

Principles
Integrity

City of Hamilton
Integrity Commissioner's Report
Regarding Complaints Against Councillor Terry Whitehead
June 10, 2022

Introductory Comments

- [1] Principles Integrity has served as the Integrity Commissioner for the City of Hamilton since July 2018. We are also privileged to serve as Integrity Commissioner for a number of Ontario municipalities.
- [2] The City of Hamilton has as part of its ethical framework a Code of Conduct which is the policy touchstone underlying the assessments conducted in this report. It represents the standard of conduct against which all members of Council are to be measured when there is an allegation of breach of the ethical responsibilities established under the Code of Conduct. The review mechanism contemplated by the Code, one which is required in all Ontario municipalities, is an inquiry/complaints process administered by an integrity commissioner.
- [3] In this regard, we have assessed the information in this matter fairly, in an independent and neutral manner, and have provided an opportunity to the respondent named in this Report to respond to the allegations, and to review and provide comment on the preliminary findings.

November 10, 2021 Report to Council:

- [4] It is necessary, at the outset of this Report, to clarify one element of its scope.
- [5] The complaints in the matters which are the subject of this Report arose in the same time frame as a previous investigation involving Councillor Whitehead was being brought to a conclusion. On November 10, 2021 Council considered a report in which Councillor Whitehead's remuneration was suspended for 30 days and regarding which Council imposed additional remedial measures to constrain Councillor Whitehead's interactions with staff of the City:
- (i) That Councillor Whitehead be restricted in his communications with City staff, outside of his own office staff, to communicating only with the City Manager, General Managers or designate; City Solicitor and City Clerk for the remainder of the 2018 – 2022 Council term;

Principles *Integrity*

(ii) 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 for the remainder of the 2018 – 2022 Council term; and

(iii) That Councillor Whitehead be relieved of his responsibilities as Chair and Vice Chair of Committees of Council and local boards for the remainder of the 2018 – 2022 Council term.

- [6] The report was carried by a vote of 12 to 0. It should be noted that Councillor Whitehead has commenced a judicial review application with respect to the matter, which, based on the most recently available information, is to be heard no earlier than October of 2022. We are a party to the judicial review and will be vigorously defending it.
- [7] Neither the findings in the November 2021 report or the judicial challenge to it have influenced our conclusion that the allegations in this Report have been substantiated.
- [8] However, given our objective of achieving course correction when necessary, and based on the principles of progressive discipline, the sanction and Council's decision on the November 2021 report do have bearing on the imposition of additional sanctions arising from this Report.

The Complaint

- [9] On December 22, 2021 we received a complaint filed on behalf of Council against Councillor Whitehead.
- [10] The essence of the complaint was that Councillor Whitehead engaged in conduct contrary to the Code of Conduct when he:
- attended, unannounced, at the office of the City Clerk on November 4, 2021 (the day before publication of the Council Agenda) and proceeded to angrily criticize and challenge her role in processing a Complaint filed against Councillor Whitehead on November 12, 2020, which related to the bullying of an employee in the fall of 2020 (regarding which Councillor Whitehead has commenced the judicial review application referenced above);
 - criticized and aggressively challenged the City Clerk's decision to place the Report before Council as she is required to do, under the Integrity Commissioner By-law;
 - threatened the City Clerk with '*consequences*' for her role in processing the Complaint initially; and
 - threatened the City Clerk with legal repercussions because of the litigation he would bring;

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- left an unsolicited voicemail message for the Executive Director of Human Resources on November 5, 2021 advising that he had just learned she was *'instrumental'* in the Complaint of November 2020 with regard to his bullying of the employee, and in an implied threat, told her he *"had to do what he had to do"* but that *"he hoped she understood"* and there were *"no hard feelings"*.

[11] It was alleged that this conduct contravened the Council Code of Conduct by:

- Intimidating employees whom he felt played a role in a complaint submitted through Human Resources, and
- Threatening legal action against staff as a result of the role they played in submitting the complaint and in placing the Integrity Commissioner's report on the Council agenda.

[12] The provisions of the Code of Conduct most applicable to the matter are:

Section 11: Conduct Respecting City Employees

11.(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 harassment and workplace violence. Accordingly:

(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...

[13] In the course of reviewing this complaint, we have also considered whether the Code of Conduct provisions with respect to prohibiting obstruction and reprisal are applicable to the conduct complained of:

13 (3) No Member of Council shall take a reprisal or make a threat of reprisal against a Complainant or any other person for providing information to the Integrity Commissioner.

[14] While in the midst of our investigation, on March 11, 2022 we received a new complaint alleging that Councillor Whitehead had again engaged in disrespectful, bullying and intimidating comments towards another Councillor and with respect to staff, during a Council meeting on February 9, 2022. The complaint was filed by the City of Hamilton's Human Resources Department on behalf of Councillor Partridge.

[15] We have consolidated both complaints in this report.

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Process Followed for this Investigation

- [16] In conducting this investigation, Principles *Integrity* applied the principles of procedural fairness and was guided by the complaint process set out under the Code of Conduct.
- [17] This fair and balanced process includes the following elements:
- Reviewing the complaints to determine whether they are within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the complaints should be restated or narrowed, where this better reflects the public interest
 - Notifying the Respondent, and providing him with an opportunity to respond in full to the allegations
 - 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
 - Upon receiving a further complaint during the investigation, notifying the Respondent and providing him with an opportunity to respond to the new allegations
 - Providing the Respondent, in early May, with the opportunity to review and provide comments to the Integrity Commissioner's Preliminary Findings Report, although none were received from him.

Background and Context:

- [18] In the fall of 2020, a complaint filed against Councillor Whitehead resulted in sanctions being imposed against him based on findings that his conduct contravened the Code of Conduct.
- [19] The complaint in that instance was formally filed with the Integrity Commissioner by management of the Human Resources Department, on behalf of the staff member who brought the issue of alleged harassment and bullying to their attention.
- [20] The Recommendation Report in that investigation was provided to Councillor Whitehead on November 3, 2021, with a copy to the Clerk to be provided to November 10, 2021 Council meeting.

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- [21] The Clerk has responsibility for publication of the Council meeting agenda.
- [22] The conduct alleging bullying and intimidation of the Clerk occurred on November 4, 2021, one day before publication of the November 10, 2021 Council agenda.
- [23] The conduct alleging intimidation of the Executive Director of Human Resources occurred on the day of publication of the November 10, 2021 Council agenda.
- [24] While the investigation was on-going, we received the March complaint arising out of conduct in the course of the February 9, 2022 Council meeting.

The Applicable Code of Conduct Provisions, and their Interpretation:

- [25] 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.
- [26] 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.

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

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

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(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.

13 (3) No Member of Council shall take a reprisal or make a threat of reprisal against a Complainant or any other person for providing information to the Integrity Commissioner.

Analysis:

Intimidating staff to prevent publication of complaint report

[28] When the Councillor attended at the office of the City Clerk on the morning of November 4, 2021, it was the day before publication of the Council Agenda.

[29] The Councillor attended unannounced, accompanied by his Administrative Assistant.

[30] Unbeknownst to the City Clerk, the Councillor was surreptitiously recording the meeting.

Principles *Integrity*

- [31] The Councillor provided us with a copy of the audio recording.
- [32] He submits that the recording of the conversation demonstrates a different narrative, one that contradicts the view of his interaction with the City Clerk as an attempt to intimidate her, to prevent her from carrying out her proper duties and obligations.
- [33] A review of the recording of the private meeting makes it quite evident that his intention in attending at the Clerk's office was to challenge the Clerk, and to strong-arm the Clerk, in an effort to prevent her from placing the Report before Council.
- [34] The meeting opens with the Councillor accusing the Clerk of failing to properly exercise her authority, that she ought to have refused to process the filing of the initial complaint at the outset.
- [35] The Councillor then proceeded to debate the words of the by-law, claiming to have written it himself, and threatening her: *"I just want you to understand the consequences of your actions"*.
- [36] He advised that he was *"having fun"* because now he is *"a millionaire"* and that he is *"holding staff accountable for screwing up on a report...and staff should start looking, and reviewing what they did here ..."*
- [37] The Councillor accused the Clerk of failing to carry out a gatekeeper role, and insisted that the complaint filed by Human Resources should never have been signed off and accepted as a complaint.
- [38] He proceeded to chastise and berate the Clerk about placing the Report on the Council agenda for the following week, despite the Clerk pointing out that she had no discretion under the by-law to do anything other than place it on the next Council agenda.
- [39] Taken together, we find that his comments represent a blatant and improper attempt to try to block or prevent the Clerk from carrying out her obligations to provide the Recommendation Report to Council.
- [40] Knowing that the Council Agenda would be made public the following day, his unannounced and unexpected visit can be seen as a pre-emptive strike to preclude the Clerk from fulfilling her obligation.

Threatening legal action against staff for carrying out their responsibilities

- [41] The November 2020 complaint was formally filed by management staff in Human Resources, on behalf of an employee who brought them his complaint of harassment and bullying by a Member of Council.

Principles *Integrity*

- [42] The City of Hamilton's *Procedure for Resolving Harassment and Discrimination Issues* contemplates that complaints of harassment raised with a manager or supervisor are to be brought to Human Resources; and that, where a Member of Council is alleged to be the harasser or bully, the Executive Director of Human Resources must refer the complaint to the Integrity Commissioner.
- [43] On Friday November 5, 2021 at 4:16 pm the Councillor left a voice mail message for the Executive Director of Human Resources, as follows:
- Oh hi Lora, hope everything's going well and hope you have a great weekend. I just got off the phone with my lawyer, a couple of lawyers actually. And as it turned out...I guess the consensus was very clearly, and profound, that you were instrumental in this process. I would have never guessed that. Anyway, I feel really bad. I was giving you the benefit. Anyway, I hope you understand that no hard feelings. I have to do what I have to do...*
- [44] It was reasonable to perceive the voice mail message as threatening, implying as it did that the Councillor would be taking steps because the Executive Director played a role in referring the complaint to the Integrity Commissioner.
- [45] During the course of this investigation, time was spent canvassing with the Councillor opportunities to resolve the complaint through circumspect acknowledgement, meaningful recognizance and genuine heartfelt apology.
- [46] We advised the Councillor that, in our view, without a genuine acknowledgement demonstrating that he truly recognized and understood the negative impacts of his conduct on staff involved, and acknowledging that his actions were a clear attempt to intimidate and to improperly influence staff, a mere apology would fall far short of resolving the (at that point only) complaint.
- [47] The Councillor insisted that he recognized and appreciated that his conduct towards the Clerk and the Executive Director reflected inappropriate and problematic behaviour.
- [48] Exchanges occurred during February with the Councillor in which we sought to understand whether the Councillor fully comprehended the problematic nature of his hostile, aggressive conduct towards staff.
- [49] Before we could arrive at a conclusion, we were contacted about the allegations of continued disrespectful and aggressive conduct occurring during the Council meeting of February 9, 2022.

Principles *Integrity*

Harassing Conduct During February 9, 2022 Council Meeting

- [50] On March 11, 2022 a further complaint was filed against the Councillor, regarding alleged disrespectful, bullying and intimidating comments during the February 9, 2022 Council meeting.
- [51] The complaint included transcribed comments from the on-line chat room conversation between Councillor Whitehead and Councillor Partridge.
- [52] We understand that the Councillor seems to frequently experience technological difficulties connecting to electronic virtual meetings of Council and committees.
- [53] While the Clerk plays a role administering these meetings, it is staff in the Information Technology Department who support the technology employed by the City in making such meetings possible.
- [54] There is evidence that the Councillor makes accusations against the Clerk when he experiences such technological difficulties – when he cannot ‘get into’ meetings, and when he cannot get onto the speakers list.
- [55] These accusations appear not to be warranted or well-founded; no other member seems to experience these difficulties.
- [56] These comments are made publicly, in the course of meetings which are livestreamed.
- [57] The Clerk experiences these statements as falsely blaming that department, or herself personally, for his technological challenges.
- [58] On February 9, 2022 at approximately 1:57:41 into the recording of the meeting, the Councillor, after having trouble unmuting, began his comments criticizing the Clerk’s staff for his technical difficulties.
- [59] When the Mayor tried to curtail the criticism, the Councillor persisted, complaining that it’s an on-going problem caused ‘by Clerks error or operator error’. He then claimed he is being muted by Clerks.
- [60] The Mayor stopped the Councillor, saying they would have somebody take another look at it as it is only Councillor Whitehead who experiences difficulties. The Councillor responded that they need to have a third party take a look at it, which can fairly be interpreted as impugning staff’s trustworthiness or competence to do so.
- [61] It was during that same Council meeting of February 9, 2022 that Councillor Whitehead was engaging in an on-line chat exchange with Councillor Partridge.

Principles *Integrity*

- [62] In that exchange, Councillor Whitehead made comments in the on-line chat to Councillor Partridge which were harassing and intimidating.
- [63] Councillor Whitehead's comments were threatening and aggressive: *"I thank you for your previous calls thanking me for defending you specially with councillor [redacted], your contemptful comments should be of concern a little self reflection might help, believe me when I say throwing mud is not productive and certainly something you might want to rethink on some one that has nothing to lose!!!!!!!"*¹
- [64] He stated that the legal process he was pursuing would reveal that the current means of holding staff accountable was being eroded: *"...a process that now has been eroded by people like you!!!!"*
- [65] We find that Councillor Whitehead's comments directed at a colleague in the on-line chat were aggressive and threatening towards her.
- [66] She has shared that, although she is not often intimidated by others, she does feel some anxiety and stress about returning to 'in person' attendance at City Hall, given that her office is located directly across from Councillor Whitehead's.

Findings:

- [67] We find that the complaints against the Councillor are substantiated.
- [68] We find that the Councillor's interaction with the Clerk in her office on November 4, 2021 was a blatant attempt to prevent her from publishing the Recommendation Report – as she was obligated to do – on the up-coming Council agenda the next day.
- [69] Leaving aside the ethical question of his surreptitious recording of the conversation, we find that his demeanour and conduct towards her was harassing and bullying, and his threats of '*consequences*' which would result from legal action are openly threatening.
- [70] We find that the Councillor's conduct, confronting and challenging the Clerk in her office on November 4, 2021 in an effort to prevent publication of the Report, constituted harassment and intimidation against her, in contravention of the Code of Conduct.
- [71] We find that the voice mail message for the Executive Director of Human Resources on November 5, 2021 constituted an attempt to intimidate her, in contravention of the Code of Conduct.

¹ Excerpt from chatroom conversation with spelling issues corrected

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[72] We find that his conduct, in both instances, reflects conduct contrary to the Code of Conduct prohibiting reprisals:

13.(3) No Member of Council shall take a reprisal or make a threat of reprisal against a Complainant or any other person for providing information to the Integrity Commissioner.

[73] We find that the Councillor's continued criticisms of the Clerk, blaming technological issues only he is experiencing on the Clerk's office, constitutes harassing behaviour towards the Clerk which is contrary to the Code of Conduct.

[74] His comments in the on-line meeting chat room during that meeting demonstrate aggressive and intimidating conduct towards another member of Council, which was experienced by her as harassment.

Additional Observations:

[75] While conducting our investigation, further instances of conduct by Councillor Whitehead have been brought to our attention, most recently his conduct during the General Issues Committee meeting of April 20, 2022.

[76] Rather than circumspection and self-awareness, we observed that Councillor Whitehead's behaviour continues to be opening hostile, aggressive, argumentative, and generally disruptive to the conduct of the meeting.

[77] We are not oblivious to the Councillor's personal health struggles, which he has spoken about publicly on numerous occasions. If his personal health challenges prevent him from controlling himself in regard to aggressive and harassing behaviour towards others, then we encourage him to seek the professional medical support that is available to him.

[78] We do note other members of Council are now making greater effort to hold him accountable, curtail unwarranted criticism of staff, and prevent disruptions. Regardless of what underlies his behaviour, it is Council's responsibility to preserve and promote a workplace free of aggressive and harassing behaviours.

[79] An example of these greater efforts was observed on April 20, 2022.

[80] In responding to the repeated statements and accusations by Councillor Whitehead against the Clerk and other staff regarding the manner in which they managed delegations at Council, the City Manager, the General Manager of Corporate Services and the Executive Director of Human Resources provided a thorough and comprehensive explanation.

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- [81] When Councillor Whitehead persisted, and refused to apologize as directed by the Chair, the Mayor and other Councillors raised points of order. We repeat here only one portion of one of the points of order which expressed frustrations with Councillor Whitehead's conduct and behaviour at the meeting:

Throughout this meeting Councillor Whitehead has been repeatedly belligerent, insulting, disrespectful, disruptive and now is directly impinging the reputation of our staff. He's been in direct violation of numerous procedural by-law clauses, rules of debate, interrupting order, decorum... this can't continue...nobody can stand this...like Councillor Whitehead, stop. Thank you.²

- [82] It is important for Members to identify and call out bad behaviour when it occurs, and to demonstrate leadership in challenging the Councillor when he engages in disrespectful and harassing conduct.
- [83] Council has the authority and the obligation duty to ensure a safe and respectful work environment for all staff, for members of Council and for the public.

Concluding Remarks and Recommendations:

- [84] An important aspect of an Integrity Commissioner's investigation report, where a breach is substantiated, is to daylight the concern for Council and the public.
- [85] As detailed above, we are of the view that the Councillor's conduct represents a breach of the provisions of the Code of Conduct and a continued pattern of behaviour for which he was previously sanctioned.
- [86] In the circumstances of this investigation, the evidence reveals a repeated pattern of unacceptable bullying and harassing behaviour directed at particular staff. The evidence discloses that, even in the face of efforts by other members of Council to curtail this conduct, the Councillor persists in engaging in unacceptable behaviour.
- [87] The Councillor has repeatedly and publicly referenced the personal health issues he is struggling with, and several individuals interviewed expressed concern for the Councillor's struggles with his own well-being, and ability to cope with the challenges of public service while grappling with personal health issues.
- [88] While sympathetic to the Councillor's personal issues, the lack of appreciation of the personal and professional toll his behaviour has taken on others cannot be excused.

² @ 6:25:50 in the recording of the April 20, 2022 General Issues Committee meeting

Principles Integrity

- [89] Supports are available through the Human Resources Department, other City resources, his health providers, and his family.
- [90] It is not sufficient to claim personal health issues – mental or physical – and then impose the impact or burden of his behaviours on staff – staff who have no ability to remove themselves or adequately respond when he turns on them.
- [91] Given the continued conduct exhibited by the Councillor as substantiated through this investigation, we conclude that a further monetary sanction is warranted.
- [92] As noted in our earlier report, 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.
- [93] The factors to be taken into consideration in determining a penalty ought to include proportionality and deterrence. We would add to this the concept of progressive discipline.
- [94] Following receipt of our November 10, 2021 Report, we imposed a 30-day suspension of pay, and Council imposed remedial measures preventing the Councillor from communicating directly with staff below the General Manager level.
- [95] We also recommended 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.
- [96] We recognize that those chairing Council and committee meetings often exercise forbearance with respect to questions by members of Council, the number of times members are allowed to speak, time limits on speakers, and momentary misconduct (outburst, interruptions and the like).
- [97] With respect to Councillor Whitehead, we recommend that the rules of procedure be strictly applied; that points of order and points of privilege be decided upon quickly and succinctly, and without debate; that the chairs of meetings continue to be diligent in maintaining order to control their meetings, curtail interruptions and curb undesirable behaviours, and that they be aware of the powers provided to them to do so in the procedure by-law, including:

8.4 Should a Member of Council persist in conducting themselves in a manner contrary to the rules set forth in subsection 8.1 after having been called to order by the Mayor or the Chair of the Committee, the Mayor or the Chair may order them to vacate the place the meeting is being held:

Principles Integrity

(i) If the Member of Council apologizes, they may, by two-thirds majority vote of the Council or Committee members (excluding the member of Council or Committee in question), be permitted to remain at the meeting; and

(ii) Any Member of Council other than the member ordered to vacate the place the meeting is being held may appeal the Mayor's or Chair's ruling, and Council or Committee may overturn the Chair's ruling by two-thirds majority vote of the Council or Committee members (excluding the member of Council or Committee in question). An appeal is not in order once a vote under section 8.4 (i) has taken place.

(iii) exclusions from voting provided for in subsections 8.4(i) and (ii) shall apply notwithstanding any other provisions in the By-law that require a member of Council or Committee to vote.

Sanction:

- [98] Having previously found complaints of harassment and bullying to be substantiated, and having previously, only 6 months ago, imposed a 30-day suspension of pay for such behaviours, and recognizing the principles of proportionality, deterrence and progressive discipline, we impose the sanction of suspension of Councillor Whitehead's remuneration for a period of 45 days commencing with the next pay period.
- [99] Although not within our authority to impose, we strongly urge the Councillor to seek support which may be available to assist him in wrestling with the personal health challenges which burden him.
- [100] 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.
- [101] We will be available to introduce this report and respond to questions during the Council meeting at which this report is considered.