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OFFICE OF THE INTEGRITY COMMISSIONER

OFFICE OF THE CITY CLERK

December 31, 2012

City Council  
City of Hamilton

**RE: Annual Report 2012**

GENERAL

In 2009, Council for City of Hamilton (Council) passed a Code of Conduct to govern the ethical behaviour of individual Members of Council in performing their duties for the constituents of the City of Hamilton. Council also passed various By-Laws to create the Office of the Integrity Commissioner to act as an impartial and independent body to administer the Code of Conduct. Earl Basse is the current Integrity Commissioner for the City of Hamilton. His contract expires on June 30, 2015.

The Integrity Commissioner's principal contact at the City of Hamilton is the Clerk's Office. However, the Integrity Commissioner reports directly to and takes direction from Council.

The purpose of the Integrity Commissioner is to provide advice and education to Members of Council to assist them in maintaining a high standard of ethical behaviour in City governance. The Integrity Commissioner also plays a role in investigating and adjudicating complaints about the conduct of Members of Council where there has been a complaint about the conduct of a Member of Council.

This annual report covers the period of January 1, 2012 to December 31, 2012 and includes the following areas:

- Summary of the duties of the Integrity Commissioner
- Explanation of the complaint process;
- Summary of the investigations, adjudications and advice or referrals for opinions;
- Policy, education and outreach activities of the Integrity Commissioner
- Budget for the Integrity Commissioner for the upcoming year

SUMMARY OF DUTIES

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The Office of the Integrity Commissioner performs four basic functions in its role of governing the ethical behaviour of Council.

### **Advisory Services:**

Providing advice to Members of Council to assist in maintaining a high standard of ethical behaviour in City government: This includes:

- Conducting research into specific issues as requested by members of Council and provide advice and guidance to prevent potential violations of the Code of Conduct and other statutes;
- Providing opinions to members of Council on various matters that relate to the Code of Conduct, again to prevent violations of the Code of Conduct and other statutes;
- Reviewing the Code of Conduct to ensure it continues to meet the needs of Council.

### **Complaint Investigation Services:**

Investigating complaints of alleged violations of the Code of Conduct by Members of Council, which includes:

- Receiving complaints and conducting the appropriate investigations into allegations of misconduct by members of Council
- Completing an investigation report and submitting it to Council for dissemination to the public.

### **Complaint Adjudication:**

Upon completion of the investigation of a complaint against a member of Council for a violation of the Code of Conduct, the Integrity Commissioner adjudicates the matter. This includes:

- Determining whether a member of Council has violated a City protocol, by-law or policy governing ethical behaviour
- Administering the appropriate discipline as outlined in the By-Law.

### **Education Services:**

The Integrity Commissioner provides education to Members of Council and to the public to assist in maintaining a high standard of ethical behaviour in City government. This includes:

- Developing presentations for Council relative to the Code of Conduct, annually meeting personally with Members of Council to discuss any issues they may have and developing written material for dissemination to Council.
- Developing a website to educate the public on the Code of Conduct and the Office of the Integrity Commissioner.
- Presenting an annual report to Council.

## THE COMPLAINT PROCESS

The following is a brief explanation of the complaint process. Full details for making a complaint against a Member of Council are described in the website for the Integrity Commissioner at <http://www.hamilton.ca/YourElectedOfficials/Integrity+Commissioner>. For full information relating to how to contact the Integrity Commissioner, the public is encouraged to refer to the website.

### **The Process:**

Complaints may be filed by Council as a whole, by a Member of Council or by another individual. An individual (complainant) may make a Complaint regarding a member of Council by filing with the City Clerk a duly completed affidavit along with a deposit of \$100. Blank affidavits may be downloaded from the website or are available through the City Clerk's office. The City Clerk then forwards the complaint to the Integrity Commissioner.

The complainant also has the option of filing the duly completed affidavit with the City Clerk in a sealed envelope, along with the fee. The sealed envelope is then forwarded intact to the Integrity Commissioner.

Upon completion of the investigation by the Integrity Commissioner and the filing of the report, if the complaint was made in good faith, the fee is fully refundable.

### **Duty of Confidentiality:**

It is important to note, that there is a duty of confidentiality in the complaint process. This duty is in law and is stipulated in Section 223.5 of the Municipal Act and requires that the Integrity Commissioner and every person acting under the instruction of the Integrity Commissioner preserve secrecy in matters relating to complaints of alleged misconduct by a Member of Council. This section prevails over the Municipal Freedom of Information and Privacy Act.

This section of the Municipal Act has a significant impact on the ability of the Integrity Commissioner to divulge information relating to complaints. The Integrity Commissioner is prohibited from divulging any information relating to a complaint until such time as the investigation is completed and the report is made to Council. At that time the report becomes a public document. This section also prohibits the complainant and the Member of Council who is subject of the complaint from divulging information relating to a complaint.

When a complaint is filed, the name of the complainant is divulged to the Member of Council who is subject of the complaint. However, that member is duty bound not to divulge the identity of the complainant or the nature of the complaint to anyone else, including other Members of Council. Nor is the name of the complainant divulged in the final report by the Integrity Commissioner to

Council. Considerable effort is taken by the Office of the Integrity Commissioner to protect the identity of the complainant and the premature leak of information relating to the complaint.

### **Limitations:**

There are time limitations in making a complaint to the Integrity Commissioner. There is a time limitation. The Integrity Commissioner may not proceed with an investigation into a complaint when more than 42 days have passed since the date when the event(s) were discovered by the complainant.

There is also a limitation on complaints made in an election year. No complaints may be referred to the Integrity Commissioner or filed with the City Clerk less than 90 days immediately prior to the date of the regular election. The next regular election will be in 2014.

## SUMMARY OF INVESTIGATIONS AND REQUESTS FOR ADVICE

### **Complaint Against Mayor Bratina:**

A Complainant filed an affidavit under section 9 of the Integrity Commissioner By-Law alleging that on four occasions, with regards to the raise given by Mayor Bob Bratina to his Chief of Staff, Peggy Chapman, Mayor Bratina had contravened Sections 2.1(b), 2.1(c), 2.1(d), 13.2(b) and 13.2(c) of the Code of Conduct.

These sections state as follows:

- 2.1** *The key statements of principle that underlie the Code of Conduct are as follows:*
- (a) Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;*
  - (b) Members of Council shall be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real;*
  - (c) Members of Council shall perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and*
  - (d) Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and Council.*
- 13.2** *Under the direction of the City Manager, City employees serve the Council as a whole, and the combined interests of all members of Council as evidenced through the decisions of Council. Accordingly:*
- (a) members of Council shall be respectful of the role of City employees to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council;*

- (b) no member of Council shall maliciously, falsely, negligently or recklessly injure the professional or ethical reputation, or the prospects or practice of City employees; and*
- (c) members of Council shall show respect for the professional capacities of City employees.*

There were four (4) allegations of misconduct as follows:

**Allegation #1:**

Mayor Bratina contravened the Code of Conduct for members of the City of Hamilton's Council, sections 2.1(b), 2.1(c), 2.1(d), 13.2(b) and 13.2(c) when in an interview on Tuesday, December 6, 2011, he stated, "I didn't give a raise, she didn't ask for a raise". Mayor Bratina in an email dated Wednesday December 7, 2011 wrote "HR evaluates everything. I didn't ask for it. It came from HR."

Mayor Bratina later admitted that the request for the salary information came from his office and his office was the impetus for the raise. It should be clear to all that Mayor Bob's comments were anything but "an unintentional misunderstanding".

Note that on Dec. 13, 2011, the O Show on Cable 14 showed a video clip of Mayor Bratina who at the meeting in February, 2011 stated: "My own Chief of Staff who is here, who has done a wonderful job when we were looking over the salaries over the past several years of people in that position, she decided on her own that she would take \$20,000 less on an annual basis than what had been paid." Mayor Bratina did not need to ask the HR Department for the salary range in Dec. since he was discussing the salary ranges with the public and Ms. Chapman when she accepted the position.

**Allegation #2:**

Mayor Bratina contravened the Code of Conduct for members of the City of Hamilton's Council, sections 2.1(b), 2.1(c), 2.1(d), 13.2(b) and 13.2(c) when during the council meeting on Tuesday Dec.13, 2011 Mayor Bratina stated "It would have been public knowledge. You get it leaked anyway." and "So there are a whole range of issues that have to be looked at in terms of why this city can't maintain confidentiality." and "So it was obviously leaked by somebody" All of these statements try to pin the blame on city staff. Later Mayor Bratina acknowledged that it was his office that released the details of the Peggy's raise on Cable 14 via The O Show.

**Allegation #3:**

Mayor Bratina contravened the Code of Conduct for members of the City of Hamilton's Council, sections 2.1(b), 2.1(c), and 2.1(d) when mayor Bratina during the council meeting on Tuesday Dec. 13, 2011 stated numerous times that he

supports and believes in open and transparent government and that his (the Mayor's) office is open and transparent.

During that same meeting he also stated that "So it was obviously leaked by somebody" and "So there are a whole range of issues that have to be looked at in terms of why this city can't maintain confidentiality."

It is clear from these last statements that Mayor Bratina does not believe in government transparency.

#### Allegation #4:

Mayor Bratina contravened the Code of Conduct for members of the City of Hamilton's Council, sections 2.1(b), 2.1(c), and 2.1(d) when Mayor Bratina on Tuesday Dec. 13, 2011 released a letter to the media that states "The statement I made was very brief, with the intention of protecting the privacy of my employee as required by employment law." The fact is that Mayor Bratina was trying to justify his comments by hiding behind a "law" that does not exist. There is nothing in employment law that precludes any employer from disclosing to the public the earnings of each and every one of their employee.

These were serious allegations and a lengthy investigation was conducted and a report was completed for Council.

Upon completion of the investigation, it was found for Allegation #1 that based on the evidence compiled and reviewed and in accordance with the civil standard on the balance of probabilities, the Integrity Commissioner found that on December 7, 2011 Mayor Bratina violated Section 13.2(b) of the Code of Conduct by providing erroneous information to the Spectator Editorial Board which had the potential of injuring the professional or ethical reputation of the City of Hamilton Human Resource staff had it not been for Council's pursuit of the matter and the trust and confidence they expressed in the City of Hamilton Human Resource staff.

The Integrity Commissioner also found that this was not a malicious or deliberate act by Mayor Bratina to mislead the Spectator Editorial Board or to discredit the professional or ethical reputation of the City of Hamilton Human Resource staff.

As per Section 19 of the Code of Conduct, the Integrity Commissioner imposed the penalty of a Reprimand on Mayor Bratina.

The Integrity Commissioner also found there was no evidence to support Allegations #2, #3 or #4 and that the complaint was neither vexatious nor frivolous. As a result, the fee deposited by the Complainant was returned.

For full details relating to this complaint refer to the "Reports" section of the website.

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## Complaint Against Councillor Powers:

A Complainant filed an affidavit under section 9 of the Integrity Commissioner By-Law alleging that Councillor Powers had contravened Section 2 of the Code of Conduct by providing false information relating to a "Stop" sign that had been erected in the Complainant's neighbourhood.

These sections state as follows:

- 2.1 The key statements of principle that underlie the Code of Conduct are as follows:*
- (a) Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;*
  - (b) Members of Council shall be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real;*
  - (c) Members of Council shall perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and*
  - (d) Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and Council.*

The substance of the complaint emanated from information that was provided to the Complainant by Councillor Powers in an email wherein Councillor Powers advised the Complainant that:

"The vast majority of pedestrian crossing signals, stoplights and stop signs are installed at the request of the neighbours and neighbourhood, either directly to staff or through the Councillor's offices...they may or may not meet the 'traffic warrants' but in all cases, the locations are reviewed for safety issues. As I advised you in the past, traffic staff reviewed three locations along Newcombe Dr, Dundas and determined that the north leg of Linington Trail where it intersects with Newcombe Dr was considered the best and safest."

A subsequent email from Traffic Services for the City of Hamilton to the Complainant stated that:

"On October 13, 2010, Council approved a motion by the Ward Councillor to install an all-way stop at the intersection of Linington and Newcombe. Staff did not provide a formal report regarding this matter to Council...."

As a result of the information contained in these emails, specifically the information underlined by the Complainant, the Complainant believed that Councillor Powers had misled him by providing false information to him. The Complainant contended that the information provided to him by the City of Hamilton staff did not support the statement by Councillor Powers that studies were conducted relative to the installation of the "Stop" signs.

A thorough investigation was completed and based on the evidence compiled and reviewed and in accordance with the civil standard on the balance of probabilities, the Integrity Commissioner found that Councillor Powers acted in good faith with the Complainant in providing the information in his email and did not mislead the Complainant.

Also, based on the evidence compiled and reviewed and in accordance with the civil standard on the balance of probabilities, the Integrity Commissioner also found that the complaint regarding the conduct of Councillor Powers was neither vexatious nor frivolous. The fee for registering the complaint was refunded to the Complainant.

**Complaint #2011-002:**

This complaint was received in late November 2011. The Complainant was interviewed to provide additional details and the Councillor in question had been advised of the complaint. The complainant had undertaken to provide additional information to the Integrity Commissioner in order to have evidence of a potential violation of the Code of Conduct. The complaint was still open at the end of 2011.

The Complainant failed to contact the Integrity Commissioner to provide the additional details he had undertaken to provide and attempts by the Integrity Commissioner to contact the Complainant in 2012 were unsuccessful. As a result, the complaint was deemed to be abandoned. The fee was returned to the Complainant by Registered Mail.

**Requests for Advice:**

During the period of January to December 2012, the Integrity Commissioner has responded to 4 requests for advice from members of Council. Responses were provided to the Councillors for their edification.

In addition to queries from Council, the Integrity Commissioner has responded to five enquiries from the public relating to a variety of issues. All were informal queries.

**POLICY, EDUCATION AND OUTREACH ACTIVITIES:**

**Association of Integrity Commissioners:**

The Integrity Commissioner is a member of an association of Integrity Commissioners from various municipalities and other jurisdictions in Ontario. This is not a formal association but a voluntary ad-hoc association that meets in one of the jurisdictions on a semi-annual basis (normally in the spring and fall). Membership in the association and attendance at the meetings is at no cost to the City of Hamilton.

The objective of this association is to provide a venue for Integrity Commissioners throughout Ontario to discuss information of mutual interest and to exchange ideas to enhance the services they provide to their respective Councils.



Each municipal Council has diverse needs and the functions and duties of the Integrity Commissioner positions in these municipalities are different. However, each Integrity Commissioner has a common role to assist Council in maintaining a high standard of ethical behaviour in City governance. These semi-annual meetings of Integrity Commissioners perform a vital role to enhance the level of service provided by each to their respective municipalities.

**Conflict of Interest:**

The issue of Conflict of Interest was highlighted by the judicial inquiry in 2011 into the activity of Mayor Hazel McCallion of Mississauga, ON. Council was provided with a transcript of the proceedings as well as a summary of the important issues that emanated from that inquiry.

The Integrity Commissioner appeared before the General Issues Committee (GIC) of Council to provide Council with information on the subject of Conflict of Interest and to answer questions for Members of Council.

The appearance of the Integrity Commissioner before the GIC as well as any other Committee of Council or staff is part of the education role performed by the Integrity Commissioner. Council is encouraged to contact the Integrity Commissioner for assistance in matters relating to potential conflicts of interest as well as on matters relating to their conduct.

**Public Access to the Commissioner:**

The Integrity Commissioner is not a full-time position for the City of Hamilton, nor is that warranted. The Integrity Commissioner works from his office in Waterloo, ON.

For the convenience of anyone who wishes to contact the Integrity Commissioner, a toll-free number has been installed at no cost to the City of Hamilton. This toll-free number is 1-855-706-3636 and can be found on the website along with other information on how to contact the Integrity Commissioner.

The Office of the Integrity Commissioner was not only established to investigate complaints of potential misconduct by Members of Council but was also established to allow the public the opportunity to consult with the Integrity Commissioner on matters relating to the Code of Conduct for Members of Council as well as conduct by Members of Council.

The public, including service organizations, are encouraged to contact the Integrity Commissioner and have the Integrity Commissioner attend and provide a presentation to the organization on matters relating to the conduct of Members of Council, the duties of the Integrity Commissioner or other matters that may be of interest that relate to the position of Integrity Commissioner for the City of Hamilton.

This is a service provided by the Office of the Integrity Commissioner at no cost to the City or the requesting person/organization. Anyone requiring additional information on this is encouraged to contact the Integrity Commissioner on the toll-free number.

**BUDGET:**

The cost for the Integrity Commissioner for the calendar year 2012 was \$33,375. There is no mileage expense included in this cost.

**CONCLUSION:**

I would like to take this opportunity to thank the Mayor and Council for their cooperation in all matters that have come before the Integrity Commissioner.

I would also like to take this opportunity to thank the City Clerk's Office for providing much appreciated administrative and other assistance.



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Earl D. Basse – Integrity Commissioner