

Principles *Integrity*

City of Hamilton

Recommendation Report of the Integrity Commissioner Code of Conduct Complaint Against Councillor Whitehead November 3, 2021

Introductory Comments

- [1] Principles *Integrity*, was appointed the Integrity Commissioner for the City of Hamilton in July 2018. Integrity Commissioners carry out a range of functions for municipalities (and their local boards). They assist in the development of the ethical framework, conduct education and training for members of Council and provide advice 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.
- [2] Where, following an investigation, the Integrity Commissioner finds that a member has contravened the Code of Conduct then, unless a reasonable resolution can be achieved, the Integrity Commissioner must submit a public report on the findings.
- [3] In the City of Hamilton, Council has delegated to the Integrity Commissioner the authority to impose sanctions as warranted. Any other remedial measures can only be imposed by Council.
- [4] In every case, including this one, the highest objective is to make recommendations that serve the public interest, if there are recommendations to be made.

Process Followed for this Investigation

- [5] In conducting this investigation, Principles *Integrity* applied the tenets of procedural fairness and was guided by the complaint process set out under the Code of Conduct.
- [6] 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

Principles *Integrity*

- Notifying the Respondent, and providing him with an opportunity to respond in full to the allegations, including ‘meeting’ with the Respondent virtually
 - Reviewing the Code of Conduct, reports, recordings of archived meetings and other documentation including emails
 - Conducting interviews of persons with information relevant to the issues under investigation, including all members of the City’s leadership team and some members of Council
 - Providing the Respondent with the opportunity to review and provide comments to the Integrity Commissioner’s Preliminary Findings Report, although none were provided to us
 - Deferring delivery of this Report until the Respondent’s return to office following his absence due to illness.
- [7] In accordance with the foregoing, on February 2, 2021 we provided Councillor Whitehead with our preliminary Findings Report and invited him to provide any response or submissions by February 17, 2021.
- [8] The process of providing a preliminary Findings Report to the Respondent, seeking comments, and reflecting upon those comments prior to finalizing a report to Council is a helpful aspect of our process.
- [9] On February 16, 2021 we received a voice mail message from the Councillor’s assistant, looking for a copy of the preliminary Findings Report. By return email to the Councillor and his assistant, we directed them to our email of February 2, advising to contact us if they could not locate it, and extending the time for response to February 25, 2021.
- [10] On March 1, 2021 we received two voice mail messages from the Councillor, responding to the preliminary Findings Report, and engaged in a 30-minute telephone conversation with the Councillor regarding his response to our preliminary Findings Report. The Councillor was encouraged to provide any additional comments to us in writing.
- [11] On March 2, 2021 we received an email from the Councillor’s assistant, apologizing in detail that she had not brought the preliminary Findings Report to the Councillor’s attention, and requesting a further extension of one week for his response. We responded to the Councillor, copying his assistant, extending the time for his response to March 9, 2021.

Principles *Integrity*

- [12] On March 8, 2021 we received a further email from the Councillor's assistant, requesting a further 2-week extension to allow the Councillor to retain legal counsel, which we responded to that same day, extending time to respond to March 12, 2021.
- [13] On March 12, 2021 we received a further request from the Councillor's legal counsel, requesting a further 2-week extension to respond. On the undertaking of the legal counsel that there would be no further requests for extension, we extended time to respond to March 26, 2021.
- [14] On March 26, 2021 we received the Councillor's 17-page written response along with 47 pages of attachments.
- [15] In his response to our preliminary Findings Report, the Councillor raised, for the first time, issues regarding our independence and impartiality. He has also challenged the process as unfair, unethical and flawed.
- [16] We are satisfied that the process we followed in investigating the complaint adhered to the tenets of procedural fairness, and that our independence and impartiality has been evident throughout. However, with the Councillor's comments in mind we have revisited our report to provide greater clarity.

Councillor's Sick Leave

- [17] Once an investigation is commenced, and where the Integrity Commissioner finds that a member has contravened the Code of Conduct, unless a reasonable satisfactory resolution can be achieved, then the Integrity Commissioner must file a report to Council at the earliest possible opportunity.
- [18] On March 31, 2021 the Councillor obtained leave of City Council for his absence due to illness until June 30, 2021.
- [19] As in cases of workplace investigations, delays can occur because a party takes a medical leave.
- [20] In this investigation, following receipt of the complaint on November 12, 2020, the investigation was completed and our preliminary Findings Report drafted by February 2, 2021.
- [21] At the end of March 2021 the Respondent took a medical leave.

Principles *Integrity*

- [22] On June 18, 2021 in response to an inquiry from the Councillor's legal counsel, we advised that in deference to his client's health issues and absence from Council, we would delay our final Report to Council pending the Councillor's return to work. We advised that while we did not feel it necessary to deliver an Interim Report to explain the delay, if the Councillor had any concerns we would provide an Interim Report to Council.
- [23] In June his sick leave was extended until September 30, 2021 and in September, that date was extended to October 31, 2021.
- [24] We have held our final Recommendation Report in abeyance pending his return to his position on Council.
- [25] While recognizing that issuing our Report within days of the Respondent's return to work may appear insensitive, we hasten to point out that the Respondent has had our preliminary Findings Report in hand (containing essentially everything except the recommendations set out at the end of this document) since February 2, 2021.
- [26] We also note that, in the time that has elapsed, at least three members of senior staff whose evidence contributed to our work are no longer on staff at the City.
- [27] Our obligation to issue this Report is not merely our obligation to Council, but to those staff who filed the complaint and those who supported the investigation of the complaint by coming forward and participating in our investigation.
- [28] For such a complainant, the Integrity Commissioner offers the only possible recourse for problematic behaviour by a member of Council. Our reports should be as timely as possible.

The Complaint

- [29] On November 12, 2020 we received a complaint from the City of Hamilton's Human Resources department filed on behalf of City staff alleging that Councillor Whitehead has engaged in a course of conduct and behaviour with respect to staff which breaches the Code of Conduct.
- [30] During the investigation, we were advised that the impetus for this complaint was the recognition by the Human Resources department and the City's senior management team that they had an obligation to seek recourse for what they perceived as a Councillor's unacceptable conduct and behaviour toward a member of staff. The conduct complained of in this complaint was viewed as the culminating incident in a familiar pattern of behaviour by the Councillor.

Principles *Integrity*

- [31] Senior management determined that the complaint should come from the Human Resources department and not the individual directly and recently involved. Management staff felt compelled to bring the allegations forward on behalf of staff directly affected; as such, we have treated this complaint as being filed by the Human Resources department, not by the staff member whose treatment by the Councillor was the culminating incident. The staff member will be referred to as Staff Member A in the balance of this Report.
- [32] Staff who were interviewed during the course of our investigation, provided cogent and relevant evidence revealing a pattern of conduct and behaviour.
- [33] The particulars set out in the complaint are as follows:
- During a Committee meeting, Councillor Whitehead repeatedly verbally attacked and impugned the professional integrity and competence of Staff Member A
 - Councillor Whitehead claimed that Staff Member A had been terminated from previous employment and suggested their job was 'on the line', thereby maligning and impugning the professional reputation of Staff Member A.

Background and Context:

- [34] The safety and operational characteristics of roadways in the City of Hamilton have sometimes been contentious. The Complete Streets objective, which places emphasis on pedestrian-friendly design, at times pits members of the community with divergent perspectives (commuters in cars, cyclists and pedestrians) against each other.
- [35] The review of Aberdeen Avenue from Queen to Longwood, initially sought by Motion in late fall 2015, was one such issue.
- [36] On November 18, 2015, the former Ward 1 Councillor brought a motion requesting the review to the General Issues Committee (GIC) without first providing the requisite Notice at the preceding meeting in accordance with the Procedural By-law.
- [37] Although the segment of Aberdeen identified by the motion was situated in Ward 1, because it serves as one of the routes for commuters travelling from other Wards, most particularly Wards 2 and 8 (now 2, 8 and 14) the initial motion lost on a tie vote, but prompted a further motion.
- [38] This further motion directed that, on those occasions when staff are engaged to write a Motion for a Councillor, where such Motion will require waiving of the rules (in other words, arriving at Council or Committee without Notice), that:

Principles *Integrity*

“those staff involved in the formulation of the Notice of Motion be directed to review the Notice of Motion with the affected ward Councillors so that they may have a reasonable timeframe with which to engage their communities”.

- [39] On April 27, 2016, Council directed (Item 7.11) that staff work with the affected Ward Councillors on interim safety measures along Aberdeen, during the full review of Aberdeen from Queen to Longwood respecting the safety and operational characteristics of the roadway.
- [40] On March 20, 2017, a report to Public Works outlined those interim measures to be implemented in advance of the completion of the Transportation Master Plan, which would result in many more changes.
- [41] On June 17, 2019 in a report to Public Works entitled *Update on Safety Measures on Aberdeen Avenue from Queen Street to Longwood Road (PW17021(a))*, staff specified the additional measures to be implemented along Aberdeen. This implementation was ratified by Council.
- [42] Among those measures was the allowance of parking on both the north and south sides of Aberdeen between Queen and Dundurn (the ‘road diet’), and with respect to the timing of implementation, that all of the changes set out “coincide simultaneously with the two-way traffic conversion of Queen Street South from Aberdeen Avenue to Main Street West”.
- [43] In September of 2020 that two-way conversion was completed, and staff were proceeding with implementation of the road diet.
- [44] Changing implementation would have required a reconsideration of Council’s earlier decision.
- [45] On September 11, 2020, a petition opposing the parking along Aberdeen was before Public Works committee. This prompted other members of the community to ‘delegate to’ (attend and speak to the committee) in support of the imminent changes.
- [46] Councillor Whitehead, whose constituents are commuters using Aberdeen, challenged the members of the community who spoke in favour of the implementation of street parking along Aberdeen.
- [47] He then questioned Staff Member A about the road diet and the procedure leading to implementation, alleging missteps including lack of consultation and acting without Council direction.

Principles *Integrity*

- [48] One of the elements in this Complaint is the treatment of Staff Member A during that meeting by the Councillor, on the basis that the Councillor was publicly attacking the staff member.
- [49] The other element relates to conduct and behaviour by Councillor Whitehead targeting that same staff member outside of the public meeting which amounted to the Councillor privately attacking the staff member.

The Applicable Code of Conduct Provisions, and their Interpretation:

- [50] The City of Hamilton Council Code of Conduct provides an ethical guide and framework for Members of Council for conduct and behavior which promotes confidence in the office which they hold as elected officials of municipal government.
- [51] That Code of Conduct sets out as the Purpose:

A legislated Code of Conduct helps to ensure that the Members of Council share a common basis for acceptable conduct. The Code of Conduct is not intended to replace personal ethics. The Code of Conduct:

serves to ensure public confidence that the City's elected representatives operate from a base of integrity, transparency, justice and courtesy.

- [52] The provisions of the Code which are most relevant to our findings and analysis in this investigation are¹:

Section 11: Conduct Respecting City Employees

11. (1) ...

(a) every Member of Council shall be respectful of the role of City officers and employees to provide service and advice based on political neutrality and objectivity, and without undue influence from any one or more Members of Council;

(b) no Member of Council shall maliciously, falsely, negligently, recklessly, or otherwise improperly, injure the professional or ethical reputation, or the prospects or practice, of any one or more City employees; and

¹ During the period of our investigation the City had not yet adopted a Council/Staff Relations Policy, which may have been relevant had it been in place.

Principles *Integrity*

(c) every Member of Council shall show respect for the professional capacities and position of officers and employees of the City.

...

(3) No Member shall use, or attempt to use, the Member's authority or influence for the purpose of intimidating, threatening, coercing, or otherwise improperly influencing any City employee with the intent of interfering with that employee's duties, including the duty to disclose improper activity.

(4) It is the policy of the City that all persons be treated fairly in the workplace in an environment free of discrimination and of personal and sexual harassment and workplace violence.

Accordingly:

...

(b) no Member of Council shall harass or engage in acts of workplace violence towards another Member of Council, any City officer or employee, or any member of the public; and

(c) every Member of Council shall:

(i) treat other Members, City officers and employees, and members of the public, appropriately, and without bullying, abuse, intimidation or violence; and

(ii) make all reasonable efforts to ensure that his or her work environment is free from discrimination, harassment and violence.

Analysis and Findings:

Evidentiary Standard for Findings of Fact:

- [53] In order to make findings of fact, the test in an integrity commissioner's investigation is a "balance of probabilities". This means that a finding requires that it be more likely true than not that the alleged conduct occurred. This is a much lower threshold than the criminal standard of proof "beyond a reasonable doubt".
- [54] Despite this lower threshold, the evidence available to us in this investigation provides a preponderance of proof on which we are able to make our findings.
- [55] We are satisfied that the alleged events occurred as reported.
- [56] We are also satisfied, as detailed below, that those alleged events constitute a pattern of conduct and behaviour by Councillor Whitehead, directed at various employees at different times, over several years.

Principles *Integrity*

Harassment, bullying; attacking, impugning staff integrity and competence:

- [57] When the issue of Aberdeen lane restrictions arose at the September 11, 2020 Public Works Committee meeting the Chair reminded Councillors that there was to be no debate, as Council direction already had been passed in June 2019 to implement the changes.
- [58] Throughout the next hour and fifteen minutes of the meeting, Councillor Whitehead's opposition to the road diet implementation manifested itself in an aggressive barrage of rapid-fire questions of Staff Member A.
- [59] Although not the subject of this complaint, he also aggressively questioned delegates speaking in support of the changes. The Chair reminded him repeatedly to confine his comments to questions of clarification.
- [60] Starting at about 2:15:00 into the meeting Staff Member A explained the pilot project of lane restrictions through parking permissions along Aberdeen. Questioning on the subject continues until 3:30:48 in the meeting recording.
- [61] It is staff's role to provide information and professional advice so that Council can make informed decisions. Councillors can ask questions of clarification, seeking to better understand issues.
- [62] It is the role of Councillors to debate each other, not staff, on issues before them. Staff are not adversaries in 'opposition' in a debate, and are not witnesses in a trial.
- [63] Councillor Whitehead's style in this meeting was to treat Staff Member A alternately as a hostile witness under cross-examination, and an adversary in a debate.
- [64] One frequent device the Councillor employs is to state his opinion or perspective (essentially, the position he would like to be adopted), then conclude with "Is that correct?"
- [65] Not surprisingly, Staff Member A did not agree with the Councillor's positions.
- [66] When used sparingly, it may be effective in ensuring the Councillor's perspective is understood.
- [67] When used repeatedly, it takes on a quality of witness-badgering that has no place in a Council chamber. No court would condone it. The opposing lawyer would object.
- [68] In a workplace, such questioning of another employee would quickly be recognized as harassment.

Principles *Integrity*

- [69] The Council chamber (including a virtual council or committee meeting) constitutes a workplace for those working for the municipality.
- [70] Employers have an obligation to ensure a harassment-free workplace, in the same way employers have an obligation to ensure a violence-free workplace. The Code of Conduct requires members of Council to refrain from harassing and bullying behaviour towards employees.
- [71] It is fair for a municipal staff member to expect prodding, even challenging, questions from Members of Council who seek to understand an issue, or seek to convey opposition to a matter. The decision after all is the responsibility of the Council, and not staff, to make.
- [72] That said, questioning which takes the form of cross-examination and interrogation is disrespectful and inappropriate and places staff in the unfair position of having to simply endure it, since they have no right to speak, unless asked, or to vote on a matter before Council or a committee.
- [73] The Respondent's questioning of Staff Member A was in form and substance disrespectful and inappropriate.
- [74] Councillor Whitehead wrongly accused Staff Member A of acting contrary to previous Council direction, implied that Staff Member A was misleading the committee, accused Staff Member A of giving different answers in private than in public, and suggested Staff Member A was lying. The Councillor then proceeded to demand a public apology from Staff Member A for the alleged transgression of failing to consult before implementing the Council direction. Although Staff Member A clearly did not agree with the Councillor's position, he attempted to deflect and assuage the Councillor, avoiding directly disputing or debating with him.
- [75] We find this aggressive and hostile questioning of Staff Member A by Councillor Whitehead constitutes harassment and bullying.
- [76] It is inappropriate to argue and debate with staff, and accuse staff of dishonesty. Staff cannot fight back, because they are expected to demonstrate respect for members of Council.
- [77] Staff cannot question Councillors, nor 'return fire' even when they are being blatantly disrespected. The situation reflects a power imbalance.
- [78] We note that the Chair attempted repeatedly to rein in the questioning, without success.

Principles *Integrity*

- [79] It is not solely the role of the Chair to maintain orderly and respectful decorum in meetings.
- [80] In our observations of hundreds of municipal council and committee meetings, such disrespectful treatment of staff would prompt quick interjection by other members of council.
- [81] At one point, the Chair ruled that the questions and comments by Councillor Whitehead were out of order, given that there was no decision being considered by the committee, and therefore nothing to 'debate'.
- [82] On a challenge to the ruling, the ruling was overturned. Shortly afterwards, when the line of questions continued, the Chair unilaterally 'removed' the Councillor from the virtual meeting.
- [83] If committee members choose to spend their time hearing about issues already decided and not before them, that is certainly their prerogative. But allowing aggressive and harassing interrogation-style questioning to continue is not acceptable.
- [84] Passively sitting on the sidelines allowing inappropriate conduct and behaviour to unfold, particularly against a member of City staff, is enabling if not encouraging this bad behaviour.
- [85] The Councillor's conduct and behaviour – peppering Staff Member A with interrogation-style questions, not listening, interrupting, and refusing to accept the responses, then suggesting they are untruthful, lying, incompetent or lack integrity – these are not acceptable behaviours from a member of a municipal Council.
- [86] The Councillor has offered a number of justifications for his behaviour: that he was experiencing stresses in his personal life; that he was just reacting in 'the heat of the moment'; that other Councillors did not find his behaviour inappropriate; that it was warranted because Staff Member A was exhibiting contempt.
- [87] We find that none of these factors are sufficient to justify or excuse the harassment and bullying which we find occurred at the Public Works committee meeting.
- [88] This public episode of protracted unbridled bullying is damaging to staff in the workplace environment.
- [89] During this investigation we interviewed a number of the City's management staff – both current and former staff - at different levels.
- [90] During those interviews, we learned that similarly bullying behaviour by Councillor Whitehead had been brought to the Councillor's attention in the past, by senior

Principles *Integrity*

managers who witnessed it being targeted at other subordinates and even at themselves. We were made aware of half a dozen separate incidents, involving as many different management staff, who experienced similar bullying by Councillor Whitehead in public meetings.

- [91] We have been advised that Councillor Whitehead's approach to staff questioning has had a chilling effect which requires management to curate who can attend committee meetings to present reports when Councillor Whitehead is anticipated to be present, with senior staff members often taking on the role themselves in lieu of staff who might have more direct experience with a matter.
- [92] The damage to staff, and to the culture of respect in the organization, is significant and lasting. Such conduct causes stress and anxiety to those on whom it is visited and inculcates a culture of apprehension and fear in others who know they will have to interact with the Councillor in the course of their employment.
- [93] A concern exists that left unchecked, the behaviour will exacerbate retention/recruitment difficulties. Experienced professionals with long track records and excellent credentials would be understandably hesitant to risk exposing their reputations to damage wrought in such an environment.

Intimidation and Threats to job-security

- [94] The complaint alleges that Councillor Whitehead told the City Manager that Staff Member A had been fired from his former municipal job before taking the position at Hamilton.
- [95] Councillor Whitehead advised us that a Council colleague confided this information to him. He advised that he learned more when he asked councillors of that other municipality when they and he were at an FCM meeting, the Federation of Canadian Municipalities.
- [96] The Councillor refused to disclose to us which Council colleague had told him this, and advised that his trustworthiness would be eroded among his colleagues if he told us.
- [97] The Councillor told us that before sharing this information with the City Manager, he first raised it with Staff Member A, but obtained no satisfactory response, as Staff Member A merely changed the subject.
- [98] In the course of this investigation, the Councillor advised us that:
 - He only told 3 individuals (aside from Staff Member A): the City Manager, the General Manager, and the Executive Director of Human Resources
 - He never heard anything back from any of them, to contradict it

Principles *Integrity*

- The information was given to him by a Council colleague, and he checked it by asking councillors from that other municipality, at the Federation of Canadian Municipalities (FCM)

[99] In the course of this investigation, we learned that:

- The Councillor never asked Staff Member A about being fired
- The Councillor shared this information with several individuals, including with one of the Staff Member A's subordinates
- The City Manager promptly told the Councillor that the information was false
- In December 2020 the Councillor continued to repeat it

[100] Members of Council have no role in the hiring (or termination) of staff below the level of General Manager.

[101] While there might be circumstances where a member of Council, upon learning that a recently-hired employee had been terminated from previous employment (thus suggesting the possibility that the organization might have hired the individual unaware of relevant information) might share it confidentially with the City Manager or a General Manager, under the circumstances of this investigation, we find that the Councillor's 'sharing' of information was a blatant attempt to falsely undermine and malign the reputation of Staff Member A.

[102] For the record, it is clear that Staff Member A was the preferred candidate when hired in mid-2018 following a thorough recruitment process, and voluntarily left a position of responsibility with a previous employer to take the job with the City of Hamilton. Staff Member A is a nationally-recognized expert in their professional field, who has held positions of responsibility for over two decades before coming to Hamilton.

[103] Further, we find that the Councillor did not confine sharing his false information – malicious gossip, in fact – with Staff Member A's superiors, but also shared it with at least one of Staff Member A's staff.

[104] On that occasion, the Councillor told a non-management staff member that Staff Member A's job was 'on the line' when they were unable to immediately take a phone call when the Councillor demanded.

[105] This is egregious conduct, as it serves the dual purposes of undermining and impugning Staff Member A's reputation and ability to support and manage staff, and intimidating to staff, by reminding them that he, as a Councillor, is able to damage and destroy the reputation and, by extension, career and livelihood of those who do not comply with his wishes and desires.

Principles *Integrity*

- [106] This is a devastating message to municipal staff, whose overarching purpose is to provide independent professional advice and information, in the public interest, to support Council's informed decision-making.
- [107] If staff can be threatened and controlled through veiled, and not-so-veiled, threats of termination, it renders the public interest subordinate to the intimidation tactics of individual Councillors.
- [108] Councillor Whitehead has not denied the allegations, but offers justification relating to his desire to do his due diligence in passing along information about the supposed termination of Staff Member A.
- [109] We do not find the Councilor's explanation to be credible.
- [110] During our investigation, we were made aware of a number of other instances, over several years, of Councillor Whitehead threatening the job of other management staff, at very senior levels, in attempting to extract a change in position in their professional advice or opinions.
- [111] Even during the time we were investigating this complaint, the Councillor has threatened other senior staff with 'firing' when he disagrees with their position or handling of a matter.
- [112] While an individual member of Council does not have any authority to fire (or direct the firing of) an employee – barring, perhaps, their own personal administrative support – the threat represents a significant act of intimidation. It is egregious and cannot be condoned.
- [113] If a member of Council is dissatisfied with the performance of any employee, there are appropriate channels to seek corrective action.
- [114] Demanding obedience to a Councillor on threat of termination is never appropriate, whether the threat can be reasonably executed or not.
- [115] We find that the conduct and behaviour in telling others that Staff Member A had been terminated was contrary to Section 11 of the Code of Conduct. We find that the Councillor's explanation regarding refusal to disclose the source of his information lacks credibility.
- [116] We find it more likely that he was intentionally attempting to plant the seed with this falsehood, to put in motion a process that would result in removal of Staff Member A, for the simple reason that he found the person resistant to complying with and acquiescing to the expectations and demands of the Councillor.

Additional Observations:

Principles *Integrity*

- [117] While the Complaint was confined to incidents occurring over a span of a few months, our interviews with numerous management staff – senior management in particular - and several Council colleagues reveal a consistent pattern of behaviour by Councillor Whitehead which occurs when he opposes information presented by staff. When this happens, he turns his attacks on staff whose job it is to convey or implement the information or direction.
- [118] Those we interviewed described these episodes of hostile, harassing behaviour as ‘Terry being Terry’.
- [119] When there is silence around the table, this likely speaks volumes to Councillor Whitehead. More than merely enabling this bad behaviour, it condones and encourages it.
- [120] Management staff told us that Councillor Whitehead’s approach in dealing with them frequently amounts to harassment and bullying, and that there has been some effort over the years to get the Councillor to ‘stop it’.
- [121] The Councillor asserts that his behaviours – which he denies are bullying or amount to a violation of the Code – are the result of personal health issues he has recently experienced during the pandemic. He asserts that the conduct of the investigation demonstrates our insensitivity, exacerbating his already high levels of stress.
- [122] As noted, we have been provided with ample evidence of credible senior staff and Council colleagues that the Councillor’s pattern of periodic bullying and harassing behaviour dates back several years.
- [123] We heard from senior managers that this complaint was just the latest in a series of incidents experienced at the hands of the Councillor, indicating that he is quick to go after staff’s competence and integrity, threatening and intimating that they will be fired.
- [124] The Councillor asserts that concerns about his approach have never before been brought to his attention by anyone, and claims to be genuinely surprised that his style and approach could be construed as bullying.
- [125] This contradicts the evidence provided by those we interviewed who said that, when confronted afterwards, in conversation, Councillor Whitehead acknowledges his attacks, sometimes apologizes, but does not ever change.
- [126] Staff characterize his bullying as situational; it happens when he is not getting the professional advice or opinion that he wants on a particular issue.

Principles

Integrity

- [127] Finally, there is a general awareness by management staff that when he is attacking a staff member in public, there are unquestionably more attacks taking place behind the scenes. It is extremely stressful for the individual, and corrosive to the integrity of the organization.
- [128] Councillor Whitehead asserted Staff Member A had a 'lack of empathy' regarding how the Councillor was 'beaten up badly' (for the impact of the Aberdeen road diet changes on his constituents). Yet, the Councillor demonstrates a considerable lack of empathy or even basic recognition of the impact he causes to others, including but not limited to this staff member, when he wages a campaign of attacks, to get his way.
- [129] In the course of this investigation, it was made clear that there is no expectation among management staff that the Councillor will actually genuinely apologize for, or even acknowledge problems with, his conduct and behaviour.
- [130] We applaud the courage of the participants in this investigation for supporting the City's employees and a more respectful work environment.
- [131] One recurrent theme we heard is that management are pessimistic that not only will Councillor Whitehead's behaviour not change, but there is the concern that the Councillor will retaliate against those who participated in this complaint, as well as Staff Member A. While Staff Member A is well-respected in his field and among management at the City, it is felt that the disclosure of this behaviour and the outcome of this investigation would expose him to more of the Councillor's objectionable behaviour.
- [132] Council members are not mere by-standers when conduct escalates. They can play a role in calling it out and challenging it, with the voice of reason.
- [133] It would be unfortunate if members of Council do not place value in supporting the appropriate and respectful treatment of professional staff above their personal allegiances and loyalties to each other.
- [134] We note that any reprisal or retaliation by the Councillor can form the basis for a separate finding of contravention under the Code of Conduct.

Summary of Findings:

- [135] In summary, we find that the Councillor Whitehead's conduct and behaviour occurred as alleged, and that this conduct contravenes the Code of Conduct.
- [136] We find his aggressive and hostile questioning during the Public Works Committee meeting of September 11, 2020 constituted harassment and bullying of Staff Member A.

Principles *Integrity*

[137] We find that his conduct in telling the City Manager and others that Staff Member A had been terminated previously was an attempt to intimidate and to falsely injure the professional reputation of an employee, contrary to the Code of Conduct.

[138] We find that the conduct and behaviour of Councillor Whitehead has contravened the Code of Conduct, in particular the provisions contained within section 11:

- s.11.(1)
 - (a) be respectful of staff and not attempt to exert undue influence
 - (b) not maliciously, falsely injure professional and ethical reputation
 - (c) fail to show respect for professional capacities of employee
- s.11(3) attempt to use authority / influence for purpose of intimidating, coercing, improperly influencing employee
- s.11(4)(b) engage in harassment of employee
- s.11(4)(c) (i) & (ii) bullying, creating a harassing environment

Concluding Remarks:

[139] An Integrity Commissioner's investigation report is not simply the conclusion of a technical exercise to determine whether there has been a breach of codified standards of behaviour. Our role is more than simply the task of bringing adjudication to grievances between individuals. As noted at the outset, we see as our highest objective in concluding an investigation to be the making of recommendations that serve the public interest.

[140] One of the most important functions of an integrity commissioner is to provide training, advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. The integrity commissioner's role is as much about education as it is about adjudication, so that municipal government can function better, and that members of the public are able to confidently conclude that members of their municipal council are acting with integrity.

[141] Sometimes we are able to resolve complaints on the basis of course correction by the Member. Where the Member acknowledges inappropriate conduct and commits to meaningful change, a public report may not be necessary. In such cases, only the complainant and Respondent are made aware of the disposition of the matter.

Principles *Integrity*

- [142] However, where a breach is substantiated, and it is important to daylight the concern, the integrity commissioner, following procedural fairness, submits a public report.
- [143] As detailed above, we are of the view that the Respondent's conduct represents a significant breach of the provisions of the Code of Conduct.
- [144] In appropriate circumstances, it may be that a Member of Council is able to correct his behaviour. In those circumstances, it is fair to give the Member the benefit of the doubt.
- [145] However, where a pattern of behaviour is observed, informal resolution is not in the public interest.
- [146] In the circumstances of this investigation, the evidence reveals a persistent pattern of unacceptable conduct and behaviour which is directed at particular staff. The evidence discloses that private attempts to prevail upon the Councillor to curtail this conduct and refrain from such unacceptable behaviour have failed.
- [147] The Councillor's response to our preliminary findings report makes it clear that the Councillor defends his conduct and behaviour as warranted, (because it allegedly arises in response to staff mistakes), and appropriate (as reflecting a style which has served the Councillor well).
- [148] He demonstrated a complete lack of acknowledgement that the conduct and behaviour raised legitimate concerns and he denied that these issues have ever previously been brought to his attention in the past.
- [149] While protecting the identity of specific individuals, we are satisfied based on our interviews with multiple senior management staff and members of Council, that the Councillor has been spoken to regarding his treatment of staff in meetings.
- [150] In our view, a significant change in behaviour is necessary.
- [151] We are not inclined to believe that training would bring about meaningful change in the Councillor's behaviour, particularly as the Councillor appears to exhibit little self-awareness in regard to the impacts of his behaviours on others.
- [152] While sympathetic to the Councillor's personal issues, we observed a lack of appreciation of the personal and professional toll his behaviour has taken on others. Without acknowledgement, there is no expectation the Councillor will see a need to change.
- [153] As such, we believe that a meaningful sanction is warranted.

Principles *Integrity*

[154] The purpose of a sanction is to reinforce Council's ethical framework when education, or acknowledgement, is insufficient. In other words, the Code of Conduct must ultimately have 'teeth'.

[155] The Hamilton Council Code of Conduct provides as follows:

s.14 If the Integrity Commissioner concludes that, in his or her opinion, a Member has contravened the Code of Conduct, he or she may:

- (1) Impose the penalty of a reprimand upon the Member; or
- (2) Impose the penalty of suspension of the remuneration paid to the Member in respect of his or her services as a Member of Council, for a period of up to 90 days.

[156] A suspension of pay does not affect the Councillor's ability to attend meetings and fulfill their duties, but it does take away a portion of his salary, as a penalty for violation of the Code.

[157] The important factors to be taken into consideration in determining that penalty ought to include proportionality and deterrence.

[158] In our view, a meaningful monetary penalty is warranted to make the point that such continued conduct is not acceptable.

[159] We are mindful that the hardships and challenges of the past year of pandemic have taken their toll on the Councillor, as they have on so many others navigating these difficult times. However, we must also recognize that the conduct and behaviour which triggered this complaint reflects a pattern of targeted and bullying behaviour which has been observed over several years.

[160] Under the circumstances, the severity of the sanction is tempered so that the Councillor is not unduly financially penalized.

[161] An integrity commissioner may also recommend, and Council may impose, certain remedial actions within its power, upon receipt of an integrity commissioner's report. The Hamilton Code references these powers under its Code of Conduct:

s.16 The Council may also, upon receiving a report from its Integrity Commissioner, take such further or other action as are within its lawful powers with respect to the subject-matter of the report and/or with respect to the Member of Council in question, including:

Principles *Integrity*

(1) Removal from membership ...

...

[162] We are recommending that the Councillor be restricted in his communications with City staff, outside of his own office staff, to only communicating with General Managers and the City Manager, for the balance of the term or for such shorter period determined by Council as appropriate. Further, we recommend that Councillor Whitehead be obliged, during Council and committee meetings, to confine his questions of staff by only directing his questions to the Mayor or Chair and not directly to staff.

Recommendations:

[163] Having found that Councillor Whitehead, the Respondent, contravened the Code of Conduct, we impose the sanction of suspension of his remuneration for a period of 30 days commencing with the next pay period.

[164] We recommend that Council impose the following remedial measures with respect to the Councillor for the balance of this term of Council or such shorter period as Council deems appropriate:

(1) That Councillor Whitehead be restricted in his communications with City staff, outside of his own office staff, to communicating only with General Managers and the City Manager;

(2) That Councillor Whitehead be obliged, during Council and committee meetings, to confine his questions of staff by directing his questions to the Mayor or Chair and not directly addressing staff.

[165] We wish to conclude by publicly thanking the parties, members of Council and current and former staff who participated in our investigation. We express genuine appreciation for the sharing of time, knowledge and perspective by everyone concerned.

[166] We will be available to introduce this report and respond to questions during the Council meeting at which this report is considered.