

HALIFAX

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Item No. 8
Halifax Regional Council
September 17, 2019

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 
Jacques Dubé, Chief Administrative Officer

DATE: August 8, 2019

SUBJECT: Leave of Absence for Elections

INFORMATION REPORT

ORIGIN

June 4, 2019 resolution of Regional Council:

THAT Halifax Regional Council request a staff report on implementing recommendation #2 in the Elections Nova Scotia report released on May 29, 2019, which would require Councillors to take a leave of absence if they register as a candidate in an election at another level of government.

LEGISLATIVE AUTHORITY

There is currently no legislative authority to require a councillor to take a leave of absence from Council in order to run in a federal or provincial election.

BACKGROUND

On May 29, 2019, the Chief Electoral Officer (“CEO”) of Nova Scotia issued a report on an inquiry it made into a complaint received regarding a member of Regional Council running as a candidate in a provincial by-election (“Report”).¹ The complaint alleged that that the member of Regional Council “took advantage of municipal resources to promote himself as a candidate in the... by-election and breached the Nova Scotia *Elections Act*” (Report, page 3).

The CEO found that the member of Regional Council did not violate the existing provincial election finance laws under the *Elections Act*, but made two recommendations, as follows:

- (1) The CEO recommends that the *Elections Act* be modified to require elected local officials and members of other legislative assemblies to, at a minimum, take a leave of absence from their other elected position during the election period; and
- (2) The CEO recommends that HRM consider updating their guidelines to reflect updates to the *Elections Act*.
The CEO asks that HRM consider extending their guidelines so that a councillor or mayor who is a registered provincial candidate be:
 - (a) required to take a leave of absence during an election period (from the day the writ is issued to election day) which is at most, 46 days, and;
 - (b) restricted from allocating discretionary funds from the date they become a registered candidate (can actively raise funds to support their candidacy) through to election day.

In respect of recommendation #2(b) respecting discretionary funds, the CEO has highlighted changes to the provincial *Elections Act* regarding the timing of the registration of a candidate that he feels should be considered by HRM in its discretionary fund guidelines. Finance staff are in the process of developing a new Administrative Order that will revise both the District Capital and District Activity Funds. The staff report that will accompany the new Administrative Order will make recommendations for Council’s consideration with respect to spending associated with members of Council running in different elections.

The CEO recommended legislative amendments to require registered candidates to take a leave of absence as soon as the writ is issued, or, if they are not registered at that time, as soon as their official nomination papers are filed. The CEO explains that this legislative change would prevent potential voter influence respecting activities the elected official undertakes in their existing elected role while they are a candidate for another elected office (referred to as the “spill over effect”).

This report addresses recommendation #2(a) respecting a leave of absence being required by the Municipality, separate from any legislative requirement for a leave of absence imposed through amendments that may be introduced by the Province to the *Elections Act* as per the CEO’s recommendation #1.

DISCUSSION

The *Municipal Elections Act* (“MEA”), the *Elections Act* (NS) and the *House of Assembly Act* (NS) set out who is eligible to run as a candidate in an election. While the MEA does restrict a Councillor from running for the office of the Mayor in a special election while continuing to sit as a councillor, the legislation does not prevent a Councillor from running in a provincial election while continuing to sit as a councillor. There is also no requirement in the legislation that the Councillor be on a leave of absence and no authority for Council to impose such a requirement. The MEA does require a councillor who is elected to the provincial legislature or the House of Commons to resign office as a councillor within thirty days of such election, which is consistent with other provinces: one cannot sit as a councillor while at the same time being a member of a provincial legislature or the House of Commons.

¹ https://www.electionsnovascotia.ca/sites/default/files/20190529_Compliance_Report_SteveCraigComplaint.pdf

Council would require specific legislative authority in either the *MEA*, the *Elections Act (NS)* or the *House of Assembly Act (NS)* for it to require a councillor to take a leave of absence to run for office at another level of government. Without the legislative amendments recommended by the CEO to the provincial government in recommendation #1, Council is not empowered to act in the way suggested by the CEO in recommendation #2(a). It will continue to be at the discretion of the individual councillor as to whether they take a leave of absence in accordance with the provisions set out in section 14(4) of the *HRM Charter*. This is consistent with other provinces: only Prince Edward Island requires a councillor to take a leave of absence (without pay) to run in a federal or provincial election.

If the amendment is enacted by the Province to either require a leave of absence, or to permit HRM to require a leave of absence, consideration would need to be given to how the member's constituents will continue to be represented on Council during the leave of absence. For example, another member of Council could agree to speak on behalf of the residents during the leave of absence. However, that member of Council would be unable to vote on behalf of the member on leave. Other issues that require consideration if a leave of absence was required include:

- Would the councillor be required to request permission of Council for the leave of absence, or would it be automatic (similar to parental leave)? Staff would recommend that it be automatic, as it would otherwise be possible for councillors to deny a request from a fellow council member. Also, if the leave was required to commence as soon as the writ is issued (as recommended by the CEO to the Province in recommendation #1), there would be insufficient time to have it approved by Council at a meeting of Council.
- What would the timing be for the required leave? The CEO recommends it begins on the day the writ is issued, but staff would recommend that it be within 48 hours of the writ being issued, so as to permit a transition to occur (assuming that it is automatic and does not require Council approval).
- Would the councillor be permitted to carry on any of their duties as councillor? For other leaves of absences (such as medical or parental), the councillor is able to continue with some portion of their duties as they are able, and to continue to access municipal resources in support of those activities. Based on the reasoning of the CEO, it would be inappropriate for the councillor to continue with any of their duties during this time.
- Would the leave of absence be paid or unpaid? In the past, some councillors running for office at other levels of government have taken a voluntary leave of absence, and some have requested that it be without pay.

It is Staff's advice that a Provincial requirement for a councillor to take a leave of absence would be preferable to requiring them to resign in order to run in a provincial election, as a resignation would necessitate a municipal special election, with its associated costs, in the event the councillor was unsuccessful in their run for provincial office.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

COMMUNITY ENGAGEMENT

No community engagement was required or undertaken in developing this report.

ATTACHMENTS

None

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

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