

## Presentation - Special General Issues Committee

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LGBTQ Advisory Committee

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### Recommendations

That the Integrity Commissioner make the following changes and take into consideration the following suggestions with respect to the draft Code of Conduct for Advisory Committees (that it distributed to Advisory Committees).

The changes and suggestions have been grouped into the following categories -

- **General** - Applies to the whole document or applies broadly to the Advisory Committee itself
- **Definitions** - Something is unclear and should be defined or redefined to ensure that continuous interpretation of the Code of Conduct is not required
- **Responsibility** - The Code of Conduct identifies something that is either outside the scope of the reasonable responsibilities for a member of an Advisory Committee (or that should be)
- **Training** - Examples that illustrate that in order for a given section of the Code of Conduct to be enacted, further training would be required

### General

1. Advisory Committees should not be classified as "local boards" as outlined both in the draft of the Code of Conduct and Appendix "B" to Report FCS21081. The implications of this classification will subject volunteers, who are not remunerated for their work, to everything outlined in the *Municipal Act*. Instead, they should be classified as "Advisory Committees" and a separate Code of Conduct should be developed for them that is subject to the City's Procedural By-law.

The general wording in the Code of Conduct suggests a homogeneity among

the bodies deemed "local boards". It is not the case that Advisory Committees, writ large, can be adequately compared with the other types of Committees, Sub-committees, Boards, Agencies, and Tribunals that are defined under the umbrella term "local board". It is necessary, whether or not Advisory Committees are ultimately defined as local boards, that any Code of Conduct consider their unique nature, position, and responsibilities.

2. The commentary in the Code of Conduct is too broad in that it purports to be "illustrative" and "not exhaustive". The vague or "not exhaustive" nature of the current Code of Conduct has been the source of confusion, misunderstanding, and harm. Continuing this practice will make it unnecessarily difficult for members of Advisory Committees to adhere to the Code of Conduct.

All of the applicable rules, regulations, and penalties should be clearly spelled out in this document in an exhaustive manner that removes the need for continuous interpretation and evaluation.

3. Members of Advisory Committees do not have access to the same legal resources as elected officials (e.g. the advice of the City Solicitor). As a result, it is unreasonable to suggest that members of Advisory Committees "[uphold] both the letter of the law and the spirit of the laws and policies established by the Federal parliament, Ontario legislature, and by City Council."

It is further unreasonable to ask that members of Advisory Committees be required to understand what is required within the breadth of the statement, "The provisions of this Code are intended to be applied in concert with existing legislation and go beyond the minimum standards of behaviour set out in current federal and provincial statutes."

4. A Code of Conduct does not stand alone. It is necessarily understood in the context of the City's Procedural By-law, the Advisory Committee Handbook, and the Code of Conduct for City Council (or other bodies). It's important that before the Code of Conduct is enacted that these other documents are also reviewed and updated, especially the Advisory Committee Handbook. Revising these documents independently will create additional undue confusion and potential harm.

Traditionally, the work of Advisory Committees has been done somewhat

informally. The changes to the Code of Conduct suggest an environment of increased formality and adherence to a broader set of laws and legislation that are not contemplated in the Advisory Committee Handbook. This imbalance must be remedied before these changes are considered.

5. It is not reasonable to suggest that Advisory Committees should be subject to the *Municipal Conflict of Interest Act*. Advisory Committees do not make decisions of a nature that would subject them to this legislation, in our opinion. Decisions that would create any potential conflict of interest are mitigated through a process of recommendation that first goes to a Standing Committee and ultimately to City Council. Downloading those responsibilities to individual volunteer members of Advisory Committees does not seem appropriate.
6. It is disingenuous to state that Advisory Committees are subject to a "decision ... to be made ... by a member of staff with delegated authority or operational responsibility". This language completely elides the foundational relationship between Advisory Committees and City Council. It doesn't make sense that staff would have delegated authority over a body that makes recommendations to City Council. There are neither illustrative nor exhaustive examples in this document that would clarify that in any meaningful way. The current wording inappropriately creates hierarchies where none currently exist and should be made much clearer to avoid potential confusion.
7. The clause "Members shall not appear before the Local Board or committee on their own behalf or as a representative on behalf of any party" (and the clause following it) elides the experiences, and rights to participation, of members of Two Spirit and LGBTQIA+ communities. It is often the case that members of the LGBTQ Advisory Committee (LGBTQAC) are also active in their communities and may, at times, need to come forward to ask for funds or other assistance on behalf of an organization that they are part of. This is often the case when considering past support for events related to the Trans Day of Remembrance (TDOR) or run by The AIDS Network or Pride Hamilton.

It will not always be possible, because of the overlapping responsibilities that are often part of the work done by members of these communities, to simply "not appear before" the LGBTQAC or ask it for assistance. If this cannot be accomplished, another process should be developed to account for this so

that individual organizations, of which there are relatively few, are not unduly harmed (similar to the provision outlined in the Code of Conduct for Business Improvement Areas).

8. There is currently no process that exists to identify "confidential information". The LGBTQAC, for instance, does not go into "closed session". If there is other information that is provided to the LGBTQAC that is considered "confidential" it would be important for there to be a process to clearly identify that information (similar to the process that City Council uses).
9. In the section entitled "Acting on Advice of the Integrity Commissioner" it appears that this information is about the Integrity Commissioner and not about a member of an Advisory Committee. If that's the case, this information should rightfully be put into a Code of Conduct for the Integrity Commissioner or better explained in relation to the responsibilities of members of Advisory Committees.

## **Definitions**

In general the LGBTQAC felt that the terms used in this document were not very accessible, colonial in nature, legal in nature, and may alienate future members including youth or volunteers who have not undertaken a more formal education.

10. The "Guiding Principles" section of the document does not begin with a set of definitions that would describe several of the phrases used therein. Several of the phrases are unclear, subjective, or would require significant interpretation, including "honesty and integrity", "diligent manner", "public confidence", "private affairs", "bear close public scrutiny", "conscientious", "impartiality and transparency", "broad range of knowledge", and "active in their own communities".

In sum, there are an abundance of legal and other terms in this document, including those outside of this section (i.e. "reasonable person fully informed of the facts", "incidental mementos or tokens of appreciation"), that have not formed part of any training provided to Advisory Committees or definitions in the Code of Conduct.

11. The section entitled "Improper Use of Influence" is very vague in its

wording as the duties of someone on an Advisory Committee, with respect to what they can influence, have not been defined in any way. In order for members of Advisory Committees to understand how their influence may be used, it should be outlined exhaustively.

12. The section "Business Relations" does not provide context or examples. It is neither exhaustive nor illustrative.
13. The terms "decorum", "proper control", "respect", in the section entitled "Member Conduct" are subjective terms and should be properly defined in context (see comments above about other definitions for more clarity on this). While the subsection entitled "Commentary" is slightly illustrative, it does not properly define, contextually, how these terms are meant to be understood.
14. In the section entitled "Media Communications" the terms "accurately communicate recommendations and proceedings" and "disparaging comments" are not defined.

Further, these two terms do not seem to align with one another. The "Commentary" subsection suggests that speaking about "disparaging comments" would not be permitted even if those comments were accurate reflections of the proceedings of a meeting. This language seems to attempt to limit the kind of speech that is considered "accurate" in favour of avoiding commentary that would be considered critical or negative (one potential definition for the word "disparaging"). It is not the case that all of the recommendations and proceedings of an Advisory Committee could possibly be contained to such a narrow field or that it would be appropriate to attempt to limit the lawful speech of its members in order to to construct that narrowness.

15. In the section entitled "Reprisals and Obstructing" it is not clear how a member of an Advisory Committee could "obstruct the Integrity Commissioner". This should be clearly defined in context.

## **Responsibility**

16. The Code of Conduct for Advisory Committees goes further than what

the legislation requires and further than the Code of Conduct for members of City Council.

Specifically, in the definition of "Family" it goes beyond what is prescribed in the *Municipal Conflict of Interest Act* to include "step-child and grand-child; siblings and step-siblings; aunt/uncle, and niece/nephew; in-laws, including mother/father, sister/brother, daughter/son; any person who lives with the Member on a permanent basis." If members of City Council are not held to this standard it seems unethical to hold members of Advisory Committees to it.

17. The section entitled "Election Campaigns" confers a greater responsibility on members of Advisory Committees than on members of City Council. The implication, as it's currently written, may be that members of Advisory Committees could neither participate in supporting a candidate in a municipal election nor could run in one themselves.

It is currently permissible for a member of City Council to both support other candidates in a municipal election (and there are many examples of this having happened) and be certified as a candidate in a municipal or other election, while continuing to fulfill the duties of their elected position as a City Councillor. It does not make sense that members of a lesser body, like an Advisory Committee, would be held to a higher standard than the standards imposed on members of City Council.

This section is also quite unclear and we may be misinterpreting it. It seems to suggest a situation whereby a member of an Advisory Committee would volunteer to assist a municipal campaign, for instance, to do administrative work. It would almost never be the case that someone would declare their relationship to an Advisory Committee to do that work, nor would there normally be an opportunity to do so. If this is about endorsing candidates, then it should be clearly stated. As it is currently written, it is difficult to imagine a scenario under which this would apply (other than what has been outlined above).

In other words, the "if" clause here is a scenario that would not likely

present itself outside of an endorsement. By leaving the wording as it is, it could be interpreted to mean exactly the opposite under a test of reasonability.

18. It is not appropriate for the Chair of an Advisory Committee, a volunteer, to be involved in conversation with individual members of committees about an "explanation provided", as outlined in the section entitled "Member Conduct". It is often the case that individual members of a committee will miss consecutive meetings for personal, medical, or other reasons that it would not be appropriate to disclose to the Chair of an Advisory Committee.

As stated earlier, and especially in Two Spirit and LGBTQIA+ communities, there are often overlapping duties, responsibilities, and community roles held by members of the LGBTQAC. The City of Hamilton must have a confidential process to deal with these matters that should be adjudicated by either City staff or the body that appointed these members to the LGBTQAC in the first place.

It has been the position of City Council that the application process, which often does not reveal confidential information of a personal or medical nature, is too confidential for members of the LGBTQAC to be permitted to participate in. The standard of confidentiality in this section would seem to require an even greater degree of caution, using that logic.

19. In the section entitled "Media Communications", it goes on to apply a retroactive force to all comments made on an individual member's social media accounts to the effect that members "should consider articulating and posting their own policy of addressing how frequently they will monitor the site for the purpose of identifying and removing disparaging, abusive or hateful comments."

This is not only a standard that members of City Council are not held to (the phrase "social media" is not even present in the current City Council Code of Conduct) but it is suggestive (i.e. "consider") rather than prescriptive. Language like this is vague and can have a chilling effect on the lawful speech of members of Advisory Committees if not carefully defined. The phrase "should consider" implies that this is

optional. This is not language that should form part of a Code of Conduct.

20. In the section entitled "Respect for the Town By-laws and Policies" there is an undue amount of responsibility placed on members of Advisory Committees who are not required to know, have not been provided access, and have not been provided with training with respect to all of the City's by-laws, policies, and procedures. It is unreasonable for individual volunteers on an Advisory Committee to be asked to undertake this responsibility. It is also not possible for a volunteer member of an Advisory Committee to be responsible for upholding the "Rule of Law". That is a very high standard and, again, language that does not appear in the Code of Conduct for City Council.

The LGBTQAC was concerned by the phrasing here that may suggest that members of Advisory Committees were required to uphold, validate, or otherwise affirm all of the City's by-laws. As a Committee representing members of marginalized, oppressed, and equity-seeking groups, it may be the advice of the Committee, or its members, to disagree with the City's by-laws or to take a contrary position to them. The advice that the Committee provides, which is in part based on the lived experience of its members, may challenge the enforcement of the City's by-laws. This is within the Committee's mandate and this form of healthy criticism should be acceptable to the City as long as it comes in the form of a recommendation.

21. In the section entitled "Conduct Respecting Staff" it is not reasonable for individual volunteers to be expected to understand the nature of the responsibility for staff to employ "political neutrality". While it is certainly important that volunteers treat staff with respect, it is up to staff to identify advice of this nature, not for volunteers to be expected to interpret when this may or may not be the case.

It is also not clear what "undue influence" is when speaking about volunteers' exertions towards staff. The "Commentary" subsection does not make any of this clear but rather introduces more terms that need defining including "normal processes" or "matters of administration". It is not clear how members of Advisory Committees



would become acquainted with these processes. Much of the language in this section is missing from the Code of Conduct for members of City Council. Again, it is unclear why there are different standards for members of "local boards" than for members of City Council.

## **Training**

22. In the section entitled "Respectful Workplace", volunteers are required to adhere to policies that they have never seen with respect to "harassment and workplace violence" and training that they have never received with respect to applicable legislation.

It is also not clear if, by virtue of their position as volunteers, who are not remunerated by the City of Hamilton, if this applies only to their interactions during meetings, with City of Hamilton staff, with one another, or through combinations of these things. The obligation for individual members of volunteer Advisory Committees to "ensure that their environment is free from discrimination and harassment" supposes that those individuals have a degree of control over that environment which they do not. It is important to further define these terms.

In addition to these numbered recommendations, we ask that the Integrity Commissioner, or members of staff from the office of the City Clerk, directly engage with all Advisory Committees about this by attending meetings, delivering a summative presentation, and asking for direct feedback.

## **Background**

The Integrity Commissioner, through the office of the City Clerk and the LGBTQ Advisory Committee's (LGBTQAC) Staff Liaison, distributed a draft of the changes it is proposing to the Code of Conduct for Advisory Committees.

The Integrity Commissioner asked for feedback on the draft. This is the only opportunity, and the only form through which, the LGBTQAC will have to provide this feedback.

The Chair of the LGBTQAC was the subject of an investigation by City Council, through its Integrity Commissioner, in 2020. Members of the LGBTQAC, including its Chair,

were interviewed as part of that investigation. The Committee made comments, in public, about that process, the Integrity Commissioner's ruling and Recommendation Report, and Council's decision. Some of the recommendations in this Citizen Committee Report reflect those public conversations.

The LGBTQAC had a further public discussion about the draft itself at its November 2021 meeting. The recommendations above also reflect that discussion.

## **Analysis / Rationale**

While we appreciate being asked to respond in this manner, we do not have confidence that most Advisory Committees have received information about how they might, as a Committee, respond collectively through this process.

In fact, there were no written instructions provided outlining how an Advisory Committee, as a body, could provide feedback on this draft Code of Conduct, how an Advisory Committee might be permitted to delegate to the Special General Issues Committee meeting in January, or how, precisely, comments are supposed to be sent to the Integrity Commissioner (e.g. through a Citizen Committee Report or through other means). At present, the only formal tool available for Advisory Committees to communicate externally is through a Citizen Committee Report, which is why we have prepared our comments in this format.

It is the opinion of the LGBTQAC that the recommendations above be considered seriously and not be simply referred to a future training session for further clarification but rather that clarity be infused into the Code of Conduct itself. It is not appropriate to hold members of Advisory Committees accountable, with potential penalties enforced, simply with a promise of future training. Up to this point, the training provided to Advisory Committees in no way prepares members to adhere to either the current or draft Code of Conduct.

The training provided to Advisory Committees, given the vagueness of the Code of Conduct, would need to be exhaustive and extensive, and likely unreasonable for volunteers to undertake in good faith without significant ongoing support.

It would also potentially limit those eligible for participation as members of Advisory Committees to those applicants who already possess some or all of this training in advance. It is not clear how the City of Hamilton is meant to manage, fund, and deliver such a comprehensive training program to the hundreds of volunteers that make up

what are being defined here as "local boards". This does not appear to have been considered as part of the process to prepare this draft.

In any event, a program of training, approved along with this Code of Conduct, is necessary in order for volunteers, City Council, and the public to understand the nature and degree of responsibility required in order to participate as members of Advisory Committees.

In our opinion, it would not be possible to enact this Code of Conduct without exhaustive training and that should be taken into consideration before any part of this Code of Conduct is enacted.