



CONFIDENTIAL

MEMO / NOTE DE SERVICE

To / Destinataire Mayor, Members of Council, the Senior Leadership Team, and Associate General Managers

From / Expéditeur Nathalie Gougeon
Auditor General

Subject / Objet Auditor General Mandate

Date: December 20, 2021

Background

As your new Auditor General, I have spent the past few months learning about the City operations and the Auditor General's mandate. As I grew more comfortable in my new role, I enquired about the intent behind the Auditor General's mandate, its various responsibilities, and my predecessors' interpretation of the Auditor General By-law No. 2021-5.

The Auditor General's mandate, as outlined in the Auditor General By-law **No.2021.5**, Section 6 subsection (1) states that: "the Auditor General shall be responsible for **assisting City Council in holding itself** and its administrators accountable for the quality of stewardship over public funds and for the achievement of value for money in municipal operations" [emphasis added]. The by-law further outlines a limitation on the authority of the Auditor General. Section 6, subsection (6) states that: "the Auditor General **shall not call into question or review the merits of the policies and objectives of Council**" [emphasis added].

In light of the express wording set out in Subsection 6(6) of the By-law, I specifically questioned how I, as the City's statutory Auditor General, could assist Council in "holding itself and its administrators accountable for the quality of stewardship over public funds", if I could not call in to question decisions made by Council throughout the course of the audits conducted by the Office of the Auditor General. As a Statutory Officer, at arm's length from the City's administration, and established pursuant to **Part V.1 of the *Municipal Act, 2001***, I sought an external legal opinion on this matter to ensure I am properly fulfilling my duties as Auditor General.

Legal Opinion

I retained the services of a very well-respected municipal lawyer, that Council members may be familiar with, Mr. John Mascarin. I requested Mr. Mascarin to provide an opinion on whether or not the Auditor General is restricted from calling into question or reviewing the merits of the

policies and objectives of City Council”. You will find the legal opinion as Attachment 1 to this memo.

His opinion concluded that the purpose and history of the legislation “indicate an intention that **the Auditor General has the authority to, at the very least, review the financial decision-making of the municipal council.** If an Auditor General is not enabled to do so, their role would be limited to merely overseeing the municipal administration of funds. This would defeat the overarching objective of the legislation and render one of the two aspects of the statutory role as superfluous¹ [emphasis added].

It is Mr. Mascarin’s “opinion that **the Auditor General does have statutory authority to review and be critical of (from a public sector management perspective) certain decisions of Council.** The express language of the *Municipal Act, 2001*, in addition to its history and purpose indicate that a municipal auditor general was intended to have some oversight role as to the financial decisions of Council when undertaken in its stewardship role over municipal resources” [emphasis added].

The Way Forward

In discussion with Mr. Mascarin, the City Solicitor, and the City Clerk, I further worked through what this conclusion would mean to the Office of the Auditor General moving forward. It is my opinion that my role was not meant to perform value judgment decisions. In other words, it was never intended for the Auditor General’s role to insert his/her/their personal opinion or personal values in how Council determines its priorities. It was however intended that the Auditor General role ensure Council hold itself accountable for the stewardship over public funds.

It is my intention to apply this interpretation of the Auditor General By-law **No. 2021.05** moving forward. This would enable the Office of the Auditor General to provide recommendations to Council through the context of an audit.

If you have any questions arising from this memo, please contact my Office directly.

Sincerely,



Nathalie Gougeon, CPA, CA, CIA, CRMA, B.Comm.
Auditor General

Attach.

Attachment 1 – Legal Opinion Letter – November 26, 2021

Attachment 2 – Auditor General By-Law No.2021-5

¹ Definition of superfluous - unnecessary, especially through being more than enough.