

Hamilton Community Legal Clinic Clinique juridique communautaire de Hamilton

100 Main Street East, Suite 203
Hamilton ON L8N 3W4
Phone: (905) 527-4572 Fax: (905) 523-7282
www.hamiltonjustice.ca

100, rue Main est. Suite 203
Hamilton (Ontario) L8N 3W4
Téléphone : (905) 527-4572 Télécopieur : (905) 523-7282
www.hamiltonjustice.ca

October 2, 2020

An Open Letter to the Hamilton City Council

We request that it be included in the formal correspondence on the agenda for the next meeting of Council

Re: Integrity Commissioner Recommendation Report re Complaint against Cameron Kroetsch

On September 30, 2020, the Hamilton City Council (“Council”) met and discussed a recently released Report (the “Report”) from Principles Integrity, which was appointed to be the Integrity Commissioner for the City of Hamilton (the “City”) in July 2018. The subject matter of this Report was a complaint initiated by Council against Cameron Kroetsch (“Mr. Kroetsch”), the Chair of the City’s own LGBTQ Advisory Committee.

The Hamilton Community Legal Clinic (“HCLC”) and its Queer Justice Project (“QJP”) initiative have been monitoring this issue as it has developed over recent days. In addition to witnessing the discussion held by Council on September 30, 2020, we have had the opportunity to review the Report issued by Principles Integrity in its entirety. We have also researched and reviewed other documents relevant to this issue. In light of all of this, we must express our significant concern about the sequence of actions and decisions taken by Council, and the precedent this may set.

Mr. Kroetsch is an ardent and prominent advocate for both Hamilton’s 2S and LGBTQIAPGNC (“Queer”) community and the city of Hamilton itself. He and his activities are well known to the media, to Council, and to the public. In turn, the City’s LGBTQ Advisory Committee, as noted in the Report, is an advisory committee to Council that is meant to voice the perspectives of the community it represents, to evaluate the City on its related efforts, and to seek to eliminate barriers.

Furthermore, it is no secret that there has been significant tension and even animosity between the Hamilton Queer community and the City. The reasons for this are many, including several of those listed within the Motion from the LGBTQ Advisory Committee originally passed on May 15, 2019, which features prominently in the Report. However, it would be a mistake to believe these issues are new. Queer communities have been engaged in a prolonged struggle for recognition, representation, and equality with all levels of governments in Canada, including here in Hamilton.

These actions by Council, which initiated a heavy-handed, public, and unnecessary response that targeted a prominent member of the Queer community, who was acting in a public role, elected to a position of leadership, was acting on a volunteer basis, and who has had public disagreements with Council previously, risk adding another point of tension and distrust. Intent is irrelevant, and the effect of these actions will undoubtedly make other members of the Queer community question whether they ought to participate in City processes or speak up on issues for fear of being targeted themselves.

The Report and the Integrity Commissioner themselves are not immune to questioning or criticism. Unfortunately, history is rife with institutions, policies, and laws whose stated purpose or name have indicated its belief that they embodied certain virtuous principles or worked in the best interests of the public or a segment of the public, but were in fact destructive forces and instruments of oppression. Now more than ever, our institutions and processes must be closely examined for systemic failings and biases.

The HCLC and the QJP do not purport to be experts on investigations into Code of Conduct violations or municipal law. However, there are questions that have arisen in our examination of the Report and the various laws and policies that are relevant to the complaint it examines. These include apparent inconsistencies and omissions within the Report’s analysis and findings. Not helping matters is that the origins and justifications for the complaint are shrouded in secrecy due to having originated at an in camera meeting of Council. Furthermore, the Report fails to justify its own existence.

*A Community Legal Clinic Funded by Legal Aid Ontario
Une clinique juridique communautaire financée par Aide juridique Ontario*

As the Report notes, the City Clerk had apparently already determined that a potential violation of the *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”) had occurred, and the City Clerk administers MFIPPA for the City independently of Council with “a high level of decision-making autonomy and responsibility regarding information published in official Council records” (para 24). Notably, the source of the Clerk’s authority on this issue is not cited in the Report. The privacy breach was the most serious allegation in the complaint, and the only one that did not rely on unsupported conclusions by the Integrity Commissioner as to the violation of extremely vague “good conduct” provisions contained in the applicable Code of Conduct. As such, it appears Council had all the findings it required to issue a reprimand when the alleged unauthorized disclosure occurred. As a result, the purpose of the complaint to the Integrity Commissioner is unclear, which invites speculation and therefore distrust.

Other questions and issues are also noteworthy. This includes the seeming lack of reference to Mr. Kroetsch’s submissions in his own defence, made in response to the draft conclusions. The Report notes that a 102-page submission was made (para 15), but by our count Mr. Kroetsch’s positions were only directly and briefly mentioned on two occasions (paras 86 and 107).

There is also the issue of the Integrity Commission’s enabling By-Law No. 16-288 (as posted on the City’s website), which does in fact omit any mention of the ability of the Integrity Commissioner to investigate anyone other than members of Council. While the *Municipal Act* does require a Code of Conduct to be established that governs local boards (section 223.2), section 223.3(1) indicates it “authorizes” Council to appoint an Integrity Commissioner to apply that Code of Conduct, it does not mandate it. In fact, the *Municipal Act* proceeds to provide for situations where no Integrity Commissioner is appointed or where a specific function is not assigned to them. As a result, it is not clear to us that the Integrity Commissioner had the jurisdiction to investigate this complaint. Notably, the City’s webpage on the Integrity Commissioner indicates the Commissioner’s role does include applying the Code of Conduct applicable to local boards, but the link provided leads to the By-Law No. 16-288, which fails to provide that function (the webpage, perhaps coincidentally, also appears to have been last modified on March 5, 2020, the day after this complaint was received by the Integrity Commissioner).

Finally, on the same City webpage providing information on the Integrity Commissioner, there are copies of the relevant Codes of Conduct, including the one applicable to members of Council and the one applicable to advisory committees. When opened, the contents of the Code of Conduct for advisory committees does not match the one cited in the report. Specifically, section 6 of the Code of Conduct from the website outlines responsibilities relating to “media communication” rather than just “communication”, as cited in the Report. Immediately, that section 6 in the version available on the City’s website indicates that “Except for the Chair, who may accurately communicate a recommendation or direction, Appointees shall not comment to the media”. Which version of the Code is in force is not clear, as neither version is dated. We imagine it may also be unclear to others, including committee members, chairs, and the general public.

It appears to us that no one in this situation behaved in a perfect manner. The concern here for HCLC and the QJP, as it always is, relates to how power is wielded in situations such as these. The Council of a major City in the province of Ontario chose to single out and target a prominent member of a historically marginalized community, who has had previous public disagreements with Council, and who was serving his city and his community in an unpaid and voluntary position. To do so, Council used the significant administrative and legal mechanisms at its disposal, which may have not been properly invoked, relied on documents that the public cannot be sure are in force, with no evidence this course of action was necessary, and which we can presume came with a significant cost. All of this while the relationship between the City and the marginalized community to which the targeted individual belongs remains extremely poor, and risks being made worse.

Based on our analysis of this situation, the behaviour of Council is extremely concerning here and appears to constitute and inappropriate use of power. We welcome any clarification of the issues we have raised, and will willingly admit where we are incorrect.

The Hamilton Community Legal Clinic and its Queer Justice Project initiative, in light of the above-noted concerns surrounding recent events, call upon the Council of the City of Hamilton to take the following actions:

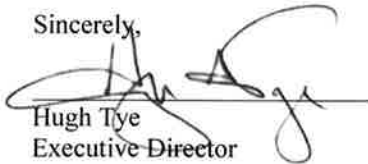
1. Issue a public apology to Mr. Kroetsch and the Hamilton Queer community for the heavy-handed manner in which Council sought to address its concerns with Mr. Kroetsch’s conduct as Chair of the LGBTQ Advisory Committee;
2. Remove any and all restrictions on members of advisory committees to publicly discuss the work and recommendations produced by their committee, including the ability to publicly comment on the responses

received from Council. There is no reason to believe this would impair their function, nor would this enable members to discuss or disclose confidential information;


3. Clarify the jurisdiction of the Integrity Commissioner under By Law No. 16-288, authorized under the *Municipal Act*, specifically as it relates to the function of applying the Code of Conduct applicable to City Committees, as local boards;
4. Commit to ensuring an open and transparent process conducted in good faith should any similar future complaints be initiated by Council and referred to the Integrity Commissioner, specifically in relation to any that may target civilian members of City Committees. It is important that the public have confidence that this process is not subject to abuse;
5. Ensure that all publicly available information contained on the City's website is up to date and accurate;
6. Take additional steps to ensure that all members of local boards understand their obligations, and those of the City, under the various pieces of privacy legislation. Where concerns are raised with members, the City ought to ensure that the specific nature of the concern, why it is a concern, and what can be done to remedy the issue, are all made very clear.

It is the sincere hope of the HCLC and the QJP that the relationship between the City of Hamilton and the Queer community is improved to the point where each side feels respected, heard, and valued. The above calls to action only serve to rectify this current issue; more work is required to improve the relationship with the community as a whole. Part of moving towards that goal involves the willingness and ability to reflect on our own actions, acknowledging power imbalances and sources of distrust, and having the courage to take the necessary steps forward. We hope to see that here and in the future.

Sincerely,



Hugh Tye
Executive Director
Hamilton Community Legal Clinic



Michael Blashko
Project Lead
Queer Justice Project