



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 (now retired), this is the very first time he had heard someone in a decision-making position state publicly 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 including the "Hamilton Club." 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 the 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 but any further involvement must end at that point.

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 apply for information on the proposal and 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 expressed disappointment that Horton's had not put in a bid for the café.

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 was the source where the Complainant expressed his displeasure with the renovations being made on the City Hall. The Complainant, who runs a downtown shop, had also displayed posters that he had developed. These posters identified 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 which identified the members of the

Renovations Committee and Councillor Ferguson as criminals was 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