

ANNUAL REPORT OF THE INTEGRITY AND ETHICS OFFICE

EXECUTIVE SUMMARY

The Terms of Reference for the Ethics Advisor and the Integrity Commissioner approved by Council in July 2016 require them to submit an Annual Report to Council.

This the first annual report on the activities of the City of Calgary Integrity and Ethics Office. It covers the 12 month period ending April 30, 2017 and a stub period of April 11, 2016 to April 30, 2016.

It includes a request to Council to amend the Integrity Commissioner's Procedure Protocol to permit complaints about Member Conduct to be submitted by e-mail directly to the Integrity Commissioner.

INTEGRITY COMMISSIONER AND ETHICS ADVISOR'S RECOMMENDATIONS

That Council:

- Receive the Annual Report of the Integrity and Ethics Office;
- Amend the Integrity Commissioner's Procedure Protocol to permit complaints to be made to the Integrity Commissioner by e-mail directly to the Integrity Commissioner.

PREVIOUS COUNCIL DIRECTION AND BACKGROUND

The Terms of Reference approved by Council in July 2016 require each of the Ethics Advisor and the Integrity Commissioner to publish "an annual report to provide Council and Calgarians with information about the activities of the Ethics Advisor and Integrity Commissioner during the preceding year" (M2016-0566)

ANNUAL REPORT

This the first annual report on the activities of the City of Calgary Integrity and Ethics Office. It covers the 12 month period ending April 30, 2017 and a stub period of April 11, 2016 to April 30, 2016.

Creation of the Integrity and Ethics Office

Calgary's first Ethics Advisor and Integrity Commissioner, both part-time positions, were appointed by City Council on April 11, 2016, splitting responsibilities which in other cities are carried out by one individual. Originally City Council contemplated the single officer model with the Integrity Commissioner having an advisory and education role, as well as an investigative and adjudicative role. But Council concluded that it was preferable to create two positions in order to separate advisory and educational responsibilities assigned to the Ethics Advisor from the investigative and adjudicative role of the Integrity Commissioner. Underlying the rationale for the separation was the premise that Members of Council ("Members") would more readily seek advice from the Ethics Advisor, considered important to good governance, knowing that she would not be called upon to judge them in any case.

Their initial duties required the Integrity Commissioner and Ethics Advisor to provide a report to City Council by June 2016 encompassing proposed enhanced terms of reference for their

ANNUAL REPORT OF THE INTEGRITY AND ETHICS OFFICE

positions; a plan to transition responsibility for the City's whistle-blower program as it related to Members from the City Auditor's Office to the Integrity and Ethics Office; and, if required, proposed amendments to bylaws. Also the Ethics Advisor was directed to further define the nature and scope of her advisory and education role.

In accordance with their initial terms of reference the Ethics Advisor and Integrity Commissioner began their tenure by having a series of consultation meetings with the City Manager, City Solicitor, City Auditor, City Clerk, staff in the Office of the Councillors and with each Member's personal staff. The Ethics Advisor also met separately with each Member and the Integrity Commissioner met with Council as a whole. In addition, the Ethics Advisor consulted with Valerie Jepson, the City of Toronto Integrity Commissioner.

The Ethics Advisor also reviewed statutes, by-laws and policies related to Member conduct, reports related to the appointment of the Integrity Commissioner, and publicly available information on the approach of the Municipal Integrity Commissioner in Ontario.

Relying on the information derived from the meetings, consultations and reviews, and consistent with Council's commitment to ethical conduct by Members and Member accountability, the Ethics Advisor and Integrity Commissioner drafted Terms of Reference for the consideration of City Council based on the following key concepts or principles:

- The Ethics Advisor should provide advice and guidance on matters of Member conduct that create a legal risk for a Member, or a risk to a Member's public reputation. Where a Member's conduct has or could create legal or reputational risk to that Member that conduct affects the Member personally, but also affects the functioning of Council and public confidence in Council.
- The Ethics Advisor does not provide legal or other advice on matters of City administration or governance, matters being addressed or within the purview of City Administration, or opportunities or exposure for The City of Calgary. In particular, the Ethics Advisor does not provide legal advice on matters within the purview of the City Solicitor.
- The relationship between the Ethics Advisor and a Member is a lawyer-client relationship governed by solicitor-client privilege. The privileged relationship means that information and advice provided between the Ethics Advisor and Member cannot be disclosed absent the Member's consent or another applicable exception to solicitor-client privilege.
- Advice may be provided by the Ethics Advisor on an individual basis or on a general basis to all Members.
- Individual advice will only be provided where requested by a Member.
- General advice may be initiated by Council or by the Ethics Advisor.
- Where advice is provided on a general basis, solicitor-client privilege does not apply to communications between Members and the Ethics Advisor on the subject-matter of that advice. □
- Advice may be in relation to matters that are governed by Council related by-laws or policies, or to matters that Council related by-laws or policies have not yet addressed.

ANNUAL REPORT OF THE INTEGRITY AND ETHICS OFFICE

- General advice is not law (although it may be legal advice). It does not bind a Member unless adopted by City Council as a matter of policy or by-law; however, general advice given by the Ethics Advisor will be taken into account by the Integrity Commissioner in assessing complaints about Member conduct, as indicative of both of appropriate conduct and of whether the Member acted in good faith.
- The Ethics Advisor will not provide an opinion on the appropriateness of a Member's conduct unless asked to do so by that Member.
- The Ethics Advisor and the Integrity Commissioner may recommend revisions to Council related by-laws or policies, or the adoption of new by-laws or policies.
- Complaints about Member conduct will be received and reviewed by the Integrity Commissioner who, in the Integrity Commissioner's sole discretion, will decide how or whether such complaints should be pursued.
- Options for the Integrity Commissioner on receiving a complaint about Member conduct will include dismissing the complaint, referring the complaint to the Ethics Advisor for resolution, further investigation of the complaint, and/or adjudicating the complaint.
- The Integrity Commissioner will have sole authority for assessing complaints about Council member conduct, and complaints about Council member conduct received by others, including City Administration or the City Auditor, should be forwarded to the Integrity Commissioner.
- The Integrity Commissioner will not consider complaints about City Administration or the City Auditor.
- The Integrity Commissioner will make recommendations to Council on the appropriate consequence or sanction for improper conduct by a Council member.
- The Ethics Advisor and Integrity Commissioner should not consider a matter simultaneously – that is, the Ethics Advisor should normally not provide an opinion on a matter the Integrity Commissioner is adjudicating and the Integrity Commissioner should normally not adjudicate a matter on which the Ethics Advisor has provided an opinion.
- Where the Ethics Advisor has provided advice based on sufficient and accurate information provided by a Member, and the Member has followed that advice, the Integrity Commissioner will not consider any associated complaint with the Member's conduct.
- The Ethics Advisor may assist in the resolution of complaints about Member conduct referred by the Integrity Commissioner after assessment.
- The Ethics Advisor and Integrity Commissioner should help educate Members and Calgarians on the legal and ethical duties of Members.

On July 4, 2016 City Council adopted Terms of Reference for the Ethics Advisor and the Integrity Commissioner as well as a Procedure Protocol for the Integrity Commissioner. Those documents may be viewed on the Integrity and Ethics Office section of the City of Calgary website.

ANNUAL REPORT OF THE INTEGRITY AND ETHICS OFFICE

Work of the Integrity Commissioner

During the reporting period the Integrity Commissioner received 17 complaints, only one of which resulted in a report to Council. Two other complaints deemed justified by the Commissioner were referred to the Ethics Advisor who was successful in mediating their resolution.

A significant number of the complaints disclosed a degree of public misunderstanding of the duties of a Member. These complaints concerned Members who, in the opinion of the complainant, did not satisfactorily represent, or advocate on behalf of, a resident or group of residents of the Member's ward. While Members customarily provide assistance to their constituents when requested, they have no duty to do so. The Municipal Government Act obligates Members "to consider the welfare and interests of the municipality as a whole". Therefore when the interests or welfare of a constituent or constituents do not align with interests of the City as a whole the Member must defer to the latter. A vote in Council or Council Committee against the wishes of constituents, does not in and of itself, constitute a breach of ethical or legal duty by that Member.

Two of the complaints concerned decisions of City Council or one of its committees. The Integrity Commissioner only has authority to consider the conduct of individual Members and not decisions taken by Council or Council Committee.

There were four complaints by a Member or Members of Council concerning the conduct of another Member of Council. One of those complaints resulted in a report to Council and another was successfully mediated by the Ethics Advisor. In the other two the impugned conduct was found not to be in violation of conduct codes.

Eleven complaints were made by a citizen or citizens concerning the conduct of a Member. One was resolved by the Ethics Advisor, three others were dismissed after investigation and the remainder did not on their face disclose an ethics violation.

The number of complaints by citizens were fewer than were expected. Only four were received through the Whistle Blower Program, the remainder by ordinary mail. The Whistle Blower Program was anticipated to be the main vehicle for making complaints to the Integrity Commissioner, but it has not proven to be so. The program is undoubtedly effective in transmitting complaints about City administration and operations to the City Auditor where frequently the complainant prefers to remain anonymous. It was anticipated to be equally effective with complaints about Council Member conduct but the small number of such complaints transmitted through it suggests otherwise.

Because the Whistle Blower Program was anticipated to be an optimal process for transmitting complaints, no other electronic means were enumerated in the instructions for making complaints. The website for the Integrity and Ethics Office therefore only specified that avenue for channeling complaints to the Integrity Commissioner.

With the benefit of experience the Integrity Commissioner is now of the opinion that the means to make complaints concerning Members should be expanded to include email directly to the Integrity Commissioner. City Council is being requested by the Integrity Commissioner to amend the Procedure Protocol to effect that change.

Specifically, that paragraph 2 of the Procedure Protocol which reads

ANNUAL REPORT OF THE INTEGRITY AND ETHICS OFFICE

2. Reports to the Commissioner shall be made through the City of Calgary Whistle Blower Program or delivered personally or by a postal or courier service to:

Integrity Commissioner
Integrity and Ethics Office
P.O. Box 2100, Station M, #8001A Calgary, AB T2P 2M5.

should be repealed, and replaced with the following:

2. Reports to the Commissioner may be made:

(a) by e-mail to Integrity.Commissioner@calgary.ca

(b) by ordinary mail, postal service or personal delivery to:

Integrity Commissioner
Integrity and Ethics Office
P.O. Box 2100, Station M, #8001A Calgary, AB T2P 2M5.

(c) Through the City of Calgary Whistle Blower program:

(i) online at Clearview Connects or

(ii) by telephone at 1-866-505-5039 (independent external phone line).

Work of the Ethics Advisor

Apart from the work noted above in relation to the drafting of the Terms of Reference and the mediation of complaints, the Ethics Advisor's work during the reporting period involved providing advice to Members individually and to Council as a whole.

The Ethics Advisor provided advice to Council as a whole in relation to changes in ward boundaries and the upcoming election. The advice related to how Members may act in other Member's wards prior to the election. Guidelines proposed by the Ethics Advisor on this issue were accepted by Council in September 2016.

The Ethics Advisor drafted changes to Council Policy necessary to implement the Terms of Reference. Those changes were approved by Council in December 2016. The Ethics Advisor also requested that Council direct her to revise and consolidate policies governing Member conduct. In December 2016 Council provided that direction to the Ethics Advisor, the City Solicitor and the City Clerk. Work on those revisions began during the reporting period, but the revised Ethical Conduct Policy was not submitted to Council until July 2017.

The Ethics Advisor provided advice to Council as a whole in relation to issues related to the conduct of Members during the election and pre-election campaign period. The issue on which advice was sought related to comments by Members about other Members. The Ethics Advisor provided Council with her opinion a code of conduct on this issue ought not to be adopted. That opinion was accepted by Council and made publicly available in February 2017.

The Ethics Advisor also provided confidential advice to individual Members on a variety of issues during the reporting period.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

Not applicable

ANNUAL REPORT OF THE INTEGRITY AND ETHICS OFFICE

REASON(S) FOR RECOMMENDATION(S):

The Integrity Commissioner, based on the experience gained in this reporting period, believes that requiring reports concerning conduct of Members of Council to be made through the Whistle Blower Program may not capture the reasonable concerns of some citizens. The recommendation that reports be permitted to be made directly to the Integrity Commissioner is intended to facilitate citizen reporting.