



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
City Clerk's Office

TO:	Mayor and Members of Council
COMMITTEE DATE:	September 25, 2020
SUBJECT/REPORT NO:	Submission of Integrity Commissioner Investigation Report – Complaint Filed Against a Citizen Committee Advisory Member (FCS20086) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Andrea Holland (905) 546-2424 Ext. 5409
SUBMITTED BY:	Andrea Holland City Clerk, Office of the City Clerk
SIGNATURE:	

RECOMMENDATION(S)

That Council consider the recommendations in the attached Integrity Commissioner Report dated September 24, 2020.

EXECUTIVE SUMMARY

Principles Integrity was appointed by Council on February 26, 2020 to be the Integrity Commissioner for the City of Hamilton.

The Integrity Commissioner is appointed to act in an independent manner on the application of the Code of Conduct and other rules and procedures governing the ethical behaviour of members of Council. The Integrity Commissioner appointed by Council shall be responsible for providing Integrity Commissioner services on an as required basis in accordance with sections 223.3 to 223.8 of the *Municipal Act, 2001*, as amended.

The Integrity Commissioner is required to preserve secrecy in all matters that come to their knowledge in the course of their duties. At the same time, the municipality is required to ensure that reports received from the Integrity Commissioner are made available to the public.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

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The “Code of Conduct Complaint Against Cameron Kroetsch, Chair, LGBTQ Advisory Committee Recommendation Report” prepared by Principles Integrity is attached as Appendix “A”.

Principles Integrity will be in attendance at the Council to answer any questions of Council.

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND – N/A

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The Integrity Commissioner gets their authority from the *Municipal Act 2001*, as amended and is accountable to and reports directly to Council. Under the *Municipal Act 2001* as amended,

Report to council

223.6 (1) If the Commissioner provides a periodic report to the municipality on his or her activities, the Commissioner may summarize advice he or she has given but shall not disclose confidential information that could identify a person concerned. 2006, c. 32, Sched. A, s. 98.

Report about conduct

(2) If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board has contravened the applicable code of conduct, the Commissioner may disclose in the report such matters as in the Commissioner’s opinion are necessary for the purposes of the report. 2006, c. 32, Sched. A, s. 98.

Publication of reports

(3) The municipality and each local board shall ensure that reports received from the Commissioner by the municipality or by the board, as the case may be, are made available to the public. 2006, c. 32, Sched. A, s. 98.

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

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The Integrity Commissioner's report has been placed on the Council agenda for council's consideration according to the *Municipal Act 2001*, as amended.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix 'A' to FCS20086 – Complaint Filed Against a Citizen Committee Advisory Member, Recommendation Report

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City of Hamilton

Code of Conduct Complaint Against Cameron Kroetsch,

Chair, LGBTQ Advisory Committee

Recommendation Report

September 24, 2020

Introductory Comments

- [1] Principles *Integrity* was appointed the Integrity Commissioner for the City of Hamilton in July 2018. We are also privileged to serve as Integrity Commissioner for a number of Ontario municipalities. The operating philosophy which guides us in our work with all of our client municipalities is this:

The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an integrity commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council and local boards meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.

- [2] The Municipal Act requires that municipalities adopt a code of conduct for members of local boards, and appoint an integrity commissioner responsible for overseeing the application of the code of conduct for local board members.
- [3] An advisory committee is a local board to which the code of conduct and oversight by the integrity commissioner apply.
- [4] Integrity commissioners carry out a range of functions for municipalities and their local boards. They assist in the development of the ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for members and outreach for the community. One of the most important functions is the provision of advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. And finally, but not principally, they investigate allegations that a member has fallen short of compliance with the municipality's ethical framework and where appropriate they submit public reports on their findings, and make

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recommendations, including recommending sanctions, that council for the municipality may consider imposing in giving consideration to that report.

- [5] Our role differs from other ‘adjudicators’ whose responsibilities generally focus, to state it colloquially, on making findings of fact and fault. While that is a necessary component when allegations are made, it is not the only component.
- [6] Our operating philosophy dictates the format of this report. The tenets of procedural fairness require us to provide reasons for our conclusions and recommendations, and we have done that. Procedural fairness also requires us to conduct a process where parties can participate in the review and resolution of a complaint.
- [7] In this regard, we have assessed the information fairly, in an independent and neutral manner, and have provided an opportunity to the respondent named in this Report to respond the allegations, and to review and provide comment on the preliminary findings.

The Complaint

- [8] On March 4, 2020 we received a complaint submitted to us by the City Clerk on behalf of Council for the City of Hamilton. For the purposes of properly scoping our investigation, we have restated and narrowed the complaint against the Respondent.
- [9] The essence of the complaint is that the Respondent Cameron Kroetsch has inappropriately used his position as Chair of the Lesbian, Gay, Bisexual, Transgender & Queer Advisory Committee¹ (the LGBTQ AC), including by improperly and publicly criticizing and/or disparaging Council decisions or processes, and that he improperly publicly disclosed personal information about identifiable individuals contrary to the Municipal Freedom of Information and Protection of Privacy Act.
- [10] Several examples of conduct by the Respondent have been considered, however, for the purposes of our findings, we have focused on three specific actions in particular.

The Deputation to HPSB: While speaking as Chair on behalf of the LGBTQ AC, the Respondent made a deputation to the Hamilton Police Services

¹ As noted in the advisory committee’s terms of reference, the acronym “LGBTQ” is a commonly used, shortened initialism for lesbian, gay, bisexual, transsexual, transgender, twospirit, intersex, queer and questioning individuals / communities and is not meant to be unduly restrictive of its constituency.

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Board (HPSB) on February 14, 2020 criticizing City Council's selection process for appointments to the Board, and requesting that the HPSB ask Council to rescind a recent appointment.

The Radio Interview: Interviewed as Chair of the LGBTQ AC, the Respondent gave a radio interview on the Bill Kelly Show in May 2019 in which he criticized Council's selection process for appointments to the HPSB, publicly accused the City of a coverup, and disparaged Council generally. The host characterized the Respondent's statements as 'City-bashing'

The Redaction Refusal: After receiving explicit advice from the City Clerk that certain information needed to be redacted from a document before it could be published, pursuant to privacy legislation (the *Municipal Freedom of Information and Protection of Privacy Act*), the Respondent proceeded to publicly post on his personal Twitter account an unredacted version of the document contrary to that explicit advice.

Use of Title of Chair in Campaign Endorsement:

- [11] We were also asked to consider the propriety of the Chair having given a political endorsement while being identified in that role.
- [12] The Respondent, during the last Federal election campaign, posted an endorsement for a candidate. In that endorsement, he identified himself as a member and Chair of the LGBTQ AC.
- [13] The practice can be perceived as an inappropriate use of the title in order to garner support or influence. Conversely a person is free to communicate political endorsements so long as they do not expressly or impliedly convey that the City shares the same view.
- [14] Since there is no provision addressing political endorsement in the Advisory Committee/Task Force Code of Conduct, we do not find that the endorsement made by the Respondent contravenes the Code. Additional guidance will be provided when we report back on the governance matters referenced in paragraph [16].

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Process Followed for the Investigation

[15] Our investigation was governed by the principles of procedural fairness. This fair and balanced process includes the following elements:

- Reviewing the Complaint to determine whether it is within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the Complaint should be restated or narrowed, where this better reflects the public interest
- Restating and narrowing the complaint so that the Respondent had sufficient knowledge of the facts, circumstances and ethical standards to be responded to
- Notifying the Respondent of the complaint and seeking his response
- Reviewing the Hamilton Advisory Committee/Task Force Code of Conduct, relevant legislation, by-laws, resolutions, archived meetings, minutes, and other relevant resources or documents
- Providing the opportunity for the Respondent to provide his response to the complaint, and interviewing the Respondent and relevant witnesses including present and former members of the advisory committee, staff, and others with first-hand knowledge of the matters before us
- Providing the Respondent with an opportunity to review our draft findings, and reviewing his lengthy 102-page submission before finalizing our Recommendation Report.

Background and Context

Governance Principles

[16] City Council has also requested our advice on certain governance matters respecting its Advisory Committees and that will be reported under separate cover.

[17] At this juncture, however, it is useful to briefly reflect upon the two municipal governance principles that inform our findings.

[18] The first principle might be called the 'Primacy of Council'. The principle recognizes that pursuant to the *Municipal Act*, Council is the decision maker on behalf of the municipality, and that Council uses a mechanism of staff, public and councillor input, principally delivered through the publication of reports and matters listed on committee agendas, in order to provide a foundation for its decisions which are ultimately made by by-law. City of Hamilton Council is no different from other Ontario municipalities in that regard; it makes its decisions based on recommendations, principally through reports submitted by Council's committees.

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- [19] Part of the City's governance structure involves the establishment of statutory and advisory committees. Some committees, such as the Committee of Adjustment, have decision making power conferred upon them by statute (in other words Council has no role in the outcome of the deliberations). Such committees are, in fact, decision-making bodies.
- [20] Other committees, referred to as 'advisory committees', are put in place so as to provide Council with advice. It may be that an advisory committee is established because it is required by statute (such as the Accessibility Advisory Committee); it may be that an advisory committee is established because Council (or Staff) does not have the capacity to develop recommendations on a defined topic, or that the perspective from a certain stakeholder group is required to create a forum for discussion on a particular topic area so that recommendations to Council can be formed. It was for this latter purpose that the LGBTQ AC was formed. Simply put, advisory committees exist to inform Council's decisions. Advisory committees are not decision-making bodies.
- [21] There is a distinction to be drawn between advice and advocacy. While an advisory committee, once it has completed its deliberations on a matter, may advocate a course of action to Council through the recommendations it submits, its role is not to advocate generally. For advisory committee members, it is sometimes a surprising revelation that their personal advocacy for a public policy issue may in some respects be constrained by their appointment to a body which is bound to an advisory role only, given the primacy of Council.
- [22] The second principle might be called the 'Compliance Principle' and in the context of this report speaks to the City's responsibility to comply with the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). Though compliance is not the City's first objective (rather, it is to adopt and implement decisions and policies it considers to best serve the public interest) it cannot be non-compliant with the statutory regime that governs it.
- [23] MFIPPA establishes a statutory framework that balances public access to information with the protection of personal information held by the City from inappropriate disclosure.
- [24] As in most municipalities, access and privacy matters are administered by the City Clerk independently from the City's Council and its administration. As such, the Clerk has a high level of decision-making autonomy and responsibility regarding information published in official Council records, including minutes and agendas published for Council and its committees.
- [25] Municipal governance structures generally accommodate flexibility in the application of procedural rules. Rigidity, a strictly rules-based approach, can stifle necessary accommodations that serve the public interest. That said it is important

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that Council and its committees adhere to foundational governance principles, including the Primacy of Council principle and the Compliancy principle, when deviations from an established rule occur.

- [26] Our role in making the assessments set out in this report was not simply to apply mechanical compliance with a code of conduct. Our findings support what we consider to be important public interest matters and provide a foundation for governance improvements, as well as encouragement for appropriate adherence to the City's ethical standards.
- [27] We are aware that our Report is to be considered at a time where there is much discussion about the role marginalized communities play in effecting change to established social order. The perspectives of communities whose voices are under-represented in public debate are now more part of that debate. That provides an interesting context for a Report which addresses the LGBTQ AC's Chair's compliance with the City's governance processes and the Code of Conduct's requirements.
- [28] As integrity commissioner we assess complaints on the basis of a person's adherence to codes, policies, laws and norms in order to provide advice and recommendations that best achieve a just result, one that in our view best serves the public interest. The current discourse causes us to be careful not to declare the 'public interest' to be a 'conventional' interest – the way it has always been.
- [29] Non-compliance with established codes, policies, laws and norms may well be the only way to achieve a needed change. The thoughtful experiences of the late United States Congressman John Lewis – famous for his notion of "Good Trouble" come to mind. Non-conformity with some rules, can (although perhaps only retrospectively) be perceived as a virtue.
- [30] To the extent any of the behaviours we have examined can be argued to be virtuous (Good Trouble, in order to achieve a desired change), they must also be assessed by their adherence to principles of municipal accountability and democratic governance. In that respect the primacy of Council is key – decisions are made by Council, and Council is accountable to the electorate for those decisions. The processes for making decisions depend upon deliberation and persuasion. Interests are balanced, if not traded, for the benefit of what is understood by the decision-makers to be the public good.
- [31] It is most certainly the role of an Advisory Committee to bring forward persuasive arguments to support recommendations seeking substantive change in how the City conducts itself to achieve public interest goals. In that sense the Advisory

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Committee can advocate for change. This Report, in part, examines to what extent advocacy which takes place outside the advisory committee framework established by the City meets the ethical standards established by the Code of Conduct.

HPSB is not a Committee of Council

- [32] In addition to appointing to its own committees, Council appoints to other bodies, which are not committees of City Council.
- [33] One such body is the Hamilton Police Service Board (the HPSB), which is comprised of three members of Council, three members appointed by the Province, and a Council-appointed citizen member.
- [34] The HPSB is an independent body overseeing the management of the Hamilton Police Service.
- [35] It is not a body which reports to Council, and although its meetings are held in Hamilton Council Chambers and the Mayor, along with 2 other members of Hamilton Council, sit on the Board, it is not part of the City of Hamilton governance structure which Council presides over.
- [36] The HPSB is a separate and distinct public government agency.

Lesbian, Gay, Bisexual, Transgender & Queer Advisory Committee (LGBTQ AC)

- [37] The LGBTQ AC is one of dozens of advisory committees (albeit not all of them titled as such) established by Council for the City of Hamilton.
- [38] The LGBTQ AC reports to Council through the Audit, Finance and Administration Committee (AF&A).
- [39] The Respondent is a member, and the Chair, of the LGBTQ AC.
- [40] Staff are assigned to support advisory committees; they may assist with committee administrative matters, provide procedural advice, and prepare meeting minutes.
- [41] Advisory committee minutes are provided to the applicable standing committee as a record of proceedings. The minutes include all recommendations being made to Council by the advisory committee. Recommendations from an advisory committee

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are sometimes conveyed to Council through the use of a Citizen Committee Report forwarded to the applicable standing committee.

[42] The jurisdiction and authority of advisory committees to make decisions is confined to matters concerning its own proceedings, unless other authority is specifically delegated by Council in the advisory committee's terms of reference.

[43] The terms of reference for the LGBTQ AC provide as follows:

Mission Statement:

The LGBTQ AC for the City of Hamilton exists to eliminate barriers experienced by LGBTQ communities by giving voice to the perspectives of LGBTQ individuals and evaluating the City on its related efforts. The Committee does this by making recommendations to Council and staff in order that the City of Hamilton will excel in providing services to and interfacing with members of the LGBTQ communities.

Mandate:

The Committee is empowered by City Council and is responsible to City Council for its services; it reports to City Council on issues and concerns pertaining to the LGBTQ communities through the Audit, Finance & Administration Committee.

Operating Guidelines:

1. Provide opportunities for members of Hamilton's diverse LGBTQ communities to share stories, impart information, raise concerns, and recommend changes as they relate to the way the City develops bylaws, policies, programs, and services that impact LGBTQ communities.
2. Provide advice and recommendations to City Council and staff with respect to the implementation of bylaws, policies, programs and services that impact LGBTQ communities.
3. Educate and increases the awareness and understanding of City Council and staff on issues that impact LGBTQ communities.
4. Facilitate access to accurate information about LGBTQ communities, including up-to-date list of LGBTQ-positive spaces, programs, resource and organizations.
5. Acknowledge and respect the diversity of Hamilton's LGBTQ communities, including those voices not represented at the

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Committee table, with respect to gender identity, sexual orientation, age ability, ethno-cultural background, and socio-economic status.

6. Review the progress and measure of success of the Committee and its activities on a regular basis.

[44] Historically, the LGBTQ AC plays a lead role in the Pride flag event, although decisions to have a flag raising are the Mayor's under the Flag Protocol.

[45] The practice also has evolved that the LGBTQ AC occasionally hosts other public-facing events without bringing a recommendation to Council or otherwise obtaining Council direction.

[46] These undertakings have, it has been suggested, supported a belief by members of the LGBTQ AC that their advisory committee has taken on an operational function and is 'expected' to do things beyond simply provide advice to Council.

Chronology

Events Leading to the Deputation to the HPSB

[47] In March 2019, Council appointed a citizen member to the HPSB. There was some concern raised within parts of the Hamilton community that the appointment was a missed opportunity by Council to ensure the citizen appointment reflected more of the diversity of the population.

[48] On April 30, 2019 the LGBTQ AC had their first meeting of the new committee and began planning the Pride Flag event. Potential dates were selected and members confirmed they would forward a list of guest speakers to staff who organize the event.

[49] On May 8, 2019 an article appeared in VICE Magazine about a City of Hamilton employee whose former activities as a leader of a white supremacist organization raised concerns.

[50] At the second meeting of the LGBTQ AC on May 15, 2019, one member of the committee presented a motion to cancel the annual Pride Flag Raising Ceremony. The motion identified the rationale for its reversal regarding the event primarily on the City's handling of the employee and Council's appointment to the HPSB:

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8.44 Motion to Cancel the Flag Raising Ceremony

Whereas the ceremonial act of displaying Pride flags at City Hall signals to the public that the City of Hamilton commits to solidarity with Hamilton's Two-Spirit and LGBTQIA+ citizens, but is not in and of itself an act of solidarity, and

Whereas the City of Hamilton has failed to materially demonstrate solidarity with Hamilton's Two-Spirit and LGBTQIA+ citizens through:

- (a) the continued employment [REDACTED]
[REDACTED]
[REDACTED] threaten the safety of all marginalized City staff and volunteers and citizens whose private information is stored using the City's IT systems (i.e. delegate home addresses, phone numbers, and other personal information); [REDACTED]
[REDACTED]; and
- (b) [REDACTED] on the Hamilton Police Services Board, despite calls from the community to revisit the decision and appoint a community member from a marginalized group; and
- (c) the City's failure to meet all of the criteria of the 2017 Trans Protocol; and
- (d) the selection process for this term of the LGBTQ Advisory Committee by:
 - arbitrarily (and without the approval of City Council) capping the committee at 9 members (where the committee's mandate does not have a membership limit); and
 - not conducting interviews with applicants; and
 - not consulting the previous committee or the wider Two-Spirit and LGBTQIA+ community about the process; and
 - as a result, excluding important voices from formal participation on this committee.

Therefore, let it be resolved that:

1. The annual unfurling and raising of flags at Hamilton City Hall in celebration of Pride month be cancelled in 2019.

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2. Any future ceremonial demonstrations of solidarity with the Two-Spirit and LGBTQIA+ community in association with the City of Hamilton's LGBTQ Advisory Committee be contingent upon a satisfactory resolution to the above noted concerns.

3. Should any event that ceremonially celebrates Pride Month with the intention of signalling the City of Hamilton's solidarity with Two-Spirit and LGBTQIA+ citizens occur in 2019, that it will be understood to be occurring without the support of, and in direct opposition of, the expressed wishes of the City of Hamilton's LGBTQ Advisory Committee.

4. The event be replaced with an open community discussion at the same time and place as the original event was scheduled, which is May 31, 2019 from 6:00 PM to 8:00 PM in the City Hall forecourt.

[51] The blacked-out portions above were redacted at the direction of the Clerk following extensive discussion and debate between the Clerk and the Chair.

[52] The fact that the LGBTQ AC believed, mistakenly, that it had the authority to cancel the City Pride flag raising is apparent in the motion.

[53] On May 22, 2019 the Respondent participated in a radio interview on a local radio talk show. Throughout the interview he was clearly identified as Chair of the LGBTQ AC.

[54] During the 15-minute interview the Respondent criticized the City's handling of an employment issue, accused the City of a coverup, criticized Council's recent appointment to the HPSB, criticized its selection process, and disparaged Council generally.

[55] The LGBTQ AC's minutes were delayed in moving forward to AF&A while the issue of the redacted content was debated.

[56] Throughout the spring and summer of 2019, the Chair and Clerk had numerous discussions regarding concerns with the LGBTQ AC minutes, relating to formatting

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and content, including privacy issues created by the inclusion of particular information in motions as presented.

[57] These protracted discussions slowed down the approval of minutes by the LGBTQ AC. As a result, minutes from the LGBTQ AC meetings from April 2019 to December 2019 were not provided to AF&A until January 21, 2020.

[58] During the summer and fall meetings of the LGBTQ AC, discussions continued around having Council revisit the citizen appointment to the HPSB and how to bring attention to the issue.

[59] At its meeting of July 16, 2019, the LGBTQ AC passed a motion to submit a request for deputation to the HPSB.

[60] The Staff liaison for the LGBTQ AC, on behalf of the Committee, sent a request to the HPSB to make a deputation regarding the citizen appointment.

[61] Initially, the HPSB denied the request for the deputation; the citizen appointment having been decided by Council, it was not relevant to the HPSB to hear the deputation concerning that issue.

[62] The LGBTQ AC decided to reiterate the request to make a deputation to the HPSB.

[63] On November 29, 2019 a further letter was sent urging the HPSB to allow the deputation regarding asking Council to reverse its citizen appointment

[64] Citizen Committee Reports are a vehicle through which an advisory committee forwards its recommendations to Council.

[65] On January 21, 2020 the LGBTQ AC forwarded a Citizen Committee Report (to AF&A) recommending that Council revoke the citizen appointment, change its selection process, and make another citizen appointment as follows:

Recommendation: That City Council revoke the appointment of its recent "Citizen Appointee" to the Hamilton Police Services Board and redo the selection process through a new process developed using the principles of equity, diversity and inclusion (EDI).

[66] Some of the recitation within the body of the Citizen Committee Report reflected negative comments about a member of Council who had participated as a member of the Selection Committee. The comments were inflammatory, irrelevant and superfluous. That information has since been redacted by the Clerk.

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- [67] The HPSB, in the meantime, had acquiesced to the request of the LGBTQ AC to make a deputation and the date for the deputation was set for February 14, 2020, one week before the minutes of the LGBTQ AC and the Citizen Committee Report were before AF&A.
- [68] The Respondent attended the HPSB February 14, 2020 and made a deputation on behalf of the LGBTQ AC, criticizing Council's selection process and requesting that the HPSB ask Council to rescind the appointment and revisit its selection process.
- [69] At the AF&A meeting of February 20, 2020, the Citizen Committee Report concerning the HPSB appointee was before the Committee. It was the decision of AF&A that the Citizen Committee Report 'be received, and no further action taken.'

Posting Unredacted Motion:

- [70] On May 15, 2019 when the motion was introduced to cancel the Pride flag raising, the motion contained personal information about identifiable individuals.
- [71] On the advice of staff, the motion was redacted before reproducing it in the meeting minutes and before moving it forward as a public document at the City's committee.
- [72] The published version of the paragraph of concern appears at paragraph [50].
- [73] Nevertheless, on February 15, 2020 the Respondent proceeded to publicly post the unredacted version of the motion on his personal Twitter account.

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Cameron Kroetsch
@CameronKroetsch



Worse is that underneath those redacted comments is not a single person's name. The [@AdvisoryLgbtq](#) took the names out when it was asked. Here's what the Committee approved, at a public meeting, for all in attendance to see. In case it's not clear, these are from May 2019. [#HamOnt](#)

8.4 Motion to Cancel the Flag Raising Ceremony

(J. Diemert / K. Sprague)

Whereas the ceremonial act of displaying Pride flags at City Hall signals to the public that the City of Hamilton commits to solidarity with Hamilton's Two Spirit and LGBTQIA+ citizens, but is not in and of itself an act of solidarity, and

Whereas the City of Hamilton has failed to materially demonstrate solidarity with Hamilton's Two Spirit and LGBTQIA+ citizens through:

[74] The full unredacted version of the motion appears in the post.

[75] As noted earlier, the Clerk and the Respondent engaged in several conversations around appropriate contents of motions and minutes, including redactions perceived as necessary by the Clerk on the basis that otherwise the minutes would contain personal information about an identifiable individual. The Respondent did not share the Clerk's views on many of these issues.

[76] On November 19, 2019 the Clerk attended the LGBTQ AC to provide an overview of her responsibilities and jurisdiction and explained in detail her reasons for requiring that certain contents of the minutes of May 15, 2019 be redacted prior to being formally adopted.

Relevant Policy Provisions: Advisory Committee Handbook and Code of Conduct

[77] The Hamilton Advisory Committee/Task Force Code of Conduct is Appendix "G" to the Advisory Committee Procedural Handbook.

[78] This Code of Conduct is a brief document, consisting of six short provisions, the most relevant of which provide as follows:

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1. Good Conduct

Appointees shall act with honesty and integrity including:

- Acting in a manner that contributes to the public's confidence in the Advisory Committee or Task Force; and
- Not engaging in conduct that may, or may appear to, constitute an abuse of their position as an Appointee.

2. Communication

Appointees should accurately communicate a recommendation or direction.

Appointees may provide their own personal opinion on a matter, provided that it is made clear to the party they are speaking to that the comments are their own and are not being made on behalf of the Committee.

[79] The Advisory Committee Handbook also contains the following guidance regarding “Members Communicating with Any Outside Agencies, Including Other Levels of Government and Media”:

Please note that members of a Committee cannot correspond or speak to any Ministries, any outside agencies, or the media without Council's prior approval, as per Standard Operating Procedure #08-001 – Communicating with any outside agencies, including other Levels of Government and the media attached as Appendix “D” and the Code of Conduct attached as Appendix “G”.

[80] Appendix D provides as follows:

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Appendix "D"

STANDARD OPERATING PROCEDURE		08-001
Subject:	Communicating with any outside agencies, including other Levels of Government and the media	

- a) City of Hamilton Committees wishing to correspond with any outside agency including the media, Ministers of the Provincial/Federal Governments or with MP's and MPP's will follow the subjoined procedures:
1. Recommendation(s) to correspond with any outside agency submitted by a Committee are forwarded to the appropriate Standing Committee for approval with the draft correspondence being attached as an appendix to a Citizen Committee Report prepared by the respective Committee Staff Liaison.
 2. Once the recommendation is approved by the Standing Committee and Council, the correspondence is submitted for signature and will be signed jointly by the Mayor and the Chair of the Committee.
 3. Any follow up correspondence received by the City of Hamilton in response to the letter will be forwarded to both City Council and to the Committee, which initiated the recommendation and correspondence.
 4. Appointees should accurately communicate a recommendation or direction.
 5. Appointees may provide their own personal opinion on a matter, provided that it is made clear to the party they are speaking to that the comments are their own and are not being made on behalf of the Committee.
 6. Appointees may refer the media or others making inquiries to the Chair, or, in the absence of the Chair, to the Vice-Chair.

Findings and Analysis

The Deputation to the HPSB

[81] The LGBTQ CA wanted Council to re-visit the issue of the appointment to the HPSB. It is evident that at least some of the members of that advisory committee recognized they had no authority or jurisdiction to decide to make a deputation to the HPSB.

[82] At the August 27, 2019 meeting, in the context of discussions about sending the Chair and Vice Chair to a meeting initiated by the Police Chief, committee members discussed their lack of jurisdiction to engage directly with the HPSB, and that their mandate is to advise City Council.

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- [83] As noted in the minutes of the August 27, 2019 meeting, some members recognized concerns about the procedural limitations of an advisory committee assuming an advocacy role rather than remaining within their mandate of advising Council.

7.4 Motion to Appoint the Chair and Vice Chair of the Committee to Attend a Meeting Organized by the Office of the Chief of the Hamilton Police Service

That the LGBTQ Advisory Committee appoint the Chair (C. Kroetsch) and Vice Chair (V. Nikolskaya) to attend a meeting at the invitation of the Office of the Chief of the Hamilton Police Service on Thursday, August 29, 2019 at 6:00 PM.

Discussion: Committee members did not think it would be appropriate for the Committee to advise Hamilton Police Service as the Committee's mandate is to advise City Council.

Members shared that they were interested in hearing the dialogue first hand. Historically, if other organisations wanted advice from the Committee they have requested to attend a monthly meeting. There were concerns raised about who has been invited to the meeting and who has been left out. There are concerns that the meeting will not be representative of either trans or racialized members of Two-Spirit and LGBTQIA+ communities.

FAILED
[emphasis added]

- [84] In fact, at its September 17, 2019 meeting, regarding Item 6.5, 'Process for deputations and delegations from the Committee', the minutes of the LGBTQ AC reflect:

The Committee is planned to depute at either the October or November meeting of Hamilton Police Services Board. The Committee discussed the steps that would be taken in the event that there are times where a deputation may need to happen in a timely manner but where the committee could not meet in advance to collectively agree on what will be shared.

Committee members will adhere to the parameters outlined in the Volunteer Advisory Handbook. Without an explicit discussion, the Committee agreed to not move forward on a deputation.

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A Committee member indicated that they felt it was the Committee's responsibility to address what happened at the June 18, 2019 Community Conversation that it hosted as part of the deputation to the Hamilton Police Services Board in addition to a request to the Board to ask City Council to consider a reselection process similar to the one it recently requested.

showing that LGBT AC members recognized the importance that committee positions should result from discussion and collective decisions. What is missing from the Committee's discussion is an acknowledgment that once the Committee's position on a matter coalesces, the Committee may recommend a course of action based on the position, but may not implement it without first seeking Council approval.

- [85] Their advisory mandate was then collectively ignored at the meeting of September 17, 2019 when a deputation to the HPSB was pursued.
- [86] The Respondent advised us that because the majority of the HPSB are City Councillors, by his deputation he was trying to make the HPSB and Council aware of the concerns around the citizen appointment.
- [87] In fact, 3 of the 7 Board members are members of City Council, the others are citizen-appointees, 3 by the Province and one by the City.
- [88] More to the point, the HPSB is, as we have noted, a separate, independent governing body. For this reason, the procedure contained in the Advisory Committee Handbook, Standard Operating Procedure #08-001 – Communicating with any outside agencies, is applicable.
- [89] When the deputation request was denied, the committee decided to send a letter to the HPSB, to be followed up with a Citizen Committee Report about the committee's concerns regarding the appointment. It appears the committee was determined to take it upon themselves to bring their concern before the HPSB.
- [90] In our view, the Citizen Committee Report was required to be supported by AF&A and ultimately Council before any communication (letter or deputation) criticizing the appointment and seeking to reverse it was shared with the HPSB. The decision to inform, share or communicate with the HPSB, or any other body, rests with Council, and not an advisory committee.

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- [91] On February 14, 2020 when the Chair made his deputation at the HPSB, he did so 'on behalf of the LGBTQ AC' but the committee was without authority to direct such action. The LGBTQ AC deputation to the HPSB, without Council direction or approval, was action outside the mandate of the advisory committee.
- [92] The question becomes what role, if any, did the Chair play in taking the committee outside their mandate, and whether the Chair's conduct in this constitutes a breach of the Code of Conduct.
- [93] At the time neither the Clerk nor other support staff appear to have attempted to stop the LGBTQ AC from making the deputation, as might be expected, or tried to prevent the committee from venturing beyond their mandate in criticizing Council's appointment.
- [94] We understand that staff supporting the LGBTQ AC did, from time to time, try to give advice on procedural matters.
- [95] We find that in the preceding months, when procedural concerns were raised by support staff or the Clerk, frequently these were opposed by the Respondent or ignored by the committee generally.
- [96] The Respondent appears to perceive guidance from administrative staff merely as additional input, and is sometimes resistant to accepting guidance from staff on procedural matters.
- [97] The Respondent has been described to us as knowledgeable in procedure, and effective in managing meetings. The Respondent's air of authority may have precipitated the LGBTQ AC acting beyond their mandate as set out in the Terms of Reference and without proper authority from Council.
- [98] Though we find that the Respondent played a role in steering the LGBTQ AC to act outside its mandate by pursuing the deputation at the HPSB in the absence of approval from Council, we stop short of finding that the Respondent was solely responsible.

'City-bashing' on the Radio

- [99] On May 22, 2019 the Respondent participated in a 15-minute radio interview on the Bill Kelly Show. He was introduced, and identified repeatedly throughout, as Chair of the LGBTQ AC.

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- [100] During that interview, the Respondent criticized Council's citizen appointment to the HPSB, criticized Council's selection process for such appointments, criticized the City's handling an employment issue raised in the media and brought to the City's attention, accused the City of covering up its handling of that issue, and disparaged the Council generally.
- [101] 14 minutes into the 15-minute interview, the host, in trying to change the tenor, stated: "I don't want this segment to be an entire City-bashing 15-minute diatribe..."
- [102] We find that the Respondent's public criticism and disparagement of Council and City processes during this radio interview, while identified as Chair of the LGBTQ AC, is conduct that undermines public confidence in the advisory committee, contrary to the Good Conduct provision in the Code.
- [103] We find that the Respondent's conduct in this regard breached the Advisory Committee Code of Conduct.

Posting Unredacted Motion

- [104] At the May 15, 2019 LGBTQ AC meeting, a motion was introduced to cancel the Pride event. Staff supporting the meeting immediately flagged a concern that the motion contained information which presented a privacy breach if not redacted.
- [105] On the advice of staff, the motion was redacted before reproducing it in the minutes of the meeting.
- [106] Nevertheless, the Respondent subsequently proceeded to publicly post the unredacted version of the motion on his personal Twitter account.
- [107] The Respondent takes the position that the information contained in the unredacted motion was already in the public domain, there having been media coverage at the meeting of May 15, 2019 when it was introduced.
- [108] We find that Respondent posting the unredacted motion, where staff had cautioned against its unredacted inclusion and release in the meeting minutes, constitutes a breach of the Advisory Committee/Task Force Code of Conduct with respect to provision 1, Good Conduct which requires:
- Acting in a manner that contributes to the public's confidence in the Advisory Committee or Task Force; and
 - Not engaging in conduct that may, or may appear to, constitute an abuse of their position as an Appointee.

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- [109] Advisory committee members are supported by administrative staff, including the Clerk, in order to support the role of the committee.
- [110] As noted above, the Clerk exercises significant autonomy in determinations under the privacy legislation. In this regard, advice from the Clerk and her administrative staff should not be disregarded or ignored by advisory committees.
- [111] More to the point, the Chair should not have unilaterally published the unredacted motion in the face of staff's caution against reproducing it in the minutes. The prior publication of the information by the media does not justify the Respondent's action in the face of clear advice from staff.
- [112] We find that this posting of the unredacted motion contrary to the advice of the Clerk's staff that it be redacted, constitutes unethical conduct by the Respondent, which may erode or undermine the public's confidence in the advisory committee.
- [113] To the extent the Respondent felt that the unredacted personally identifying information was so compelling that it needed public disclosure, we are of the view that the act of posting the information not only undermined the City's obligation to maintain compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, it demonstrated a cavalier disregard of the City Clerk's advice, as well as the privacy interests of the affected person.
- [114] Regardless of the Respondent's opinion of the person affected, and the City's relationship to that person, the choice to publish the information on his personal Twitter account did not amount to 'Good Trouble'. On the contrary, the violation was serious and purposeful, and carried with it implications for the City's privacy protection obligations, and the individual involved.

Summary of Findings

- [115] In summary, we find that the Chair's deputation to the HPSB in the circumstances did not represent a breach of the Code of Conduct on the basis that while unauthorized by City Council, the Respondent's deputation on behalf of the Committee was facilitated in part by the assistance of staff, upon whose advice he should have been permitted to rely. Absent that reliance, the behaviour would amount to a breach of the Respondent's responsibilities under the City's policy respecting communications with outside agencies, as set out in paragraph [80].
- [116] We find that the Respondent has inappropriately used his position as Chair of the LGBTQ Advisory Committee, including by improperly and publicly criticizing and disparaging Council decisions and processes through a radio interview in which he

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was identified as participating in his role as Chair of the LGBTQ AC. This we consider to be a breach of the Rule 1 of the Code of Conduct, respecting good conduct, as referenced in paragraph [78].

[117] We find that the Respondent improperly publicly disclosed personal information about an identifiable individual when he posted an unredacted motion contrary to the advice of the Clerk and the *Municipal Freedom of Information and Protection of Personal Privacy Act*. This we consider to be a breach of Rules 1 and 2 of the Code of Conduct, respecting good conduct and communications, as referenced in paragraph [78].

Recommendations and Concluding Remarks

[118] There is a strong relationship between good governance and proper ethical behaviour. In many respects, this investigation has clarified a need for improved practices and protocols regarding City Council's subordinate bodies, including its advisory committees.

[119] Where the Respondent's behaviour has been the result of governance deficiencies, such as inconsistent governance documentation, or advice received from City staff, no findings of non-compliance have been made because it would be unfair to do so.

[120] This report, however, focuses on whether the Respondent has breached the Code of Conduct applicable to him. In that respect we have made findings, that:

he has inappropriately used his position as Chair of the LGBTQ Advisory Committee, including by improperly and publicly criticizing and disparaging Council decisions and processes through a radio interview in which he was identified as participating in his role as Chair of the LGBTQ AC. This we consider to be a breach of the Rule 1 of the Code of Conduct, respecting good conduct, as referenced in paragraph [78]

and

he has improperly publicly disclosed personal information about an identifiable individual when he posted an unredacted motion contrary to the advice of the Clerk and the *Municipal Freedom of Information and Protection of Personal Privacy Act*. This we consider to be a breach of Rules 1 and 2 of the Code of Conduct, respecting good conduct and communications, as referenced in paragraph [78]

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- [121] These findings would support the adoption of a resolution to reprimand Mr. Kroetsch, as we recommend below.
- [122] Though the Respondent is capable and earnest, these findings may have eroded the confidence Council has placed in him as a member, the Chair in fact, of the LGBTQ AC. That was a threshold consideration for some members of Council in deciding to bring these matters to the attention of the integrity commissioner.
- [123] With the benefit of now having this report, Council may ask itself whether the Respondent's actions are sufficiently grave so as to make the determination that the public interest would be best served if another person were to chair the LGBTQ AC.
- [124] As noted, advisory committees can only effectively promote change by influencing Council decisions by the making of persuasive recommendations . The decision to follow such recommendations will always reside with Council, and Council will be influenced by the confidence it has in the body making the recommendation. Loss of confidence in a Chair of an advisory committee would be concerning, particularly when the anticipated advice is expected to be complex, and challenge the status quo.
- [125] In this matter, it must be recognized that the Respondent is very much engaged in issues relevant to the LGBTQ AC through other means. Our findings respecting the Code of Conduct breaches, and the Respondent's submissions to us in that regard, suggest that the governance requirements that support the primacy of Council are not easily navigated by him. When City staff attempted to guide the Respondent on matters particular to municipal governance, they regularly found resistance and challenges to their interpretations.
- [126] In the circumstances, it might be appropriate that the Respondent, recognizing the constraints on him as an advocate pushing for change through the structure of an advisory committee, consider relinquishing his role on the LGBTQ Advisory Committee.

Recommendations:

- [127] An integrity commissioner may recommend that sanctions be imposed, including a reprimand, or a suspension of pay for up to 90-days. The position of Chair of the LGBTQ AC being unpaid, a sanction which included suspension of the Respondent's pay would be of no practical effect.

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[128] We find the more appropriate sanction to be a formal reprimand.

[129] We are also of the view that Mr. Kroetsch should give consideration to resigning from the committee; his actions would appear to have undermined the relationship between this advisory committee and the Council the committee seeks to advise. He can likely more effectively pursue his advocacy efforts without the constraints of the City's committee governance structure.

[130] In the event that Mr. Kroetsch does not step down, it falls within Council's jurisdiction to consider whether to revoke his appointment.

[131] Accordingly, it is recommended:

1. That Council pass the following resolution:

That having been found to have breached the Hamilton Advisory Committee/Task Force Code of Conduct, that Cameron Kroetsch be and is hereby formally reprimanded.

2. That Cameron Kroetsch consider resigning from his position on the LGBTQ AC, and should it be his decision to do so, that he indicate that outcome prior to the day upon which this Recommendation Report is to be considered by Council; and

3. Alternatively, that Council consider revoking the appointment of Cameron Kroetsch as a member of the Lesbian, Gay, Bisexual, Transgender & Queer Advisory Committee, and that he be thanked for his service to date.

[132] We wish to conclude by publicly thanking everyone who was asked to participate in our investigation.

[133] We will be pleased to be available at the Council meeting where this report is considered.

All of which is respectfully submitted

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Integrity Commissioner for the
City of Hamilton