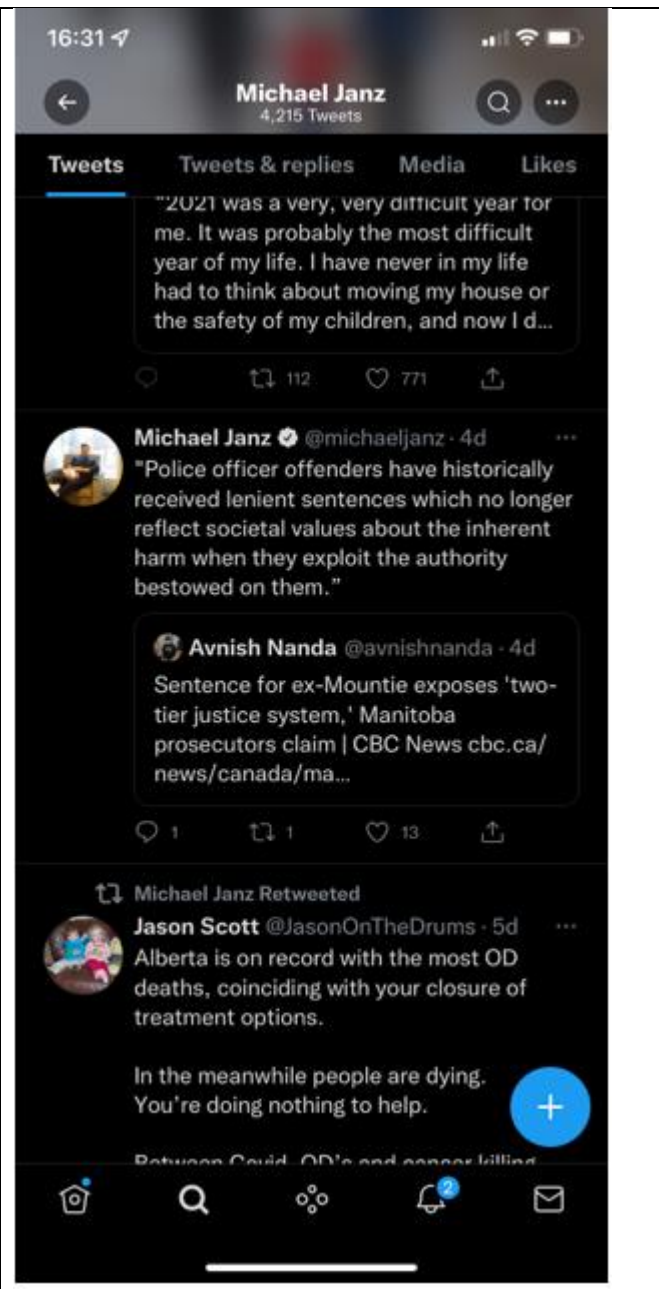
Finding:

Dismissed. Not a violation of the Code.



<p>Dec 29 2021 Page 22</p>	<p>Allegation 21</p> <p>Implying that the EPS was and is negligent in its duties, and that there is no oversight over the EPS budget and expenditures.</p> <p>IC Comments:</p> <p>Nothing on the face of this post that is contrary to the Code. Commenting on a matter of public interest and on a matter before Council.</p> <p>Objectively, no implication found within this post as alleged. Just comments on whether Edmonton pays more than other jurisdictions.</p> <p>Constituents and public are permitted to know a Council Member's thinking on topics related to taxpayer expenditures and matters of public interest, and Council Members are permitted to express their opinions.</p> <p>Finding:</p> <p>Dismissed. Not a violation of the Code.</p>	 <p>16:32</p> <p>Michael Janz 4,215 Tweets</p> <p>Tweets Tweets & replies Media Likes</p> <p>Show this thread</p> <p>10 32 167</p> <p>Michael Janz @micha... · 2021-12-29 ... Is there a Canadian jurisdiction that pays more than Edmonton for police?</p> <p>I believe #yegcc has the highest compensation and the largest per capita spend, including this years \$1M increase. Another reason we need an Audit as @AaronWardDene initiated.</p> <p>Right service/time/cost.</p> <p>Duncan Kinney @d... · 2021-12-28 a 1st year constable with the edmonton police starts, STARTS, at \$34.09 an hour or \$71k a year. this doesn't include overtime, benefits and pension which are substantial. ...</p> <p>Show this thread</p> <p>8 15 64</p> <p>Michael Janz Retweeted</p> <p>Jemele Hill @jemelehill · 2021-12-28 ... For example, every media outlet should include that Delta CEO Ed Bastain ask the CDC to reduce the recommended quarantine time from 10 days to 5 for</p>
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<p>Dec 31 2021 Page 20</p>	<p>Allegation 22</p> <p>Publicly “liking” social media posts from known critics of the EPS who are known for misrepresenting facts about the EPS and its members.</p> <p>IC Comments:</p> <p>Nothing in the post violates the Code. Liking comments about people who are “known for misrepresenting facts” deficient. Invalid allegation.</p> <p>No details given on what is misrepresented.</p> <p>Finding:</p> <p>Dismissed. Not a violation of the Code.</p>	 <p>The screenshot shows a Twitter profile for Michael Janz with 4,215 tweets. The profile is viewed on a mobile device at 16:31. The 'Tweets' tab is selected. A tweet by Tom Engel (@TomEngel18) is visible, which is a retweet by Michael Janz. The tweet text reads: 'Note the difference between this @edmontonpolice statement he produced a firearm & the killing of Steven Nguyen where there was silence on whether he possessed a knife when he was shot. Draw your own conclusion. #police #PoliceAccountability #transparency'. Below the text is a photo of a crime scene with yellow tape that says 'DO NOT CROSS'. The photo is from cbc.ca with the caption 'Alberta police watchdog investigating after suspect shot dead by police CB...'. The tweet has 3 replies, 11 likes, and 5 retweets. Below this is a tweet from Michael Janz (@michaeljanz) that says 'Quiet NYE dinner w the family playing a few of our 2021 faves...'. The bottom navigation bar shows icons for home, search, activity, notifications (2), and messages.</p>
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<p>Jan 2 2022 Page 19</p>	<p>Allegation 23</p> <p>Posting his own Tweets that falsely state or imply that police officers in Edmonton are not held accountable for their actions.</p> <p>IC Comments:</p> <p>Expressing an opinion on a matter of public interest regarding policing.</p> <p>Finding:</p> <p>Dismissed. Not a violation of the Code.</p>	 <p>The screenshot shows a Twitter profile for Michael Janz (@michaeljanz) with 4,215 tweets. The profile is viewed on a mobile device at 16:31. The 'Tweets' tab is selected. The visible tweets include:</p> <ul style="list-style-type: none"> A tweet from Michael Janz (@michaeljanz) dated 4 days ago: "2021 was a very, very difficult year for me. It was probably the most difficult year of my life. I have never in my life had to think about moving my house or the safety of my children, and now I d..." A tweet from Michael Janz (@michaeljanz) dated 4 days ago: "Police officer offenders have historically received lenient sentences which no longer reflect societal values about the inherent harm when they exploit the authority bestowed on them." A retweeted tweet from Avnish Nanda (@avnishnanda) dated 4 days ago: "Sentence for ex-Mountie exposes 'two-tier justice system,' Manitoba prosecutors claim CBC News cbc.ca/news/canada/ma..." A retweeted tweet from Jason Scott (@JasonOnTheDrums) dated 5 days ago: "Alberta is on record with the most OD deaths, coinciding with your closure of treatment options. In the meanwhile people are dying. You're doing nothing to help."
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Page 18
[no date
provided]

Allegation 24

Implying that members of the EPS may somehow be associated with the “Proud Boys” because of an event in the City of Calgary in 2020.

IC Comments:

No reference in the post re EPS.

No reference to the Proud Boys in this post. Photo depicts photo of Thin Blue Line flag. See comments in main body of report.

Finding:

Dismissed. Not a breach of the Code.

