



OFFICE OF THE INTEGRITY COMMISSIONER

December 31, 2010

City Council
City of Hamilton

RE: Annual Report 2010

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 to the constituents of the City of Hamilton. Council also passed By-Law 08-154 to create the Office of the Integrity Commissioner to act as an impartial and independent body to administer the Code of Conduct. Earl Basse was appointed to the position of Integrity Commissioner beginning January 1, 2010 with a two-year contract. The contract expires December 31, 2011.

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 is the first Annual Report to be submitted to Council by the Office of the Integrity Commissioner and covers the period of January 1, 2010 to December 31, 2010. This Annual Report 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
- Summary of other activities of the Integrity Commissioner
- Policy, education and outreach activities of the Integrity Commissioner
- Budget for the Integrity Commissioner for the upcoming year

SUMMARY OF DUTIES

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 outlined in the Integrity Commissioner By-Law 08-154. Please refer to that By-Law for full details.

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 shall 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.

For the purposes of conducting the investigation, the name of the complainant is divulged to the Member of Council who is subject of the investigation. However, that Member of Council is duty bound not to divulge the identity of the complainant to anyone else. Nor is the name of the complainant divulged in the report to Council. Considerable effort is taken by the Office of the Integrity Commissioner to protect the identity of the complainant.

Limitations:

There are some 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. There was a regular election held in 2010.

SUMMARY OF INVESTIGATIONS AND REQUESTS FOR ADVICE

In 2010, the Integrity Commissioner received three complaints for investigation. One complaint came from Council and two from the public. For full details regarding each of these complaints, please refer to the reports attached to this Annual Report.

A fourth complaint had been received. However, the Integrity Commissioner was unable to act on it as the sworn affidavit had not been completed within 90 days of the regular municipal election. To date, the complainant has not taken steps to further that complaint since the election had been completed October 25, 2010.

This fourth complaint identified a communication issue in the complaint process. As a result, procedures have changed. The Integrity Commissioner is now immediately advised by email once a complaint has been received.

In addition to formal investigations conducted by the Office of the Integrity Commissioner, there were also a number of requests for advice and opinions relating to the conduct of Members of Council. The Integrity Commissioner was contacted on four (4) occasions to provide advice to Members of Council on various matters.

The Office of the Integrity Commissioner is responsible for the conduct of Members of Council only. It does not have jurisdiction over the conduct of City employees. The public often does not understand this differentiation. The City Manager has jurisdiction over the conduct of City employees. Complainants who reported misconduct by City of Hamilton employees were referred to the City Manager for action. Procedures within the Office of the Integrity Commissioner have been developed to make this process easier.

SUMMARY OF OTHER ACTIVITIES OF THE INTEGRITY COMMISSIONER

During the course of 2010, the Integrity Commissioner met individually with 15 of the 16 Members of Council to discuss issues relating to the Code of Conduct and other areas of interest to the Members.

The Integrity Commissioner is an active member of an ad-hoc association of Integrity Commissioners from other municipalities and jurisdictions in Ontario. In discussions with other Integrity Commissioners and in the course of performing the duties of the Integrity Commissioner, from time to time issues are identified from other jurisdictions that may be relevant to Members of Council for Hamilton. It is important to ensure that Council is

cognizant of these issues. As a result, the practice of meeting with Members of Council on an individual basis will continue as an annual practice. In the event critical issues are identified, Council will be advised immediately by internal correspondence from the Integrity Commissioner.

With the completion of the municipal election, the Integrity Commissioner met with the new Council on November 23, 2010 and provided a presentation to them.

During this term, the Integrity Commissioner has reviewed the Code of Conduct and found that it meets the needs of Council at this time. This is an ongoing practice that will continue. If a need for change is identified, appropriate recommendations will be made to Council.

POLICY, EDUCATION AND OUTREACH ACTIVITIES:

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 creation of the Integrity Commissioner positions in these municipalities are different. However, the intent of assisting Council in maintaining a high standard of ethical behaviour in City governance is common to all. These semi-annual meetings of Integrity Commissioners perform a vital role enhancing the level of service provided by each to their respective municipalities.

Maintaining and updating the website for the Office of the Integrity Commissioner is an ongoing process and the Integrity Commissioner continues to work with the IT Department to complete and enhance the website for the Integrity Commissioner to ensure it is user friendly and provides the information the public and others require.

BUDGET:

The cost for the Integrity Commissioner for the calendar year 2010 was \$45,975. There is no mileage expense included in this cost.

The major element in the budget of the Office of the Integrity Commissioner is the cost of conducting investigations. It is difficult to estimate the number of investigations or the time required to complete each investigation over the next calendar year. However,

there is no reason to believe that the budget required for 2011 would exceed the budget for 2010.

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.

The Integrity Commissioner does not have a formal office at the City of Hamilton, nor is there a need for one. The duties and functions of the Integrity Commissioner do not require full time attendance. However, it is important for the Integrity Commissioner to attend at the City of Hamilton on a regular basis and be available to and communicate to Council, the public and to communicate with the public and the staff as needed.

The Integrity Commissioner is in attendance in Hamilton each Thursday and can be contacted through the Clerk's Office or at the numbers below:

Telephone (Hamilton):	905.543.2424 ext. 5434
Direct Line (Waterloo Office):	519.578.6795
Cell Phone:	519-501.3636
Fax (Hamilton):	905.546.2095
Direct Fax (Waterloo Office):	519.578.5607
Email 1:	ebasse@rogers.com
Email 2:	Earl.Basse@hamilton.ca

I would like to take this opportunity to thank the City Clerk's Office for their assistance in finding office space for the Integrity Commissioner to work when in attendance at the City of Hamilton. I would also like to especially thank the City Clerk's Office for providing much needed administrative and other assistance.

I would also like to thank the IT Department for their assistance in developing the website for the Integrity Commissioner.



Earl D. Basse – Integrity Commissioner



OFFICE OF THE INTEGRITY COMMISSIONER

June 15, 2010

City Council
City of Hamilton

RE: Complaint of Misconduct against Councillor Lloyd Ferguson

Complaint

A Complainant filed an affidavit under section 9 of the Integrity Commissioner By-Law alleging that Councillor Lloyd Ferguson, Councilor for Ward 12, contravened Section 10 (Improper Use of Influence) of the Code of Conduct by making a comment “on the air” during a radio talk show regarding a food service bid for the newly renovated Hamilton City Hall.

The Complainant had heard Councilor Ferguson being interviewed on CHML Radio by the host Bill Kelly. Councillor Ferguson is the Chair of the committee responsible for renovations to City Hall. The Complainant had heard Councilor Ferguson speaking about the renovations and the new coffee and food service that had been located in the east wing.

According to the Complainant, Councillor Ferguson stated the Request for Proposal (RFP) had been issued and was posted for bids. Councillor Ferguson then said “...and I hope that Tim Horton’s wins. I think that it would be great for Hamilton.”

The Complainant advised that in over 30 years as a business professional, this is the very first time he had heard someone in a decision-making position publicly support a preference for a vendor before the proposals had even been evaluated or possibly even received.

The Complainant was also concerned because the Councillor was the Chair of the Renovations Committee that makes the final recommendation to City Council and the Council usually listens to those recommendations. The Complainant stated that presumably Councillor Ferguson knew that Tim Horton’s was a bidder because he wouldn’t just pull their name out of the air. He knew that Tim Horton’s had bid or was going to submit a bid.

The Complainant also expressed concern that City Staff, who may have heard the interview or were made aware of the Councillor Ferguson's comments, would be biased toward Tim Horton's in making the decision for the successful bidder. The Complainant had also heard that Councillor Ferguson was going to be part of the selection body and that was inappropriate.

Investigation

The Complainant was interviewed and he advised that he is not involved in the bidding process nor is he associated with anyone that is submitting a bid for consideration. He also made it clear that he had no personal grudge against Councillor Ferguson and would have made the same complaint regardless of who made the comment.

When asked if the complainant had any prior dealings with Councillor Ferguson, he replied that he had spoken to the Councillor Ferguson as well as other councillors at social and fund raising events. There was no indication by the Complainant that he had spoken to Lloyd Ferguson about his comments prior to his complaint.

A copy of the interview conducted by Bill Kelly of CHML on January 27, 2010 was obtained and the contents were reviewed. In the interview, Councillor Ferguson was asked about the restaurant that had been on the 7th floor. He responded by saying that it is being relocated to the 1st floor with an outdoor café. Councillor Ferguson then stated:

"I hope Tim Horton's puts in a competitive bid because they are a Hamilton Icon and it would be nice to have them in City Hall since they got their start in Hamilton. But we have to go through a competitive process to make sure we get full value for the taxpayer."

It is this statement that caused the Complainant concern.

Further investigation revealed that the RFP would close March 30, 2010 and City Staff would then review the bids received and select a vendor for the restaurant. It is important to review the bidding process to determine the extent, if any, that Councillor Ferguson could influence the decision.

The Bidding Process:

There are safeguards built into the bidding process to prevent political interference by Council. The steps in the process for the café are as follows:

1. The Renovations Committee decides what type of café is needed on the 1st floor;
2. That request is passed on to a sub-committee;
3. The sub-committee outlines the needs and limits of the proposed café and passes that information to the Purchasing Department;

4. The Purchasing Department prepares the RFP outlining the limits and needs of the proposed café and puts the RFP out for bids;
5. Once the bids are received, the bidders are compared to certain basic criteria. If a bidder does not meet the requirements, the bidder is disqualified. If a bidder meets the basic requirement, the bids are passed on to an Evaluation Committee;
6. The Evaluation Committee, comprised of City Staff from various departments, makes the selection.

Councillors are not involved in the bidding process nor are they allowed access to information prior to the closing of the bid. If a constituent makes a complaint to a Councillor about the process, the Councillor would pass on a constituent's complaint prior to the closing. The Councillor would have no further involvement in the process.

Investigation determined that the Renovations Committee, of which Councillor Ferguson is the Chair, made no attempt to and did not interact with the Purchasing Department Staff during the bidding process. It was also determined that Councillor Ferguson did not, at any time, make enquiries of the Purchasing Department as to the status of the café bid.

Only two (2) companies submitted bids for the café. Tim Horton's did not submit a bid for the café.

Councillor Ferguson was interviewed. He advised that he has no pecuniary or other interest in Tim Horton's and did not make his comments to Bill Kelly for any personal reason. His comments were made because Hamilton is the birthplace of Tim Horton's and it would be appropriate for them to have an outlet in the newly renovated City Hall.

Councillor Ferguson denied having any influence on the decision making process for the successful bidder of the café. As he had stated in his interview with Bill Kelly, the competitive process must be followed.

Councillor Ferguson advised that he had had interaction with the Complainant on a number of occasions. Councillor Ferguson provided newspaper articles in which the Complainant had expressed displeasure with the renovations being made on the City Hall. The Complainant was instrumental in developing posters identifying the members of the Renovations Committee as "...heritage criminals..." and displayed photographs of the Councillor with the caption: "WANTED FOR CRIMES AGAINST HERITAGE". The content of the posters identifying the members of the Renovations Committee and Councillor Ferguson as criminals appeared to be a personal attack on their character.

When interviewed, the Complainant had indicated that he had only conversed with Councillor Ferguson at social and fund raising events. He did not volunteer any information about what the topic of discussion was, but he made it clear that he had no personal grudge against Councillor Ferguson and would have made the same complaint

regardless of who made the comment. The posters and articles do not support that statement.

FINDINGS

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 Ferguson's remarks in the interview on CHML did not contravene the City of Hamilton Code of Conduct or other procedures, rules or policies governing a member of Council's ethical behaviour.

Also, 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 the complaint regarding the conduct of Councillor Ferguson is deemed to be vexatious. As per Section 12(3) of By-Law 08-154, the fee for registering the complaint shall not be refunded.



Earl D. Basse, Integrity Commissioner

cc: Councillor Lloyd Ferguson
Complainant



OFFICE OF THE INTEGRITY COMMISSIONER

June 15, 2010

City Council
City of Hamilton

RE: Complaint of Misconduct against Councillor Tom Jackson

Complaint

On February 11, 2010, a signed affidavit under section 9 of the Integrity Commissioner By-Law was received alleging that Councillor Tom Jackson, Ward 6 Mountain, had contravened the Code of Conduct. The allegation was very general in nature and there was no indication as to which section of the Code of Conduct was contravened by the Councillor. However, the affidavit did indicate that there was no "grading certificate" for the complainant's residential subdivision and that the City of Hamilton and the corrupt By-Law enforcement officers were covering this up.

The complainant was contacted in an attempt to clarify the substance of the complaint and arrange for a meeting. During the telephone conversation, the complainant leveled even more allegations against Councillor Tom Jackson, calling Councillor Jackson and city officials, including the police, as corrupt.

In interviewing the complainant, there was a list of complaints leveled against Councillor Jackson and other City employees. The list of allegations against Councillor Jackson included:

1. Cover up of incompetence by the City on issues relating to massive grading and storm water drainage on the complainant's property;
2. Corruption by Councillor Jackson and the City engineers and legal department;
3. Threats being made by Councillor Jackson to the complainant's neighbours;
4. Demands and threats by Councillor Jackson for the complainant to sell the house to the City;
5. Councillor Jackson falsifying an arrest warrant against the complainant;
6. Councillor Jackson encouraging the complainant's neighbours to force the complainant to move;
7. Councillor Jackson violating privacy laws by divulging personal information about the complainant to the complainant's neighbours;

8. Councillor Jackson harassing the complainant and paying others to harass the complainant;
9. Councillor Jackson assaulting the complainant.

The complaints against Councillor Tom Jackson were varied and serious. The complaints all stemmed from a grading dispute relating to the residence of the complainant. This dispute has been on-going for more than 20 years. To comprehend the scope of the allegations, it is necessary to understand the history surrounding this on-going situation.

History

The Complainant moved into a new residence in a new sub-division in Hamilton in 1988. At some point, the Complainant experienced problems relating to the drainage of water from his property. He believed that this was as a result of the failure of the City and the developer to properly install drainage systems in the sub-division.

The Complainant contacted his councillor, Councillor Tom Jackson, to complain about the drainage on his property. According to records, Councillor Jackson forwarded the drainage problem complaint to the Engineering department for investigation, which is standard procedure for Councillors when complaints are received from constituents. Councillor Jackson's office was provided copies of correspondence from the various City Departments on action that had been taken or was proposed.

The Complainant had made his own enquiries and learned that a grading certificate had not been issued for the sub-division when it had been developed in 1988. The City of Hamilton did not deny that fact.

In an effort to remedy the situation, the City installed a catch basin in the Complainant's back yard at the developer's expense. The Complainant was not completely satisfied with this solution, and eventually took legal action against the City of Hamilton.

The catch basin was replaced and relocated to the southeast corner of the property. According to information received and photographs, the Complainant had allegedly blocked off this drain after it had been installed, which caused even more flooding. The purpose for blocking the drain is unknown.

Councillor Jackson brought the matter before Council and secured additional funding in an effort to assist the Complainant. An extensive review was conducted by the City of Hamilton and recommendations were made to change the grading to resolve the issue.

The City prepared the necessary documentation and obtained permission from the owners of the homes in the affected sub-division to change the grading changes on the properties concerned to satisfy the Complainant's needs. The Complainant refused to sign this document.

INVESTIGATION INTO THE ALLEGATIONS

1. Cover up of incompetence by the City on issues relating to massive grading and storm water drainage on the complainant's property

Investigation

Investigation revealed that in 1988 the City of Hamilton failed to issue the necessary grading certificate for the development of the sub-division. The City admitted this oversight.

Interviews were conducted and a variety of documents relating to the development of the Complainant's sub-division as well as correspondence between and amongst the City and the Complainant were reviewed.

Investigation revealed that the drainage issue was brought to the attention of Councillor Jackson in December 1991 at which time he forwarded the complaint to the appropriate department for whatever action needed to be taken. Councillor Jackson was not directly involved with the drainage problem. Documents and correspondence was copied to Councillor Jackson's office for his information.

The City admitted its oversight in failing to issue the necessary grading certificate. Investigation revealed that at the time, the City had taken steps to mitigate any problems stemming from this oversight including installing a catch basin on the Complainant's property and relocating the catch basin in an effort to resolve the situation.

It was learned that shortly after moving into his residence in 1988, the Complainant, at his own expense, removed 4-5 truckloads of earth from his backyard. The purpose of this was not clear, nor was it clear if any problems developed as a result of this occurrence but shortly thereafter, the Complainant began to complain about drainage problems.

It was also learned that over time, residents of the surrounding homes to the sides and to the rear of the Complainant's residence had altered their backyards to suit their lifestyle. There is no evidence to substantiate that this exacerbated the drainage problem of the Complainant.

Conclusion

By failing to issue a grading certificate, the City of Hamilton did not comply with its policies and procedures in place in 1988. However, the City took steps to mitigate its oversight. Whether this failure resulted in the drainage problems for the Complainant is a moot point, as the resolution of the drainage problem is beyond the jurisdiction of the Integrity Commissioner. It is the conduct of Councillor Jackson that is at issue here.

Councillor Jackson had forwarded the complaint from his constituent to the Engineering Department in accordance with policy and there is no evidence to indicate that Councillor Jackson had at any time attempted to cover-up any issue relating to the complaint. Councillor Jackson made sure he was kept informed of the action taken by receiving copies of documents from the Engineering Department. Also, Councillor Jackson presented the matter to Council and obtained additional funding in an effort to resolve the drainage problem.

I find that Councillor Jackson's conduct in this matter is appropriate and there is no evidence to indicate that Councillor Jackson violated the Code of Conduct. This allegation is without merit.

2. Corruption by Councillor Jackson and the City engineers and legal department

Investigation

This is a very serious allegation relating to the conduct of Councillor Jackson and was fully investigated to determine if there is any evidence to support this claim.

From our investigation, we determined that Councillor Jackson had forwarded the Complainant's complaint regarding the drainage problem on his property to the Engineering department in accordance with municipal policy. The Engineering department had responded to the Complainant's complaint regarding the drainage problems on his property and had taken steps to resolve the matter by installing a catch basin on the Complainant's property.

This issue has been ongoing with the Complainant since 1988. Although the Complainant makes this complaint of corruption against Councillor Jackson, the City engineers and legal department, when we interviewed the Complainant he could not provide any evidence to support this, nor was there any evidence found in interviews with neighbours, city employees and documents reviewed.

Conclusion

This allegation is unfounded and vexatious.

3. Threats being made by Councillor Jackson to the Complainant's neighbours;

The Complainant alleges that Councillor Jackson is covering up the grading certificate issue by threatening the neighbors with legal action and the neighbors did not want a lawsuit because it would cost hundreds of thousands of dollars.

Investigation

There was no cover up by the City regarding its failure to issue the grading certificate. That oversight was admitted by the City.

Neighbours were interviewed and none of the neighbours were aware of any potential lawsuit being brought against them by Councillor Jackson nor had Councillor Jackson threatened them in any way.

Councillor Jackson states that he had never taken this action.

Conclusion

This allegation is unfounded and is frivolous and vexatious.

4. Demands and threats by Councillor Jackson for the Complainant to sell the house to the City;

The Complainant alleges that Councillor Jackson had personally put up “For Sale Signs” three (3) times on his front lawn and demanded that he sell the house. Councillor Jackson had members of the Legal department and the Engineering department with him when he attended at the Complainant’s property to place the signs.

In addition to placing the signs, the Complainant alleges that Councillor Jackson and the members of the Legal department and the Engineering department had demanded that he sell the house to the City of Hamilton and had threatened him if he did not do so.

Investigation

After making the allegations, the Complainant could not provide any evidence or documents to substantiate these events.

Interviews of the neighbours did not reveal an evidence to support these alleged events.

Councillor Jackson and city employees were interviewed. They all admit that in the course of their duties with the City of Hamilton, they had been at the property and conversed with the Complainant. However at no time did they demand that he sell the house to the City nor did they in any way threaten the Complainant.

The investigation did not uncover any evidence to support this allegation.

Conclusion

This allegation is unfounded and is frivolous and vexatious.

5. Councillor Jackson falsifying an arrest warrant against the Complainant;

The Complainant alleges that Councillor Jackson had used his influence as a member of the Police Board to sign a false arrest warrant relating to damage allegedly made by the Complainant to the property of his neighbour.

Investigation

Hamilton Police Service had no record of Councillor Jackson making a complaint to the police regarding the Complainant. Also, Councillor Jackson could not sign an arrest warrant against the Complainant. If an arrest warrant is issued, it is not done so on the authority of a Councillor or the Police Board. It is done in accordance with judicial procedure and department policy.

The Complainant could not provide any additional evidence to support this allegation.

Conclusion

This allegation is unfounded and is frivolous and vexatious.

6. Councillor Jackson encouraging the Complainant's neighbours to force the Complainant to move;

The Complainant alleges that Councillor Jackson had told the neighbors not to talk to him and were instructed by the Councillor to try and force the Complainant out of the neighbourhood.

Investigation

This complaint was thoroughly investigated with the neighbours of the Complainant. At no time did Councillor Jackson encourage the neighbours to force the Complainant to move.

Councillor Jackson denies any knowledge of this issue.

Conclusion

This allegation is unfounded and is frivolous and vexatious.

7. Councillor Jackson violating privacy laws by divulging personal information about the Complainant to the Complainant's neighbours;

The Complainant alleges that Councillor Jackson went to all of the neighbors and informed them that the Complainant had a "rap sheet" (criminal record).

Investigation

The neighbours were aware of the Complainant's interaction with the Police and the Justice System as many of the issues that were brought to the attention of

the Police and the Justice System involved the neighbours in the first place. Councillor Jackson did not inform the neighbours of the Complainant's police record.

Councillor Jackson was unaware if the Complainant had a police record.

Conclusion

This allegation is unfounded and is frivolous and vexatious.

8. Councillor Jackson harassing the Complainant and paying others to harass the Complainant

The Complainant alleges that there are approximately nine (9) neighbours that are harassing him and his wife and that Councillor Jackson is behind the neighbours in their harassment activities. This harassment has been taking place over the past 22 years and the Complainant alleges that Councillor Jackson had actually paid one of the neighbours to harass him by giving them an amount of corporate stock.

Investigation

The Complainant could not provide any additional substantive evidence of this allegation.

The neighbour who allegedly received the corporate stock denies that this action occurred. This neighbour also denies receiving any form of payment from Councillor Jackson and at no time did Councillor Jackson counsel them to harass the Complainant.

Interviews of other neighbours did not reveal any evidence to indicate that Councillor Jackson had made attempts to encourage the neighbours to harass the Complainant.

Conclusion

This allegation is unfounded and is frivolous and vexatious

9. Councillor Jackson assaulting the Complainant

The Complainant alleges that Councillor Jackson had assaulted him when he was picking up his mail from his mailbox.

Investigation

This is a serious allegation. However, the Complainant could not provide any evidence of this occurring nor could he provide any details of the assault. He did not report the matter to the police.

Conclusion

This allegation is unfounded and is frivolous and vexatious.

OTHER FACTS

The Complainant believes that in 1988, the developer of the sub-division where he purchased his residence had failed to properly grade the property and that the City of Hamilton had failed to take the proper steps to ensure the grading of the property was in accordance with City By-Laws. Nor had the City taken steps to correct the situation to the satisfaction of the Complainant. Whether this is true or not is not within the mandate of the Integrity Commissioner to determine and I make no judgment on that issue.

The Integrity Commissioner's mandate is the conduct of Councillor Tom Jackson and the allegations made by the Complainant about his conduct.

In addition to the above complaints, the Complainant has also reported nineteen (19) other incidents to the Integrity Commissioner regarding the conduct of Councillor Tom Jackson. However, the Complainant was either unable or unwilling to provide details to merit additional investigation or the allegations were outside the jurisdiction of the Integrity Commissioner. Information relating to those 19 incidents has been reviewed and recorded.

FINDINGS

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

Also, 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 the complaints regarding the conduct of Councillor Jackson are frivolous and vexatious. As per Section 12(3) of By-Law 08-154, the fee for registering the complaint shall not be refunded.



Earl D. Basse, Integrity Commissioner

cc: Councillor Tom Jackson
Complainant



OFFICE OF THE INTEGRITY COMMISSIONER

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 12th, 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 19th, 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 19th, 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.

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.

Complaint #3:

The Employee stated that on or about November 12th, 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 19th, 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 19th, 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.

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

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