



OFFICE OF THE INTEGRITY COMMISSIONER

November 13, 2013

City Council
City of Hamilton

RE: Complaint of Misconduct against Mayor Robert Bratina

Complaint

On May 9, 2013, Council approved the following resolution:

7.9 Complaint to the Integrity Commissioner

WHEREAS on April 24, 2013, during a meeting of City Council, the Mayor stepped away from his place at the table and approached the City Manager and said something to him while Council was debating Motion 7.2, respecting the Re-Affirmation of Council's Position regarding the B-Line Light Rail Transit on King Street;

AND WHEREAS Sections 13.2 and 17.1 of the Code of Conduct for Members of Council being Appendix "H" of the City of Hamilton's Procedural By-Law 10-057, as amended, may have been contravened;

THEREFORE BE IT RESOLVED:

That, pursuant to Section 8 of By-Law 08-154, as amended, a By-law to establish the Office of the Integrity Commissioner, a complaint concerning the verbal exchange between Mayor Bratina and the City Manager at the Council meeting of April 24, 2013, regarding the alleged misconduct of Mayor Bratina in bullying City Manager Chris Murray, be referred to the Integrity Commissioner for review.

Section 13.2 of the Code of Conduct for Members of Council states as follows:

Under the direction of the City Manager, City employees serve the Council as a whole, and the combined interests of all members of Council as evidenced through the decisions of Council. Accordingly:

- (a) *members of Council shall be respectful of the role of City employees to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council;*
- (b) *no member of Council shall maliciously, falsely, negligently or recklessly injure the professional or ethical reputation, or the prospects or practice of City employees; and*
- (c) *members of Council shall show respect for the professional capacities of City employees.*

Section 17.1 of the Code of Conduct for Members of Council states as follows:

It is the policy of the City that all persons be treated fairly in the workplace in an environment free of discrimination and of personal and sexual harassment³. Accordingly:

- (a) *no member of Council shall harass another member of Council, City employees or any member of the public; and*
- (b) *all members of Council shall:*
 - i) *treat one another, City employees and members of the public appropriately and without abuse, bullying or intimidation; and*
 - ii) *make all reasonable efforts to ensure that their work environment is free from discrimination and harassment.*

Investigation

Interviews were conducted of Councillors and staff that were in close proximity to the incident. In particular, the Mayor and City Manager were interviewed along with other staff and Members of Council. The Video Stream of the Council Meeting of April 24, 2013 was also carefully examined as was the Ready Report.

At Item 6.1 of the Agenda for Council Meeting April 24, 2013, Councillor McHattie introduced a Notice of Motion concerning the Reaffirmation of Council's Position Regarding the B-Line LRT on King Street. This Motion was discussed for 1 hour and 42 minutes by Council.

Council's position on the B-Line LRT on King Street is contained in Appendix 'A' of Report PW13014, referred to throughout the Council Meeting as the "Rapid Ready" Report.

From the Video Stream, it was apparent this was a significant emotional issue for all. There were also discussions in open Council on comments made to the media and the veracity of those comments. There was considerable dialogue both in favour and in

opposition of the Motion. After all the back and forth discussions on Councillor McHattie's Notice of Motion, the Motion was ultimately referred back to the Clerk's office for additional clarity on the wording and other particulars relating to the Motion. For full details of the discussion, please refer to the Video Stream of that Council Meeting.

The Complaint alleges that, during the lengthy discussion of the Motion, the Mayor stepped away from his place at the table, approached the City Manager and said something to him. Unfortunately the Video Stream did not record the Mayor's exchange with the City Manager. However, it did show the Mayor leaving his position at the head of the "Horseshoe" and returning after 17 seconds. The Video Stream did not show where the Mayor went.

Investigation revealed that the Mayor did leave his place at the middle of the "Horseshoe", approached the City Manager and stated to the Manager:

"I can't believe you said that! I can't believe you said that!"

This was confirmed during an impassioned exchange between Mayor Bratina and Councillor Farr during the Council Meeting of April 24, 2013 after the Motion had been referred by to the Clerk's office. This was also confirmed by other witnesses.

The Mayor was referring to comments the City Manager had made in response to a clarification requested by Councillor Johnson who asked the City Manager if the insertion of the phrase "priority project" into the Motion before Council was in conflict of the Rapid Ready Report which had been previously passed by Council and forwarded to the Province and contained Council's Transit Plan for the City of Hamilton.

In his reply to this clarification, the City Manager indicated that the insertion of that phrase was not in conflict with the Rapid Ready Report. The Mayor disagreed and did walk over to the City Manager to express his displeasure. From evidence from the Video Stream, this exchange, including walking over to the City Manager's position and back, took 17 seconds. No other comments were made.

Witnesses described the Mayor's tone as angry but not threatening. The City Manager advised he was surprised at the tone and content of the Mayor's comments to him but was neither intimidated nor threatened by the exchange nor did he feel his professional reputation was injured. The City Manager did not respond to the Mayor's comments.

In the week following the Council Meeting of April 24, 2013, the Mayor asked the City Manager to his office and apologized for his comments during the Council Meeting in question. The Mayor and City Manager then had an amicable conversation discussing various accomplishments of the City of Hamilton. The relationship the City Manager has with the Mayor has not been adversely affected.

During the course of this investigation, it was learned that Members of Council often vacate their places at the "Horse shoe" to have a side-bar conversation with staff while the council meeting is in progress as this serves a useful purpose in speeding up the

meeting. Although I'm not in favour of such activity, as it tends to disrupt Council, the appropriateness of such activity is for Council to determine.

Conclusions

Based on the evidence compiled and reviewed and in accordance with the civil standard on the balance of probabilities, it is the Commissioner's conclusions that:

1. The discussions relating to the Councillor McHattie's Notice of Motion during the Council Meeting of April 24, 2013 were impassioned and emotional and at times accusatory;
2. Mayor Bratina, during this Council Meeting did leave his place at the table and did approach the City Manager and did state "I can't believe you said that! I can't believe you said that!" and then immediately returned to his position at the table;
3. Leaving their positions at the table to speak with staff during public sessions of Council is not an uncommon practice of Members of Council;
4. The tone of the Mayor's comments was angry. However, Chris Murray, the City Manager, did not feel he had been either intimidated or harassed by the Mayor's actions and comments, nor did he feel that his professional or ethical reputation had been injured. He was just surprised by the Mayor's actions and comments;
5. These actions and comments made by the Mayor have not affected the working relationship between him and Chris Murray;
6. The Mayor apologized to Chris Murray the next week.

Findings

Based on the evidence compiled and reviewed and in accordance with the civil standard on the balance of probabilities, it is the Commissioner's findings that:

1. The Mayor's tone and comments to the City Manager at the Council Meeting of April 24, 2013 were not appropriate but I do not find it in contravention of either Section 13.2 or 17.1 of the Code of Conduct for the following reasons:
 - a. The City Manager did not feel intimidated or threatened by the Mayor's actions nor did he believe his professional reputation had been injured.
 - b. Other employees in close proximity to the City Manager did not feel intimidated or harassed;

- c. The tone of the discussions relating to Councillor McHattie's Notice of Motion was fervent and there were some emotional and accusatory exchanges during that discussion. The Mayor's tone in his exchange with the City Manager reflected the emotion of the meeting but was not considered to be threatening.
2. During the course of the investigation it was learned that the Senior Management Team (SMT) for the City of Hamilton and Council enjoy a positive relationship. This incident did not affect that relationship.

Notwithstanding the positive relationship that the SMT and Council enjoy, members of staff often feel intimidated when making presentations before Council and Committee meetings. It is imperative that when Council and Committees are conducting their business, they demonstrate respect for staff at all times and promote a positive relationship between staff and Council and Committees.

It is important for Committee chairs to take Committee members to task if any demonstrate inappropriate behaviour toward staff.



Earl D. Basse, Integrity Commissioner

cc: Mayor Bratina
Members of Council