



Hamilton

OFFICE OF THE INTEGRITY COMMISSIONER

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July 30, 2010

City Council  
City of Hamilton**RE: Complaint of Contravention of the Code of Conduct  
Councillor Terry Whitehead****COMPLAINT**

On December 9, 2009, Hamilton Council forwarded a complaint to the office of the Integrity Commissioner for the City of Hamilton alleging that Councillor Terry Whitehead had contravened the Code of Conduct.

The complaint which had initially been made to the Human Resource Specialist alleges that:

- 1. The Councillor engaged in a course of conduct which showed a pattern of inappropriate behaviour toward the Employee. The Councillor's conduct was such that the Employee considered it to be humiliating, aggressive, belittling and intended to intimidate the Employee.*

If proven, this allegation which would constitute a violation of the Code of Conduct for Members of Council which states that harassment of staff is misconduct.

- 2. The Employee stated that on or about November 4, 2008, the Councillor instructed the Employee to seek to have a parking ticket against a friend of the Councillor's wife withdrawn. When the Employee failed to have the ticket withdrawn the Councillor engaged in behaviour toward the Employee which the Employee considered to be harassment.*

If proven, this allegation would constitute a violation of the Code of Conduct for Members of Council which states that no member of Council shall use the influence of office for any purpose other than the exercise of his or her official duties.

3. *The Employee stated that on or about November 12<sup>th</sup>, 2008, the Councillor instructed the Employee to book travel arrangements for a friend of the Councillor, during working hours.*

If proven this is an allegation which would constitute a violation of the Code of Conduct which states that no member of Council shall use the influence of their office for any purpose other than for the exercise of their official duties.

4. *The Employee has stated that on or about February 19<sup>th</sup>, 2009, the Councillor instructed the Employee to provide a photocopy of a Report to Committee of the Whole on the Pan Am Games bid to Nicole McIntyre, a reporter for the Hamilton Spectator.*

*The original Report contained both public and confidential portions. The confidential portions were to be discussed by Committee of the Whole in camera.*

*On February 19<sup>th</sup>, 2009, the Hamilton Spectator published a story, under the byline of Nicole McIntyre which contained information from the in-camera portions of the Report.*

If proven, this allegation would constitute a violation of the Code of Conduct which states that no member of Council shall disclose the content of a matter that has been discussed at or the substance of deliberations of an in-camera meeting, except for content that has been authorized by Council or a Committee of Council to be released to the public.

## INVESTIGATION

Investigation into this matter was commenced upon receipt of the complaint from Council in January 2010 and the Employee in question was interviewed and additional information was gleaned. Between November 2008 and July 2009, the Employee maintained a written record of Councillor Whitehead's conduct that the Employee believed was harassment in support of Complaint #1.

Councillor Whitehead was provided a copy of the Complaints being investigated along with the written record made by the Employee relating to his conduct. Councillor Whitehead provided a written response to the allegations and was interviewed. In his responses, Councillor Whitehead provided information relative to each of the incidents along with explanations. He denied each of the allegations.

In responding to the allegations, Councillor Whitehead provided the Integrity Commissioner with a large volume of documents. Councillor Whitehead advised that these documents had been downloaded from the Employee's computer and were evidence of the Employee conducting a private business during working hours at the City. Councillor Whitehead found that the Employee was not performing her job to the

level he had expected and he became frustrated with this. However, he denies that his conduct was humiliating, aggressive or intimidating.

The documentation was reviewed. It consisted of a large volume of emails, brochures, internet documentation and other information confirming that the Employee was actively operating a private business on City time and utilizing City of Hamilton assets such as computers and communication equipment.

The Employee was interviewed and admitted to operating a private business during office hours. However, the Employee advised that the operation of this business was minimal and did not impede or interfere with the performance of her duties to the City.

During the course of this investigation, other staff and Councillors were interviewed. Councillor Whitehead's current assistant advises that she has been working with Councillor Whitehead since July 2009 and at no time has he engaged in a course of conduct which was inappropriate. She has known Councillor Whitehead for a long period of time and has worked with him on a volunteer basis prior to attaining her current position and has always found him to be professional in his dealings with her.

## **FINDINGS**

This investigation is focused on Councillor Whitehead's conduct and not the conduct of the Employee. The conduct of the Employee is not within the jurisdiction of the Integrity Commissioner except as it relates to the evidence and to the conduct of Councillor Whitehead.

My findings are based on evidence on the balance of probabilities. In this case, the conduct of the Employee is relevant in evaluating the evidence against Councillor Whitehead.

### **Complaint #1:**

*The Councillor engaged in a course of conduct which showed a pattern of inappropriate behaviour toward the Employee. The Councillor's conduct was such that the Employee considered it to be humiliating, aggressive, belittling and intended to intimidate the Employee.*

If proven, this allegation which would constitute a violation of the Code of Conduct for Members of Council which states that harassment of staff is misconduct.

Harassment is not defined in the By-Laws, nor is it defined in law. The Canadian Human Rights Commission describes situations in which harassment occurs. Webster's Dictionary defines it as:

To create an unpleasant or hostile situation for especially by uninvited and unwelcome verbal or physical conduct.

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For the purposes of this enquiry, the Webster's definition is appropriate.

There are no allegations of physical or sexual harassment. The allegations relate to humiliating, aggressive and belittling behaviour. The evidence provided by the Employee and that of Councillor Whitehead is in direct contradiction of each other.

The Employee has documented a number of incidents of Councillor Whitehead's conduct between November 2008 and July 2009 that when taken in their entirety, provide evidence that would indicate that Councillor Whitehead's behaviour towards the Employee may be inappropriate. Councillor Whitehead provided explanations for each of these incidents.

However, considering that the Employee had engaged in a private business using City assets during City hours and had hidden that fact from Councillor Whitehead, one begins to question the Employee's reliability and to question the reliability of the evidence compiled by the Employee.

Councillors are elected by the residents of the City of Hamilton and do not always come with developed management skills, and for the most part, that is not required. Councillors depend on their Administrative Assistants to operate the office when they are not available. However, if one does not hire assistants skilled in fulfilling the function of an assistant, it is incumbent on the Councillor to closely manage that assistant.

Prior to being hired by Councillor Whitehead, the Employee had had no experience in municipal services and had had no experience as an Administrative Assistant. This put the Employee in a difficult position as the Employee was not fully aware of the duties nor was the Employee provided an orientation package to familiarize the Employee with the duties expected of an Administrative Assistant.

Councillor Whitehead had expected the Employee to fulfill the position, yet he did not hire someone with previous experience in providing the services he required. The evidence indicates that Councillor Whitehead did not closely supervise the Employee. Nor were his expectations clearly articulated to the Employee. As a result, their expectations were not the same. In this case, the Employee was conducting an outside business whilst employed and managed by Councillor Whitehead. The Councillor was not aware that this was happening in his office.

According to Councillor Whitehead, the Employee had continually complained that there was not sufficient time in the day to perform all the duties he asked of the Employee. Councillor Whitehead should have been more cognizant of the Employee's abilities to perform the daily functions of his office and should have been more vigilant of the Employee's daily duties. However, failing to be aware that the Employee was working an outside job on City time is not a violation of the Code of Conduct.

In Complaint #1, based on the evidence presented and reviewed and in accordance with the civil standard on the balance of probabilities, it is the Commissioner's finding

that Councillor Whitehead did not contravene the City of Hamilton Code of Conduct or other procedures, rules or policies governing a member of Council's ethical behaviour.

### **Complaint #2:**

*The Employee stated that on or about November 4, 2008, the Councillor instructed the Employee to seek to have a parking ticket against a friend of the Councillor's wife withdrawn. When the Employee failed to have the ticket withdrawn the Councillor engaged in behaviour toward the Employee which the Employee considered to be harassment.*

If proven, this allegation would constitute a violation of the Code of Conduct for Members of Council which states that no member of Council shall use the influence of office for any purpose other than the exercise of his or her official duties.

Councillor Whitehead's response to this allegation is that he is aware that the use of his office to interfere in the operation of Parking Services is forbidden and that he at no time did so. However, it has been common practice for his office to pass on information to departments within the City, Parking Services being one of them, when a constituent asks them to do so.

A friend, who is also a constituent, had received a parking ticket. She had driven her father for cancer treatment therapy and in waiting for the treatment to be completed had exceeded the parking time limit by 5 minutes. Councillor Whitehead had asked the Employee to pass this information on to Parking Services. Councillor Whitehead denies that he had asked that the ticket be cancelled. There is a time limit on the payment of parking tickets and the Employee had failed to pass on the information in a timely manner. The constituent failed to meet the time limit and had to pay extra fees as a result.

Councillor Whitehead advised that in his position as supervisor of the Employee, he had admonished the Employee for failing to make the timely connection to Hamilton Parking Services on behalf of the constituent. He did not ask for the ticket to be cancelled.

The Manager of Parking Services advises that Councillor Whitehead has not asked for the cancellation of any ticket with Parking Services, nor has he interfered with the operation of Parking Services. The Manager does remember this ticket as the female person that attended at Parking Services to pay the fine was extremely belligerent to her staff. The ticket was paid.

In Complaint #2, based on the evidence presented and reviewed and in accordance with the civil standard on the balance of probabilities, it is the Commissioner's finding that Councillor Whitehead did not contravene the City of Hamilton Code of Conduct or other procedures, rules or policies governing a member of Council's ethical behaviour.

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### Complaint #3:

*The Employee stated that on or about November 12<sup>th</sup>, 2008, the Councillor instructed the Employee to book travel arrangements for a friend of the Councillor, during working hours.*

If proven this is an allegation which would constitute a violation of the Code of Conduct which states that no member of Council shall use the influence of their office for any purpose other than for the exercise of their official duties.

Councillor Whitehead admits that he had asked the Employee to look into available flights for his friend, a constituent. The circumstances were that his friend was vacationing with his partner in a remote area of Mexico where there was no telephone available. The friend had to travel to a telephone where he made a number of calls to Canada. In one of the calls he had learned that his partner had a family emergency that required their premature return. Another of the calls he made was to return a phone call to Councillor Whitehead on another matter. In the conversation he had asked Councillor Whitehead to check on airline flights for his partner to return immediately to Hamilton for the emergency. Councillor Whitehead then asked the Employee to assist the friend by looking on line for available flights and sharing the information with his friend. Financial records were reviewed and they confirm that the flight was paid by the friend and not by the City of Hamilton.

Councillors are encouraged to advocate and facilitate issues for constituents. This was an emergency situation in a foreign country and Councillor Whitehead was assisting a constituent to return home. This type of conduct was not a common occurrence. The Employee was not continually asked to book flights for friends or constituents nor was the Employee repeatedly asked to perform personal favours for friends of Councillor Whitehead. This was an isolated incident.

On the surface this action may appear to be beyond the normal scope of the Employee's duties. However, I do not believe that the spirit and intent of the Code of Conduct is to restrict the ability of a Councillor to facilitate or assist a constituent in an emergency situation.

Councillors must have discretion to decide how to best serve the needs of their constituents and the City of Hamilton. This was an isolated incident. It was not common practice for Councillor Whitehead to ask the Employee to perform personal favours for friends or constituents. To characterize this isolated incident as a violation of the Code of Conduct is not appropriate.

In Complaint #3, based on the evidence presented and reviewed and in accordance with the civil standard on the balance of probabilities, it is the Commissioner's finding that Councillor Whitehead did not contravene the City of Hamilton Code of Conduct or other procedures, rules or policies governing a member of Council's ethical behaviour.

#### **Complaint #4:**

*The Employee has stated that on or about February 19<sup>th</sup>, 2009, the Councillor instructed the Employee to provide a photocopy of a Report to Committee of the Whole on the Pan Am Games bid to Nicole McIntyre, a reporter for the Hamilton Spectator.*

*The original Report contained both public and confidential portions. The confidential portions were to be discussed by Committee of the Whole in camera.*

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Copies of the reports in question were obtained from Municipal Records and were reviewed. Copies of the articles in the Hamilton Spectator (February 19 and February 23, 2009) were also obtained and reviewed. Although in the Spectator article it does state that a copy of a staff report was obtained, it does not specify whether the report was confidential or public. Both reports were prepared by staff.

The Employee was interviewed and the Employee referred to the notes the Employee had made relative to the dissemination of the report to Nicole McIntyre. Public reports are printed on white paper. Confidential or non-public reports are very unique in that they are printed on very distinctive red paper. Although the Employee had notes on the incident, there was no record to indicate whether the copy of the report provided to Nicole McIntyre was from the red report or the white report. The Employee could not recall which report was provided, nor did the Employee have a copy of the documents provided to Nicole McIntyre.

The information published in the Spectator articles was then compared to both the confidential and public reports referred to in the Complaint. The published information could have come from either the public or the confidential reports. No information unique to the confidential report was published by the Spectator. The information published was included in the public report and available to the public.

There is no evidence to determine the validity of this complaint.

#### **RECOMMENDATIONS**

Councillors' Administrative Assistants provide a vital service to the Councillor and the constituency. They are often the face of the Councillor in dealing with issues within the

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Ward and it is important for them to have experience in municipal governance, in dealing with people and in managing time. It is also important for them to be trained in the tasks specific to their duties. Newly elected Councillors are provided with orientation packages to assist them in their new duties and their Administrative Assistants should receive similar training to assist them in their new duties.

Councillors are elected to serve the City of Hamilton and their constituents and that often becomes their prime focus. However, they are also expected to manage their staff and promote a respectful work environment for their staff. This requires management skills and training to ensure that staff is treated in accordance with policies, procedures and the applicable statutes. Some Councillors bring those skills with them. Others may require training.

**Recommendations:**

1. That staff develop minimum standards of education and experience for applicants applying for positions as Administrative Assistant;
2. That an Orientation package be developed for new Administrative Assistants;
3. That staff develop a management training program for newly elected Councillors as part of their Orientation package.

**Conclusion**

Based on the evidence presented and reviewed and in accordance with the civil standard on the balance of probabilities, it is the Commissioner's finding that Councillor Whitehead did not contravene the City of Hamilton Code of Conduct or other procedures, rules or policies governing a member of Council's ethical behaviour.



**Earl D. Basse, Integrity Commissioner**

cc: Councillor Terry Whitehead  
The Employee