

**To: THE COUNCIL OF THE CORPORATION OF THE CITY OF HAMILTON,  
CITY HALL, 71 MAIN STREET WEST,  
HAMILTON, ONTARIO L8P 4Y5**

**And To: The Complainant**

**And To: Councillor Terry Whitehead**

**March 14, 2016**

**REPORT BY THE INTEGRITY COMMISSIONER FOR THE CITY OF HAMILTON**

**Re: Complaint of Alleged Breach by Councillor Whitehead of the Code of Conduct for  
Members of Council, with respect to an incident which occurred on September 1, 2012  
[File #2012-02]**

**Introduction**

My term of office as the City's Integrity Commissioner commenced on May 1, 2015.

At that time, I received from my predecessor in this office, Mr. Earl Basse, documentation relating to the one outstanding Complaint alleging breach of the City's Code of Conduct, which he had inquired into, but not reported upon to Council, due to the possible relevance of court proceedings still ongoing at that time. Mr. Basse, following the conduct of his inquiry into the matter, had prepared his draft report to Council, but withheld it pending adjudication of issues before the court, so as to ensure that his report would not affect the court proceedings.

I have now been advised that the court proceedings have concluded, and am therefore in a position to provide the following Report to the Council, the Complainant, Councillor Whitehead, and the public.

**The Circumstances Leading to the Complaint, and its Follow-up**

To summarize the circumstances which apparently led to the Complaint, it appears that, on September 1, 2012, Councillor Whitehead, dressed casually in golf attire and a ball cap, attended at the home of the Complainant to advise that he (Councillor Whitehead) had received current and past complaints from a number of neighbours with respect to noise alleged to have been created by work with pneumatic tools performed by the Complainant on vehicles in the garage on his property; and requested the Complainant to discontinue that activity.

The Complainant filed an affidavit under the Integrity Commissioner By-law, alleging that Councillor Whitehead had, through making this visit to his home, contravened the role of Council set out in s. 224(d) of the Municipal Act, and therefore one of the statements of principle contained in the Code of Conduct, (s.2.1(d): "Members of Council shall seek to serve the public interest by upholding both the letter and spirit of the laws and policies established by the Ontario Legislature [and...] Council.") There was no allegation of contravention by the Councillor of any of the substantive responsibilities imposed upon him by the Code of Conduct.

Some complaints by neighbours with respect to noise caused by the Complainant, later became the subject-matter of prosecution by the City's Municipal By-law Enforcement office, of one or more charges under the City's Noise Control By-law. It was the currency of those proceedings which led Integrity Commissioner Basse to delay the delivery of his report, as described above.

Further to recent queries by the Complainant, I have been advised by the City Solicitor that the by-law charge against the Complainant was, on September 28, 2015, dismissed. Factors cited in the court's decision included the absence of objective measurements of "noise", and possible lack of precision in the wording of the By-law.

### **Mr Basse's Conclusions**

Mr. Basse, in his Report, concluded as follows, under **FINDINGS:**

"Based on the evidence compiled and reviewed and in accordance with the civil standard on the balance of probabilities, it is the Commissioner's finding that Councillor Whitehead acted in good faith with the Complainant and did not exceed his authority under the Code of Conduct.

Also, based on the evidence compiled 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 Councillor Whitehead was vexatious.

As per Section 12(3) of By-law No. 08-154, the fee for registering the complaint shall not be refunded to the Complainant."

I did not conduct any additional independent inquiry into the content or subject-matter of the above Report, but need state at this time only that I agree with the reasoning and conclusions of the former Integrity Commissioner, quoted above, and express my regret that so much time and effort had to be expended by City officials and Councillor Whitehead in dealing with this Complainant's trivial complaint.

**This Complaint is dismissed.**

(signed)

George Rust-D'Eye,  
Integrity Commissioner for the City of Hamilton

[signed original to be delivered to the City Clerk by mail]