

**TO: THE CITY COUNCIL OF THE CITY OF HAMILTON**

March 14, 2016

**FROM: GEORGE RUST-D'EYE, INTEGRITY COMMISSIONER  
AND LOBBYIST REGISTRAR FOR THE CITY OF HAMILTON**

**RE: MY SECOND PERIODIC REPORT AS INTEGRITY COMMISSIONER TO THE CITY**

I serve as the City's Integrity Commissioner, pursuant to my appointment, by Council, relating to By-law No. 08-154, (establishing the Office of Integrity Commissioner), and By-law No. 10-053, Appendix "H", (enacting the Code of Conduct for Members of Council). My current term of office commenced as of May 1, 2015.

On September 2, 2015, I submitted my first periodic report to the City (IC15-001). This is my second such report, summarizing my activities as the City's Integrity Commissioner during the period from August 1, 2015, (when my previous report was prepared), up to the present time.

#### **SUMMARY OF MY WORK AS INTEGRITY COMMISSIONER SINCE AUGUST 1, 2015**

During the period covered by this report, the majority of my work involved providing advice to Members of Council regarding their ethical obligations and responsibilities under the Code of Conduct, one of my specific responsibilities, under s. 7(e) of the Integrity Commissioner By-law.

I addressed from time to time, specific proposed complaints by members of the public against one or more Councillors, or requests for advice relating to the propriety of their conduct, but in almost all cases I found that such issues could be resolved without the need for a full inquiry. A number of such queries related to matters outside my jurisdiction, in most of which cases I provided helpful suggestions as to how the individual's concerns might best be addressed and resolved, if possible.

The following is a chronological list of some of the issues which I addressed during the period in question, and a summary of By-law provisions and principles which I brought to bear in dealing with them:

**August , 2015:** I received a query concerning the election campaign expenses of a Member of Council, and other complaints concerning that Member. Upon enquiry, I ascertained that the latter complaints had been the subject of inquiry by my predecessor, Mr. Basse, and determined by him to be unfounded. I advised the person that I do not sit in appeal from Mr. Basse's decisions, or try to second-guess them. Issues involving election expenses were more appropriately dealt with through the compliance audit process.

**August 18, 2015:** A corporation which had apparently entered into a construction contract with the City, but had been noted by the City to be in default, sought my support in collecting the sums said to be due to it by the City. I advised the claimant that issues of this kind are not within my jurisdiction as the City's Integrity Commissioner.

**September 9, 2015:** A Complainant alleged that a Member of Council had a conflict of interest in serving on the City's Selection Committee with respect to the City's appointment of a new Integrity Commissioner, at a time when the then-current Integrity Commissioner was investigating an alleged breach of the Code of Conduct by the Member. I decided not to conduct an inquiry into this complaint, mainly on the basis that, even assuming that all of the allegations of fact could be established by the evidence, such conduct would not constitute a contravention of the Code of Conduct or any other law. The Councillor in question had no financial interest in the appointment of the City's Integrity Commissioner, and there were no facts negating the assumption that he would fulfill his responsibilities as a Member of Council and of the Committee.

**October 7, 2015:** A Member of Council requested my advice with respect to Council's anticipated receiving of an intended delegation to it by a person who had been a client of the Councillor, with respect to aspects of a substantial subject-matter to be considered by the Council when the delegation would be made. I advised the Member that it would be difficult for me to provide advice, in circumstances in which I had received no complaint, and my determination of issues could depend upon fact-finding through an inquiry, that I was not yet in a position to conduct. Every case depends on its own facts. I did point out, however, that the circumstances in question could create a public perception of potential conflict of interest or inappropriate conduct, with respect to the submissions to be made to Council by the person in question. I drew the attention of the Councillor to the principles embodied in the Code, dealing with not only actual conflict of interest, but also the importance of public perceptions of Councillor conduct, and the need for Council duties to be fulfilled in a manner that supports public confidence in the integrity of its decision-making process. I suggested to the Councillor, as I have in a number of cases involving other Members, the desirability of giving consideration to rising in Council before the item is considered, and stating that, while satisfied of the absence of any conflict of interest, nevertheless the Member would leave the chamber, and not participate in or vote upon, any issue concerning the matter.

**October 8, 2015:** In response to a request from a senior member of staff, I confirmed that, while I believe it to be within my jurisdiction to address complaints of alleged harassment of, or threats to, employees by one or more Members of Council, if the conduct alleged provides reasonable grounds to believe that the acts complained of could constitute contravention of the Criminal Code or other legislation, I would have to suspend my inquiry and refer the matter to the appropriate officials.

**October 19, 2015:** I advised a citizen that I do not have the responsibility to deal with allegations of improper conduct alleged to have been engaged in by the City's by-law enforcement staff.

**November-December, 23, 2015** – I received a Complaint from a person who alleged that a Member of Council had publicly insulted another individual. After making further enquiries into the matter, I decided not to proceed with any further inquiry, due to: the ambiguity of the allegations; uncertainty as to whom and about whom the statement(s) may have been made; the fact that the complaint appeared to represent another step in a long-standing history of

controversy and litigation between the parties; that the Member had taken steps to clarify the situation; and the fact that each of the parties had the right to sue the other in a defamation action, and neither had done so.

**January 23, 2016:** A Member of Council requested my advice with respect to the impact on the performance of the Councillor's responsibilities, of the fact that the Member's son is employed by the City. I advised the Member of the fact that I am not in a position to provide legal advice to Members as to their duties under the Municipal Conflict of Interest Act or the conflict of interest principles embodied in the Code of Conduct. I strongly advised the Member to seek legal advice with respect to the Member's legal rights and responsibilities, and specifically relating to the fact that the Act attributes to a member of Council, the financial interests of any child of the member. While the City's Code of Conduct does not contain a similar "deeming" section, I suggested that the Member consider not participating in consideration of a matter potentially affecting, directly or indirectly, the son's financial interest, at least until such advice had been obtained.

**January 29-30, 2016:** I recommended that Members of Council not accept an invitation from a developer to travel to meet with the developer, taking into account the issues of public perception referred to above.

**January 29-30, 2016:** I was consulted by a Member of Council with respect to Council consideration of a matter involving "postal banking", and the Member's spouse's employment with Canada Post, in respect to which the Member had received advice from the City's previous Integrity Commissioner that, with respect to the Code of Conduct, the Member would not necessarily be in a conflict of interest position with respect to every decision affecting Canada Post. While I agreed with that opinion, I drew to the Councillor's attention the issues of public perception referred to above, the attribution to a Councillor of the financial interest of a spouse under the Municipal Conflict of Interest Act, and the desirability of giving consideration to the possible course of action referred to above under **October 7, 2015**.

**March 7-9, 2016:** I dismissed a Complaint against a Member of Council, on the basis of its being trivial and vexatious. My Report on that matter has been forwarded to the Council, to be placed before it at its meeting to be held on March 30, 2016.

I have also provided advice to one or more Members of Council, that under the Code of Conduct, a Member of Council has the right to file a Complaint concerning alleged breach of the Code of Conduct by another Councillor.

I would note at this time, that the Province has made amendments to the Ombudsman Act, giving the Provincial Ombudsman the power in some cases to investigate decisions, conduct or actions taken by municipalities and their local boards, (either in response to a complaint, or on his/her own motion), and to investigate a complaint within the jurisdiction of the municipality's integrity commissioner, if that official refuses to do so, or after the local integrity commissioner's investigation has concluded.

Arising from my review of the City's Code of Conduct in the course of my exercise of responsibilities as its Integrity Commissioner,

**I RECOMMEND** that the Council request its City Solicitor, in consultation with me, to review the provisions of the Code of Conduct, particularly with respect to:

- requiring that a Complaint be submitted in the form of an affidavit, (as opposed to requiring simply that it be in writing), (ss. 9 and 10); and that the Complainant pay a [refundable] fee of \$100.00 (s. 12);

- delegation to the Integrity Commissioner of the power to impose penalties, in the context of the contemplation by the Municipal Act that it is the Council which may impose such sanctions, after receiving a report from its Integrity Commissioner concluding that the Member has contravened the Code of Conduct [ss. 19, 20, 24(e), and 26(1)];

- the requirement that the Integrity Commissioner submit reports to all Members of Council directly, which would be done by the Clerk in any event (s. 23).

Once again, as I did in my first periodic report to the Council, I wish, through my delivery to Council of this Report, to request strongly and encourage all Members of Council to feel free, and invited, to contact me at any time for advice with respect to the interpretation and application of the Code of Conduct, and of any other Council rules and policies governing the ethical responsibilities and conduct of its members.

(signed)

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Integrity Commissioner and Lobbyist Registrar

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