

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

Citation: Cllr. Danko X Post re Cllr. Kroetsch – DGB-HamiltonICI-25-001

Date: January 29, 2025

REPORT ON COMPLAINT

Introduction

[1] On January 20, 2025, I received two complaints¹ from two separate Complainants who requested and to whom I have granted anonymity² concerning a tweet posted by Cllr. Danko on the X platform on January 20th concerning Cllr. Kroetsch (hereinafter “the Tweet”).

[2] For the reasons that follow, I dismiss the Complaint; however, I am issuing a Report so that Members of Council are aware of my approach to new sections 14.1 and 14.2 of the Code of Conduct.

The Complaints

[3] The Tweet posted on X by Cllr. Danko on January 20, 2025 at 8:47 am forming the subject-matter of the Complaint reads as follows:

After a Code of Conduct violation for undisclosed problematic connections, Ward 2 Cllr @Cameron Kroetsch is now working to shield from accountability organizations Justice Ramsay found were encouraging encampments.

All #HamOnt taxpayers deserve accountability, including Ward 2.

[4] These statements were followed by a screenshot of a motion drafted by Cllr. Danko dated January 15, 2025 for consideration at the General Issues Committee (“GIC”) on the same date³ entitled “Re-Alignment of Taxpayer Funding to Good Faith Encampment Support Organizations.” The gist of the motion was to ask staff to identify City-funded organizations involved in encampment related support services and “propose opportunities to re-align City funding, limited to organizations that are proven good faith community partners committed to collaboratively

¹ I will hereinafter refer to both complaints as “the Complaint.”

² I wish to make it clear that Cllr. Kroetsch was not one of the Complainants.

³ The motion was subsequently traversed to the February 5, 2025 GIC meeting.

working with the City of Hamilton in alignment with City and Council interests, approved by-laws and policies.”

[5] A copy of the actual post is found at Appendix “A” of this Report.

[6] The complaints collectively allege that the Tweet unfairly and falsely maligns Cllr. Kroetsch and alleges breaches of ss. 8.(1) (Decorum), 11 (Conduct Respecting City Employees) and 14.1 and 14.2 (Standards Relating to Communications) of the Code of Conduct.

[7] I summarily determined that ss. 8.(1) and 11 do not apply, the former because the Tweet does not offend the principles of “decorum” that I articulated in my previous decision regarding a previous posting on X by Cllr Danko⁴ and the latter because Cllr. Kroetsch is not, as a matter of law, an employee of the City in his role as a councillor.

[8] The following constitutes my reasons for dismissing the allegations of breaches of ss. 14.1 and 14.2 of the Code of Conduct.

Relevant Provisions of the Code of Conduct

[9] The relevant provisions of the Code, which were first incorporated into the Code of Conduct last year and are being considered by me for the first time, are as follows:

SECTION 14 STANDARDS RELATING TO COMMUNICATION

14.1 Members are responsible for making honest statements. No member shall make a statement, including through social media, when they know that statement is false or are reckless as to whether it is true. No member shall make a statement with the intent of misleading Council or members of the public.

14.2 Members will conduct their communications with each other and members of the public, including by means of social media, in ways that maintain public confidence in the office to which they have been elected or appointed, are open and honest, focus on issues rather than personalities, and avoid threatening, intimidating, offensive or abusive conduct.

Response of Cllr. Danko

[10] On January 22nd, I emailed Cllr. Danko advising him of the subject-matter of the Complaint, the sections of the Code alleged to have been breached and asked him to respond to the following questions:

In relation to my consideration whether ss. 14.1 or 14.2 have been breached, I would be grateful if you would respond to the following questions:

⁴ *Councillor Danko Tweet (Re)*, 2024 ONMIC 11 (CanLII) at paras. [26]-[28].

1. What organizations Justice Ramsay found were encouraging encampments that Cllr. Kroetsch was working to shield from accountability were you referring to?
2. How is/was Cllr. Kroetsch working to shield these organizations from accountability?

[11] His response to me by email later that same day (with thanks to him for his timeliness) was as follows:

1. Councillor Kroetsch was found to violate the code of conduct due to his undisclosed relationship to the applicant's legal representation – or in other words “undisclosed problematic connections”.
2. On January 19, 2025 (prior to my X post) Councillor Kroetsch sent the attached email to all of Council [the email is not attached but is addressed below], stating that he would ask the City Solicitor to comment on my Good Faith Encampment Support Organization Notice of Motion (attached) [attachment removed but the Motion is discussed above] with further comments that he did not believe it is “legal” and similar to a previous issue the City Solicitor warned about. Councillor Kroetsch's email was a deliberate mis-representation of a discussion he had with the City Solicitor and City Clerk (confirmed to me privately by the City Solicitor) and he had already been advised that a request to go in camera to discuss a Notice of Motion would be out of order.

Therefore, it is reasonable to conclude that Councillor Kroetsch was actively working to use his position to shield encampment organizations from accountability and protect their funding – which would be the outcome of approval of this motion.

Councillor Kroetsch subsequently publicly confirmed his actions in a response X post on January 20th, 2025 (attached) [the post is not attached but is addressed below]. In this reply post, Councillor Kroetsch goes even further to shield encampment support organizations by stating that he believes my motion to be “a dangerous path” and characterizing my motivation as “coming after community organizations” which “puts many Hamiltonians at risk”.

3. Councillor Kroetsch's allegation that I am “coming after community organizations” and intend to put “many Hamiltonians at risk” as stated in his January 20th X post are in themselves false and defamatory statements intended to mislead the public and are therefore a violation of Section 8.1 (Decorum) and Sections 14.1 & 14.2 (Standards Relating to Communications).
4. Justice Ramsay did not identify specific organizations. My X post does not state that Councillor Kroetsch is working to shield a particular organization – rather that he is working to shield organizations generally (including the applicant's legal counsel which was the subject of his non-disclosure code of conduct violation).

Justice Ramsay identified specific activities by local encampment support organizations that the Justice considered to be problematic as they are highlighted in his ruling.

Paragraph 24 refers to the Hamilton Community Legal Clinic and legal counsel for the applicants which is the specific subject of Councillor Kroetsch's non-disclosure code of conduct violation.

Paragraph 61 & 64 refer to various Hamilton support organizations including HamSMART, Keeping Six, The Encampment Support Network, the Disability Justice Network of Ontario and various others.

These specific paragraphs are referenced and quoted in the original motion.

...

I will also note that once again, I am being targeted for reprisal through Integrity Commissioner complaints, due to my political position on this issue and because I continue to publicly speak about issues of public interest.

[12] I emailed Cllr. Danko on January 23rd with two follow up questions. My questions and his responses are as follows:

1. Question: Before you posted the tweet, did you have any reason besides the email Cllr. Kroetsch sent on January 19th questioning the "legality" of your motion to make you believe he was opposed to cracking down on organizations encouraging encampments?

Answer: Councillor Kroetsch has well known and established connections to various encampment support organizations.

He confirms this in his comments to the IC in his recent code of conduct violation - paragraph [26] "He (Councillor Kroetsch) 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."

Councillor Kroetsch further confirms his firm support for encampment support organizations in his press release regarding his code of conduct violation (attached) where he states: "As anyone who has followed me on social media knows, I have never hidden the fact that I have a personal and professional relationship with Ashley Wilson or a professional relationship with Wade Poziomka. I have also been clear, before the encampment litigation began, about where I stand when it comes to encampments in Hamilton..."

Therefore, I believe that any reasonable person would conclude that Councillor Kroetsch would be opposed to the premise of cutting funding for organizations

supporting encampments – as he has essentially stated himself – prior to his January 19th email.

2. Question: Please comment on whether you feel your X post violated the Direction in s. 14.2 of the Code to “focus on issues rather than personalities”?

Answer: Councillor Kroetsch is not a member of the public, he is an elected political representative.

It is a fundamental part of western democratic governance for political representatives to question, comment on, or criticize the actions of other political representatives - which is exactly what I have done here.

For example – if I said “The Mayor’s budget is totally out of touch with reality.” Or “Doug Ford is shortchanging municipalities.”

These are completely routine political statements personally directed at a specific political representative, but related to a political issue – no different than my X post.

A statement that may be a violation of 14.2 would be “The Mayor is braindead.” Or “Doug Ford is a crook.”

In this case, Councillor Kroetsch’s actions are political. My comment is respecting the political issue of funding of encampment support organizations, and Councillor Kroetsch’s actions working to support those organizations.

In fact, Councillor Kroetsch frequently engages in personal criticisms of council and his colleagues himself – I’m not going to waste time scrolling too far back, but here’s a few representative examples just from the last couple months.

Here is Councillor Kroetsch criticizing his colleagues personally.



Here is Councillor Kroetsch personally criticizing Councillor Francis and his motivation.



Cameron Kroetsch
@CameronKroetsch



An important and timely read in today's [@TheSpec](#), especially as Councillor Francis has moved up his motion on the notwithstanding clause to Council tomorrow, likely to prevent delegations from the very people whose rights he's trying to take away. [#HamOnt](#)
[thestar.com/opinion/contri...](#)



From thestar.com

6:57 AM · Nov 12, 2024 · **6,318** Views



1



19



39



2



Who can reply?

Accounts @CameronKroetsch mentioned can reply



Cameron Kroetsch @CameronKroetsch · Nov 12, 2024



For context, Francis' motion was tabled at the November 6 General Issues Committee as a notice of motion. That means it was supposed to come back as a motion to GIC on November 20. He instead decided to move it to tomorrow's Council meeting where delegations are not permitted.



2



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1.4K



Finally, Councillor Kroetsch has on several occasions stated his opinion that it is part of legitimate political discussion to question an elected official's character and criticize elected officials.



Cameron Kroetsch
@CameronKroetsch



No one is questioning your volunteer work. Residents, however, have every right to question your character, or mine, especially when lives are on the line. It's essential that the public is free to be critical. Elected office is uncomfortable. That's a good thing. [#HamOnt](#)
[x.com/PaulsEsther/st...](#)

This post is unavailable.

6:57 PM · Nov 6, 2024 · 8,347 Views

There is nothing in my X post that is personally disparaging to Councillor Kroetsch – I am strictly critical of his political actions which is the issue.

If I have violated 14.2 of the Code because I focused on personalities not issues, then so has Councillor Kroetsch on multiple recent occasions. I agree with Councillor Kroetsch that it is part of legitimate political discussion to question an elected official's character and criticize elected officials – within reason. I do not believe it is in the best interests of our local democracy for the IC to set the bar that any perceived personal criticism that is entirely consistent with routine political comment, is a Code of Conduct violation.

Reasons for Decision of Justice Ramsay in Heegsma v. Hamilton⁵

[13] The following are the paragraphs of the Reasons in the Encampment Litigation case cited by Cllr. Danko in his Response:

[24] The remaining applicants all used or use drugs. Many of the affidavits of the applicants contained boilerplate [assertions]. Parts were obviously drafted by lawyers. The applicants, apart from Mr. Smyth, have mental issues or drug problems which can affect perception and memory. Some of their recollections of being evicted were hazy or were the product

of what they were told. I prefer the evidence of the City staff as to what happened in enforcement of the by-law.

...

[61] She is concerned that there is a developing, false narrative that encampments are a safe alternative form of housing. That narrative appears in the affidavits of some of the applicants' witnesses. From talking to her patients, it appears that it has been a factor in the decision to leave safer environments.

⁵ 2024 ONSC 7154; Notice of Appeal served on January 22, 2025.

Findings of fact

...

[64] Dr Koivu's concern about the false narrative encouraging people to leave safer alternatives is supported by the evidence of David Buckle, a member of the Outreach Team, *who has observed organized groups encouraging encampment residents to resist options other than encampments.* [emphasis added]

Email from Cllr Kroetsch to All Members of Council sent on January 19, 2025

[14] The email from Cllr. Kroetsch to his fellow Members of Council referenced in the Response of Cllr. Danko reads as follows:

Hi folks,

I will be asking the City Solicitor to weigh in on this Notice of Motion [the one entitled "Re-Alignment of Taxpayer Funding to Good Faith Encampment Support Organizations"] during the Closed Session at Council this week as I don't think it's legal, and feels similar to the discussion we had about ...[content redacted to protect privacy interests], which the City Solicitor warned us all about at that time.

In short, I think we need more information about it before it's placed on the General Issues Committee Agenda.

I could wait until the next GIC meeting to do that, but then it would mean going into Closed Session to get legal advice before any delegations took place on the matter, which I think may be disrespectful to those who may show up to speak to the motion. I'll ask the City Solicitor and the City Clerk how to best do that. If it needs to wait until GIC, that's ok too, I just thought I'd write to let you all know that I was planning to ask for legal advice about it and why.

Cameron

X Post by Councillor Kroetsch in Response to Councillor Danko's Impugned X Post

[15] On January 20, 2025 at 1:18 pm, as commentary on Cllr. Danko's Tweet of early that day, Cllr. Kroetsch posted the following on X:

← Post



Cameron Kroetsch

@CameronKroetsch

I've asked for a discussion on the legal merits of this motion at the February 5 GIC meeting, when this will be tabled. I think we're going down a dangerous path. Coming after community organizations who depend on City funding is not ok and puts many Hamiltonians at risk. #HamOnt



John-Paul Danko @JohnPaulDanko · 2d

After a Code of Conduct violation for undisclosed problematic connections, Ward 2 Cllr @CameronKroetsch is now working to shield from accountability organizations Justice Ramsey found were encouraging en...

NOTICE OF MOTION	
General Issues Committee: January 15, 2025	
<p>MOVED BY COUNCILLOR J.P. DANKO:</p> <p>Re-Alignment of Taxpayer Funding to Good Faith Encampment Support Organizations</p> <p>WHEREAS, the City of Hamilton relies on many local social agencies, harm reduction, homeless and encampment organizations that provide various levels of support to vulnerable populations throughout the City</p> <p>WHEREAS, in 2024 the City of Hamilton invested a total of \$186 million dollars towards housing and homelessness, \$125 million funded by municipal taxpayers, equivalent to approximately \$215 per resident per year;</p> <p>WHEREAS, on December 23rd, 2024, Ontario Superior Court Justice James Ramsey issued a ruling dismissing the claim of fourteen homeless applicants that the City of Hamilton breached their right under the Charter to life, liberty and security of the person (s. 7) and to equal benefit of the law (s. 15);</p> <p>WHEREAS, paragraph 4 of Justice Ramsey's ruling states "I observe that the most vulnerable individuals not only the homeless but also the elderly person and the child who want to use a sidewalk or a city park will not licitly through used needles and human waste";</p> <p>WHEREAS, paragraph 24 of Justice Ramsey's ruling states "Many of the affidavits of the applicants contained late dates. Parts were obviously drafted by lawyers";</p> <p>WHEREAS, paragraph 51 of Justice Ramsey's ruling states "... there is a disbelieving, false narrative that encampments are a safe alternative form of housing. That narrative appears in the affidavits of some of the applicants' witnesses. From talking to her (respect witness Dr. Kojouhar) it appears that it has been a factor in the decision to leave safer environments";</p> <p>WHEREAS, paragraph 64 of Justice Ramsey's ruling states "... Dr. Kojouhar's concern about the false narrative encouraging people to leave safer alternatives is supported by the evidence ... a member of the Outreach team, who has observed organized groups encouraging encampment residents to resist options other than encampments";</p> <p>WHEREAS residents have reported observing instances where homeless individuals have received information regarding the City's resources, services, and organizations in...</p>	<p>...d taxpayer resources should be prioritized to fund ...</p> <p>...with community partners, working collaboratively with ...</p> <p>...ent with the interests of the City, residents, and the ...</p> <p>als.</p> <p>IT RESOLVED</p> <p>...ng Services staff be directed to identify and itemize ...</p> <p>...homelessness support social agencies, harm reduction ...</p> <p>...ment outreach organizations.</p> <p>...ng Services staff propose opportunities to re-align ...</p> <p>...tions that are proven good faith community partners ...</p> <p>...ely working with the City of Hamilton in alignment with ...</p> <p>...rests, approved by-laws and policies.</p> <p>...nelessness support social agency City funding and ...</p> <p>...it opportunities be referred to the 2025 budget for c...</p>

1:18 p.m. · 20 Jan 25 · 9,542 Views

9 Reposts 3 Quotes 43 Likes



[]

Analysis

Preliminary Issue: Was Cllr. Danko's X Post Made in His Capacity as a Councillor?

[16] As I have previously observed, it is implicit that for statements of a Member of Council on social media to fall within the ambit of the Code of Conduct, they must be made in their capacity as a Member, not as a private citizen.⁶ In this case, I have no trouble concluding that Cllr. Danko's post was made in his capacity as a councillor given the subject matter of the Tweet, the identification of him as a Hamilton Councillor in his X profile and the attachment of his Notice of Motion to be presented at a GIC meeting to the subject post.

The Importance of Safeguarding Political Speech

[17] Debate regarding the encampment file is highly charged, both politically and emotionally. There are strong views on either side of the debate concerning the extent to which encampments should be tolerated, if at all.

[18] I stated the following in relation to a complaint involving a councillor in another municipality for which I am the Integrity Commissioner, albeit dealing with negative comments about the municipality's CAO:⁷

[38] The Code of Conduct must be interpreted in a manner consistent with the Charter, including the right of freedom of expression enshrined in s. 2(b) of the Charter.⁸ In addition, an Integrity Commissioner should be reluctant to interfere with a politician's communication of political ideas.⁹ For example, in my Report on a previous complaint, I noted that the impugned comments constituted an ad hominem attack against particular individuals and if the councillor had confined his remarks to a rebuttal of the speaker's message, I would not have found a violation of the Code of Conduct.¹⁰

[39] The ability of councillors to publicly comment on important issues – such as the use of Strong Mayor Powers - should not be chilled, but at the same time, due regard for the reputations of staff must be maintained. Prior Integrity

⁶ *Councillor Danko Tweet (Re)*, 2024 ONMIC 11 (CanLII), at para. [20].

⁷ *Complaint re: Councillor David Sheen (Media Statements)* – DGB-CaledonICI-2024-03, paras. [38] and [39].

⁸ See, for example, *Re VanLeeuwen*, [2021 ONMIC 13 \(CanLII\)](#) at para. [179](#); *Newman v. Brown*, [2021 ONMIC 11 \(CanLII\)](#) at para. [68](#); *Anderson, D. v. Pinto*, 2022 ONMIC 6 (CanLII) at para. 123.

⁹ See, for example, *Linton v. Kitras*, [2020 ONMIC 1 \(CanLII\)](#) at paras. [76-81](#); *Re Murphy (No. 1)*, [2017 ONMIC 20 \(CanLII\)](#) at para. [31](#); *Anderson, D. v. Pinto*, 2022 ONMIC 6 (CanLII) at para. 126. Certainly, if the expression of such ideas clearly contravenes other Code provisions, such as those prohibiting the maligning of municipal staff, that will be an exception where political communication will be scrutinized.

¹⁰ Private Complaint re: Councillor Danko Tweet (Re) – DGB-HamiltonICI-2024-01, at para. [28].

Commissioner decisions have been careful not to unnecessarily silence councillors from respectfully criticizing decisions made by staff. Other ICs have also sought to isolate councillor conduct from whether the impugned decision or action on the part of staff was correct or whether the criticism levelled had any merit. However, various ICs, including myself, have found Code violations where councillor comments veer into inappropriate questioning of the motives, competence or professionalism of staff.¹¹

[19] In my opinion, this analysis is equally applicable to the circumstance of a complaint under s. 14 of the Code about one councillor commenting on statements or position taken by his or her fellow Members of Council. In fact, even more latitude should be given to criticisms of fellow Members of Council relative to those concerning a municipal employee given the relatively greater ability of a Member of Council to attract media attention in the defence of their position compared to a staff person.

Application of ss. 14.1 and 14.2 to the Facts of this Case

[20] S. 14.1 of the COC states that “No member shall make a statement, including through social media, when they know that statement is false or are reckless as to whether it is true.” S. 14.2 of the COC states that Members shall “maintain public confidence in the office to which they have been elected or appointed, are open and honest, focus on issues rather than personalities, and avoid threatening, intimidating, offensive or abusive conduct.”

Was Cllr. Danko’s Post Knowingly or Recklessly False?

[21] As a lawyer reading Justice Ramsay’s Reasons, I do not interpret them as supporting Cllr. Danko’s claim that he found that there were City-funded “organizations ... encouraging encampments” as I find Cllr. Danko’s Tweet implies, taken in its entirety, including the content of his Notice of Motion appended thereto. True, Ramsay J. did cite evidence that there were “organized groups” encouraging encampments, but he did not identify them let alone find that they were City-funded, as I find was implied in Cllr. Danko’s Tweet. Having said that, Cllr. Danko is a professional engineer by training and occupation, not a lawyer, and paragraph 64 of Justice Ramsay’s Decision where evidence of organized groups is cited does fall under the heading “Findings of Fact.” On balance, I accept that Cllr. Danko did not knowingly or recklessly misrepresent Justice Ramsay’s findings, although I believe they were, in fact, misleading.

[22] With respect to Cllr. Danko’s assertion that Cllr. Kroetsch “is now working to shield from accountability organizations Justice Ramsay found were encouraging encampments,” he points to an email from Cllr. Kroetsch prior to his Tweet where Cllr. Kroetsch questions the “legality” of the motion. Cllr. Danko additionally relies on a post by Cllr. Kroetsch after Cllr. Danko’s Tweet where Cllr. Kroetsch states: “ I think we are going down a dangerous path. Coming after

¹¹ See my decision in Complaint re: Councillors Labbee and Parent re Open Letter and Social Media Posts Concerning CAO delegated authority and non-union senior staff pay increases – DGB-Greater Sudbury ICI-2024-03, paras. [77] and [80], citing *McNeil v Bifulchi*, 2017 ONMIC 3 (CanLII), <<https://canlii.ca/t/hqdh5>>; *Sinnott et al. v McConkey*, 2021 ONMIC 4 (CanLII), <<https://canlii.ca/t/jg64t>>; *Byford v Matlow*, 2018 ONMIC 5 (CanLII), <<https://canlii.ca/t/hv1ts>>; *Clancy v Therrien*, 2021 ONMIC 12 (CanLII), <<https://canlii.ca/t/jj6b>>.

community organizations who depend on City funding is not OK and puts many Hamiltonians at risk” [emphasis added].

[23] With regard to the first above-referenced communication, Cllr. Kroetsch’s questioning of the “legality” of Cllr. Danko’s motion is not a basis, standing alone, for asserting that Cllr. Kroetsch is attempting to shield City-funded, pro-encampment organizations from accountability as Cllr. Danko asserts. There may well have been valid reasons for Cllr. Kroetsch to legitimately believe that the motion was improper from a “legal” perspective; as such, Cllr. Kroetsch’s pre-Tweet email does not support Cllr. Danko’s rationalization of the accuracy of his Tweet maligning Cllr. Kroetsch.

[24] Cllr. Kroetsch’s response to Cllr. Danko’s impugned Tweet directly refers to coming after City-funded community organizations being “not ok” after raising the legality of Cllr. Danko’s motion. This tends to corroborate Cllr. Danko’s assumption that Cllr. Kroetsch’s objection to the legality of the motion was motivated by his desire to protect the community organizations involved in encampment support targeted in Cllr. Danko’s motion.

[25] In all of the circumstances, I cannot conclude that Cllr. Danko’s Tweet was knowingly false or made recklessly with respect to whether it was true or not. It was based on an educated assumption about Cllr. Kroetsch’s motive for questioning the legality of Cllr. Danko’s motion that appears to have been proven accurate.

Did Cllr. Danko’s Tweet Violate the Direction in s. 14.2 to “Focus on issues rather than personalities”?

[26] As I have stated above, commentary on political issues, like encampment-related policies, constitute political speech that Integrity Commissioners should exercise caution about chilling.

[27] In dealing with a strikingly similar issue (albeit in the context of a complaint based on s. 8.(1) of the Code of Conduct (breach of “decorum”)) in a confidential letter from me to the Complainant and the affected Members of Council dismissing Complaint 24-013 that was subsequently leaked to the media,¹² I stated:

There is perhaps no more divisive an issue not only in the City of Hamilton but among municipalities across the Province generally today than homeless encampments, with very strong views harboured on each side. Particular broad deference must therefore be given in assessing political discourse on this issue for fear of muzzling debate. In addition, in this case, to the extent there were any comments made that might be considered a breach of s. 8.(1), all of these comments were only alleged to have been directed at other Members of Council, who have ample means of defending themselves in the news and social media, as compared to staff or members of the public who might have less of a voice to refute statements made about them. This further suggests that broader latitude with respect to finding a breach of decorum should be accorded in relation to the present Complaint.

¹² “Integrity Commissioner Warns About ‘Muzzling Debate’ at Hamilton Council, December 3, 2024, Bay Area Observer (per John Best).

...

I am somewhat more concerned about the comments on the part of Cllr. Kroetsch both at the Council meeting and in his Ward Newsletter.¹³ This is because, whereas Cllrs. Francis and Nann did not target any particular councillor, Councillor Kroetsch specifically targeted Cllr. Francis in both his oral and written remarks, which, to my mind, makes it a more concerning matter. However, caselaw regarding the scope of IC scrutiny of comments made at Council meetings where an issue of decorum has been dealt with at the meeting by the presiding officer indicates that the IC should not engage in further scrutiny of the issue.¹⁴ I apply that precedent in this case as it was clear that Mayor Horwath's admonition against characterizing the opinions of others immediately following Cllr. Kroetsch's comments had been directed at his comments.

I do note that the comments in Cllr. Kroetsch's Newsletter deriding Cllr. Francis came after the November 13th Council meeting where the Mayor had essentially admonished her fellow Members not to personalize the homelessness encampment debate. In other words, he repeated the same statements in his Newsletter despite having previously been warned. Nevertheless, given the highly divisive nature of the issues and the emotions running high on both sides, I decline to find that Cllr. Kroetsch breached decorum and therefore s. 8.(1) of the Code, just as I would not have found the comments made by Cllr. Francis at the November 13th meeting to have breached decorum.

[28] The circumstances of the current Complaint are indistinguishable in my view from those I considered in Complaint 24-013 – Cllr. Danko attributes ulterior motive to Cllr. Kroetsch's complaint about the "illegality" of his motion regarding the curtailment of funding to encampment support groups who encourage the creation and maintenance of encampments, just as Cllr. Kroetsch previously attributed ulterior motive to Cllr. Francis' decision to bring his motion before Council rather than at a GIC meeting where delegates could speak to the motion, both in the context of the "fraught" encampment issue. The issue, therefore, becomes whether the outcome changes if it is considered in the context of a breach of s. 14.2 of the Code rather than s. 8.(1) of the Code. In my view, it does not.

[29] In order to avoid muzzling political debate, I am of the opinion that stress must be placed on the word "*focus*" in the phrase "focus on issues rather than personalities" found in s. 14.2. I therefore interpret that phrase to require a determination of whether an attack on, or criticism of, an individual is the dominant aspect of the statement, or whether it is merely collateral to the

¹³ Statements in that newsletter were clearly made in the course of his or her performance, of his or her responsibilities as a Member and therefore fall within the scope of s. 8(2) of the Code.

¹⁴ [*Harding v Neal*, 2021 ONMIC 5](#), at para. 81.

dominant political purpose of the message. If the former, it constitutes a violation; if the latter, it does not violate that aspect of s. 14.2.¹⁵

[30] Applying the foregoing test, I find that Cllr. Danko's Tweet had the dominant purpose of advancing his agenda of opposing encampment support groups which he understood were encouraging the creation and maintenance of encampments. Given the forum on which it was posted, it is clear the Tweet also sought to influence public opinion, mobilize public opposition to an opposing Councillor's position on an issue and generate public discussion. While there was an unnecessary reference to Cllr. Kroetsch having been found to have violated the Code of Conduct related to the very encampment issue and speculation that Cllr. Kroetsch's motive for attempting to have his motion declared "illegal" was because of his support for groups that were encouraging encampments, I find that these statements were collateral to the primary political focus of the Tweet, which was to undermine support for encampment support groups (and their supporters) that (in his view) were encouraging the creation and maintenance of encampments.

[31] I therefore conclude that there was no breach of this aspect of s. 14.2 of the Code.

Was Cllr. Danko's Tweet "Threatening, Intimidating, Offensive or Abusive Conduct"?

[32] Despite the assertion by one of the Complainants that Cllr. Danko's Tweet was an attempt to "intimidate" Cllr. Kroetsch into backing down from his position, I do not regard it as having been posted for that reason, and obviously, judging by the timely and defiant response from Cllr. Kroetsch, it was wholly ineffective in this regard if that was its intent. I also find that it fails to rise to the level of "threatening" or "abusive". I am further not prepared to find that the Tweet was "offensive" to the necessary degree given the Charter protection of freedom of expression such as to violate this provision of the Code.

Concluding Remarks

[33] Although I have dismissed the Complaint, I wish to address two matters of concern to me:

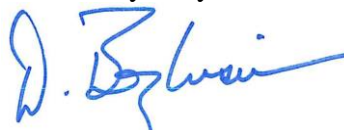
1. An inordinate proportion of Code of Conduct complaints in this jurisdiction and others in which I am the IC concern statements by councillors in news and social media, typically with a political issue at the heart of the message, but which perhaps veer into the realm of personal criticism of one or more individuals. I urge members of the public and Council to ask themselves before filing a Complaint whether the pith and substance of the message is a statement of political views or an attack on an individual. If the former, it will, except in rare cases, not rise to the level of a Code of Conduct violation;
2. While criticisms of positions taken by rivals have long been the subject-matter of political debate, there has been an increasing lack of civility and personal attack in political discourse which many have attributed to a spillover of American-style politics into this country. In my opinion, at the

¹⁵ A not dissimilar, though less developed, interpretation of an identical section of the Town of Orangeville's Code of Conduct was reached in *Newman v Brown*, [2021 ONMIC 11 \(CanLII\)](#).

municipal level, such attacks undermine the public's faith in the quality of their elected officials and the operation of local government generally. I urge Members of Council to be cognizant of this in formulating their expressions of political views going forward.

[34] This concludes my Report.

Yours very truly,

A handwritten signature in blue ink, appearing to read "D. Boghosian", with a long horizontal flourish extending to the right.

David G. Boghosian
Integrity Commissioner,
City of Hamilton