

Attachment 2: Motion Arising - Proposed Amendments to the Local Authorities Electoral Act

EXECUTIVE SUMMARY

Council, during its 2018 January 29 Regular Meeting approved the following resolution:

“Council request the Mayor write a letter to the province requesting amendments to the *Local Authorities Election Act* (LAEA) on the topics of an elected member of council being nominated to run as a candidate for provincial or federal level of government resigning their position at city council and forfeit transition allowance upon being elected as an MLA or MP and; that the candidate’s surplus campaign funds or those generated since the last municipal election be donated to The City for the purpose of defraying the costs of a by-election.”

The subject matter of the LAEA is the electoral process for candidates seeking office as a member of a Municipal Council. Once a Councillor or Mayor is elected and sworn in, the *Municipal Government Act*ⁱⁱ (MGA) is the legislative instrument that defines and regulates Councillor and Mayoral duties and responsibilities.

Rather than compel resignation Division 7 of the MGA provides grounds for the disqualification for a member of council. Section 174(1) states that councillors are disqualified if they become a judge, Senator, MLA, or MP. To effect Council’s resolution, this section will need to be amended to disqualify members of municipal council that submit Candidate Nomination Papers and register for either provincial or federal office.

With respect to eligibility for transition allowances, this matter is exclusively for Council to decide. This allowance is not governed by any provincial legislation or regulations. Council originally adopted this benefit as a ‘resettlement allowance’ mirrored to similar loss of office benefits provided to Members of Alberta’s Legislative Assembly. Council may, if it so decides, redefine the allowance’s eligibility requirements. However, Council is reminded that there exists a long-standing presumption in Canadian law against the retroactive (or ex post facto) removal of an existing benefit within a contractual relationship via legislative or policy changes. More robust legal analysis is recommended should Council decide to eliminate this benefit.

Finally, regarding the disposition of surplus campaign funds to defray the cost of a by-election. Currently, the LAEA provides that surplus campaign funds may be either donated to a registered Alberta Charity, or donated to the municipality. An amendment to the LAEA stipulating that any member of municipal council disqualified because they are seeking office for another order of government is consistent with the goals and objectives of electoral reform.

Background and Analysis

At the 2018 January 29 Regular Meeting, Council debated Notice of Motion C2018-0081 entitled “Setting Mayoral and Councillor Term Limits and Recall”. This Notice of Motion set out to establish Council’s position on issues of electoral reform and requested that the Mayor communicate with the Government of Alberta’s Minister of Municipal Affairs (“The Minister”) to implement specific amendments to the Local Authorities Elections Act (“LAEA”).

The requested amendments in the original Notice of Motion raised issues with respect to the absence of term limits and recall provisions in the LAEA. Following a robust discussion and debate, Council decided that they would not adopt either resolution. Further Amendments to the original Notice of Motion were made, and Council’s Motion Arising resulted in the substitution and approval of the following two resolutions:

- 1) “Council request the Mayor write a letter to the province requesting amendments to the Local Authorities Election Act on the topics of an elected member of council being nominated to run as a candidate for provincial or federal level of government resigning their position at city council and forfeit transition allowance upon being

elected as an MLA or MP and; that the candidate's surplus campaign funds or those generated since the last municipal election be donated to The City for the purpose of defraying the costs of a by-election." And, that the 2) "Topic of Electoral Reform be added to a future meeting of the Intergovernmental Affairs Committee".

Resolution One: Requesting that the Mayor communicate to the Minister Council's position requesting specific amendments to the Local Authorities Elections Act. This resolution raises three separate issues:

- i) That a member of Council be compelled to resign if nominated to represent a political party and campaigning to be either a Member of the Legislative Assembly of Alberta, or alternatively, a Member of the Parliament of Canada;
- ii) That said member of Council forfeit any transition allowance to which they may be eligible upon if elected to another order of government; and finally,
- iii) That campaign funds raised since the last municipal election be "donated" to The City of Calgary to help defray the costs of a by-election.

The subject matter of the LAEA is the electoral process for candidates seeking office as a member of a Municipal Council. Once a Councillor or Mayor is elected and sworn in, the Municipal Government Actⁱⁱⁱ (MGA) is the legislative instrument that defines and regulates Councillor and Mayoral duties and responsibilities, with the notable exception of ongoing campaign fund raising.

Nomination and Campaigning for Another Order of Government

Division 7 of the Municipal Government Act "Disqualification of Councillors" provides reasons that disqualify a duly elected member of municipal council. The MGA states:

"S.174(1) A Councillor is disqualified from Council if ...

(c) the councillor becomes a judge of a court or a member of the Senate or House of Commons of Canada or of the Legislative Assembly of Alberta;"

The MGA is silent on the issue of a disqualification of a member of municipal council being nominated and / or actively campaigning for office as a Senator, Member of the Legislative Assembly of Alberta, or Member of the Parliament of Canada.

An article in the Canadian Parliamentary Review^{iv} analyzed provincial legislation and regulations across Canada dealing with members of a municipal council seeking a seat in either a provincial assembly or the House of Commons. That research identified that only New Brunswick and Prince Edward Island legislated this specific issue. In New Brunswick members of municipal council are ineligible from being nominated for another order of government and must therefore resign prior to accepting a nomination. In contrast Prince Edward Island requires a member of municipal council to take an immediate leave of absence without remuneration upon nomination.

The question regarding the status of an elected official moving between the legislative assembly of a province and the House of Commons is addressed in both current federal and provincial legislation. For example, federal legislation specifically declares that members of a provincial legislature are ineligible to serve in the House of Commons. Part 6 of the Canada Elections Act^v addresses Candidate Qualifications, and section 65 states that: "The following persons are not eligible to be a candidate:

- c) a member of the legislative assembly of a province;

The Parliament of Canada Act^{vi} also addresses this issue stating that:

"no person who, on the day of nomination at any election to the House of Commons, is a member of the legislature of any province is eligible to be a member of the House of Commons, or is capable of being nominated or voted for at that election, or being elected to, or sitting or voting in, the House of Commons".

Essentially, federal legislation requires that a member of a provincial legislative assembly resign their seat one day prior to being nominated to seek office as a Member of Parliament. If they fail to do so, all votes received by the individual in a subsequent federal election will have no effect.

Similarly, the Alberta's Legislative Assembly Act^{vii} immediately disqualifies a Member of the Legislature if they become a member of the Senate or House of Commons^{viii}. However, given that federal legislation prohibits a sitting MLA from being nominated to the House of Commons, the Alberta Legislative Assembly Act does not require an MLA to resign after being nominated to seek elected office to the House of Commons as this issue is addressed in the Federal Legislation.

Accordingly, to achieve the results carried in Council's Motion Arising will require proposing two legislative amendments to the Government of Alberta. Specifically, a request to amend MGA section 174 "Disqualification of Councillors" and conjunctively to propose an amendment to the section 26 of the Alberta Assembly Act using similar phrasing to section 22 of the Parliament of Canada Act quoted above.

Forfeiture of Transition Allowances

The transition allowance was first introduced in 1997^{ix} and styled as a "resettlement allowance" modelled on a similar "loss of office" allowance paid to Alberta MLAs. The benefit initially provided members two weeks per year served to a maximum of thirteen years' service, or six months remuneration. In 2000 this benefit was renamed as a "transition allowance" and increased to match a change in the provincial benefit to one year's pay for twenty-six or more years of service.

The establishment of the transition allowance, the procedures and rules for its disposition are a matter of Council policy and are completely within the authority granted to municipal councils under the MGA. Although Council reserves the right to exercise this power, it established and renewed under bylaw 25M2015 the "Council Compensation Review Committee" to conduct a periodic review and make recommendations with respect to Council salaries (and other forms of compensation), benefit plans, and pensions.

On 2017 May 29 Council received report CCRC2017-0508 from the Council Compensation Review Committee. The Review Committee recommended that Council "eliminate the transition allowance for any elected official who leaves for any reason" (Recommendation #4 of the Report). Council reviewed, debated and subsequently defeated this recommendation. A current Council is not bound by its' past decisions. Accordingly, the forfeiture of transition allowances payable to a Councillor elected to another order of government is an issue for Council to determine and establish via policy. It therefore does not require the Mayor to include this matter in his communications with the Minister.

However, revoking eligibility for a member of Council's transition allowance may raise other legal issues and expose Council to liability. There is a long-standing presumption in Canadian law against the retroactive (or ex post facto) removal of an existing benefit within a contractual relationship via legislative or policy changes. More robust legal analysis is required should Council elect to pursue this option.

Transfer of Campaign Surplus Funds to Defray Cost of By-election

Finally, with respect to part (c) of Resolution One, the LAEA addresses issues with respect to surplus campaign funds in Part 5.1 entitled "Municipal Election Finance and Contribution Disclosure". Although part (c) of Resolution One addresses funds raised since the last municipal election, there is also the question of the disposition of surplus funds that were raised during the prior municipal election. The LAEA addresses both these issues.

Section 147.4 Campaign Disclosure Statements defines the rules with respect to distribution of campaign financing. In s.147.4(1.1) (a) if the candidate decides not to run in the next general election, all surplus funds are to be donated to a registered charity or "to the municipality where the candidate was declared elected in a previous general election". As this section stands, the disposition of surplus funds is left to the sole discretion of the candidate to decide. Accordingly, limiting the candidate's ability to select a registered charity and ensure that

surplus funds always accrue to the municipality to defray the cost of a by-election will require an amendment to the LAEA.

Section 147.5 of the LAEA addresses the issue of Campaign surplus. This section defines the process that all candidates must follow if they have a surplus following an election. Surplus funds are, in accordance with section 147.5(1) transferred to the municipality following an election. These funds are held in trust by the municipality (as per s.147.5(2)) until the next general election or by-election. If the candidate files nomination papers, the entrusted funds are returned to the candidate (in accordance with s.147.5(3)). However, if the candidate does not file nomination papers, the surplus funds are to be donated to either a designated charity (s.147.5(4)) or alternatively, becomes the property of the municipality (147.5(5)) in the absence of a decision by the candidate with respect to the disposition of the funds.

Funds donated to the municipality can be used for any municipal purpose, and it would be either through a direct resolution or policy statement to provide clarification as to how The City will use funds received under either provision in Part 5.1 of the LAEA.

Accordingly, a request will be made to the Minister seeking an amendment that any surplus funds held by a former member of Council who is disqualified under MGA section 174(1)(c) because they have been elected to the Legislative Assembly or to the Parliament of Canada be redirected to the municipality for the purposes of defraying the costs associated with a municipal by-election.

A separate report will follow with respect to the second part of the resolution "Topic of Electoral Reform be added to a future meeting of the Intergovernmental Affairs Committee".

ⁱ RSA 2000, L-9 as amended 14 December 2016

ⁱⁱ RSA 2000, M-26 as amended 1 April 2018

ⁱⁱⁱ RSA 2000, M-26 as amended 1 April 2018

^{iv} Webb, Heather – Changing House: The Law Affecting a Move Between Elected Offices, 2015 Canadian Parliamentary Review, Volume 38, issue No 1, pp. 23-28.

^v SC 2000, c-9

^{vi} RSC 1985, c. P-1 section 22

^{vii} RSA 2000, L-9 as amended 14 December 2016

^{viii} Ibid, section 26.

^{ix} 1997 July 14 Commissioner's Report C97-43 Aldermanic Compensation and Benefits, pp. 6067 – 6070