



## OFFICE OF THE INTEGRITY COMMISSIONER

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February 25, 2015

City Council  
City of Hamilton

**File #2014-04**

**File #2014-05**

### **RE: Complaints of Misconduct against Councillor Lloyd Ferguson**

#### **Complaint**

On February 26, 2014, Councillor Ferguson was attempting to discuss an issue with a City Staff member when he noticed Mr. Joey Coleman, an independent media reporter, near the vicinity in which they were conversing. Councillor Ferguson asked Mr. Coleman to move away then grabbed Mr. Coleman and physically moved him. They both had heated words then Councillor Ferguson departed the area and City Hall.

On May 27, 2014 (File #2014-04) and then again on May 29, 2014 (File #2014-05), two separate complaints were received at the City in relation to this incident, alleging that on February 26, 2014 Councillor Ferguson had violated the Code of Conduct, namely Section 45(a) and Section 45(b) which state:

**45.** *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 harassment. 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

An inquiry into the allegations was commenced and the results of that inquiry are being reported herein.

The complainants and Councillor Ferguson were interviewed and the security tape of the incident was reviewed along with emails, newspaper articles and other documentation believed pertinent to the inquiry.

From the information reviewed, including Councillor Ferguson's own admission, there is no doubt that on February 26, 2014, Councillor Ferguson did grasp Mr. Coleman and physically move him approximately 3 feet.

Councillor Ferguson explained that he had had his first meeting at 8:30am on February 26, 2014 and had attended meetings for most of the day until Council ended at approximately 10:30pm. One of the issues discussed near the end of the day was the 20 Year License Agreement with the Hamilton Tiger-Cats Football Club, which was a contentious issue with heated discussions by Council. Councillor Ferguson was opposed to the Agreement which passed in open Council by a 9-7 vote.

Councillor Ferguson further explained that after the Council Meeting, as Chair of the Stadium Sub-Committee, he approached a member of staff to have a private discussion with him regarding the License Agreement and was standing next to the staff member conversing with the staff member when Mr. Coleman approached them. This is confirmed by the security tape.

In Mr. Coleman's media account he states that he was standing approximately three (3) metres from Councillor Brad Clark and a staff manager holding his tripod and camera, when Councillor Ferguson walked in front of him and said to either the Manager or Councillor Clark "I need to talk to you about something." This is not confirmed by the security tape.

Councillor Ferguson explained that he believes that Mr. Coleman has eavesdropped on private conversations in the past and that he had a recording device with him to record this private conversation. The security tape shows that Mr. Coleman was carrying some equipment when he approached Councillor Ferguson. Mr. Coleman's media account of the incident states that he had his camera equipment with him but it was turned off, the shutter was closed and was only carrying it to move locations for the press conference. The security tape could not show the state of readiness of the equipment. However, Mr. Coleman approached to a point estimated to be less than two (2) feet from Councillor Ferguson which would be in range of a sensitive recording device.

Councillor Ferguson explained that he asked Mr. Coleman to move and when Mr. Coleman did not move away, Councillor Ferguson grasped Mr. Coleman by the arm and physically propelled him approximately three (3) feet away, at which time Mr. Coleman vociferously expressed his displeasure of Councillor Ferguson physically moving him.

According to the security tape, it appeared that both Councillor Ferguson and Mr. Coleman had words.

Councillor Ferguson explained that after the incident he left City Hall. The next day, February 27, 2014 at approximately 8:30am, Councillor Ferguson asked to see Mr. Coleman privately in his office at which time Councillor Ferguson personally apologized to Mr. Coleman for his actions. Councillor Ferguson then attended the General Issues Council Meeting held in Council Chambers at which time he stated in open Council that he wished to “apologize for last night to Mr. Coleman.” He further stated that his actions were unacceptable and that he apologized to Mr. Coleman, Members of Council and the Public for his actions.

Mr. Coleman reported that he accepted Councillor Ferguson’s apology and that Councillor Ferguson regrets his actions. Mr. Coleman thanked Councillor Ferguson for the apology and stated that the matter is now behind him.

However, later on that same day, Mr. Coleman sent an email to the City regarding the “Security Camera Footage at City Hall of Incident Wednesday Night”.

This email reads as follows:

“I request the City of Hamilton take steps, if not already taken, to secure its footage of the second floor area from Wednesday night of the incident that occurred between myself and Councillor Ferguson.

At present, I've accepted the apology of Mr. Ferguson and the matter is closed in as far as it relates to the violation in my own personal regard.

As it relates to City of Hamilton policies and Council policies, those matters are not my decision to make.

I've been informed by a private citizen that they've filed a complaint with the City in this regard.

As this video may become evidence in future investigations of this matter, and I wish to ensure my interests are protected, I'm requesting the preservation of the video until such time reasonable to conclude the matter resolved to all parties, including this and potential third-parties.

I thank you for your attention to this matter and will offer any assistance I can to any internal City review of this matter.”

CCTV security video is normally saved for a period of 14 days only. The complaints against Councillor Ferguson were not filed with the City until May 27, 2014 (#1) and May 29, 2014 (#2), a full three (3) months after the incident and both within two days of each other. Had Mr. Coleman not informed the City on February 27,

2014 that a complaint had been filed, the security tape would not have been available for inquiry purposes on May 27, 2014 when the complaints were actually filed with the City. It is interesting to note that at the time of Mr. Coleman's email, a private citizen had not filed a complaint with the City in this regard.

The Complainants deny that they were acting in concert and that the two (2) day difference in filing the complaints is a coincidence only. Complainant #1 stated that prior to taking any action with the Integrity Commissioner, he wanted to confirm the incident with Mr. Coleman and had difficulty contacting him. Once Complainant #1 did contact Mr. Coleman, he then proceeded with the complaint.

Complainant #2 is knowledgeable of municipal policies and knows that the Integrity Commissioner is responsible for enforcing the Code of Conduct. Complainant #2 had discussed his complaint with Mr. Coleman and denies that there is any collusion with Mr. Coleman in filing this complaint. Once Complainant #2 filed his complaint against Councillor Ferguson on May 29, 2014 he informed the media that he had done so and this was reported to the public.

Both Complainants state that they were waiting for Council to take action and did not file a report until it became evident that was not going to happen.

As a result of personal medical issues, the Commissioner was unable to complete this inquiry until now.

## Conclusions

Based on the interviews conducted, 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. Councillor Ferguson was Chair of the Stadium Sub-Committee and as such attended a contentious In-Camera and Public meeting relating to the 20 Year License Agreement with the Hamilton Tiger-Cats Football Club very late in the day of February 26, 2014.
2. Councillor Ferguson had attended to City business from 8:30am until approximately 10:45pm on February 26, 2014.
3. Mr. Coleman approached Councillor Ferguson on the 2<sup>nd</sup> floor of City Hall at approximately 10:45pm on February 26, 2014 and came in close proximity of Councillor Ferguson and a staff member at a time when Councillor Ferguson wished to have a private conversation with the staff member;

4. Councillor Ferguson asked Mr. Coleman to vacate the area and when he did not, Councillor Ferguson grasped Mr. Coleman by the arm and physically moved him away;
5. At approximately 8:30am, February 27, 2014, Councillor Ferguson personally apologized to Mr. Coleman in the privacy of his office, then again apologized publicly at the General Issues Council Meeting held in Council Chambers at 9:30am on February 27, 2014;
6. Mr. Coleman accepted the apology and thanked Councillor Ferguson for the apology and indicated at that time that the matter was closed;
7. Two complaints of misconduct were filed with the City on May 27, 2014 and May 29, 2014 respectively, a full three months after the incident.

## 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. Notwithstanding that it was a long and contentious day of meetings from 8:20am until 10:45 pm, Councillor Ferguson should not have made physical contact with Mr. Coleman and as a result Councillor Ferguson is in violation of Section 45(a) and (b) of the Code of Conduct.
2. The complaints regarding the conduct of Councillor Ferguson were neither vexatious nor frivolous. As per Section 12(2) of By-Law 08-154, the fee for registering the complaint shall be refunded to the Complainants.



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**Earl D. Basse, Integrity Commissioner**

cc: Councillor Ferguson  
Complainant