

**OFFICE OF THE INTEGRITY COMMISSIONER**

June 1, 2011

City Council
City of Hamilton

**RE: Complaint of Misconduct against Councillors Lloyd Ferguson,
Jason Farr, Terry Whitehead and Rob Pasuta**

COMPLAINT

A Complainant filed an affidavit under section 9 of the Integrity Commissioner By-Law alleging that Councillors Lloyd Ferguson, Jason Farr, Terry Whitehead and Rob Pasuta contravened Section 2.1 (d) of the Code of Conduct:

Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and Council.

The Complainant asserted that:

“on Thursday January 13, 2011 the aforementioned Councillors violated the Municipal Act, 2001 when holding a breakfast meeting with Edmonton Oiler, and Katz Group, representative Pat LaForge. It is generally held in the professional world, which include NHL CEO's and City Councillors that meetings conducted over meals are formal meetings. They are official meetings arranged through traditional business contact invitations, they are included in work calendars, official business is discussed and conducted, and they are meetings where meal, and other associated costs (ie. flights, mileage, accommodation, etc.) are assigned to corporate accounts, corporate credit cards, or reimbursed through expense accounts.

It is my position that any statement such a meeting is informal, or social, in nature is not based in accepted professional practice. At this meeting, quorum for the Subcommittee was realized, yet the members failed to provide any public notice of the meeting and the meeting was not open as required by the Municipal Act, 2001 (s. 239). The Committee also neglected to keep a record of its meetings as mandated by the Act (s.239(7)).”

The Complainant was interviewed by telephone and particulars of the allegation were further discussed. Each Councillor was contacted and advised of the complaint relating to their meeting with Mr. LaForge.

INVESTIGATION

A review of City of Hamilton By-Laws ensued and it was determined that procedures relating to Council meetings are articulated in the Procedural By-Law and Council is bound by the regulations and provisions set out in that By-Law.

The Office of the Integrity Commissioner is responsible for enforcing the Code of Conduct and has jurisdiction over that By-Law only. Section 15 of the Code of Conduct addresses the conduct of Council as it relates to Council policies and procedures and requires members of Council to adhere to Council policies and procedures in conducting business on behalf of the City of Hamilton.

However, Section 15.1 states that:

“Members of Council shall observe the terms of all policies and procedures established by City Council, provided that a member of Council’s failure to observe the rules of procedure contained in the Procedural By-law is deemed not to be a contravention of this Code of Conduct.”

This section of the Code of Conduct clearly states that violations of the Procedural By-Law are deemed not to be a contravention of the Code of Conduct and are thus beyond the jurisdiction of the Integrity Commissioner.

The integrity Commissioner met with the City of Hamilton Solicitor and the Clerk to discuss this section of the Code of Conduct. From these discussions, it was learned that *this provision of the Code of Conduct was enacted to prevent frivolous complaints to the Integrity Commissioner resulting from heated discussions during Council Meetings.* However, the wording of the section goes far beyond that restriction. After discussions with the City of Hamilton Solicitor and the Clerk, it was agreed that this section of the Code of Conduct, removes the Integrity Commissioner from jurisdiction over violations of the Procedural By-Law.

FINDINGS

Based on the provisions of Section 15.1 of the Code of Conduct, the Office of the Integrity Commissioner does not have jurisdiction to conduct an investigation into the conduct of the Members of Council as it relates to this complaint. As a result, the Integrity Commissioner did not conduct a formal investigation into the conduct of the noted Councillors. The Complainant was advised by telephone of this finding.

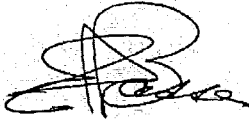
Based on the evidence presented and reviewed and in accordance with the civil standard on the balance of probabilities, it is the Commissioner’s finding that the complaint regarding the conduct of Councillors Lloyd Ferguson, Jason Farr, Terry

Whitehead and Rob Pasuta is neither frivolous nor vexatious. As a result, the fee paid by the Complainant, as required in Section 12 of the By-Law to Establish the Office of the Integrity Commissioner is to be refunded in whole.

Also, the provisions of Section 15.1 of the Code of Conduct which restricts the authority of the Office of the Integrity Commissioner is far reaching, is too general in nature and is deemed to not be in the spirit and intent of the By-Law to Establish the Office of the Integrity Commissioner. Nor is it deemed to be in the best interest of the City of Hamilton.

RECOMMENDATIONS

It is recommended that the provisions of Section 15.1 of the Code of Conduct be reviewed and the words "provided that a member of Council's failure to observe the rules of procedure contained in the Procedural By-law is deemed not to be a contravention of this Code of Conduct" be removed from Section 15.1 of the Code of Conduct.



Earl D. Basse, Integrity Commissioner