

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

FEBRUARY 20, 2018

RE: INTEGRITY COMMISSIONER REPORT – ADVICE RESPECTING THE CITY OF HAMILTON’S CODE OF CONDUCT WITH RESPECT TO “CONFLICT OF INTEREST” IN RELATION TO RENTAL HOUSING SUB-COMMITTEE MATTERS

In my capacity as Integrity Commissioner to the City, I have been reviewing my responsibilities and any outstanding matters arising out of my assigned work for the City.

In the course of this review, I have come across one outstanding matter with respect to which the Council, at its meeting held on August 18, 2017, requested a report, but to which I have not yet responded, which request is the following:

“7.20 Integrity Commissioner – Legal Opinion respecting the Municipal Conflict of Interest Act and the City of Hamilton’s Conflict of Interest (Item 8.9)

That the Integrity Commissioner report back to the Council with a legal opinion on the *Municipal Conflict of Interest Act* and the City of Hamilton’s Conflict of Interest, as it relates to Councillors who own rental properties as well as those tenants in the City of Hamilton in relation to the Rental Housing Sub-Committee matters.”

At the outset, I wish to emphasize to the Council that this report is provided in my capacity only as the City’s Integrity Commissioner, not as a “legal opinion”; that the City must look to its City Solicitor with respect to its own legal interests; and that Members must seek their own legal advice from counsel whom they may retain as individuals, with respect to their own interests, rights and responsibilities.

CONTEXT

Although I have not, until recently, obtained and reviewed the background documents which gave rise to this request, the following would appear to provide a reasonable outline:

-for a number of years, the City has had under consideration the enactment of a Rental Housing By-law;

-the City Council, on September 25, 2013, decided that a permanent Proactive Enforcement Program to enforce rental housing conditions be approved [subject to terms not here relevant], and:

“That a sub-committee be established to work with interested stakeholders to assist with the implementation of an approach to enforcement and legalization of appropriate rental housing including, but not limited to, process, fees, and by-law regulations.”

-the Council, on September 25, 2013, in approving Item 6 of Planning Committee Report 13-014, approved the establishment of a Rental Housing Sub-Committee, whose mandate is **“To work with interested stakeholders to assist with the implementation of an approach to enforcement and legalization of appropriate rental housing including, but not limited to, process, fees, and by-law regulations.”**

-the composition of the Sub-Committee (which I will refer to in this report as the “RHS”), is 9 members, including 3 Members of Council, appointed by Council, and representatives of a number of interested bodies and groups (some public and some representing other interested stakeholders), set out in the By-law, presumably considered by the Council as having interests and responsibilities relevant to rental housing issues in the City.

-the RHS:

- holds its meetings in public;
- receives technical support, including legal services, from designated City staff;
- has its administrative costs of operating meetings and legislative support, provided by the City Clerk’s Division;
- has not been delegated the power to exercise powers of the Council, or to make any orders or decisions binding on the City or on any of the “interested stakeholders”. It appears to have been intended by the Council that the RHS exercise an administrative, facilitative and operational role, and provide information and recommendations to the Council with respect to rental housing matters;
- may propose and recommend amendment to its Terms of Reference, to be “forwarded to the Planning Committee for approval”;
- is required to “follow all procedures established under the City of Hamilton Procedural By-law”.

The Minutes of a City Council meeting held on March 29, 2017, at which the Council had before it a matter involving “a resolution respecting Schedule 5 of Bill 7 – An Act to amend or Repeal Various Acts with respect to Housing and Planning (Property Standards)”, disclose that with respect to that matter, a number of Members of Council “declared a conflict...as they currently own rental units”.

It was this latter action by the Members which led to the request for this report.

APPLICABLE PRINCIPLES

The issues which are the subject-matter of the Council’s request for this opinion, arise out of, and relate to, matters which have already been the subject-matter of legal advice received by the City from its City Solicitor.

I would, first and foremost, emphasize that it is the responsibility of every Member of Council to ensure that he or she complies at all times with applicable law, and, particularly, to be aware of, understand, and comply with, all of the requirements of the Municipal Conflict of Interest Act, as well as the provisions of the Council’s Code of Conduct and to recognize and understand the importance of maintaining both the substance, as well as the appearance, of compliance in every way with such requirements, and the drastic nature of sanctions and other consequences which may follow any contravention.

Both of the laws referred to above, flow from, and are based upon, the important ethical and legal considerations applicable to the role of elected governmental representatives of the public, and the public attention which, more and more in recent times, is being brought to bear on the manner in which they conduct their important work.

Addressing the issues which I have been asked to address, while Hamilton’s Code of Conduct for Members of its Council does not contain a specific prohibition or restriction with respect to “conflict of interest”, it does state, in s. 2.1, as one of the key principles that underlie the Code, that:

“(b) Members of Council shall be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real;”

The Municipal Conflict of Interest Act, in section 5, prohibits every Member of Council from participating in debate or voting upon any matter in respect of any matter in which the Member has a direct or indirect, or attributed, financial interest, and requires any such Member to disclose the interest and its general nature, and not to attempt in any way to influence the voting on any such question.

It is noted that, under section 4 of that Act:

4. Section 5 does not apply to any pecuniary interest in any matter that a member may have,

(k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.

CONCLUSION

I conclude, based on the above provisions of the Municipal Conflict of Interest Act and, by analogy, of the Code of Conduct, referred to above, that, subject to the responsibility of every Member to decide for him or herself whether or not he/she should participate or vote with respect to any particular matter, I do not believe that the fact alone that a Member owns a rental property, has one or more tenants in a property, or is a tenant of rental property, would, in itself, result in contravention of the Code in relation to Rental Housing Sub-Committee matters generally.

Of course, every case depends on all of the relevant facts and issues involved in the particular matter before the Council, (or a committee or local board), with the key issues to be determined including the financial impact, if any of the resolution, proposal or decision upon the financial circumstances of the Councillor, and whether or not the Member's interest is so remote or insignificant that it can or cannot, reasonably be regarded as likely to influence the Member.

In my role as Integrity Commissioner to the City, [and I am no longer a lawyer], I am not in a position to give legal advice to Members as to their responsibilities under the Municipal Conflict of Interest Act. I would strongly suggest that any Member in doubt as to how to proceed with respect to any particular matter or vote at Council, seek and follow her or his own legal advice, and, in case of doubt, proceed on the basis that the requirements of the Act should be followed as if a conflict does exist.

I trust that the foregoing will be of assistance to your Council. I will be pleased to provide whatever other or further assistance in this regard, that the Council may require.

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