

Authority: Item 9, Committee of the Whole
Report 08-020
CM: June 11, 2008

Bill No. 154

CITY OF HAMILTON

BY-LAW NO. 08-154

To Establish The Office Of Integrity Commissioner

WHEREAS Council desires to provide for an Integrity Commissioner to help ensure that members of Council conform to ethical standards of behaviour in carrying out their duties and are held to account for adherence to their Code of Conduct and any other applicable City procedures, rules or policies;

AND WHEREAS section 223.3 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorizes the City of Hamilton to appoint an Integrity Commissioner who performs functions with respect to the application of the Code of Conduct for members of Council and other procedures, rules or policies governing their ethical behaviour;

AND WHEREAS sections 223.4 to 223.8 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provide that an Integrity Commissioner appointed under section 223.3 has certain powers, duties and protections, including: the powers of a commission under Parts I and II of the *Public Inquiries Act*, R.S.O. 1990, c. P.41; the duty to preserve secrecy with respect to all matters that come to their knowledge in the course of performing their functions; and the protection of not being a competent or compellable witness in a civil proceeding;

AND WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes, and in particular paragraph 2 of subsection 10(2) authorizes by-laws respecting the accountability and transparency of the municipality and its operations;

AND WHEREAS sections 23.1 and 23.2 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorize the City of Hamilton to delegate its powers and duties, including legislative and quasi-judicial powers under the *Municipal Act, 2001*, S.O. 2001, c. 25, to an individual who is an officer, employee or agent of the City of Hamilton;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

Definitions

1. In this By-law:
 - (a) "City" means the municipality of the City of Hamilton or the geographic area of the City of Hamilton, as the context requires;
 - (b) "Code of Conduct" means the Code of Conduct for members of Council, as approved by Council from time to time, as it existed on the date of the event or events giving rise to a Complaint;
 - (c) "Complaint" means a request by City Council, a member of Council, a City employee, a City resident, or a person who has business, institutional or other premises in the City, that the Integrity Commissioner conduct an inquiry into an event or series of events alleged to contravene the Code of Conduct or any other procedures, rules or policies governing the ethical behaviour of members of Council;
 - (d) "Complainant" means a person who makes a Complaint;
 - (e) "Council" means the City's Council;
 - (f) "judge" means an individual appointed as a judge under s. 96 of the *Constitution Act, 1867*; or an individual appointed as a judge of the Ontario Court of Justice, or an equivalent Court in another Canadian Province or Territory;
 - (g) "Municipal Act" means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;
 - (h) "Municipal Freedom of Information and Protection of Privacy Act" means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended; and
 - (i) "Public Inquiries Act", means the *Public Inquiries Act*, R.S.O. 1990, c. P.41, as amended.

Appointment

2. Council shall appoint a former judge who has retired from office to be Integrity Commissioner for a fixed term of office, such term to be established by Council at the time of the appointment.

3. Without limiting Council's authority to appoint an individual as Integrity Commissioner under section 2, the Integrity Commissioner may be:
 - (a) a full or part-time City employee;
 - (b) retained by Council on a term contract based on "fee for service";
 - (c) cross-appointed by Council together with one or more other municipal councils as the Integrity Commissioner for all of the municipalities making the cross-appointment; or
 - (d) cross-appointed by Council to perform one or more of the other functions authorized under Part V.1 of the Municipal Act, provided that those functions are and remain compatible with the Integrity Commissioner's functions under this By-law.
4. The Integrity Commissioner shall be paid such remuneration and expenses as are determined or directed to be determined by Council.
5. The Integrity Commissioner may be removed for cause, before the expiry of their term of office, by Council.

Role

6. The role of the Integrity Commissioner is to help ensure that members of Council perform their functions in accordance with the Code of Conduct and other procedures, rules or policies governing their ethical behaviour.

Duties

7. The Integrity Commissioner shall:
 - (a) Prepare written materials for distribution to and use by members of Council regarding the role of the Integrity Commissioner and ethical obligations and responsibilities of members of Council under the Code of Conduct and any other procedures, rules or policies governing their ethical behaviour.
 - (b) Prepare written materials and content for the City's web site for distribution to and use by the public to aid in their understanding of the role of the Integrity Commissioner and ethical obligations and responsibilities of members of Council under their Code of Conduct and any other procedures, rules or policies governing their ethical behaviour.
 - (c) At least once each Council term, deliver an oral presentation to members of Council regarding the role of the Integrity Commissioner and ethical obligations and responsibilities of members of Council

under their Code of Conduct and any other procedures, rules or policies governing their ethical behaviour.

- (d) Upon request, provide advice to individual members of Council regarding their ethical obligations and responsibilities under their Code of Conduct and any other procedures, rules or policies governing their ethical behaviour.
- (e) Provide advice and recommendations to Council regarding amendments to the Code of Conduct and any other procedures, rules or policies governing their ethical behaviour.
- (f) Prepare and deliver an annual report to Council containing a summary of their activities during the calendar year.

Making A Complaint Regarding A Member Of Council

- 8.(1) Council may refer a Complaint directly to the Integrity Commissioner.
 - (2) A Complaint referred to the Integrity Commissioner under subsection (1) shall contain the information required to complete Appendix A to this By-law, but is not required to be in the form of an affidavit.
 - (3) No fee under section 12 is payable with respect to a Complaint referred to the Integrity Commissioner under this section.
- 9. A Complainant may make a Complaint regarding a member of Council by filing with the City Clerk a completed and sworn/affirmed Appendix A to this By-law together with the fee under section 12, and the City Clerk shall forward such a Complaint, without added comment, to the Integrity Commissioner.
- 10. A Complainant filing a Complaint under section 9, may file the completed and sworn/affirmed Appendix A to this Bylaw in a sealed envelope and the City Clerk shall forward the Complaint to the Integrity Commissioner unopened.
- 11. A Complaint regarding a member of Council shall not be made available to the public except as may be required under the Municipal Freedom of Information and Protection of Privacy Act.

Refundable Fee

- 12.(1) A Complainant shall pay to the City Clerk a refundable fee in the amount of \$100.00 upon the filing of a Complaint under section 9.

- (2) The fee payable under subsection (1) shall be refunded to the Complainant when the Integrity Commissioner files their report under section 22, except as may otherwise be required under this By-law.
- (3) Where a Complaint is found to be frivolous, vexatious, or not made in good faith under section 18, the fee shall not be refunded.
- (4) Where a Complaint has been stayed under section 17, a Complainant may withdraw their Complaint and receive a refund of the fee.

Limitation Period

- 13.(1) Except as provided for in this section or section 32, the Integrity Commissioner shall not proceed with an inquiry in regard to a Complaint which is filed with the City Clerk more than 42 days after the date when the event or series of events which are the subject matter of the Complaint were discovered by the Complainant.
- (2) An event, or series of events, is discovered on the earlier of:
 - (a) the date upon which the Complainant first knew,
 - (i) that the event, or series of events, had occurred,
 - (ii) that the event, or series of events, constituted a contravention of the Code of Conduct, and
 - (iii) the identity of the member of Council involved in the event or series of events; and
 - (b) the date on which a reasonable person with the abilities and in the circumstances of the Complainant first ought to have known of the matters referred to in paragraph (2)(a).
- (3) A Complainant is deemed to have known the matters referred to in paragraph (2)(a) on the date the event, or series of events, occurred, unless the contrary is proven, the onus of which proof lies upon the Complainant.
- (4) Where, pursuant to this section, the Integrity Commissioner decides not to proceed with an inquiry they shall prepare and file a report under section 22, which applies with necessary modifications, setting out that decision.

Inquiry Into A Complaint Regarding A Member Of Council

14. Where a Complaint regarding a member of Council is received by the Integrity Commissioner, they shall conduct an inquiry promptly, thoroughly and in a manner that ensures the member of Council who is the subject of the Complaint is given an opportunity to know the nature of the Complaint against them and to make representations respecting the Complaint to the Integrity Commissioner.
15. Information concerning the nature of a Complaint disclosed to a member of Council under section 14 shall be used by the member only for the purpose of making representations respecting the Complaint to the Integrity Commissioner and not for any other purpose.
16. In conducting an inquiry into a Complaint regarding a member of Council, the Integrity Commissioner may exercise any power given to them under this By-law or under Part V.1 of the Municipal Act, including the power to conduct or not to conduct an inquiry under the *Public Inquiries Act*.
- 17.(1) If the Integrity Commissioner is satisfied that a Complaint regarding a member of Council does not contain sufficient information to set out a *prima facie* contravention of the Code of Conduct or other procedures, rules or policies governing a member of Council's ethical behaviour, they shall stay the inquiry into the Complaint.
 - (2) Before staying an inquiry under subsection (1), the Integrity Commissioner shall give the Complainant an opportunity to provide additional information respecting the Complaint and in doing so shall explain to the Complainant what additional information would be required to set out a *prima facie* contravention of the Code of Conduct or other procedures, rules or policies governing a member of Council's ethical behaviour.
 - (3) Where the Complainant provides additional information under subsection (2), the Integrity Commissioner shall consider all of the information provided and shall reassess whether there is sufficient information to set out a *prima facie* contravention of the Code of Conduct or other procedures, rules or policies governing a member of Council's ethical behaviour.
 - (4) Where the Integrity Commissioner has stayed an inquiry into a Complaint and, after the stay, additional information is provided which, on its own or together with the information provided before the stay, sets out a *prima facie* contravention of the Code of Conduct or other procedures, rules or policies governing a member of Council's ethical behaviour, the Integrity Commissioner shall lift the stay and conduct the inquiry.

- 18.(1) If the Integrity Commissioner is satisfied, after considering the information contained in a Complaint and any other relevant information, that a Complaint regarding a member of Council is frivolous, vexatious or not made in good faith, they shall not conduct an inquiry or, where that becomes apparent in the course of an inquiry, shall terminate the inquiry.
- (2) Where, pursuant to subsection (1), the Integrity Commissioner decides not to proceed with an inquiry they shall prepare and file a report under section 22, which applies with necessary modifications, setting out that decision.

Penalties and Delegation Regarding a Contravention by a Member of Council

19. The penalties for a member of Council who contravenes the Code of Conduct or other procedures, rules or policies governing the member's ethical behaviour shall be those authorized under subsection 233.4(5) of the Municipal Act, namely:
 - (a) a reprimand;
 - (b) suspension of remuneration paid to the member in respect of the member's services as a member of Council for period of up to 90 days.
- 20.(1) The power to impose the penalties under section 19 is delegated to the Integrity Commissioner.
 - (2) Except as otherwise provided in this By-law, the Integrity Commissioner shall not delegate the power to impose the penalties under section 19, but shall exercise the power personally even where an inquiry into a Complaint is conducted or reported on by a delegate of the Integrity Commissioner under section 33.
21. A penalty imposed by the Integrity Commissioner takes effect immediately upon the filing of their report on the inquiry with the City Clerk.

Reporting An Inquiry Into A Complaint Regarding a Member of Council

- 22.(1) Where the Integrity Commissioner has completed an inquiry into a Complaint regarding a member of Council, they shall, within 60 days of completing the evidence gathering and investigation portion of the inquiry, prepare and file with the City Clerk a report to Council regarding the inquiry.

- (2) Where, in the opinion of the Integrity Commissioner, it is not possible to prepare and file a report to Council within the time set out in subsection (1), they may advise Council of this together with the reasons for their inability to prepare and file the report to Council and request an extension of time for the preparation and filing of the report. Council may, after considering the request, grant the Integrity Commissioner permission to file their report on or before a new fixed date.
23. The Integrity Commissioner shall provide a copy of their report filed under section 22 to the Complainant, to the member of Council who is the subject of the Complaint and to all other members of Council at the same time as filing the report with the City Clerk.
24. The report filed under section 22 shall include:
- (a) the nature of the Complaint;
 - (b) the evidence gathered from the Complaint and from the inquiry;
 - (c) the Commissioner's findings of fact regarding the Complaint, which findings shall be made in accordance with the civil standard on the balance of probabilities;
 - (d) the Commissioner's decision, based on the findings of fact, that the member of Council contravened or did not contravene the Code of Conduct or other procedures, rules or policies governing a member of Council's ethical behaviour;
 - (e) where the Commissioner decides that the member of Council has contravened the Code of Conduct or other procedures, rules or policies governing the member's ethical behaviour, the penalty under section 19, if any, to be imposed, including a copy of a letter of reprimand, if imposed, or a copy of the notice of suspension of remuneration, if imposed.
25. Where the Integrity Commissioner's delegate under s. 33 decides that a member of Council has contravened the Code of Conduct or other procedures, rules or policies governing the member's ethical behaviour but that the member was acting in accordance with the Commissioner's advice given under subsection 7(d) and had, before receiving this advice, disclosed to the Commissioner all the relevant facts that were known to the member, the delegate shall so state in the report under section 22 and no penalty shall be imposed.

- 26.(1) Where the Integrity Commissioner imposes a penalty suspending the remuneration paid to a member of Council, they shall notify the General Manager of Finance and Corporate Services of the suspension and the period of time of the suspension.
- (2) The General Manager of Finance and Corporate Services shall ensure the remuneration of the member of Council is suspended in accordance with the notice of the Integrity Commissioner under subsection (1).
27. Where the Integrity Commissioner has filed a report in respect of an inquiry with the City Clerk under section 22, the City Clerk shall place the report on the next available Council Agenda as an information item.

Budget For The Office Of The Integrity Commissioner

- 28.(1) The Integrity Commissioner shall submit an annual budget directly to Council during the City's budget process.
- (2) The budget submitted under subsection (1) shall contain all anticipated costs and expenses for the operation of the office of the Integrity Commissioner for the calendar year, excepting only expenses for the conduct of an inquiry under the Public Inquiries Act.
- (3) The costs and expenses for the operation of the office of the Integrity Commissioner under subsection (2) may include hiring staff, arranging for facilities or obtaining expert services, as the Integrity Commissioner considers necessary to perform their functions.
- 29.(1) If the Integrity Commissioner is satisfied that it is necessary to exercise any of the powers under the Public Inquiries Act to complete an inquiry, they shall prepare and file, forthwith, with the City Clerk a report to Council setting out the circumstances and reasons for the exercise of these powers.
- (2) The report under subsection (1) shall:
 - (a) set out the efforts which the Integrity Commissioner has made to gather necessary evidence and to otherwise complete the inquiry without resorting to the exercise of powers under the Public Inquiries Act;
 - (b) explain why the Integrity Commissioner considers it necessary to exercise the powers under the Public Inquiries Act;
 - (c) set out the steps which the Integrity Commissioner anticipates taking under the Public Inquiries Act; and

- (d) explain how the steps set out in paragraph (2)(c) will comply with subsection (5).
- (3) Where the Integrity Commissioner has filed a report with the City Clerk under subsection (1), the City Clerk shall place the report on the next available Council Agenda as an information item.
- (4) Subsequent to filing their report under subsection (1), the Integrity Commissioner shall provide, forthwith, to the General Manager of Finance and Corporate Services, an estimate of all anticipated costs and expenses which will be incurred in exercising the powers under the Public Inquiries Act.
- (5) The Integrity Commissioner shall ensure that all reasonable steps are taken to minimize the anticipated costs and expenses without hampering the ability of the Integrity Commissioner to complete the inquiry.
- (6) Where the Integrity Commissioner becomes aware that the costs and expenses may exceed the estimate under subsection (4), they shall provide forthwith a revised estimate to the General Manager of Finance and Corporate Services.
- (7) Upon being provided with an estimate under subsection (4) or a revised estimate under subsection (6), the General Manager of Finance and Corporate Services shall make provision for the payment of costs and expenses and shall report to Council regarding the amount of the estimate or the revised estimate for Council's information and, if necessary, for Council to consider the source of funding.

Confidentiality

- 30(1) The Integrity Commissioner is entitled to have access to such information belonging to or used by the City, including legal advice that has been given to Council, Standing Committees, the Board of Health or City Departments, as they are satisfied is necessary to conduct an inquiry.
- (2) A disclosure to the Integrity Commissioner of legal advice under subsection (1):
 - (a) shall be deemed not to constitute a waiver of solicitor-client privilege;
 - (b) shall be used only for the purpose of conducting an inquiry and not for any other purpose; and
 - (c) the contents or substance of such legal advice shall not be disclosed in any public report prepared by the Integrity Commissioner or any

person acting under the instructions of the Commissioner, including their delegate under section 33.

31. The Integrity Commissioner and every person acting under the instructions of the Commissioner, including their delegate under section 33:
 - (a) shall preserve the secrecy of all confidential documents, material or information, whether belonging to the City or not, that come into their possession or to their knowledge in the course of their duties; and
 - (b) without limiting the obligation to preserve secrecy under subsection (a), shall ensure that they and, in particular, any reports they prepare, comply at all times with the Municipal Freedom of Information and Protection of Privacy Act and with the Council Procedure By-law regarding personal and personnel information.

No Complaints 90 Days Prior To A Municipal Election

- 32.(1) Despite any other provision of this bylaw, no Complaint may be referred to the Integrity Commissioner under section 8, or filed with the City Clerk under section 9, 90 days immediately prior to the date of a regular election held pursuant to the *Municipal Elections Act, 1996*, S.O. 1996, Chapter 32, as amended.
 - (2) The 90 days under subsection (1) shall not be included in the calculation of the 42 days under subsection 13(1).

General Provisions

- 33.(1) The Integrity Commissioner may, in writing, delegate their duties to conduct an inquiry, including the exercise of powers under the Public Inquiries Act.
 - (2) Notwithstanding subsection (1), the Integrity Commission shall, in writing, delegate their duties to conduct an inquiry, including the exercise of powers under the Public Inquiries Act, their duties to report on an inquiry and the power to impose either of the penalties under section 19, where the Commissioner:
 - (a) has provided advice to an individual member of Council under subsection 7(d) and
 - (i) the member of Council is the subject of the Complaint, and

(ii) the advice was provided under subsection 7(d) in respect to the subject matter of the Complaint; or

(b) has an actual or apparent conflict of interest.

(3) In making a delegation under subsections (1) or (2), the Integrity Commission shall first satisfy themselves that the person to whom the duties are to be delegated is fully capable of carrying these duties out.

(4) The Integrity Commissioner may, at any time, revoke a delegation made under subsection (1) and carry out the delegated duties themselves.

(5) The Integrity Commissioner may, at any time, revoke a delegation made under subsection (2) and make another delegation under subsections (2) and (3).

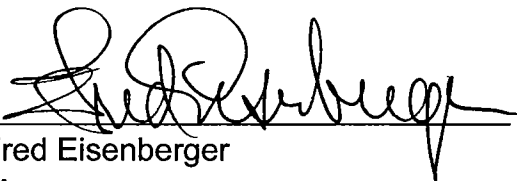
34. If the Integrity Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code* (Canada), the Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to Council.

35. Appendix A which is attached to this By-law forms a part of it.

36. This By-law may be referred to as the Integrity Commissioner By-law.

37. This By-law comes into force on the day it is passed.

PASSED and **ENACTED** this 11th day of June, 2008.



Fred Eisenberger
Mayor



Kevin C. Christenson
City Clerk

Appendix A

Please note that a member of Council who is the subject of a Complaint under section 9 of the Integrity Commissioner By-law will be informed of the identity of the Complainant.

Affidavit

(Complaint under section 9 of the Integrity Commissioner By-law)

Affidavit of _____ [full name]
I, _____ [full name], of the
City/Town/other of _____ [municipality of residence] in the
Province of Ontario

MAKE OATH AND SAY/AFFIRM:

1. I am a member of the City of Hamilton's Council/a City of Hamilton employee/ a City of Hamilton resident/a person who has business, institutional or other premises in the City of Hamilton.

2. I have personal knowledge of the facts as set out in this affidavit because

_____ [insert reason(s), e.g. I work
for . . . , I attended the meeting at which . . . , etc].

3. I have reasonable and probable grounds to believe that a member of the City of Hamilton's Council, _____ [name of member], has contravened section(s) _____ [specify section(s)] of the **Code of Conduct for members of the City of Hamilton's Council/ other procedure, rule or policy**, the particulars of which are as follows:

[Set out the statements of fact in consecutively numbered paragraphs in the space below, with each paragraph being confined as far as possible to a particular statement of fact.

If you require more space, please attach an additional page or pages, numbered consecutively, with a statement at the top of each additional page that the contents form part of this affidavit.

If you wish to include documents or other exhibits to support this Complaint, please refer to them as Exhibit A, B, etc. and attach them to this affidavit.

If you are relying on the information of others, please indicate this and identify the source of the information by name, providing contact information if possible.]

_____ [specify the number of additional pages, if any, attached] pages are attached.

If you are filing this Complaint more than six months after the date of the event or series of events which form the basis of the Complaint, you should review section 13 of the Integrity Commissioner By-law and include all necessary information regarding the reasons why your date of discovery is later than the deemed date of discovery under that section.

4. This affidavit is made for the purpose of making a Complaint for consideration by the City of Hamilton's Integrity Commission and for no other purpose.

SWORN/AFFIRMED before me at _____)
the City/Town/etc. of _____)
_____)
in the Province of Ontario on _____)
_____ [date].)

_____)
A Commissioner for taking affidavits, etc.) [signature]
[signature of Commissioner])

Signing a false affidavit may expose you to prosecution under section 131 and 132 or 134 of the Criminal Code (Canada) and also to civil liability for defamation.

**Notice of Collection of Personal Information
pursuant to
the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA)**

Personal information contained on this form is collected under the authority of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, and will be used for the purposes of an inquiry by the Integrity Commissioner into a Complaint regarding a member of Council pursuant to the Integrity Commissioner Bylaw. Questions about this collection may be directed to: (need to insert details of either City Clerk or the Integrity Commissioner)