

**CITY OF HAMILTON INTEGRITY COMMISSIONER,
DAVID G. BOGHOSIAN**

Citation: Kroetsch, Cameron re Encampment Litigation Debate Participation – DGB-HamiltonICI-2024-014

Date: January 3, 2025

REPORT ON COMPLAINT

Introduction

[1] I received a Complaint which was filed with the City Clerk’s office and forwarded to my office on November 11, 2024 concerning Councillor Cameron Kroetsch’s relationship with two lawyers, Ashley Wilson and Wade Poziomka, who act on behalf of parties engaged in litigation against the City of Hamilton regarding homeless encampments on City property (hereinafter, “the Encampment Litigation”).¹ It is alleged that in light of his relationship with these two lawyers, Cllr. Kroetsch has breached of sections 2, 4, 5, and 8 of the Code of Conduct for Members of Council (the “Code”) in participating in Council deliberations concerning the Encampment Litigation, at least not without disclosing these relationships.

[2] The Complainant requested and I have granted them anonymity in respect of this Complaint.

Complaint

[3] The Complaint states:

I am concerned with the relationship Ward 2 Councilor [sic] Cameron Kroetsch has with 2 lawyers during his 2 years in council. I am concerned that there is potentially an undeclared conflict of interest.

I believe he has a personal relationship (and he has admitted so), with a lawyer named Ashley Wilson and possible [sic] Wade Poziomka. Both of these lawyers represent or have represented encampment supporters who are currently involved [sic] in litigation against the City of Hamilton regarding the City's handling of the homelessness crisis and associated encampment protocol. As these sessions are in closed camera, it is unknown to his constituents if he has declared a conflict.

¹ The legal citation is *Heegsma v. Hamilton (City)*. A decision on the merits of this Application was released by the presiding Judge, Ramsay J., on December 23, 2024, in which the City prevailed in upholding the impugned provisions of the City’s Parks Bylaw and Streets Bylaw (By-Laws 01-219 and 97-162) in the face of Charter challenges: see *Heegsma v. Hamilton (City)*, 2024 ONSC 7154 (CanLII), <https://canlii.ca/t/k8h37>.

Word Document Submitted with the Complaint

[4] In a Word document that accompanied the Complaint, the Complainant states:

- Cllr. Kroetsch is in breach of s. 4(1) of the Code, which prohibits Members from accepting a gift or benefit connected to their role as a Member unless explicitly excepted, because I learned from [source of information redacted] that Wade Poziomka undertakes legal work on a *pro bono* basis for marginalized people and that Cllr. Kroetsch considers himself marginalized.
- Cllr. Kroetsch is in breach of s. 5 of the Code, which prohibits, among other things, members from disclosing confidential information, based on his relationship with Poziomka and Wilson. The Complainant acknowledged that they have “no direct proof of this” and that the Complaint is based on what they perceive to be the opportunity for Cllr. Kroetsch to exchange confidential information.
- Cllr. Kroetsch is in breach of the portions of s. 8 which pertain to participating in a decision-making process when they have a disqualifying interest in the matter. This allegation is based on Cllr. Kroetsch’s relationship with Wilson and Poziomka and Cllr. Kroetsch’s prior advocacy work. It is alleged that Cllr. Kroetsch attends in-camera meetings of Council and regularly votes on encampment issues while maintaining friendships with both Poziomka and Wilson.
- Poziomka represents Cllr. Kroetsch in regards to his suspension from the Hamilton Police Board and also represents 19 unhoused people in litigation against the City of Hamilton. The document then included a link to an article from The Spec titled “Investigation limbo has kept Hamilton councillor Cameron Kroetsch suspended from police board for five months — with no end in sight” dated August 10, 2024.
- Wilson acts as co-counsel in the same litigation on behalf of unhoused persons referenced in the above bullet. The Complainant notes that Wilson also works for the Hamilton Community Legal Clinic and includes an outline of her work history. The Complainant notes that there are many photos of Cllr. Kroetsch spending personal time with Wilson and that he has admitted the two are friends in a Facebook group. It is further alleged that Cllr. Kroetsch has made conflicting or disingenuous statements regarding Wilson’s involvement in the above-referenced litigation on behalf of unhoused persons and notes that Wilson also acted as a volunteer on Cllr. Kroetsch’s campaign for Council.

- The City of Hamilton cannot have a symbiotic relationship with the law firm Ross & McBride LLP, at which Wilson was formerly employed.² The Complainant notes that the City should not be able to hire a law firm to represent it while that same law firm represents parties, including the 19 unhoused persons and an unspecified developer, engaged in litigation as against the City. It is stated that this is a conflict of interest.

[5] Included were also screenshots of:

- An interaction between a Facebook user commenting on an unspecified post in the Facebook group “Welcome to the North End (Hamilton, ON)” stating that a councillor’s friends have a lawsuit against the City to allow camping in parks. Cllr. Kroetsch responds to this comment stating that “my friends did not bring this lawsuit” and that those who did were able to do so in accordance with their legal rights.
- A post on the FB group “Welcome to the North End (Hamilton, ON)” which includes four photos Cllr. Kroetsch and Wilson and questions whether “the person in the photos”, in reference to Wilson, is a friend of Cllr. Kroetsch and whether Wilson is involved in litigation against the City. Cllr. Kroetsch responds to the question and states that “no one in those photos is involved in the case...[or]..filed the application.” He further states that one of the people in the photos was briefly involved but “not in any defining way.” In response to the question whether Wilson is no longer involved, Cllr. Kroetsch responds affirmatively.
- A post by Ashely Wilson to X dated February 22, 2023 in which Wilson shares “an update on encampment litigation in Hamilton” and quote-tweets a post by Community Legal Clinic of York Region from the day prior.
- Wilson reposting a post made by a user on X sharing a post made by the Community Legal Clinic of York Region dated March 11, 2024.

November 12, 2024 Email

[6] In this email, the Complainant:

- Provided a copy of an [Order](#) of Justice Goodman dated November 8, 2022 in a proceeding between Ashley Poff, Darrin Marchand, Gord Smyth, Mario

² The Ross & McBride website indicates that Mr. Poziomka is currently a partner at that firm and has been with the firm continuously since 2010.

Muscato and Shawn Arnold against the City of Hamilton, on which Poziomka and Wilson are listed as counsel for the Applicants.³

- Provide screenshots of three posts from Cllr. Kroetsch’s Instagram account of pictures of him with Wilson. In these posts, Cllr. Kroetsch and Wilson are shown to “vacation...hike..[and] campaign” together and he calls her his best friend.

November 20, 2024 Email

[7] In response to a request from my office for the Complainant to particularize the “decision-making process” that Cllr. Kroetsch allegedly participated in with a disqualifying interest, it was stated that:

- Cllr. Kroetsch participated in the following in-camera sessions of Council at which Encampment litigation or matters were discussed:
 - Dec 7th, 2022 GIC committee - "Encampment matter overview";
 - Jan 10th, 2023 GIC Budget - voted on encampment response funding;
 - Jan 18th, 2023 Encampment Litigation Update;
 - Feb 1, 2023 Encampment Litigation Update;
 - Feb 8th, 2023 Encampment Litigation Update;
 - Feb 15th 2023 Encampment Litigation Update;
 - March 22, 2023 Encampment Litigation;
 - May 22, 2024 Encampment Litigation
- The Complaint pertaining to the Cllr. Kroetsch’s disqualifying interest is described as three-fold:
 1. Cllr. Kroetsch has a relationship with his “best friend”, Wilson, who is a lawyer for the Applicants;
 2. Cllr. Kroetsch has a relationship with Poziomka, who is potentially representing Cllr. Kroetsch on a *pro bono* basis as well as representing the Applicants; and

³ The Order was made in the context of an Application on behalf of the listed for, among other things, declaratory relief that sections, including those relating to camping and tents, of Hamilton’s *Parks By-Law* and *Streets By-Law* are of no force and effect. The Application describes the Applicants as “encampment residents”.

3. The City's relationship with the law firm Ross McBride LLP, which was hired to work for the City while being involved in litigation against the City.
- The Complainant further alleges that Cllr. Kroetsch has breached s. 2.(2), which required Members to avoid conflicts of interest, both real and apparent.

Provisions of the Code of Conduct Alleged to Have Been Violated

[8] The Complaint alleges that the following sections of the Code were breached:

SECTION 2: KEY STATEMENTS OF GENERAL PRINCIPLE UNDERLYING THE CODE

2. The key statements of principle that underlie the Code of Conduct are as follows:

(2) every Member shall be committed to performing his or her functions with integrity and to avoiding the improper use of the influence of his or her office, and conflicts of interest, both apparent and real;

SECTION 4: GIFTS AND BENEFITS

4. (1) No Member shall accept a fee, advance, gift or benefit, that is connected, directly or indirectly, with the performance of the Member's duties or responsibilities of or in office, except as permitted by one or more of the exceptions listed in subsection 4(3).

...

(3) The following are exceptions to subsection 4(1):

- (a) compensation authorized by law;
- (b) such gifts or benefits that normally accompany the duties of office and are received as an incident of protocol or social obligation;
- (c) a political contribution otherwise reported by law;
- (d) admission to a widely-attended event, such as a convention, conference, symposium, forum, panel discussion, dinner, viewing, reception or similar event, offered by the entity responsible for organizing and presenting the event and unsolicited by the Member, if attending or participating in his or her official capacity, including:
 - (i) participation in an event as a speaker or panel participant by presenting information related to City matters;

- (ii) performance of a ceremonial function appropriate to the Member's office;
 - (iii) attendance at an event that is appropriate to the official capacity of the Member;
- (e) admission to a charity or community organization for whose benefit the event is being held, and unsolicited by the Member of Council;
- (f) admission to a training or education program, including meals and refreshments furnished to all attendees, if such training or education is related to the Member of Council's duties in office and in the interests of the City;
- (g) services provided without compensation by persons volunteering their time;
- (h) a suitable memento of a function honouring the Member;
- (i) food, lodging, transportation and entertainment provided by federal, provincial or municipal governments or by political subdivisions of them or by a government of a foreign country;
- (j) food and beverages consumed at banquets, receptions or similar events, if:
- (i) attendance serves a legitimate business purpose;
 - (ii) the person extending the invitation or a representative of the organization is in attendance; and
 - (iii) the value is reasonable and the invitations infrequent;
- (k) communications to the office of a Member of Council, including subscriptions to newspapers and periodicals.
- (4) Except for paragraph 4(3)(c), the exceptions listed in subsection 4(3) do not apply to a lobbyist. No lobbyist shall give or provide or be permitted to give or provide, a gift or benefit under this section, except a political contribution authorized by law.
- (5) In the case of one or more fees, advances, gifts or benefits referred to or included in any of paragraphs 4(3)(b), (h), (i), (j) or (k), if the value thereof, or if the total value of any one or more such fees, advances, gifts or benefits, provided to or received by, a Member from any one source during the course of a calendar year, exceeds \$200, the Member shall, within 30 days of such provision or receipt, or of reaching or exceeding such amount, file a disclosure statement with the City Clerk. The disclosure statement shall indicate:

- (a) the nature of every such fee, advance, gift and benefit;
- (b) its source and date of provision and/or receipt; and
- (c) the circumstances under which it was provided and/or received.

(6) Every disclosure statement filed or required to be filed under subsection 4(5) shall be a matter of public record, and duly made available to the public.

SECTION 5: CONFIDENTIALITY

5. (1) No Member of Council shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of his or her office, in either oral or written form, except when required by law or authorized by Council to do so.

SECTION 8: CONDUCT IN OFFICE, INCLUDING AT COUNCIL AND COMMITTEES

8. (1) Every Member shall conduct him or herself with decorum in the course of his or her performance, or required performance, of his or her responsibilities as a Member, and at meetings of Council and Committees of Council and other meetings, and in accordance with the provisions of the Procedural By-law, and other By-laws of the City, where applicable.

(2) In this Section:

- (a) A “disqualifying interest” is an interest in a matter regarding which a reasonable person fully informed of the facts and circumstances would conclude that the Member could not participate impartially in the decision-making process related to the matter either because to do so would not be in compliance with the Municipal Conflict of Interest Act, or, because the Member’s relationship to persons or bodies involved in the matter or affected by the decision is so close, a reasonable person would conclude that the Member could not effectively carry out their public duty with impartiality.
- (b) A “non-disqualifying interest” is an interest in a matter that, by virtue of the relationship between the Member and other persons or bodies associated with the matter, is of such a nature that a reasonable person fully informed of the facts and circumstances would conclude that the Member could still participate impartially in the decision-making processes related to the matter only so long as:
 - (i) the Member fully discloses the interest so as to provide transparency about the relationship; and

(ii) the Member states why the interest does not prevent the Member from making an impartial decision on the matter.

(3) Members shall not participate in the decision-making processes associated with their role or position when they have a disqualifying interest in a matter. Participation includes attempting to influence an outcome, whether the decision to be made is to be made by Council or a member of staff with delegated authority or operational responsibility.

(4) Members may participate in the decision-making process related to a matter in which they have a non-disqualifying interest provided they file at their earliest opportunity a Transparency Disclosure in a form and manner established by the City Clerk acting in consultation with the Integrity Commissioner.

(i) Transparency Disclosures are public documents and shall be available for public viewing on the City of Hamilton’s website.

(ii) On receipt of a proper request, the Integrity Commissioner shall determine whether an interest is a disqualifying interest or a non-disqualifying interest.

Preliminary Issues

Summary Dismissal of Certain Complaints

[9] I initially reviewed the Complaint to determine if it raised a prima facie breach of the Code provisions alleged to have been violated.

[10] As I have stated in numerous previous decisions, based on precedent,⁴ the provisions of s. 2 of the Code of Conduct, setting out statements of general principle, are merely to be used as aids for interpreting other, enforceable sections of the Code and do not set out independently enforceable obligations. I therefore find no violation based on s. 2.(2) of the Code.

[11] With respect to the remaining sections of the Code alleged to have been breached, despite requesting and receiving additional evidence from the Complainant, I find that they have not supplied sufficient evidence to establish reasonable grounds to believe that a violation has occurred in respect of the following sections of the Code:

- Section 4 – Gifts and Benefits;⁵

⁴ See, for example, Private Complaint re: Councillor Danko Tweet (Re) – DGB-HamiltonICI-2024-01 at paras. [12]–[15], citing *Greater Vancouver Regional District v. British Columbia (Attorney General)* 309 BCAC 124, [2011 BCCA 345 \(CanLII\)](#) at paras. 45-47.

⁵ While I did learn subsequent to my initial review of the Complaint that both Ms. Wilson and Mr. Poziomka provided pro bono legal services to Cllr. Kroetsch while he was a Councillor, such a “benefit” would appear to fall under the

- Section 5 – Confidentiality;
- Section 8.(1) – Conducting Oneself With Decorum.

[12] I did conclude that there were reasonable grounds to investigate further regarding the allegations of breach of ss. 8.(2), (3) and (4) of the Code of Conduct.

Limitation Period

[13] The Complaint, as it relates to ss. 8.(2), (3) and (4) of the Code of Conduct, pertains to Cllr. Kroetsch’s involvement in and voting on matters related to the Encampment Litigation in which Mr. Poziomka and Ms. Wilson act as counsel at the following meetings:⁶

Dec 7th, 2022: Council Meeting - "Encampment matter overview"

Jan 10th, 2023: GIC - Budget – Encampment Issues

Jan 18th, 2023: GIC - Encampment Litigation Update

Feb 1, 2023: GIC - Encampment Litigation Update

Feb 8th, 2023: Council Meeting - Encampment Litigation Update

Feb 15th 2023: GIC- Encampment Litigation Update

March 22, 2023: GIC- Encampment Litigation

May 22, 2024: Council Meeting - Encampment Litigation

[14] The City’s Integrity Commissioner Bylaw (16-288) contains the following provision relating to the time limit for lodging a Complaint:

13. (1) Except as provided for in this section, the Integrity Commissioner shall not proceed with an inquiry with respect to a Complaint which is made or filed more than 180 days after the date when the event or the last of a series of events which is or are the subject-matter of the Complaint, occurred.

exception contained in s. 4.(3)(g) of the Code, which encompasses “services provided without compensation by persons volunteering their time.” Although I question whether the second clause “by persons volunteering their time” is intended to distinguish a situation where a person is volunteering in their personal capacity, such as on an election campaign, as opposed to acting through another organization, such as a law firm where they are a partner or employee, in light of my findings on s. 8 set out below, I will leave resolution of this issue for another day.

⁶ I note that some of the meetings were misidentified by the Complainant and have been corrected in this Chart.

(2) The Integrity Commissioner may proceed with an inquiry with respect to a Complaint which is filed after the expiry of the time limit, if the Integrity Commissioner is satisfied that

- (a) the delay was incurred in good faith;
- (b) it is in the public interest to proceed with an inquiry, or give consideration to whether or not to conduct an inquiry; and
- (c) no substantial prejudice will result to any person because of the delay.

(3) A Complainant is deemed to have known the matters referred to, on the date that the event, or series of events, occurred, unless the contrary is proven, the onus of proof of which lies upon the Complainant.

[15] It is to be noted that ss. 13.(2)(a) and (3) effectively import the “discoverability” principle into the Code, meaning that if a Complainant did not know and could not reasonably have known about the circumstances giving rise to the Complaint until a point more than six months after the events in question occurred, the Complaint can be investigated, subject to the provisions of ss. 13.(2)(b) and (c) being satisfied.

[16] Given that all except one of the meetings at which Cllr. Kroetsch is alleged to have contravened s. 8 of the Code occurred more than 6 months prior to the date on which the Complaint was filed, being November 11, 2024, the question becomes: when did the Complainant learn about these meetings and when did they come to believe that Cllr. Kroetsch’s involvement constituted a breach of the Code?

[17] In response to our email questioning them in this regard, and a number of follow up emails, the Complainant provided a series of emails setting out relevant facts as follows (being our summary of the Complainant’s responses, not their verbatim responses):

- The Complainant stated that they did not know which lawyers were involved in Encampment Litigation until May, 2024;
- The Complainant did not turn their mind to who Wilson/Poziomka were until seeing Cllr. Kroetsch’s November 8, 2024 Facebook posts;
- They only became aware of the Councillor’s potential breaches of the Code after his Nov 8 Facebook posts and then reviewing the Code, Agenda Items for Council Meetings, and Wilson/Poziomka’s work history;
- The Complainant later acknowledged, after we provided them with two screenshots of photos posted on X in which they tagged Cllr. Kroetsch with Wilson on July 6, 2024 and September 19, 2024, respectively, that July 6th was

the first time they became aware of Cllr. Kroetsch's relationship with Wilson. Those photos were provided to her by another X user who they had no prior knowledge or relationship with;

- They looked through Council and GIC meeting agendas in November 2024 to see if Kroetsch declared a conflict regarding Encampment Litigation and found out he had not.

[18] I am satisfied based on the Complainant's explanations that they did not know about Cllr. Kroetsch's relationship with either Wilson or Poziomka prior to July 2024 and his participation in discussions of Encampment Litigation agenda items until November 2024. I find that they have established that they did not know and could not reasonably have known about the circumstances giving rise to their Complaint more than 6 months prior to the Complaint being filed.

[19] With respect to s. 13.(2)(c), I am satisfied that Cllr. Kroetsch would not be prejudiced if I proceeded with an investigation of the Complaint. This is not a case which turns on memories of parties or witnesses about some undocumented interaction; rather, the meetings in question are documented, as are whether Cllr. Kroetsch declared a non-pecuniary conflict in respect of the subject meetings. Cllr. Kroetsch has an ongoing personal relationship with both Ms. Wilson and Mr. Poziomka and, as will be seen below, had no problem confirming the nature and longevity of these relationships.

[20] I find that s. 13.(2)(b) essentially sets out a balancing test, asking the IC to weigh the various factors for and against proceeding to investigate a Complaint where more than 6 months have passed since the events giving rise to the Complaint occurred. In this case, I believe that "clearing of the air" in respect of whether Cllr. Kroetsch improperly supported the Encampment Litigation in his role as a councillor out of friendship/loyalty to Mr. Poziomka and Ms. Wilson is of such public interest that I should proceed with an investigation in the circumstances. I see no overriding considerations for not doing so, especially since the Encampment Litigation is still ongoing such that the Complaint is not related to a matter from the distant past.

[21] For the foregoing reasons, I find that the limitation period set out in s. 13 of Bylaw 16-288 does not bar the investigation of the Complaint.

[22] I note that, even had I found that the Complaint was time-barred in respect of meetings held more than six months prior to the filing of the Complaint, one of those meetings, being the GIC meeting held on May 22, 2024, took place less than six months prior to the filing of the Complaint and the complaint in respect of that meeting therefore would not have been barred in any event.

Investigation

Interview and Initial Email Exchange with Councillor Kroetsch

[23] I wrote to Cllr. Kroetsch setting out the particulars of the Complaint by letter dated and emailed on December 13, 2024. I met with Cllr. Kroetsch via Zoom on December 18, 2024 to discuss the only aspect of the Complaint I was still investigating, being ss. 8.(2), (3) and (4) of the Code of Conduct. We had a subsequent email exchange with respect to some follow up questions I had on December 27, 2024.

[24] Cllr. Kroetsch freely admitted to being friends with Ashely Wilson and admitted being aware that she was involved as counsel in the Encampment Litigation.

[25] Cllr. Kroetsch acknowledged being aware that Wade Poziomka was co-counsel for the Applicants in the Encampment Litigation. He indicated that he met Mr. Poziomka about 14 years ago when he was a student at the University of Guelph and they were both union reps in Guelph. They have remained friends since. He crossed paths with Mr. Poziomka before he became a councillor when he was involved in an action group involved with “encampment watch.” He further acknowledged that Mr. Poziomka acted for him in a judicial review proceeding in the Divisional Court relating to the previous IC’s finding that he breached the Code of Conduct for Members of Local Boards in relation to certain comments he made in the press media and on social media as then Chair of the City’s LGBTQ+ Advisory Committee, but not in respect of anything related to the Hamilton Police Services Board as the Complainant alleged. He further confirmed that this representation of him was pro bono, meaning that Cllr. Kroetsch did not have to pay for his legal services.

[26] He noted that his stance regarding the protection of the rights of homeless persons, including in relation to encampments, has been long-held and unequivocal, and was hardly influenced his relationships with either Mr. Poziomka or Ms. Wilson.

[27] He confirmed that he did not declare a non-pecuniary interest in relation to any Council debate regarding the Encampment Litigation.

Review of Encampment Litigation Documents

[28] The original Notice of Application in the Encampment Litigation, dated October 24, 2021, did not list either Ms. Wilson or Mr. Poziomka as counsel of record. The Amended Notice of Application, dated November 8, 2022, did list Mr. Poziomka as co-counsel of record. Although Ms. Wilson was not listed as counsel of record in the Encampment Litigation Application, she is listed as having appeared (presumably as agent for counsel of record) on the backing page of an Order arising from a Case Conference in the Encampment Litigation on November 8, 2022. Furthermore, in an X post on December 18, 2024, she acknowledged having previously being involved as counsel in the Encampment Litigation in response to posts by Cllr. Danko and she was listed as counsel along with Mr. Poziomka and two others in the Encampment Litigation in a press release titled

“HAMILTON ENCAMPMENT LITIGATION UPDATE” posted by one of the counsel of record for the Applicants in the Encampment Litigation, Sujit Choudhry, on March 11, 2024.

Review of In Camera Meeting Minutes Relating to Encampment Litigation Matters

[29] I have determined from a review of Minutes of in camera Council and GIC meetings at which the Encampment Litigation was discussed that on February 1, 2023 and May 22, 2024, Cllr. Kroetsch moved resolutions related to that litigation that contained terms favourable to the Applicants and their counsel in that litigation, and voted in favour of a third resolution of the same nature on March 22, 2023.⁷

Notice of Application Re Quashing HPSB Decision to File an OCPC Complaint Against Cllr. Kroetsch filed issued January 11, 2024

[30] My office accessed the court records in respect of this matter, being an application filed by Cllr. Kroetsch against the Hamilton Police Services Board seeking judicial review of its decision on December 13, 2023 to request that a complaint against Cllr. Kroetsch be investigated by the OCPC. Ms. Ashley Wilson is listed as the lawyer of record for Cllr. Kroetsch in that proceeding.

Hamilton Spectator article “Police board investigation leaves Coun. Kroetsch in limbo,” August 10, 2024

[31] The article identifies Mr. Poziomka as Cllr. Kroetsch’s lawyer in relation to an Ontario Civilian Police Commission (“OCPC”) complaint against the Councillor concerning press and social media criticisms leveled by him against the Board (of which he is a Member) in respect of its budget process. It further contains a number of statements made by Mr. Poziomka on behalf of Cllr. Kroetsch.

Further Email Exchange with Cllr. Kroetsch on December 30, 2024

[32] After reviewing the Court documents referred to in para. [30] and The Spec article referred to in para. [31], I emailed Cllr. Kroetsch asking him to confirm or clarify the involvement of Mr. Poziomka and Ms. Wilson in the OCPC/HPSB matters and if one or both had acted for him in these matters, whether they had done so pro bono. He responded the same day advising as follows:

- Ms. Wilson initially acted for him in the OCPC/HPSB matter but when she began working for the Hamilton Community Legal Clinic, Mr. Poziomka took over his representation in these matters;
- They both acted for him pro bono on these matters.

⁷ I am unable to provide further particulars given the confidential nature of in camera discussions.

Analysis

Findings of Fact

[33] I make the following findings of fact:

- Cllr. Kroetsch has had longstanding friendships with Ms. Wilson and Mr. Poziomka. The latter also acted for him pro bono in litigation related to a COC Complaint while he was the Chair of the City's LGBTQ+ Advisory Committee. Mr. Poziomka is also acting for Cllr. Kroetsch in relation to the OCPC complaint against him relating to his service as a Member of the Hamilton Police Services Board, also on a pro bono basis. Ms. Wilson previously acted as his legal counsel in relation to the HPSB/OCPC matter on a pro bono basis;
- To Cllr. Kroetsch's knowledge, Mr. Poziomka is co-counsel for the Applicants in the Encampment Litigation. He was also aware that Ms. Wilson has also appeared as either counsel or agent for counsel for the Applicants, and was otherwise involved in advancing the interests of the Applicants in the Encampment Litigation;
- Cllr. Kroetsch actively participated in Council and GIC closed session discussions of agenda items related to the Encampment Litigation, including moving two resolutions and voting on another subsequent to November 2022;
- Cllr. Kroetsch did not declare any interest, disqualifying or non-disqualifying, or file a Transparency Disclosure Form, in relation to any Council or GIC votes related to the Encampment Litigation.

Did Cllr. Kroetsch Have a Disqualifying Interest?

[34] The issue in relation to the disclosure of a "disqualifying interest" under s. 8.(2) of the Code is whether "a reasonable person fully informed of the facts and circumstances would conclude that the Member could not participate impartially in the decision-making process related to the matter... because the Member's relationship to persons or bodies involved in the matter or affected by the decision is so close, a reasonable person would conclude that the Member could not effectively carry out their public duty with impartiality."

[35] Neither of the lawyers Cllr. Kroetsch has a relationship with are parties to the Encampment Litigation although the fact that they are or were counsel in the matter is an interest that cannot be ignored. I surmise that these lawyers were undertaking the prosecution of that case on a pro bono basis, meaning that their interest was in securing a favourable result and thereby enhancing their reputations in their area of legal interest, human rights law. It is also possible that they were working on a contingency basis, meaning they would receive some percentage of any recovery

from the City in the litigation.⁸ In any case, I believe that a reasonable person fully informed of the facts would conclude that both Wilson and Poziomka had an interest in a favourable outcome of the Encampment Litigation, of which Cllr. Kroetsch would have been aware of.

[36] A reasonable, fully informed person would be aware that, even before he became a councillor, Cllr. Kroetsch was a strong supporter of the rights of homeless persons, including their right to camp in City parks in the absence of what he felt were reasonable alternatives. I have no doubt that a reasonable, fully informed person would not conclude that Cllr. Kroetsch's voting on the Encampment Litigation was motivated by the "closeness" of his relationship with either of the two lawyers or that he could not effectively carry out his public duty in relation to that litigation with impartiality on account of these relationships.

[37] I therefore dismiss the Complaint regarding a disqualifying interest under s. 8.(2)(a) and (3) of the Code.

Did Cllr. Kroetsch Have a Non-disqualifying Interest?

[38] A "Non-disqualifying interest" is one that is of such a nature that a reasonable person fully informed of the facts and circumstances would conclude that the Member could still participate impartially in the decision-making processes related to the matter only so long as:

- (i) the Member fully discloses the interest so as to provide transparency about the relationship; and
- (ii) the Member states why the interest does not prevent the Member from making an impartial decision on the matter.

[39] In my opinion, the definition of "non-disqualifying interest" in the Code of Conduct is problematic, in that it does not set out why, if an interest is not a "disqualifying interest" because a reasonable, fully informed person would not think it would prevent the Member from deciding the matter impartially, it would then need to be disclosed in order to render it one where the Member can still participate in the debate and vote on the matter. The definition is simply silent on this point. If one were to read s. 8.(2)(b) literally, in my view, there would never be an interest that would be "non-disqualifying" if it were found not to be "disqualifying." Given that this would effectively render ss. 8.(2)(b) and (4) of the Code meaningless, I decline to give it this meaning.

[40] I interpret the intent of the Code as being that a "disqualifying interest" is intended to deal with a case where a reasonable, fully informed person would conclude that there would likely be actual bias in relation to the Member's decision-making about the matter at hand, whereas a "non-disqualifying interest" is one where a reasonable, fully informed person would believe there is a

⁸ Solicitor-client privilege bars counsel from revealing the nature of their retainer with their clients so I did not make inquiries of them to determine the nature of their retainer.

reasonable apprehension of bias unless the relationship was explained and reasons provided as to why the interest would not influence the Member's participation in the consideration of the matter.⁹

[41] In this case, I find that Cllr. Kroetsch had a non-disqualifying interest in relation to decisions about the Encampment Litigation that he should have disclosed for the following reasons:

- Mr. Poziomka, co-counsel for the Applicants in the Encampment Litigation, was a longstanding friend of Cllr. Kroetsch;
- Mr. Poziomka acted for Cllr. Kroetsch pro bono (ie. for free) in two different matters, including one that was active during the time the Councillor was participating in closed session discussions of the Encampment Litigation, suggesting to a reasonable person that the latter may have felt that he owed Mr. Poziomka a favour in return for having received, and continuing to receive, free legal services;
- Cllr. Kroetsch was friends with Ms. Wilson, who also acted as both counsel for the Applicants in the Encampment Litigation and as Cllr. Kroetsch's personal counsel while the Encampment Litigation was ongoing and the Councillor was participating in Encampment Litigation agenda items;
- The resolutions which Cllr. Kroetsch moved and participated in on February 1 and May 22, 2023 and voted on at the March 22, 2024 meeting stood to benefit the Applicants (and therefore, directly or indirectly, their counsel) in the Encampment Litigation.

[42] As Cllr. Kroetsch did not disclose this interest and explain why it would not affect his determination of matters related to the Encampment Litigation, and did not complete and file a Transparency Disclosure Statement in respect of these interests, I find that he breached ss. 8.(2)(b) and (4) of the Code.

Appropriate Penalty

[43] I do not doubt that Cllr. Kroetsch's positions with respect to the Encampment Litigation would have been the same regardless of the identity of counsel for the Applicants in that litigation. Nevertheless, in view of the paramountcy of transparency and accountability underlying the Code of Conduct, it remains a violation. In light of the relatively minor nature of this breach, I recommend that the Councillor be reprimanded by Council for his omission in declaring a non-disqualifying interest and that he file a Transparency Disclosure Statement in respect of his involvement in all debates and votes regarding the Encampment Litigation as set out above.

⁹ I note that we were unable to find any caselaw interpreting a similar provision in a Code of Conduct so this analysis proceeds on first principles.

Concluding Remarks

[44] I have found that Cllr. Kroetsch violated ss. 8.(2)(b) and (4) of the Code of Conduct and have recommended that he be reprimanded by Council in respect of this breach. I further direct that he complete a Transparency Disclosure Statement in respect of all aspects of his participation in deliberations of Council and Council committees regarding the Encampment Litigation.

[45] This concludes my investigation.

Yours very truly,



David G. Boghosian
Integrity Commissioner,
City of Hamilton