

TO: THE CITY COUNCIL OF THE CITY OF HAMILTON

July 25, 2016

**BY: George Rust-D'Eye,
INTEGRITY COMMISSIONER TO THE CITY OF HAMILTON**

**RE: REPORT RE: COMPLAINT AGAINST A MEMBER OF COUNCIL ALLEGING
CONTRAVENTION OF THE CODE OF CONDUCT FOR MEMBERS OF
COUNCIL, on May 31, 2016**

COMPLAINT MADE: JUNE 24, 2016: City Clerk's ID #16-001

Summary of the Complaint

I have received and reviewed a Complaint against a Member of Council, the particulars of which are summarized as follows:

It is alleged that the Member, at a meeting with a number of residents:

- accused one or more of them, including the Complainant, of "backstabbing", or "going behind the back" of, the Member, by sending a letter by the Complainant to the MPP, which, according to the Complainant, should have been held in confidence;
- stated that one or more members of the group had been "harassing students", with respect to a local board, alleged by the Complainant to have been made as a "bully/scare tactic to intimidate and control certain members of the committee".

In response to an email communication by the Complainant to the Member, the Member, in an emailed response, stated:

"I did not suggest that you, personally, have harassed anybody. I was merely observing that harassment, if it is occurring, needs to stop."

My Consideration of the Complaint

In the written form of Complaint (just over 2 pages), the Complainant alleges that, by the course of conduct summarized above, the Member has contravened sections 2(2.1) (key statements of principle that underlie the Code), and section 5(5.1) of the Code of Conduct (Disclosure of confidential information).

My initial responsibility, as Integrity Commissioner, upon receiving a Complaint, must be to decide whether or not, assuming that the allegations set out in the Complaint can be established as factual, they disclose a possible contravention of the Code of Conduct, and, if so, whether the Complaint warrants my conducting an inquiry and reporting the results of the inquiry to the Council, with or without recommendation for Council action.

In giving consideration to each of the above issues in this case, I have taken into account the following:

- the statements, if made, occurred at an informal get-together by the Member with a small group of residents;

- there is no suggestion that the Member, in making the statements, intended to accuse the Complainant, or anyone else, of any criminal or other illegal conduct or serious acts of wrong-doing; any allegations of "harassment of students" do not appear to have suggested any serious alleged acts of misconduct or illegal or improper conduct towards one or more individual persons, or within the context of "harassment", referred to in the Code as behaviour directed at, or offensive to, another person on one or more of a series of specific prohibited grounds, none of which apply in this case.

- I have not been provided with a transcript or other formal record of the meeting, and there is no information suggesting that the allegations were reported upon by the press, or caused lasting injury or serious detrimental impact to the Complainant or others.

- the Member's email to the Complainant clarifying the Member's comments, appears to represent an intent in good faith, to reduce the seriousness and impact of the statements complained of.

My preliminary response to the Complaint was to view the comments more in the nature of political rhetoric delivered by the Member in the heat of the moment, and not as misconduct of a serious or ongoing nature, bringing the City or its Council into disrepute, or constituting contravention of the Code of Conduct serious enough to conduct further inquiry. This led to my consideration of whether or not to stay my inquiry into this matter, but before doing so, I sent an email to the Complainant, as required under s. 17(1) of City By-law No. 08-154, providing the opportunity to provide any further information concerning the Complaint, to which the Complainant responded.

My Decision

On the basis of the foregoing, and of my consideration of the nature and context of the Complaint, I have decided to stay any further inquiry into this Complaint at this time.

As Integrity Commissioner, it is not my role to become involved in political issues, and I do not wish to take action against a Member of Council in the circumstances of this case, which may have the effect of establishing a precedent for the Integrity Commissioner being seen as a censor or watchdog over statements made by Councillors which, while viewed by some as disagreeable or insulting, may involve honest or well-intended statements of expression or opinions, not serious enough or so contrary to the public interest of the municipality or the public interest, to warrant full-scale inquiry.

Accordingly, I have decided to take no further action with respect to this Complaint at this time, and to report this decision to the Council, on a "no-names basis", so as to, hopefully, bring this matter to a close.

I have provided a copy of this Report to both the Complainant and the Member involved.

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