

Whistleblower Investigation Report

December 8, 2014

Executive Summary

The Calgary office of Norton Rose Fulbright was retained by the City of Calgary Auditor to conduct an investigation into certain allegations involving a number of Councillors, s.17(1) s.20(1)(d) Councillors, s.17(1) City staff working in the Council Offices, s.17(1) Council staff or former staff and s.17(1) s.20(1)(d).

This investigation focused on the Office of the Councillors as a workplace and the interactions between Council staff and Councillors, both the employing Councillor and other Councillors. Council has adopted the Respectful Workplace Policy as applying to the Council staff. The Ethical Conduct Policy for Members of Council endorses a "safe and caring work environment" for, amongst others, Council staff.

s.17(1) s.20(1)(d) s.17(1) s.20(1)(d). The problems are sufficiently widespread to sustain a finding of systemic problems within the workplace. Since the problems are known to many in the workplace, all those working in the Council office are affected by the environment. There are indications that these types of issues are not new.

There have been substantiated breaches of Council policies by s.17(1) s.20(1)(d) members of Council affecting current and former Council staff. s.17(1) s.20(1)(d) Council staff feel that they have no options in the face of such conduct other than to quit or put up with unwelcome comments and actions. s.17(1) s.20(1)(d)

None of the substantiated allegations were criminal in nature. None were attributable to the presence of alcohol in the workplace. Allegations were considered substantiated if there were witnesses or if the Councillor confirmed the circumstances.

s.17(1)

s.20(1)(d)

The employment relationship between Councillors and staff is not only subject to Council policy, it is also subject to the *Alberta Human Rights Act* and the *Employment Standards Code*. Council staff could file complaints under either statute against the Councillor as employer.

s.24(1)(a)

The whistleblower process is not ideal to address such issues, but is the only current mechanism the staff can invoke.

s.24(1)(a)

s.24(1)(a)

Introduction/Background

The Calgary office of Norton Rose Fulbright was retained by the City of Calgary Auditor to conduct an investigation into certain allegations involving a number of Councillors. The allegations involved potential breaches of the Respectful Workplace Policy HR-LR-001(B) (the "RW Policy") by certain Councillors.

Under the Ethical Conduct Policy for Members of Council CC042 (the "EC Policy"), Council has committed "to creating and sustaining a vibrant, healthy, safe and caring work environment and in all interactions with the public, all City employees, contractors, Council staff and all Members of Council."

Under the Councillors Assistant Policy PAC005 (the "CA Policy"), Council has incorporated the RW Policy into the employment relationship with Council staff.

The investigation was conducted in accordance with the Whistle-Blower Policy CC026 (the "WB Policy"). The investigators were William J. Armstrong, Q.C. and Erin Ludwig. s.1... s... Councillors, s... City staff working in the Council Offices, s... Council staff or former staff s.17(1) s.20(1)(d) s.17(1) s.20(1)(d)

The Employment Relationship between Councillors and Staff

The Council staff are not City of Calgary employees but are defined as employees of each applicable Councillor. This is set out in the Councillors Assistants Policy PAC005 (the "CA Policy") which was last revised October 21, 2013. The fundamental rationale for staff being employees of the Councillors is that these are political appointments. They are employed for fixed terms not exceeding four years and are tied to the term of office of the employing Councillor. If the employing Councillor dies, resigns or is defeated, the employment of that Councillor's staff automatically ends.

This basic employment situation appears to date from a 1987 consultant's report.¹ That report recommended severing the administrative relationship with the City Clerk's Department, creating an Aldermanic Office Services Group headed by a Manager, and that:

Future employees of the Aldermanic Office Services Group be on contract (on a similar basis to the employees of the Mayor's office) and that they become employed at the pleasure of the Group.

Unlike the current situation under the CA Policy, it was recommended that the power to hire and fire would be vested in the Manager. Currently, that power is vested in each Councillor.

The situation with respect to the Mayor's office has evolved since 1987. Now, the employees of the Mayor's office are all limited-term, exempt City employees. Between 1987 and 2010, the employees of the Mayor's office were a mix of employees of the City and employees of the Mayor. Since the 2010 election, all are City employees.

The following table shows the differences between council staff and the employees in the Mayor's office:

¹ Western Management Consultants: The Lennox Partnership, Aldermanic Office Co-ordinating Committee Organization Review, September 22, 1987

Issue	Council Staff	Mayor's Staff
Employment Status	Limited term, employee of each Councillor	Limited term, City employees
Insurance Benefits	Not in MEBAC, separate policy, equivalent to MEBAC	In MEBAC if eligible in terms of hours worked
Pension	RRSP matching, not in LAPP	LAPP
Vacation, Bereavement and Statutory Holidays	As set out in Management Exempt Policy	Vacation is individually negotiated. Rest is per Management Exempt Policy
Severance	Councillors' Staff Severance Policy	Individually negotiated
Payroll Administration	City	City

The Council office has evolved considerably since the time of the 1987 consultant's report. At that time, each then alderman had one assistant.

Councillors have the option of hiring staff directly or hiring through the City Human Resources system. A number of the staff knew the Councillor before beginning in the Council office. Staff may have worked on an election campaign before being hired as an assistant.

Relevant Policies and Legislation

The CA Policy expressly endorses the RW Policy and incorporates it by reference into the CA Policy. The CA Policy also references the *Employment Standards Code* of Alberta as applying to the staff. The RW Policy references the *Alberta Human Rights Act*. Both acts legally apply to the staff.

The RW Policy itself expressly applies to Councillors, but not Council staff. However, the incorporation by reference of the RW Policy into the CA Policy makes the RW Policy apply to Council staff.

The RW Policy is intended to "outline the minimum standards for creating a vibrant, healthy, safe and caring work environment." The RW Policy defines three categories of "inappropriate behaviour" as follows:

- "Disrespectful behaviour
- Discrimination/harassment
- Damage to people or property".

The third category is not relevant to this investigation. Relevant portions of the policy are set out below.

"8.2.1 Disrespectful Behaviour

Disrespectful behaviour is:

- Vexatious: conduct, comments, actions or gestures which are humiliating, offensive, hurtful or belittling. ...

- Hostile or unwanted.
- Affecting the employee's dignity, wellbeing, or physical integrity.
- Resulting in a harmful or poisoned work environment

Examples of disrespectful behaviour include, but are not limited to:

- written or verbal comments, actions, gestures or other behaviours or 'jokes' which are humiliating, offensive, hurtful or belittling;
- bullying or intimidation;
- abusing authority;
- yelling or shouting (except where intended to alert another to danger); ...

8.2.2 Discrimination/Harassment:

Behaviours practices, policies or systems which have a direct or adverse impact based on: ... gender (including pregnancy and sexual harassment), or any other ground covered by the *Alberta Human Rights Act*.

Discriminatory or harassing behaviours include comments and actions which are unwelcome, that are based on a prohibited ground of discrimination and result in a negative or poisoned environment.

Examples include:

- Any previously described inappropriate behaviour that is based on a prohibited ground;
- Sexual harassment includes comments or conduct such as unwelcome advances, requests, comments, physical contact such as unnecessary touching, pinching or jostling or gestures that are suggestive or persistent staring that are of a sexual nature. ... ;
- Unwelcome remarks, jokes, taunts, suggestions or speculations about a person's body, attire, sex life, etc.;"

The RW Policy reflects general Canadian human rights law and cases.

Also relevant is the Ethical Conduct Policy for Members of Council CC042 (the "EC Policy"). This policy has a respectful workplace section which reflects the RW Policy:

"Respectful Workplace

Council is committed to creating and sustaining a vibrant, healthy, safe and caring work environment and in all interactions with the public, all City employees, contractors,

Council staff and all Members of Council. (The City of Calgary Respectful workplace Policy).

Key Requirements

- Be polite, courteous and respectful of others at all times.
- Treat others equitably and fairly.
- Recognise and value the diversity among citizens, City employees, contractors, Council staff and all Members of Council."

Findings of Fact

During the investigation, a clear picture emerged of the current situation in the Council office. The concern is what those interviews collectively disclosed and not who reported each individual piece of information.

s.17(1) s.20(1)(d) interviewed all report that the situation regarding inappropriate behaviour (as defined in the RW Policy) is much improved since they began working in the Council office.

s.17(1)

s.20(1)(d)

They saw the only realistic options to be to tolerate the behaviour, to quit or to go on stress leave.

There is very little training in policies for either new Councillors or new staff. The Council Orientation Policy CC034 makes general reference to the "Manager of the Aldermanic Office Services" providing a manual of policies to Councillors and their staff. New staff are provided with a printed copy and a link to the RW Policy. Beyond this, there appears to be no specific training in how Councillors are to treat staff, beyond the mechanics of pay, benefits, etc. There also appears to be no training beyond the simple provision of the policy to staff.

s.17(1) s.20(1)(d) Councillors were identified as potentially having breached the RW Policy: s.17(1) s.20(1)(d) and Evan Woolley. The alleged breaches by each of the s.17(1) s.20(1)(d) Councillors vary substantially. There was no evidence that the breaches of the RW Policy were events that the s.17(1) s.20(1)(d) Councillors jointly engaged in, rather it was each individual Councillor's behaviour in certain circumstances with differing third parties and complainants.

s.24(1)(a)

s.24(1)(a) Nothing was substantiated against Councillor s.17(1) s.20(1)(d) The substantiated breaches of the policies with respect to individual Councillors are:

s.17(1)

s.20(1)(d)

s.17(1)

s.20(1)(d)

Evan Woolley

Councillor Woolley once was inappropriate

s.17(1)

s.20(1)(d)

s.17(1)

s.20(1)(d)

Conclusions

s.17(1)

s.20(1)(d)

s.24(1)(a)

s.17(1)

s.20(1)(d)

s.17(1)

s.20(1)(d)

Councillor Woolley was upset s.17(1) s.20(1)(d)
 s.17(1) s.20(1)(d) became "animated".

Recommendations

The WB policy mandates that the City Auditor report the investigation findings to Council in camera. It is solely the responsibility of Council as a body to determine the consequences for the breaches of policy by any individual Councillor. The EC Policy provides the following list of possible courses of action available to Council (note the list is not exhaustive and Council is not limited to only the following actions):

- "a) Apology by the Member of Council to the impacted individual(s),
- b) Removal of the Member from Council Committees other than Standing Policy Committees or other representative bodies,
- c) Dismissal of the Member from a position of deputy Mayor or Chairperson of a Committee,
- d) Educational training on ethical and respectful conduct provided by a third party at the expense of the Member of Council's office budget,
- e) Any action taken by Council should include a time frame and what remedial action is expected."

s.24(1)(a)

s.24(1)(a)

s.24(1)(a)

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of December, 2014

William J. Armstrong, Q.C.