

INFORMATION REPORT

**TO: MAYOR AND MEMBERS,
GENERAL ISSUES COMMITTEE
CITY OF HAMILTON**

February 2, 2017

SUBJECT: MyThird Periodic Report as Integrity Commissioner to the City

By: George Rust-D'Eye, Integrity Commissioner and Lobbyist Registrar

City Council first appointed me as its Integrity Commissioner and Lobbyist Registrar effective May 1, 2015. Subsequent decisions by the Council have extended this appointment to a current date of April 30, 2017.

The subject-matter of my responsibilities as Integrity Commissioner relates to the implementation and application of Council's 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 previous periodic reports to the Council summarizing my activities as Integrity Commissioner, were submitted on September 2, 2015 and March 14, 2016. In this report, I summarize my work since the date of my last report.

SUMMARY OF MY WORK AS INTEGRITY COMMISSIONER SINCE MARCH 14, 2016

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 subsection 7(e) of the Integrity Commissioner By-law.

During that period, I addressed 43 specific requests for advice by Members of Council or others relating to the propriety of their conduct, and proposed and actual complaints alleging contravention of the Code of Conduct by one or more councillors, but in almost all such cases I concluded that the issues raised could be resolved informally, and without the need for a full inquiry. Some 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.

During the period in question, I provided written Reports to the Council for information with respect to two of the Complaints which I had addressed and dismissed, as well as updating the Council from time to time with respect to my work generally.

I also have been involved in frequent discussions with the City Solicitor, and appeared before the Council and provided written and oral reports, with respect to the form, substance, and objectives of both existing and proposed Provincial legislation and Council jurisdiction and by-laws relating to the legal and ethical responsibilities of members of municipal councils, committees and agencies, boards and commissions, and the role of councillors who constitute their memberships.

I also serve as Integrity Commissioner to a number of other Ontario municipalities, and provide advice to their councils and members with respect to the role and ethical responsibilities of councillors, as well as legal issues of governance, Provincial enabling and other municipal legislation, and municipal powers. I am an active member of the Municipal Integrity Commissioners of Ontario, and of other associations of municipal accountability officers and solicitors exercising those responsibilities.

SOME PRINCIPLES RELATING TO THE CONDUCT OF MEMBERS OF COUNCIL

In the course of my work as Integrity Commissioner for the City of Hamilton, I have received, in addition to the small number of formal Complaints, a number of contacts and inquiries, from Members of Council, the City Solicitor and other staff, potential and actual complainants, litigants, the press, and private citizens, seeking assistance with respect to the interpretation and application of the Code of Conduct and other By-laws of Council, and other matters within my jurisdiction, knowledge and experience

I do not intend to set out in this Report the details of inquiries and other matters I have dealt with on behalf of the City, with respect to which I have previously reported to the Council. However, for the assistance of the Council, the following are some of the general principles which I have adopted, or conclusions or advice which I have given or understand relating to the application of the Code of Conduct. I would emphasize that each of these conclusions arises from the specific facts and circumstances of the particular query in question, and does not necessarily constitute a legal or other opinion applicable to other situations:

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- my responsibilities as Integrity Commissioner are determined by law, including the City's enabling legislation, other Provincial laws, and the by-laws of the City;
- I deal with matters involving the conduct, or alleged conduct, of Members of Council, in the context of the provisions of the Code of Conduct and what I see as the intent of the Council represented by the words of that and other by-laws of Council, and the words and intent of Provincial, and other, relevant legislation;
- a Member of Council may file a Complaint alleging contravention of the Code of Conduct, by another councillor;
- I have no jurisdiction over, and avoid engaging in, issues or merits of fact-finding, policy, political, legal, planning or other substantive decision-making by the Council, or alleged misconduct by staff;
- I refrain from proceeding with an inquiry unless I have sufficient information to decide whether or not an allegation may involve a possible contravention of the Code of Conduct serious enough to justify investigation, and not frivolous, vexatious or properly the subject of criminal or other proceedings;
- I frequently communicate with, and pay deference to, the City Solicitor, who has always provided me with helpful assistance with respect to matters within the scope of her responsibilities;
- from time to time I may advise a councillor that issues of public perception justify the Member to consider absenting him or her self from a meeting, or recusing themselves from participating or voting with respect to a particular matter, even where otherwise authorized by law to do so;
- I have the duty to remain independent and impartial, and to maintain strict confidentiality over information that comes to my knowledge in the course of my duties under the Municipal Act, subject to what is necessarily disclosed in my reports to the Council, or is otherwise authorized or required to be disclosed, according to law, such as the making of my periodic reports to the Council, such as this one, in which I "may summarize advice... given but shall not disclose confidential information that could identify a person concerned";
- I am not authorized or in a position to provide legal advice to Members with respect to their personal legal obligations, or proceedings under the Municipal Conflict of Interest Act or other legislation, or with respect to the position of their spouses, parents or children;
- in all cases, I take into account possible ways in which allegations may be resolved informally, or resolution may be reached without the need for me to conduct a formal inquiry into the matter;
- my advice relates to only the obligation of Members acting in that capacity, within my jurisdiction under my appointment and the Code of Conduct, and not for instance, conduct only as a member of an agency, board or commission with respect to its own

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proceedings, code of conduct or rules outside of the jurisdiction of the Code of Conduct of City Council;

-I recognize that my reports to Council are made available to the public, and I try to avoid the publication of allegations of misconduct against a named Member, or disclosing the names of complainants, with respect to which I have not conducted an inquiry or reached lawful conclusions within my jurisdiction, and such information is necessarily and lawfully disclosed in the course of exercising that jurisdiction.

The foregoing is submitted for the information of the Council of The City of Hamilton.

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