

Election Disclosure Complaints Officer

ISSUE

The purpose of this report is to propose amendments to Bylaw No. 8491 *The Campaign Disclosure and Spending Limits Bylaw, 2006* (the “Bylaw”) in response to interviews with Professor Courtney and Mr. Neil Robertson, Q.C. regarding the 2016 City of Saskatoon Municipal Election Disclosure Complaints.

BACKGROUND

2.1 History

At its meeting held on October 23, 2017 City Council resolved:

- “1. That during the Administration’s review of Bylaw No. 8491, *The Campaign Disclosure and Spending Limits Bylaw, 2006*, they interview Professor Courtney and Mr. Robertson to determine if the process was fair for all parties and transparent to the public; and
2. That, in the course of its review, the Administration report back as to whether it would be appropriate to disclose the name(s) of the complainant.”

2.2 Current Status

City Council appointed Professor John Courtney as the Election Disclosure Complaints Officer by resolution on July 21, 2010. Professor Courtney has been kept on retainer by payment of \$1,000 per year since that time.

2.3 Public Engagement

N/A

2.4 City of Saskatoon’s Current Approach

Part III of the Bylaw outlines how the Election Disclosure Complaints Officer is designated, who is eligible for appointment, remuneration, duties, complaints and investigation processes. A copy of the current section of the Bylaw is attached to this report as Appendix 1.

2.5 Approaches in Other Jurisdictions

Campaign disclosure rules are common throughout Canada. Approaches vary, but the amendments proposed in this report would reflect practices in other jurisdictions.

OPTIONS

Professor Courtney was appointed the Election Disclosure Complaints Officer for the 2016 City of Saskatoon Municipal Election. Mr. Neil Robertson, Q.C. provided legal advice and support to Professor Courtney. City Council requested that Professor Courtney and Mr. Robertson, Q.C. be interviewed regarding the process and whether improvements could be made.

In general, both Professor Courtney and Mr. Robertson, Q.C. spoke favourably of the process. Specifically, they said:

- They liked the Bylaw;
- That it was drafted in a manner that was easy to apply;
- The process worked well;
- The express authority for the Elections Disclosure Complaints Officer to retain support services was welcome;
- The process was fair and transparent in that the outcome was reported publicly;
- The process needs to be removed from the City and that having an arms' length investigation was good;
- That they would not recommend disclosing the names of complainants; and
- That anonymous complaints should not be allowed.

However, a few areas for amendment were suggested. With respect to Part III of the Bylaw it was suggested:

- That an email address be added as a requirement of the complaint as having an email address would allow for ease of communication and would provide certainty as to the contact information for each complainant;
- That a standard Complaint Form be developed to provide consistency; and
- That allowing for support services retained by the Elections Disclosure Officer to directly bill the City would be less burdensome on the Elections Disclosure Officer.

With respect to Part II of the Bylaw, it was suggested that the Bylaw be amended to proactively deal with the issue of endorsements and especially in the context of voluntary endorsements versus endorsements at candidate sponsored events.

Option 1 - Approve Amendments

The Administration is recommending the following amendments to the Bylaw:

- Creation of a Complaint Form to be attached as a Schedule to the Bylaw;
- Requiring a complainant to provide an email address if one is available;
- Making it clear that anonymous complaints are not allowed;
- Clarifying the definition of election advertising to make it clear that it does not include voluntary statements by an individual on a non-commercial basis; and
- Clarifying section 3(2) of the Bylaw by changing the reference from "advertising" to "election advertising" which is currently defined in the Bylaw, but not specifically referenced.

The amendments incorporate the suggestions of the Elections Disclosure Officer from 2016, and would provide for more clarity in the Bylaw. The Administration does not believe an amendment is required to accommodate the concerns regarding the payment of support services. The Administration will work with the Elections Disclosure Officer on a process to streamline the payment of any invoices.

Option 2 - Disclose Complainant's Name

The second option would be to make the changes above and also amend the Bylaw to allow for public disclosure of the complainant's name.

The Administration is not recommending that the Bylaw be amended to allow for the public disclosure of the complainant's name. Both Mr. Robertson, Q.C. and Professor Courtney recommended against this change. Disclosure of the names of complainants can discourage possible complainants from coming forward. Amending the Bylaw to make it clear that anonymous complaints are not allowed will help discourage frivolous complaints.

Option 3 - No Change

This option would maintain the status quo and make no amendments to the Bylaw.

RECOMMENDATION

That the Governance and Priorities Committee recommend to City Council that the City Solicitor be instructed to amend Bylaw No. 8491, *The Campaign Disclosure and Spending Limits Bylaw, 2006* in accordance with Option 1 outlined above.

RATIONALE

These amendments will enhance the Bylaw as outlined above.

ADDITIONAL IMPLICATIONS/CONSIDERATIONS

N/A

COMMUNICATION ACTIVITIES

N/A

APPENDICES

1. Part III of Bylaw No. 8491, *The Campaign Disclosure and Spending Limits Bylaw, 2006*

Report Approval

Written & Approved by: Cindy Yelland, Interim City Solicitor
Reviewed by: Joanne Sproule, City Clerk
Jeff Jorgenson, City Manager