

INTEGRITY COMMISSIONER REPORT

October 3, 2017

**TO: THE MAYOR AND MEMBERS OF COUNCIL
OF THE CITY OF HAMILTON**

ATTENTION: The City Clerk, RE: Clerk's ID # 17-003

FROM: GEORGE RUST-D'EYE, INTEGRITY COMMISSIONER

RE: COMPLAINT AGAINST A MEMBER OF COUNCIL

INTRODUCTION:

In my capacity as Integrity Commissioner to The City of Hamilton, I received, on May 5th, 2017, a written form of Complaint received and processed by the Office of the City Clerk on that date, in which an individual, representative of a not-for-profit corporate body, alleges contravention by a Member of Council, of subsections 2(1), 2(2) and 2(3) of the Council's Code of Conduct for Members of Council, By-law No. 16-288.

ALLEGATIONS OF CONTRAVENTION OF THE CODE OF CONDUCT

In the Complaint, the Complainant alleges that, with respect to an application by the body to the City for a facilities review of City property in response to the body's request for "a fair distribution of playing fields for its members", the Councillor:

- "refused to conduct a facilities review ... despite numerous requests";
- "breached s. 2(1) of the Code "by failing to truly entertain the [body's] request for a facilities review, by failing to communicate with the [body] reasonably despite the numerous formal correspondence; and by failing to take any substantive action as requested by the [body] in writing and in person."

- "failed to conduct a review", [and] has taken a [facility] long-dedicated to the particular activity of the body and turned it into a facility for a different activity without consultation, without evidence and "despite the pleas of the [body] for a fair and proper accounting" in response to its request "for an honest, open and inclusive review for over one year;"

- "failed to act, acted without evidence and exhibited a bias in favour of other [bodies] over the activities of the [body} and the body itself."

MY RESPONSE TO THE COMPLAINT

The Complaint is dismissed, on the following grounds:

The three provisions of the Code of Conduct alleged to have been infringed are specified in the Code to be “key statements of principle that underlie the Code of Conduct”, and are not in themselves requirements or prohibition of specific activities. However, that in itself would not inhibit or restrict my inquiry or recommendations to the Council in a Report if the facts alleged in the Complaint raised serious issues of breach of any of the substantive provisions of the Code.

However, the allegations contained in the Complaint, even if upheld, upon inquiry, and accepted by me as having been established, are, in my opinion, based upon a misconstruing of the role of a Councillor and the governmental aspects of the Code itself.

The thrust of the Complaint is with respect to policy decisions within the jurisdiction of, and apparently made by, the City Council in authorizing or differentiating with respect to the use of its property by members of the public and organizations involved in particular activities, and it is to the Council, and its By-laws and jurisdiction, and, in some cases possibly the Courts, (concerning which I make no comment), that the Complainant must look in seeking decision-making in its favour with respect to its requested use of City land.

In my opinion, the role of a Member of Council, does not, in itself, or as a matter of law, include the policy role and responsibilities ascribed by the Complaint to an individual Member of Council, in respect of alleged participation by the Councillor in decision-making by the Council, or pursuant to its delegated authority.

I do not believe that I am required by the City’s By-laws to report on this matter to the Council, but I do so, once again, for the purpose of raising issues of public importance to my role, and to provide the Council, and the public, with my approach to my responsibilities and the approach and principles which I will bring to bear in addressing complaints alleging contravention of the City’s Code of Conduct.

George Rust-D’Eye,
Integrity Commissioner and Lobbyist Registrar to The City of Hamilton

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