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Donald Fraser, President Tom Atterton, Secretary

**Comments to the Committee of the Whole respecting a By-law to establish an  
Integrity Commissioner for the City of Hamilton  
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The Hamilton and District Labour Council has argued consistently for some time that the City of Hamilton needs to establish an independent office of Integrity Commissioner with the authority to investigate alleged ethical breaches by members of City Council and impose penalties if the facts warrant. Although voters are the final arbiters of the appropriateness of political conduct, the actions of some members of council in the past have put council into the difficult position of judging colleagues and, as an unintended consequence, have raised questions about the efficacy of our municipal government. Local government is closest to the people and more grassroots oriented; it seems to be more susceptible to ignoring or not taking seriously rules governing elections or conduct in office because these just get in the way of helping constituents or doing civic business or, frankly, building egos and sustaining personal fiefdoms. If residents of the city are to trust that its government is working in their collective best interests, the conduct of councilors must be above reproach. If there are allegations of shadowy dealings, citizens need to be able to shine some light on the situation. If there is brazen misconduct evident then there must be ways to clearly and unequivocally state that such behaviour is not acceptable and will not be tolerated in an elected official. The draft by-law to establish an Integrity Commissioner is an important step in ensuring that municipal government in Hamilton is, and is seen to be, transparent and honest. The Hamilton and District Labour Council endorse the draft by-law and asks that the committee/council to adopt it.

We make the following observations for your consideration:

1. The ability to make the position part-time or share the function with several municipalities as outlined in section 3 makes some sense and potentially eases the burden on taxpayers who must fund this important watchdog role. At this point, it is not clear how many complaints will be received by the commissioner or investigations conducted. If the commissioner is appointed initially as a part-time or shared officer, council must remain open to making the job full-time if the number of complaints/investigations calls for it.
2. We strongly endorse the advisory function provided in section 7(d).
3. We have some concerns about the filing fee of \$100 (section 13). Although we understand that the fee is meant to discourage frivolous complaints, we do not want financial considerations to restrict the filing of complaints that legitimately need to be reviewed at the first stage of the process. There are folk in this city that cannot afford to pay \$100, even if it is refundable, to have their concerns

- recognized. Consideration should be given to reducing the fee to \$25 or eliminating it completely. Perhaps this could be tested out over a year (or the remainder of the term) to see how many frivolous complaints the commissioner reports. It likely is easier to establish the fee at \$100 and reduce it if the evidence permits rather than start with a low or no fee and then raise it. However, we are concerned about putting up barriers to participation.
4. The penalties that can be imposed by the commissioner in section 20 are appropriate. Consideration could be given to adding restrictions on assigning official ceremonial duties or chairing committees for a specified period of time. These are real penalties but only if the “offender” would be eligible to perform these roles during the period of suspension.
  5. It is appropriate that the power to impose penalties rests with the commissioner (section 21 (2)) especially given the limited sanctions that can be applied. In the absence of an independent adjudicator, council is left in the undesirable position of passing judgment on itself or its members, leaving an impression of inappropriate leniency, special treatment or, occasionally, personal vendetta.
  6. The proposed by-law (section 23 (1) provides that the commissioner should report within 60 days of completing an investigation. There is no time limit on the investigation itself; it is obviously necessary to gather all the facts before rendering a decision. However, those with experience in arbitrations and similar processes know that these can take a very long time. Consideration should be given to reducing the reporting requirement to 45 days. Since the commissioner can ask for an extension, this should not be onerous or detrimental to the soundness of the decision.
  7. It is important that the budget process (section 29) not be used to stifle the work of the commissioner by limiting resources necessary to the function of the office. It is equally important that the office run efficiently and within its mandate. It must not become an unaccountable fiefdom too. The city’s audit processes or, an auditor general, if the city pursues that type of accountability mechanism, might be an acceptable check on potential excesses rather than political interference in its operations. This is a tricky issue since council is responsible for setting the budget.
  8. Section 31 (1) of the draft says that the commissioner cannot accept complaints filed within the 90 days prior to a municipal election. The political rationale for this restriction is understandable. However, city councilors remain in office during that period of time; presumably ethical conduct as it applies to running the city is not suspended because of an election campaign. Given that the 90 days does not apply to the time limits for filing, we presume that a complaint could be lodged against a councilor who was re-elected for an alleged breach during the 90 days prior to the election following the election. If the councilor is not re-elected, we suppose that a complaint could be filed and adjudicated but any penalties would be moot. We understand that unproven allegations made during an election campaign could be injurious or fatal to a candidacy but we are not sure that this should trump the time frames for filing complaints provided in section 14. Section 11 could provide some protection to councilors in this regard. Although we would

prefer to see section 31 (1) eliminated, political reality suggests that this wont happen. Consideration should be given to narrowing the restriction to 60 days.

The following observations do not directly concern the draft by-law under consideration but are, in our opinion, essential to an open, honest and transparent political culture in Hamilton:

1. The work of the integrity commissioner is founded on a strong code of ethical conduct that applies to city councilors. This code should be available to the public and posted prominently on the city's website.
2. Arguments have been made that the conduct city staff should be subject to investigation by the integrity commissioner. In our view, the role of the commissioner is to protect the integrity of political decision-making. The city has codes of conduct for its employees and the right to enforce them. Those protected by collective agreements have the right to grieve and those who are not members of unions can avail themselves of other remedies.
3. Election financing reform properly is not part of this by-law. Prior to the last municipal election, the Labour Council adopted the position that neither corporations nor unions should be allowed to donate money or in-kind services to candidates for municipal office. We again urge city council to endorse this idea, apply it in Hamilton and ask the provincial government to change the law for the entire province prior the next municipal election cycle.

Again, the Labour Council has some concerns about the draft by-law to establish an integrity commissioner. However, failure to adopt any of our suggested changes will not compromise our support for this measure. Strengthen it if necessary but do not delay unreasonably its adoption or implementation.

Respectfully submitted,  
HAMILTON AND DISTRICT LABOUR COUNCIL

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Secretary