

INTEGRITY COMMISSIONER - PROPOSED TERMS OF REFERENCE AND RECRUITMENT STRATEGY

EXECUTIVE SUMMARY

Council is poised to become the first Council in western Canada to appoint an Integrity Commissioner. The Integrity Commissioner will serve as a valuable resource to both Council members and Calgarians in regard to matters relating to Council members' ethical duty. Retaining an Integrity Commissioner will further enhance Council members' accountability to Calgarians. This report outlines a proposed initial terms of reference and recruitment strategy for the Integrity Commissioner.

ADMINISTRATION RECOMMENDATIONS:

That the Priorities and Finance Committee:

1. Recommend that Council approve the initial terms of reference for the Integrity Commissioner outlined in the Attachment to this report;
2. Recommend that Council direct 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;
3. Forward this report to the 2015 April 27 Council meeting as an item of urgent business; and
4. Recommend that Council keep this report and the attachment confidential pursuant to Sections 24(1)(a) and (d) of the Freedom of Information and Protection of Privacy Act until such time as Council makes a decision in regard to this matter.

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 relating to allegations of misconduct by elected officials. Council directed Administration and the City Auditor's Office to explore options for investigating and enforcing allegations of misconduct of Councillors, such options to include the establishment of an integrity officer.

On 2015 February 09 Council considered Report PFC2015-0207 and approved in principle the establishment of an independent Integrity Commissioner. Council directed Administration and the City Auditor's Office to consult with Councillors and provide a report to the 2015 April 21 Priorities and Finance Committee meeting outlining a proposed terms of reference and recruitment strategy for an Integrity Commissioner.

BACKGROUND

For several years, Council has been focused on enhancing:

- the openness, transparency and accountability of its decision making; and
- accountability as it relates to Councillors' conduct.

As evidence of this:

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- On 2007 May 28 Council adopted a Whistle-blower Policy (CC026) outlining responsibilities for the reporting and investigation of allegations of waste and/or wrongdoing by members of the Administration. This policy was designed to reflect The City's "ongoing effort to support open, ethical, accountable and transparent local government". On 2013 May 27 Council extended the application of the Whistle-blower Policy to Council members and Councillors' staff;
- On 2011 January 24 Council established the Legislative Governance Task Force mandated to recommend to Council actions to improve governance at The City. The Task Force's priorities are to:
 - make Council more accessible and transparent to the public;
 - make the Council decision-making process more efficient; and
 - increase accountability;
- Effective 2013 July 01 Council adopted the Ethical Conduct Policy for Members of Council (CC042). The purpose of this policy is to:
 - "establish and promote ethical conduct standards for Members of Council in interactions with the public, all City employees, contractors, Council staff and all Members of Council; and
 - outline certain rules of conduct for Members of Council so that they may carry out their duties, powers and functions with impartiality and dignity, recognizing that the functions of Members of Council is, at all times, service to the public".

On 2014 September 22 this policy was amended to confirm that both Councillors and Councillors' staff were entitled to the benefit of and subject to the Workplace Violence Policy.

On 2015 February 09 the Ethical Conduct Policy was further amended to provide clarity around policies relating to alcohol and illegal substance use and expensing alcohol;

- Over the years, Council has adopted various additional policies to govern its conduct including policies relating to Councillors' expenses and allowances (PAC006), Councillors' expenses for out of town travel (PAC007), disclosure (CC044), gifts and benefits (CC043) and learning and development (CC024); and
- Effective 2014 December 15 Council adopted a policy outlining a code of conduct for citizens appointed to Council-established boards, commissions and committees.

The Province of Alberta is similarly focused on increasing openness, transparency and accountability in municipal governance. Section 145 of the Municipal Government Act (MGA) always provided Council with discretion to pass a bylaw in relation to:

- the procedure and conduct of council, council committees and other bodies established by council; and

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- the conduct of councillors, members of council committees and other bodies established by council.

However, on 2015 March 30 the MGA was amended to require that Council establish, by bylaw, a code of conduct governing councillors' conduct. While the amendments to the MGA provide that a councillor must not be disqualified or removed from office for a breach of the code, the Province has empowered the Minister to make regulations respecting:

- matters that a code of conduct must address;
- the date by which the code must be established;
- sanctions to be imposed for a breach of the code;
- matters that a council must take into consideration in establishing a code;
- implementation of the code; and
- any other matter the Minister considers necessary.

These new sections of the MGA have not yet been proclaimed in force.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

On 2004 July 21 Toronto's Council became the first Canadian council to appoint an Integrity Commissioner. Council appointed David Mullan, a renowned lawyer and professor in administrative law, to serve for a five year term. Mr. Mullan was succeeded by Osgoode Hall Law School Dean Lorne Sossin on an interim basis and then by lawyers Janet Leiper in 2009 and Valerie Jepson in 2014 September. Ms. Jepson is the first person to be appointed to this office on a full-time basis.

In 2006, the Province of Ontario passed the City of Toronto Act 2006 which required the City to have an Integrity Commissioner, Ombudsman, Lobbyist Registry and an Auditor General. These positions are known collectively as "Accountability Officers".

In 2009, Toronto's Council adopted Chapter 3 of the Toronto Municipal Code which outlines in detail the roles and responsibilities of the Accountability Officers and the selection, appointment, reappointment, removal, resignation and remuneration policies relating to them.

While not required to do so, 31 additional Ontario municipalities have opted to secure the services of an Integrity Commissioner.

In response to Council's 2015 February 09 direction, the City Solicitor and City Auditor reviewed information regarding the role of municipal, provincial and federal Integrity or Ethics Commissioners. They also discussed the mandate, selection and investigation and reporting procedures of Integrity Commissioners with Toronto and Hamilton's Integrity Commissioners, the Province of Alberta's Ethics Commissioner, the City Solicitors for Toronto and Mississauga and representatives of Toronto's City Manager's Office.

The City Auditor and City Solicitor then met with each member of Council to share their understanding of Integrity Commissioners' roles and experience and solicit from Council members their views regarding:

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- the mandate of and required competencies for the Integrity Commissioner, the length of his or her term and whether the term should be renewable;
- the investigation, reporting and sanctioning processes of the Integrity Commissioner; and
- the recruitment strategy for the Integrity Commissioner.

Council members provided very thoughtful comments in regard to these matters. While Council members are generally very supportive of appointing an Integrity Commissioner, some Councillors felt that they would benefit from an enhanced understanding of other Council members' rationale for the need for this appointment. However, the majority of Council members seemed to agree that:

- the role of the Integrity Commissioner and the nature of the concerns he or she would address must be clearly defined. In particular, the Integrity Commissioner's role vis-a-vis that of the City Auditor's Whistle-Blower Office and the City Solicitor must be clearly delineated. There were questions about how the Integrity Commissioner would triage concerns and ensure they were redirected to the City Manager, City Auditor, City Solicitor, Director of Human Resources or a Council member if that is where the issue would be most appropriately addressed;
- the Integrity Commissioner should have legal experience or training or experience or training in the areas of ethics, governance, conflict of interest and/or human resources and must be well respected and very approachable in nature;
- the Integrity Commissioner's services are unlikely to be required on a full-time basis;
- the Integrity Commissioner's term of office should range from three to five years. Some Council members felt that the term should overlap with Council members' terms to enable a new Council to benefit from the services of an experienced Integrity Commissioner;
- the Integrity Commissioner's initial mandate should focus on advising on and addressing questions or concerns relating to Council members' conduct. There was limited support for including Councillors' staff in the Integrity Commissioner's initial mandate but even less support for including the conduct of those appointed by Council to boards, commissions and committees in the Integrity Commissioner's initial mandate;
- the Integrity Commissioner should be appointed by Council;
- an external firm should be used to conduct the recruitment process as it would likely have access to additional information about competencies required of and compensation payable to Integrity Commissioners;
- policies governing Council members' conduct must be reviewed to ensure they are clear and comprehensive. Some Council members commented that this analysis should be undertaken by the Integrity Commissioner while others felt that the analysis should be undertaken by an external party other than the Integrity Commissioner prior to the Integrity Commissioner's appointment;
- the Integrity Commissioner's formal and informal investigation processes must be clearly defined and communicated and fair to all parties;
- the name of the complainant should remain confidential;

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- the Integrity Commissioner's reports of substantiated findings should be delivered to Council in its entirety and become public documents. However, some Council members felt that the Integrity Commissioner's reports should be considered by Council in camera prior to being made public. Also, some Council members felt that the extent of detail to be included in the public reports should depend on the subject matter of the investigation; and
- the Integrity Commissioner should make recommendations to Council for appropriate sanctions in the event he or she finds a violation of a Council member's ethical duty. However, a few members of Council felt that the Integrity Commissioner should be empowered to impose sanctions in the event of such a finding.

There was less consensus on the topics of:

- whether the Integrity Commissioner's term should be renewable;
- whether members of Council should serve on the committee recommending to Council a candidate to serve as Integrity Commissioner. Most members of Council felt that it was critical that Council members serve on the committee and several expressed interest in doing so. Some Council members felt that the involvement of the City Manager, City Solicitor and/or City Auditor (regardless of Council members' involvement) would be of assistance in determining a short list of candidates. Some Council members felt that it would be beneficial to have former Council members serve on the committee and/or to have other stakeholders such as Calgarians or Councillors' staff serve on the committee; and
- whether those wishing to report alleged violations of Council members' ethical duty should be required to swear affidavits to launch an investigation or whether the Integrity Commissioner should act on anonymous complaints.

Additional questions or comments related to:

- whether the Integrity Commissioner's role would include addressing questions or issues relating to Council members' election campaigns;
- a desire to have the Integrity Commissioner assist in enhancing Council's orientation program to ensure that additional information about Council members' ethical duty is included in it;
- the transition of the whistle-blower process, as it relates to questions or concerns about Council members' conduct, from the City Auditor to the Integrity Commissioner;
- requirements of the Integrity Commissioner's office including costs and processes associated with complaint intake, records management, investigation support and legal advice that might be required by the Integrity Commissioner.

Given Council members' insights, the City Manager recommends that Council adopt the proposed initial terms of reference for the Integrity Commissioner outlined in the Attachment to this report. This information should be sufficient to assist an external firm in developing a proposed recruitment strategy for Council members' consideration. The City Manager believes

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that it would be advantageous for Council to have the benefit of the Integrity Commissioner's views prior to finalizing his or her powers, duties and functions. Once the Integrity Commissioner has completed the work outlined in the initial terms of reference, those powers, duties and functions could be included in a Bylaw.

The City Manager believes that Council would benefit from securing additional information about competencies and compensation from an external recruitment firm experienced in Integrity Commissioner searches.

The City Manager, City Solicitor and City Auditor look forward to working with the Integrity Commissioner to assist him or her in understanding respective roles and responsibilities, share the City Auditor's experience with the whistle-blower policy to date, assist with the transition process for whistle-blower concerns that relate to Council members' conduct and provide any other assistance to the Integrity Commissioner that he or she may see fit.

Stakeholder Engagement, Research and Communication

See above.

Strategic Alignment

Securing the services of an Integrity Commissioner aligns with Council's priority of ensuring a well-run city and Council's focus on open, accountable and transparent decision making and enhanced accountability in regard to Council members' conduct.

The Province recently adopted amendments to the MGA requiring councils to establish codes of conduct by bylaw. Appointing an Integrity Commissioner is aligned with the Province's desire to enhance the accountability of councils throughout Alberta.

Social, Environmental, Economic (External)

Calgarians will benefit from clearly articulated processes to assist in understanding Council members' ethical duty and to ask questions and express concern about Council members' conduct.

Financial Capacity

Current and Future Operating Budget:

Costs associated with retaining an external firm to assist with the activities outlined in Recommendation 2 and 2015 costs associated with the retention of the Integrity Commissioner and establishing his or her office will be absorbed in existing budgets. A request for additional funds will be included in the budget adjustment process.

Current and Future Capital Budget:

Not applicable.

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Risk Assessment

The City Manager, City Solicitor and City Auditor agree with the observation made by both Toronto's Integrity Commissioner and several members of Council that the largest advantage to be gained by having an Integrity Commissioner would be to provide an advisor to assist Council members in ensuring they understand their ethical duties and are positioned to comply with their legislated obligations and policies governing Council members' conduct. The City Manager, City Solicitor and City Auditor also support the view of those Council members who indicated that a more comprehensive, clear and commonly understood policy regarding ethical duty would be helpful for Council members. These actions will result in reduced risk for Council members and for the corporation of The City of Calgary.

REASONS FOR RECOMMENDATIONS:

The City Manager, City Solicitor and City Auditor fully support Council's desire to secure the services of an Integrity Commissioner to assist Council in furthering the achievement of its objectives in regard to enhancing the openness, transparency and accountability of its decision making and accountability in regard to Councillors' conduct.

ATTACHMENT

Proposed initial terms of reference for the Integrity Commissioner