

ETHICS ADVISOR AND INTEGRITY COMMISSIONER TERMS OF REFERENCE

EXECUTIVE SUMMARY

City Council has demonstrated its commitment to ensuring accountability and ethics in Council members' conduct. It has done so in part by creating the Integrity and Ethics Office for The City of Calgary and appointing Alice Woolley as Ethics Advisor and Allen Sulatycky as Integrity Commissioner in that Office. It also asked the Ethics Advisor and Integrity Commissioner to propose Terms of Reference for their roles.

After consultation and input from Council members and other stakeholders, the Ethics Advisor and Integrity Commissioner have identified key concepts and principles underlying their roles. They have used those key concepts and principles to draft Terms of Reference for each role, and a Procedure Protocol to govern the Integrity Commissioner's investigation and adjudication of complaints about Council member conduct.

The Integrity and Ethics Office recommends that the Terms of Reference and Procedure Protocol be adopted by Council. It also seeks approval for the Office, the City Solicitor and the City Auditor to report back to Council with respect to any amendments to by-law or policy that are necessary to implement the Terms of Reference.

INTEGRITY AND ETHICS OFFICE RECOMMENDATIONS

That Council:

1. Adopt the proposed Terms of Reference for the Ethics Advisor outlined in the Attachment;
2. Adopt the proposed Terms of Reference and Procedure Protocol for the Integrity Commissioner outlined in the Attachment;
3. Direct the Integrity and Ethics Office, the City Solicitor and the City Auditor to report back to Council no later than 2016 September 26 with any required by-law or policy amendments necessary to implement the Terms of Reference and Procedure Protocol.

PREVIOUS COUNCIL DIRECTION / POLICY

On 2014 December 15 Council noted that recent events in the federal government and other public institutions highlighted a need for further clarity around investigation and other processes related to allegations of misconduct by elected officials. Accordingly, Council directed Administration and the City Auditor's Office to explore new options for investigating and enforcing allegations of misconduct by Council members, such exploration to include the merits of establishing an integrity officer.

On 2015 February 9, after considering Report PFC2015-0207 titled "Independent Integrity Commissioner", Council approved in principle the establishment of an independent Integrity Commissioner position. Administration and the City Auditor's Office were directed to consult with members of Council about this position and provide a report to the Priorities and Finance Committee's 2015 April 21 meeting outlining a proposed terms of reference and recruitment strategy for an Integrity Commissioner.

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On 2015 April 27, after considering Report PFC2015-0378 titled “Integrity Commissioner – Proposed Terms of Reference and Recruitment Strategy”, Council:

(a) Approved the following initial terms of reference for the Integrity Commissioner:

“...that the Integrity Commissioner be initially responsible for considering the following matters and making recommendations to Council in regard to each:

Regarding the Integrity Commissioner’s advisory and education roles:

- Reviewing relevant legislation and Council policies relating to Council members’ conduct;
- Conducting a best practice review to assist in formulating recommendations to Council intended to ensure that policies adequately establish and promote ethical conduct standards for Council members;
- Educating Council members about, and providing advice to Council members in regard to, their ethical duty; and
- Educating Calgarians about the expected conduct of Council members and responding to Calgarians’ questions in regard to Council members’ ethical duty;

Regarding the Integrity Commissioner’s complaint investigation and adjudication roles:

- Conducting a best practice review in regard to the receipt, investigation and adjudication of complaints and appropriate sanctions;
- Developing mechanisms for the submission of concerns about Council members’ conduct;
- Developing mechanisms to resolve or further investigate valid concerns;
- Developing mechanisms to report substantiated breaches of Council members’ ethical duty to Council;
- Developing a list of sanctions to recommend to Council in the event of a finding of a breach of ethical duty; and
- Educating Calgarians on these processes”; and

(b) Directed the City Manager and Director of Human Resources to retain an external firm to further explore competencies and compensation for Integrity Commissioners, develop a recommended recruitment process for the Integrity Commissioner (such process to include recommendations for the composition of a committee to recommend a short list of candidates to Council and recommendations in regard to the Integrity Commissioner’s term and whether the term should be renewable) and report the result of such analysis to Council through the Priorities & Finance Committee no later than 2015 July 27.

On 2015 April 27, after considering verbal report VR2015-0043, Council appointed Mayor Nenshi, Councillor Farrell and Councillor Pootmans to serve as members of the Selection Committee for the Integrity Commissioner, asked Councillor Pootmans to approach a member of the public to serve on the Committee and directed that the in camera discussions remain

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confidential pursuant to Sections 17(1) and 19 of the Freedom of Information and Protection of Privacy Act.

At the 2015 June 15 and 16 Combined Meeting of Council, after considering verbal report VR2015-0056, Council approved an exception to Section 4.9 of Council Policy CC003 titled "Appointment of Members of Council, Administration and Citizens to Agencies and Establishment of Council Agencies" and appointed Bruce Day as the citizen member to serve on the Selection Committee for the Integrity Commissioner. Council directed that the verbal report and in camera discussion remain confidential pursuant to Sections 17(1) and 19 of the Freedom of Information and Protection of Privacy Act.

On 2015 July 20, after considering Report C2015-0586 titled "Establishment of Terms of Reference for the Selection Committee for the Integrity Commissioner", Council adopted the terms of reference for the Selection Committee outlined in the attachment to that report.

On 2016 March 14, after considering Report C2016-0246 titled "Integrity Commissioner Selection Committee Report", Council established the Integrity and Ethics Office and approved the appointment of Allen Sulatycky to serve as Integrity Commissioner in the Integrity and Ethics Office, and Alice Woolley to serve as Ethics Advisor in that Office.

BACKGROUND

The background for Council's decision to appoint an Integrity Commissioner is summarized in the Corporate Administration Report to The Priorities and Finance Committee dated 2015 21 April. The proposed Terms of Reference for the Integrity Commissioner included as an attachment to that Report contemplate the Integrity Commissioner having an advisory and education role, as well as an investigative and adjudicative role.

On 2016 March 14 City Council approved the appointment of an Ethics Advisor and an Integrity Commissioner, who together would make up the Integrity and Ethics Office. The two roles were created to allow a separation between the advisory and education role (served by the Ethics Advisor) and the investigative and adjudicative role (served by the Integrity Commissioner). Alice Woolley was appointed as Ethics Advisor and Allen Sulatycky was appointed as Integrity Commissioner.

The Ethics Advisor and Integrity Commissioner were appointed on a part-time basis for a two-year renewable term. The appointment directed the Ethics Advisor and Integrity Commissioner to further define the nature and scope of their roles.

The Ethics Advisor and Integrity Commissioner began their positions on 2016 April 11.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

To define the Terms of Reference the Ethics Advisor and Integrity Commissioner met with:

- The City Solicitor, City Manager, City Auditor and the City Clerk
- Staff of the Office of the Councillors
- Staff of members of Council

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In addition, the Ethics Advisor met or had conversations with:

- Members of Council
- City of Toronto Integrity Commissioner Valerie Jepson

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

The purpose of the meetings and discussions was to identify the needs and priorities appropriately met by the Ethics Advisor and Integrity Commissioner, and to understand existing policies and approaches to issues of Council member conduct.

The proposed Terms of Reference reflect these meetings and discussions, and in particular the following key concepts or principles:

- The Ethics Advisor should provide advice and guidance on matters of Council member conduct that create a legal risk for a Council member, or a risk to a Council member's public reputation. Where a Council member's conduct has or could create legal or reputational risk to that Council member that conduct affects the Council 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 Council 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 a Council member cannot be disclosed absent the Council 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 Council members.
- Individual advice will only be provided where requested by a Council 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 Council 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.

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- General advice is not law (although it may be legal advice). It does not bind a Council 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 Council member conduct, as indicative both of appropriate conduct and of whether the Council member acted in good faith.
- The Ethics Advisor will not provide an opinion on the appropriateness of a Council member's conduct unless asked to do so by that Council 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 Council 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 Council 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 Council member, and the Council member has followed that advice, the Integrity Commissioner will not consider any associated complaint with the Council member's conduct.
- The Ethics Advisor may assist in the resolution of complaints about Council member conduct referred by the Integrity Commissioner after assessment.
- The Ethics Advisor and Integrity Commissioner should help educate Council members and Calgarians on the legal and ethical duties of Council members.
- The Ethics Advisor and Integrity Commissioner positions should be part-time.

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STAKEHOLDER ENGAGEMENT, RESEARCH AND COMMUNICATION

See above.

STRATEGIC ALIGNMENT

The principles underlying the Terms of Reference align with Council's commitment to ethical conduct by Council members and Council member accountability, as reflected in Council by-laws and policies related to ethical conduct, and the appointment of the Ethics Advisor and the Integrity Commissioner. Specifically, the Ethics Advisor and Integrity Commissioner's Terms of Reference facilitate Council member understanding of, and compliance with, standards for ethical behaviour by a Council member.

SOCIAL, ENVIRONMENTAL, ECONOMIC (EXTERNAL)

Calgarians will have increased clarity and understanding about standards for ethical behaviour by Council members.

FINANCIAL CAPACITY

Financial implications were addressed at the appointment of the Ethics Advisor and the Integrity Commissioner. The proposed Terms of Reference do not change the financial requirements for the Ethics Advisor or Integrity Commissioner positions.

RISK ASSESSMENT

The role of the Ethics Advisor and Integrity Commissioner set out in the Terms of Reference and Procedure Protocol will enhance Council members' ability to comply with their legal and ethical obligations. It will reduce risk for Council members and for The City of Calgary

REASONS FOR RECOMMENDATIONS:

The Integrity and Ethics Office recommends that Council adopt the attached Terms of Reference and Procedure Protocol as accomplishing the key concepts and principles identified through Stakeholder consultation and assessment of relevant law, policies and other materials.

ATTACHMENT

1. Proposed Terms of Reference for Ethics Advisor and Integrity Commissioner, and a Procedure Protocol for the Integrity Commissioner.