

Options for Changes to the Sanction Hearing Process

Option 1: Status Quo

The decision on a code of conduct breach remains with the Integrity Commissioner. The Commissioner continues to make a recommendation on the sanction but the sanction is determined at a hearing with City Council.

Strengths: Simple and Straightforward. No additional resourcing required.

Weaknesses: Since these will be rare hearings, the quasi-judicial nature of the hearings leads to confusion on the part of City Council. This confusion can include the role of City Council, and disagreements about the code of conduct itself.

Other Considerations: While the decision to sanction should be a quasi judicial decision, it will inevitably have a political tone if City Council as a whole is required to make the decision.

Option 2: Integrity Commissioner has final decision on sanction

Delegate the decision on whether to sanction to the Integrity Commissioner with no right of appeal to City Council. This invests the Integrity Commissioner with a higher degree of responsibility and allows no oversight of the decisions in any way except for judicial review.

Strengths: Simple and Straightforward. Removes decision making from sitting members of City Council.

Weaknesses: No direct oversight of decisions of the Integrity Commissioner. More likely to end up in judicial review without some level of oversight.

Other Considerations: This would require the Integrity Commissioner to take on an enhanced role with greater responsibility.

Option 3: Sanction is decided by a Council Committee

Delegate the decision on whether to sanction to a Council Committee (comprised of members of the public appointed by City Council). This removes the sanction

hearing from City Council and provides a Committee of Council with the ability to decide the level of sanction.

Strengths: Allows some level of oversight of the Integrity Commissioner.
Removes decision making from City Council.

Weaknesses: Slight increase to costs since this would be a new tribunal that would require establishment by bylaw, recruitment (TBD), appointment and on-going resourcing.

Other Considerations: This would require the creation of a new Council Committee. It is assumed that this Council Committee will not have members of City Council and will likely be made up of sitting members of other tribunals (like the SDAB and CSLAC - possibly the chair of each committee).

Since this is an Independent body, any concerns relating to the Ethics Advisor appearing as an advocate for a single Councillor are also remedied. The members of the independent body would not see the Ethics Advisor in the advisor role, so there would be no confusion about the dual nature of the roles although there may still be an issue if the complaint is one councillor complaining about a second councillor.

Option 4: Sanction determined by Integrity Commissioner with right of appeal to City Council (or a Council Committee)

Delegate the Initial Decision on the sanction to the Integrity Commissioner with a right of appeal on the sanction only to City Council (or a subcommittee). This is the preferred option over option 2 since it does not change the role of the Integrity Commissioner from the current process. The Integrity Commissioner would essentially have the identical role that they do today for the sanction hearing process.

Strengths: Allows some level of oversight of the Integrity Commissioner.
Removes decision making from City Council if a Subcommittee.

Weaknesses: Slight increase to costs since this would be a new tribunal.

Other Considerations: This would require the creation of a new tribunal. It is assumed that this independent subcommittee will not have members of City

Council and will likely be made up of sitting members of other tribunals (like the SDAB and CSLAC - possibly the chair of each committee).

Since this is an Independent body, the concerns relating to the Ethics Advisor appearing as an advocate for a single Councillor are also remedied to some extent. The members of the independent body would not see the Ethics Advisor in the advisor role, so there would be no confusion about the dual nature of the roles, although there may still be an issue if the complaint is one councillor complaining about a second councillor.

Option 4A: Sanction determined by Integrity Commissioner with right of appeal to City Council (or a Council Committee) and information report to City Council afterwards.

Same as Option 4 but with an information report to City Council (but no ability for City Council to change anything). This may be seen as more transparent, but assuming the decisions on both sanction and investigation are required to be published, seems to be unnecessary and may give an opportunity for political theater by voting down the information report.

Rejected Options:

Have a full right of appeal of both Sanction Decision and Breach Decision to the Council Subcommittee. While this would be ideal, it puts the Integrity Commissioner into a position where they would have to “call evidence” and “defend their decision” on the code violation. This is awkward at the best of times for tribunals and can create allegations of bias. It would be even more awkward given the sensitive nature of some of the material that can be available to the Integrity Commissioner in a sanction investigation.