

Principles
Integrity

City of Hamilton

Integrity Commissioner's Recommendation Report

Complaint Involving the Chair of the

Advisory Committee for Persons with Disabilities

October 19, 2023

Introductory Comments

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

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

- [2] The Municipal Act requires that municipalities adopt codes of conduct for members of Council and for the people appointed by council to the variety of committees and other bodies that serve Council. The Act also requires that municipalities appoint an Integrity Commissioner responsible for overseeing the application of the applicable codes of conduct.
- [3] The City of Hamilton's Advisory Committee for Persons with Disabilities (the ACPD) is subject to a Code of Conduct and oversight by the Integrity Commissioner.
- [4] Integrity Commissioners carry out a range of functions for municipalities. They assist in the development of the ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for members and outreach for the community. One of the most important functions is the provision of advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. And finally, but not principally, they investigate allegations that a member has fallen short of compliance with the municipality's ethical framework and where appropriate they submit public reports on their findings, and make recommendations, including

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

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

The Complaint

- [8] On February 15, 2023 we received a complaint submitted to us by the City Clerk, forwarding an Investigation Report dated January 24, 2023 in which the City’s Human Rights and Workplace Harassment Investigator reported to senior management following complaints and counter-complaints between the Vice-Chair and the Chair of the ACPD, recommending referral of the matter to the Integrity Commissioner.
- [9] The initial investigation by Human Resources staff was undertaken in accordance with the City’s harassment and discrimination prevention policies, during the period of the election hiatus (August 2022- October 2022) during which period the Integrity Commissioner is unauthorized, under the Municipal Act, to receive and administer inquiries.
- [10] Both members were advised of the findings and the impact of their actions and behaviour in writing on October 27, 2022, advised that their manner of interacting was less than optimal for individuals in a leadership role, and cautioned that further behaviour might constitute a policy violation.
- [11] On October 30, 2022 both parties raised renewed concerns regarding recent interactions with each other.
- [12] Following further investigation and meetings by the Human Resources and Workplace Harassment Investigator, it was determined that the Chair, Aznive Mallett, had engaged in conduct ‘concerning for a leader and member of an advisory committee’ and in violation of the City’s harassment and discrimination

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prevention policies. The Investigator recommended referring the matter to the Integrity Commissioner for follow up action as deemed appropriate.

- [13] While Human Resources staff provided us with the file documents, recognizing that members of advisory committees are entitled to procedural fairness by the Integrity Commissioner – particularly where removal might be recommended - we determined that we had an obligation to notify the Chair and the Vice Chair of our involvement.
- [14] In initiating a renewed investigation, we emphasized with both members the desire to find a resolution to the concerns without need for a public Recommendation Report to Council.
- [15] Despite our efforts in attempting to achieve an informal resolution, we now advise that no such resolution was able to be achieved, and therefore we have no alternative but to provide this public Report to Council.

Process Followed for the Investigation

- [16] Our investigation was governed by the principles of procedural fairness. This fair and balanced process includes the following elements:
- Reviewing the Complaint to determine whether it is within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the Complaint should be restated or narrowed, where this better reflects the public interest
 - Notifying the Respondent (the Chair) that we would be investigating the complaint and providing her a full opportunity to respond
 - Reviewing the initial investigation report, reviewing emails and other documentation, reviewing livestreamed recordings of ACPD meetings, and interviewing the parties to the complaint as well as other persons with relevant information
 - Providing the Respondent with an opportunity to review and provide comments on our preliminary Report
 - Finalizing our Recommendation Report and transmitting it to the Respondent, the Complainant, and to Council.

Background and Facts:

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- [17] The Respondent, Aznive Mallett, is the Chair of the ACPD. The Complainant, James Kemp, is the Vice-Chair.
- [18] Aznive Mallett advised us that she has been a member of the ACPD for the past approximately 5 terms of Council and Chair for the past 3 terms.
- [19] James Kemp was first appointed a member of the ACPD in 2019.
- [20] The ACPD meets monthly for approximately 2 hours.
- [21] The ACPD also has 7 Working Groups, comprised of selected members of the ACPD. Each of the Working Groups also meet monthly for approximately 2 hours each.
- [22] Aznive Mallett sits on 6 of the Working Groups.
- [23] During the 2021-2022 timeframe, the Respondent and the Vice-Chair engaged in disrespectful conduct, curt and rude exchanges, both in person during meetings and in email communications.
- [24] We have found, as did the Human Resources Investigator, that the Respondent has engaged in conduct which violates the City's harassment and discrimination prevention policies, and which constitutes a breach of the Code of Conduct.
- [25] Examples of this include the Respondent cutting-off and answering for the Vice-Chair; sending curt, rude and hostile emails to the Vice-Chair; commenting on more than one occasion that the Vice-Chair *needs counselling*; provoking conflict and generally belittling him.
- [26] The Vice-Chair told us that over the past year and a half it has been getting progressively worse.
- [27] The Vice-Chair has recognized and has shown contrition with respect to occasions when he has been triggered by the Chair's comments, and responded in kind.

Relevant Policy Provisions: Advisory Committee Handbook and Code of Conduct

- [28] The Code of Conduct in place when the Human Resources investigation was conducted included the following:

Appointees shall act with honesty and integrity including:

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

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Appointees shall respect and co-operate with other Appointees and the Advisory Committee or Task Force staff.

[29] On January 19, 2022 Council passed a resolution adopting a new Code of Conduct for Local Boards, delaying implementation of its enforceability until April 30, 2023.

[30] The recently-enacted Code of Conduct for Local Boards, now in full force and effect, provides as follows:

Rule 11: Respectful Workplace

Members are governed by the workplace harassment and workplace violence policies in place for staff, recognizing that integrity commissioner is responsible for the administration and investigation of complaints.

All Members have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation and to ensure that their work environment is free from discrimination and harassment.

Findings:

[31] Based on our review of the past investigation, and having conducted our own interviews with both the Respondent and the Vice-Chair as well as other persons with relevant information, we find that the complaints concerning the Chair are generally substantiated.

[32] We find that the Respondent's conduct towards the Vice-Chair represents bullying and harassment contrary to the City's harassment policies in breach of the previous Code of Conduct and the current Code of Conduct for Local Boards.

[33] The Respondent's conduct makes it intolerable for the Vice-Chair to participate productively on the ACPD, and condoning on-going harassment by the Respondent bears on the public's confidence.

[34] Our attempts to find an amicable and workable resolution have been unsuccessful. The Respondent, for example, has refused to take responsibility for any of the difficulties being experienced by the Committee and has made no commitment to improve the working relationship with the Vice-Chair. In our view there exists an attitude of entitlement which is interfering with the proper governance of the Committee.

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[35] In the interest of ensuring a productive and respectful environment at the ACPD, having considered the external investigation report and our own review of the matter, and despite the Chair's longstanding membership on the Committee, it is our observation that a significant change in the Committee's leadership should be undertaken.

Recommendations and Concluding Remarks:

[36] Though the Chair has made valuable contributions through her longstanding membership on the Committee and her leadership as Chair for three terms, it is a Chair's responsible to set a respectful tone in order to 'quarterback' the contributions of a committee's membership.

[37] We understand that experience serving on an advisory committee or local board may be seen as a benefit, however, long-serving citizen appointees may come to expect re-appointment term after term, whereas it behooves Council and the community to provide opportunities for others to serve in this capacity, despite a learning curve in the initial months.

[38] Although there are no term limits to such appointments, the number of consecutive terms served by appointees should likely be a relevant factor in Council's consideration on citizen appointments.

[39] Further, where there exists such a significant body of work that an advisory committee must put in place half a dozen permanent Working Groups composed of members of the same advisory committee, it may be desirable for Council to re-consider the mandate of the advisory committee.

[40] With respect to the well-functioning of the ACPD, we are recommending that the Respondent not continue as a member of that committee.

[41] Under the Municipal Act, an Integrity Commissioner may recommend remedial measures which Council may impose, including removal of a citizen appointee from a committee.

[42] In the event that the Respondent does not resign before this Report is considered by Council, we are recommending that the Respondent be removed (either through revocation of her appointment or by non-renewal of her appointment, as necessary).

[43] Accordingly, it is recommended:

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1. That in the event Aznive Mallett has not resigned her appointment to the Hamilton Advisory Committee for Persons with Disabilities by the date this Report is considered by Council, that Council not re-appoint her or revoke her appointment, as necessary.

All of which is respectfully submitted,
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