

**REPORT TO CITY COUNCIL  
CONCERNING MAYOR NENSHI'S  
RECORDED COMMENTS IN BOSTON**

**Allen Sulatycky  
Integrity Commissioner  
City of Calgary**

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On April 21, 2016 while he was a passenger in a Lyft livery vehicle in Boston, Massachusetts, unknown to him, the conversation Mayor Naheed Nenshi was having with the driver was being live streamed on the internet. Later it was widely broadcast by numerous news outlets.

Lyft, like Uber, is a ride-sharing service. There is interest in Calgary concerning Uber operations because the company wishes to establish itself here and the City of Calgary is in the process of developing its own policies concerning such services, with special regard to Uber. The Boston driver had been engaged with both Lyft and Uber so Mayor Nenshi took the opportunity to discuss various aspects of the business with him.

During the course of the conversation the Mayor made uncomplimentary comments about Uber and labelled its CEO and some of its employees with undignified descriptors. He also described steps taken

by the City of Calgary to test the process Uber uses to check on the background of its prospective drivers.

On April 23 after his return from Boston the Mayor issued a written statement in which he apologized to the Uber CEO and Uber's employees for his inappropriate language and in which he, while apologizing for any confusion he had caused, implicitly renounced his description of the procedures employed by the City to test the Uber driver screening system .

On April 24 Councillor Sutherland requested that I investigate the Mayor's conduct in Boston and his comments about the City's activities in testing Uber's screening procedures. City Council on April 25 passed a motion "that the matter of the Mayor's comments in the Boston Transportation Network Company (TNC) vehicle be referred to the Integrity Commissioner to examine, and report back directly to Council at the Integrity Commissioner's discretion". Councillor Sutherland later agreed that his request was subsumed by that motion.

On April 27 Councillor Colley-Urquhart requested that I specifically examine two statements made by Mayor Nenshi in the Lyft vehicle, namely:

“We’re no fools. So we sent people to sign up to be Uber drivers to see if they could get through the background check.”

“How we found registered sex offenders and people with convictions for violent crimes? I don’t want to know why we know these those people...but they all made it through the theoretical background screening.”

The scope of the investigatory powers of the Integrity

Commissioner has been defined by City Counsel in Terms of Reference and it is limited to the conduct of members of the City Council and their employees. I do not have the authority to investigate operational or administrative activities of the City or its employees. I cannot, for example, inquire into the appropriateness of methods used by City administration to test Uber’s procedures.

The issue before me is not whether the City acted appropriately but whether the Mayor accurately described the City’s actions in his statements in Boston. If the only way to determine the accuracy of those statements was by investigating whether the City sent persons with serious criminal records to sign up as Uber drivers I would be compelled to make that inquiry ancillary to the issue before me. But it is unnecessary to do so

in light of the information provided by the Mayor in his subsequent written and oral explanations declared to be the truth as known to him at all relevant times. Corroborative information from Councillor Colley-Urquhart backs up the Mayor's disavowal of his Boston statements.

Aside from the issue of accuracy, the Mayor has already acknowledged that his language on the occasion in question was inappropriate and he has apologized generally, and specifically to Uber personnel. There is nothing I can add on this aspect of his comments.

What, in my opinion, remains as the only issue for examination is those portions of his comments pertaining to the methods used by the City to test Uber screening procedures. They are the specific comments cited by Councillor Colley-Urquhart.

The picture painted by the Mayor's words is one of a city carrying out covert operations in which sex offenders and violent criminals were engaged on behalf of the City. Many people would find the idea frightening, scandalous and disturbing. But there certainly are times when entities which conduct legally permitted investigations have no effective way to obtain evidence without enlisting some very disreputable individuals. In those cases careful planning and sophisticated techniques

are employed to ensure that the public is not put at risk. The unsavoury persons engaged in the operation are usually kept under constant live or electronic observation and their conversations are monitored and recorded through listening devices. The entire operation is highly disciplined and knowledge of it is limited to those persons required for its conception, preparation and implementation. By comparison the sketchy and jocularly described operation recounted by the Mayor is like an episode of the Keystone Kops, which in itself raises questions as to its accuracy. Unfortunately the message received by many was that City administration embarked on an adventure which created a risk to the public by exposing it in uncontrolled conditions to persons convicted of sexual and violent crimes.

In his April 23 written statement and in other oral statements the Mayor made it clear that he was not aware of anyone convicted of a sexual offence passing the background check used by Uber in Calgary and that the City was only anecdotally aware of one driver with an assault conviction who cleared the Uber background check.. That was the extent of his knowledge on the matter.

The Mayor has said that his Boston statements resulted from a conflating of facts and a poor choice of words. I find that to be a barely plausible explanation given the simplicity of the words used and their stark dissonance with what was said afterwards to be true. To acquire knowledge anecdotally is not so easily confused with acquiring the same knowledge through a sting operation. Nor is reference to a single individual casually made in repeatedly pluralized terms.

So what is to be made of the words used by the Mayor in the Boston Lyft vehicle? By later articulating the truth the Mayor has tacitly admitted that the words spoken in Boston were not true. That has been corroborated by Councillor Colley-Urquhart, who, according to her website and media reports, has made her own inquiries to confirm or dispel the truth of the Mayor's words and has concluded that "the Mayor's facts were inaccurate and that the City did not, has not and will not use people convicted of sex crimes and violent criminal offences to test Uber's or any other transportation network ride-sharing company's screening practices".

This leads to question why the Mayor said what he said. Given the

context in which the Mayor understood he was speaking, in private to disinterested third parties, he could not have had any purposefully deceitful or malevolent intent. The only reasonable explanation is that he was simply enthusiastically indulging in some extravagant hyperbole intended to underline the assertion that “we’re no fools”. Whatever the explanation is, it does not make the words true.

In speaking as he did has the Mayor crossed some ethical boundary? The City of Calgary has an *Ethical Conduct Policy for Members of Council*. It consists of provisions limited to a few specific categories. In written submissions to me the Mayor has made the case that his statements in Boston did not infringe any of those categories. To that limited extent his submissions are correct. But ethical conduct cannot be exhaustively or exclusively defined by the specific categories found in the City policy for members of council. That policy is introduced with the assertion that it “supports and is aligned with The City of Calgary’s corporate values” the first of which is stated to be “honesty”.

A statement made knowing that it is not true cannot be said to be an



honest statement. But I would be overreaching to say that it is a dishonest statement. Dishonesty is synonymous with deceitfulness, fraudulence, corruption, deception and other conduct which is contrary to good morals, all of which usually entail an intent to mislead in order to gain an advantage or avoid a disadvantage. There is nothing in the circumstances of this matter to suggest that the mayor had any malevolent or tainted intent. In my view if the Mayor's pure hyperbole did not result in consequences (as he expected it would not) his general apology would have been sufficient. But the Mayor's Boston hyperbole was not inconsequential.

Unquestionably the Mayor had no expectation of advantage from his statements nor could he have intended to cause or foreseen any consequences arising from them, believing as he did that his audience was confined to the occupants of the Lyft vehicle. That changed when his words were broadcast for all to hear, causing many listeners in Calgary to have a sense of unease about city administration and operations. The Mayor had placed into question, in a phrase borrowed from American jurisprudence, "the purity of his own temple". City Administration was

put under a pall of suspicion. Citizens questioned whether their safety had been compromised. The Mayor's inaccurate statements were not, after all, innocuous, and were thereby carried across the ethical threshold embodied in the City's value of honesty.

The Mayor has already apologized for using the words which he used and for the confusion caused. But his statements caused more than confusion. Many Calgarians became uneasy about the conduct of City employees. Many city employees felt that they were unfairly put under suspicion. An apology for using confusing words or causing confusion does not address the other reactions experienced by many people. In the circumstances the Mayor's apology was too limited. A more fulsome apology as enthusiastically delivered as the Boston statements, directed to members of the City Administration and to those Calgarians who were led to believe that city employees did not have proper regard to public safety, would have been appropriate.

My recommendation is that City Council consider requiring the Mayor to apologize specifically to City Administration and all Calgarians

for the noted effects of his unfortunate enthusiastic and hyperbolic statements.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Allen Sulatycky", with a stylized flourish at the end.

Allen Sulatycky