

December 28th, 2010

To The Honorable Hector Goudreau
Minister of Municipal Affairs
Alberta Government
Phone: (780) 427-3744
Fax: (780) 422-9550

From Larry Heather
2010 Public School Board Candidate
627 – 104th Ave S.W.
Calgary, Alberta T2W 0A4
403 – 629-5433 Cell

Dear Hon. Minister Goudreau,

In regard to the administration of the Local Authorities Election Act I have a question of serious importance. My investigation of the chain of events on the day of the swearing in of Calgary City Council on October 25th, 2010 may reveal that the legitimacy of the swearing in of Mayor Designate Naheed Nenshi and the City Council Aldermen may be in question.

As quoted below, Section 9:1 of the Local Authorities Election Act states that the term of office for any person elected under the Act commences with the beginning of the organizational meeting of the elected authority (i.e. Calgary City Council) following the general election, to immediately before the beginning of the organizational meeting of the elected authority after the next general election.

There are several problems with the way events transpired on October 25th, 2010 with the swearing in ceremony of the Calgary City Council.

1. First of all, the meeting conducted in the evening of October 25th, 2010 in Calgary City Hall was not opened or closed in a manner which indicates that it is even part one of a two-part organizational meeting, which seems to have been held the following day, Tuesday October 26th, 2010. The ceremony to invest power in the Mayor Designate and Aldermen is clearly premature to the requirement laid down by the Act.

2. Secondly, as detailed below, there were two Oaths of Office administered to Mayor Designate Naheed Nenshi on that same day of October 25th, 2010. The evening Oath of Office administered by the Mayor Designate's sister must be investigated as to its validity. A query to the Commissioners For Oaths office is now I am informed, under the examination of the Government legal advisors. (See attachment for copies of the two Oaths.) According to my questions to the Commissioners For Oaths Office, Shaheen Nenshi Nathoo was not at the time of signing, on the register of appointed Commissioners. Nor does she to my knowledge hold ex-officio status as a Commissioner.

3. Thirdly, the other Oath of Office swearing in Mayor Designate Nenshi seemed to have taken place privately with the City Clerk earlier in the day of October 25th, 2010. To my knowledge it was done around ten-thirty in the morning, but this must be verified by those in attendance. This earlier swearing in, albeit by a valid Commissioner For Oaths, is premature to any organizational meeting, be it the evening swearing in ceremony, or the real organizational meeting on Tuesday the twenty-sixth. If both Oaths of Office are found to be invalid, then the Mayor Designate's swearing in of the fourteen Aldermen is also in question. A mayor's ex-officio status as a Commissioner is

dependent on person actually being legally sworn into the office under the terms required by the Act.

The implications of this is importance when for about ten weeks, the conduct of City business seems to have rested on shaky ground if questioned by those who wish to challenge any decisions taken. I would suggest another *valid* swearing in ceremony may need to be enacted and an enabling motion to validate the Council's business decisions up to the current date. An *improper swearing in* of City Council officials may in fact make them *not* legally responsible for the decisions they have made since that time or in the future.

The requirements of the Act regarding Term of Office seem to be intended to avoid certain conflicts and perceptions:

a. That the investing of power in elected officials not be a private transfer of power closed off from public scrutiny.

b. That the authority of the retiring Mayor or Council and the newly elected Council, not be subjected to overlapping times of dual authority. Even though officials in your ministry indicate that no official business was conducted by either the past Mayor or Mayor Designate until the organizational meeting, the course of events as they transpired certainly open up the possibility of such a possible conflict in authority. The swearing in of the fourteen Alderman is in fact an Act of Official Business by the Mayor.

c. That in tandem with the Oaths of Office Act, and the Commissioner For Oaths Act, the signing of the Oath be done by one who is empowered by the Province of Alberta to witness and sign such an Oath.

Further to these concerns, are the optics of one receiving an investiture of power from a private family member. or from a person who holds no public authority in the jurisdiction concerned. (Just a Commissioner of Oaths for such an office of high responsibility seems to fall short of the scrutiny needed.) This type of family witness in our democratic culture is not permitted for many documents, including that of a reference for a passport.

Revision of the Oaths of Office Act should be considered to specify that the signature be required from one who holds current authority, and who is not in a position of possible conflict of interest. (i.e. Judge, City Commissioner, etc.) After all, the Mayor is to represent the concerns of over one million Calgarians and such procedures as the transfer of power need to be fully transparent. It would seem that the Office of Commissioner For Oaths is not a sufficiently prominent position for the swearing in of such vital elected officials.

Term of office Local Authorities Election Act – September 10th, 2010
9(1) A person elected under this Act, unless otherwise disqualified from remaining in office, holds office from the beginning of the organizational meeting of the elected authority following the general election to immediately before the beginning of the organizational meeting of the elected authority after the next general election.

Below is the Supplemental Information also sent to the Commissioner For Oaths office in support of the above investigation.

Dec. 13th, 2010

Mary Clark

Registration of Commissioners For Oaths

Dear Mary,

It has come to my attention that the Oath of Office for the Mayor of Calgary, Naheed Nenshi, who was supposed to be sworn in at the City Council Meeting of the evening of October 25th, 2010 was signed by his sister, Shaheen Nenshi Nathoo. According to my investigation with the office of Commissioners For Oaths, Shaheen is not on the list of appointed Commissioners for Oaths in the province of Alberta. To my knowledge she does not hold ex-officio status to qualify as a signer.

Neither is her signature in conformity to the format proscribed by the Act in requiring an expiry date to be recorded along with a printed stamped name if she is indeed qualified to sign such a document.

Attached is the copy of the Oath of Office for Mayor, along with another one signed the same day by the City Clerk, Diana Garner, who is registered as a Commissioner, but with a slight discrepancy in that the official list seems to have her down as Diane, not Diana. From what I understand, this was signed earlier in the day apart from the meeting in public later on.

I have written up along with the copies of the two documents a few questions that in my mind should be asked. City staff referred to the evening document as 'Ceremonial', and the one signed in the day as 'Official.'

What is the propriety of having two Oaths of Office registered for the same position? Apparently, City Staff and the Mayor Designate Naheed Nenshi realized the document signed by his sister would not be sufficient to satisfy the legal requirements as set out by the Province.

I have registered a separate complaint to investigate whether Shaheen Nenshi Nathoo is in violation of the Act by her signature to such a document. And whether the City of Calgary Administration was in full knowledge of the implications of having two Oaths signed and for what rationale was this allowed.

I await your response with interest.

Yours Truly,

Larry Heather

Calgary



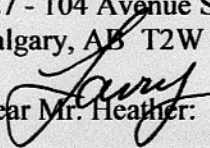
ALBERTA
MUNICIPAL AFFAIRS

*Office of the Minister
MLA, Dunvegan - Central Peace*

AR49688

January 17, 2011

Mr. Larry Heather
627 - 104 Avenue SW
Calgary, AB T2W 0A4


Dear Mr. Heather:

Thank you for your letter of December 28, 2010, regarding your concerns over the oath of office ceremony held for the newly elected council for the City of Calgary.


As Minister of Municipal Affairs, it is not my role to intervene in local matters such as the oath of office ceremony for newly elected officials. The *Local Authorities Election Act (LAEA)* broadly defines the term of office in section 9; it is not prescriptive with respect to the proceedings of this ceremony. While Municipal Affairs provides advice regarding the application of the *LAEA*, the determination of whether a municipality has followed the proper process must be made by a court of law.

The *Oaths of Office Act* and the *Commissioner for Oaths Act* fall under the mandate of Alberta Justice and Attorney General. Therefore, I would suggest you contact that ministry for any further clarification you require at:

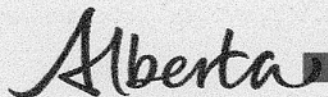
Alberta Justice and Attorney General
3 Floor Bowker Building
9833 - 109 Street
Edmonton, Alberta T5K 2E8
Phone: 780-427-2745

Thank you again for writing.

Sincerely,



Hector Goudreau
Minister of Municipal Affairs
MLA, Dunvegan-Central Peace



104 Legislature Building, Edmonton, Alberta T5K 2B6 Canada Telephone 780-427-3744 Fax 780-422-9550

P.O. Box 1054, 035- 1 Avenue SW, Falher, Alberta T0H 1M0 Canada Telephone 780-837-3846 Fax 780-837-3849
Toll Free From All Areas 1-866-835-4988

January 20, 2011

Larry Heather
627 – 104th Avenue S.W.
Calgary, Alberta
T2W 0A4

Dear Mr. Heather:

Further to your letter that we received on December 12, 2010, we have now completed our investigation into the swearing of the Oath of Office for the Mayor of Calgary.

We can confirm that the Mayor was sworn in officially before a valid Commissioner for Oaths prior to the ceremonial swearing in. In this regard, we have confirmed the identity of the City Clerk and the validity of the Oath of Office document. Since the signature is that of the City Clerk, the different spelling of the printed name does not invalidate the document.

We have also confirmed that Shaheen Nenshi Nathoo is not a Commissioner for Oaths. We are confident however that she did not intend to breach the law, in light of the general understanding that this was purely a ceremonial occasion in keeping with tradition of the City of Calgary.

With regard to the remainder of your questions, we would suggest you contact the appropriate City of Calgary officials.

Thank you for bringing this to our attention.

Yours truly,



Mary E. Clark
Registrar
Official Documents & Appointments

February 18th, 2011
 To The Honorable Hector Goudreau
 Minister of Municipal Affairs
 Alberta Government
 Phone: (780) 427-3744
 Fax: (780) 422-9550

Faxed 1 of 7 pages
 Date Correction to 2011

From Larry Heather
 2010 Public School Board Candidate
 627 – 104th Ave S.W.
 Calgary, Alberta T2W 0A4
 403 – 629-5433 Cell

Dear Hon. Minister Goudreau,

Thank you for your letter of response on January 17th, 2011 regarding my concerns as to the proper procedure of the Swearing In Ceremony of Calgary City Council on October 25th, 2010.

It is hardly conceivable that as Minister in charge of the administration of the Local Authorities Election Act, that you would wait for private action in the Courts to prompt you to take action. The issue of whether the Council over Alberta's largest city of over one million citizens is conducting its affairs under lawful authority.

For seventeen weeks the Clerk's office of Calgary Council has been operating on the assumption that fundamental legal, Act defined requirements in relation to the Mayor's installation in office, can be moved around and subjugated to a local ceremonial tradition of having a prominent citizen swear in the Mayor. As you will see by the attached response of Mary Clark from the Registrar's office, Shaheen Nenshi Nathoo is not a Commissioner for Oaths. I have made appeal of the decision for inaction on this unauthorized signing to the Minister taking responsibility from MLA and Leadership Candidate Alison Redford.

If the Council has not been duly installed according to the Act, none of the actions they have taken since have true legal force, as the Aldermen's swearing in depended on the validity of the Mayor's installation. Moreover, it is questionable whether any of them are legally responsible for what they have done in the name of their position since that time. As I repeat section 9:1 below I would like to follow with some observations.

Term of office Local Authorities Election Act – September 10th, 2010

9(1) A person elected under this Act, unless otherwise disqualified from remaining in office, holds office from the beginning of the organizational meeting of the elected authority following the general election to immediately before the beginning of the organizational meeting of the elected authority after the next general election.

I do not wish to convey that the Act is prescriptive to the actual format of the Swearing In Ceremony, but one must assume an illegal signing of an Oath of Office would not be covered under local discretion. Furthermore, the Act is definitely prescriptive that the powers of Council and Mayor *must be* transferred in the first organizational meeting and not before. There is not to be two Councils or two Mayors in charge of a municipality at one time. Any such overlap is *also* prescribed under the Act.

It can be safe to assume that if fundamentals like the installation into office are taken lightly, other aspects of legislated duties are more likely to be taken lightly. The cable broadcast of the Ceremony did not clearly reveal to me that the swearing in was part of the organizational meeting. However, minutes of the meeting of October 25th, Organizational Meeting Part One obtained recently do contain the statement, "Ms. Nenshi Nathoo administered the Oath of Office to Mayor-Elect Naheed Nenshi."

This is a knowing misrepresentation of the facts and no statement in the minutes reveals the City Clerk's morning swearing in that took place in private, outside the purview of the public. This too violates the Act in that the powers of the Council and Mayor are to be transferred within the *public* organizational meeting.

I trust this information will encourage you to investigate the facts again. And I encourage your office to take the initiative of administering the Act in its fullness. This issue is not my private dispute with the City over a private grievance. This issue involves the concerns of all Calgarians and the transactions that are conducted in their behalf by the Council. And Calgarians are dependent on the Ministry to conduct proper oversight into the powers granted under your authority.

I await your response with interest.

Yours Truly,

Larry Heather
Calgary

THE CORPORATION OF THE CITY OF CALGARY

**LEGISLATIVE RECORDS ASSISTANT
CORPORATE RECORDS**

**CITY CLERK'S
#8007**

HAND DELIVER

AGENDA

**RE: ORGANIZATIONAL MEETING OF COUNCIL AND OTHER
RELATED BUSINESS**

**DATE: MONDAY, 2010 OCTOBER 25th AND
TUESDAY, 2010 OCTOBER 26th**

**TIME: MONDAY, 2010 OCTOBER 25th – 7:00 P.M.
TUESDAY, 2010 OCTOBER 26th – 9:30 A.M.**

PLACE: COUNCIL CHAMBER, MUNICIPAL BUILDING

**DIANA L. GARNER
CITY CLERK**



MINUTES OF THE ORGANIZATIONAL MEETING OF CALGARY CITY COUNCIL AND OTHER RELATED BUSINESS

Commencing on Monday, 2010 October 25 at 7:00 p.m.

PRESENT:

Mayor N. Nenshi
Alderman G-C. Carra
Alderman A. Chabot
Alderman D. Colley-Urquhart
Alderman P. Demong
Alderman D. Farrell
Alderman D. Hodges
Alderman R. Jones
Alderman S. Keating
Alderman G. Lowe
Alderman G. MacLeod
Alderman J. Mar
Alderman B. Pincott
Alderman R. Pootmans
Alderman J. Stevenson

ALSO IN ATTENDANCE:

City Manager O. Tobert
City Solicitor P. Tolley
City Clerk D. Garner

This meeting was conducted in accordance with the Procedure Bylaw 44M2006, as amended.

The City Clerk called the meeting to order.

PRAYERS – INTERFAITH REPRESENTATIVES

The following interfaith representatives offered prayers at today's meeting:

1. Mr. Wayne Stewart
2. Rabbi Howard Voss-Altman
3. Mohamud Zavert

OATHS OF OFFICE

Ms. Nenshi Nathoo addressed Members of Council Elect and members of the gallery.

Ms. Nenshi Nathoo administered the Oath of Office to Mayor-Elect Naheed Nenshi.

Mayor Nenshi administered the Oaths of Office to the following:

- Ward 1 Dale Hodges
- Ward 2 Gordon Lowe
- Ward 3 Jim Stevenson
- Ward 4 Gael MacLeod
- Ward 5 Ray Jones
- Ward 6 Richard Pootmans
- Ward 7 Druh Farrell
- Ward 8 John Mar
- Ward 9 Gian-Carlo Carra
- Ward 10 Andre Chabot
- Ward 11 Brian Pincott
- Ward 12 Shane Keating
- Ward 13 Diane Colley-Urquhart
- Ward 14 Peter Demong

Mayor Nenshi took the Chair at 7:30 p.m. and the City Clerk assumed her regular seat in the Chamber.

Mayor Nenshi addressed Members of Council and members of the gallery.

RECESS

Moved by Alderman Hodges, Seconded by Alderman Jones, that Council now recess at 7:32 p.m., to reconvene in the Council Chamber on Tuesday, 2010 October 26 at 9:30 a.m. to continue with the 2010 Organizational Meeting of Council.

CARRIED

Council reconvened in the Chamber at 9:30 a.m., on Tuesday, 2010 October 26, with Mayor Nenshi in the Chair.



ALBERTA
MUNICIPAL AFFAIRS

Office of the Minister
MLA, Dunvegan - Central Peace

AR50209

March 24, 2011

Mr. Larry Heather
627 - 104 Avenue SW
Calgary, AB T2W 0A4

Dear Mr. Heather:

Thank you for your letter of February 18, 2011 regarding your concerns over the oath of office ceremony held for the newly elected council for the City of Calgary.

Municipal elections were held in October 2010, at which time this council was elected by the majority of those who chose to exercise their democratic right to vote. As Minister of Municipal Affairs, it is my role to review the legislation for municipalities, bring forward amendments to that legislation as needed and advise on that legislation.

It is the courts who have the authority to determine whether a municipality has followed the proper processes. In addition, section 540(e) of the *Municipal Government Act* (MGA) provides that no bylaw, resolution or proceeding of a council or proceeding of a council committee may be challenged on the ground that a councillor did not take the oath of office. Therefore, any ruling on whether the oath of office was administered properly would not have any impact on the validity of any city council proceedings.

As mentioned to you in my previous letter, the *Oaths of Office Act* and the *Commissioners for Oaths Act* fall under the mandate of Alberta Justice and Attorney General. I would suggest you contact that ministry for further clarification, toll-free at 310-0000, then 780-427-5981.

I encourage you to work with this council. It would be inappropriate for me to intervene in the operations of a municipality, unless an inspection has been conducted that has found the municipality has been managed in an irregular, improper, or improvident manner, or directives have been issued by Ministerial Order, and those subsequent directives have not been followed. Conducting an inspection is an extraordinary measure, and I do not undertake the decision to do so lightly.

Alberta

.../2

104 Legislature Building, Edmonton, Alberta T5K 2B6 Canada Telephone 780-427-3744 Fax 780-422-9550

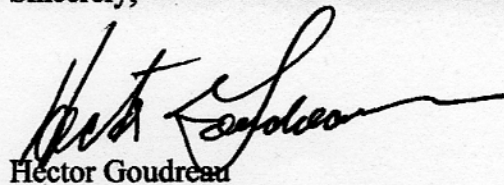
P.O. Box 1054, 035- 1 Avenue SW, Falher, Alberta T0H 1M0 Canada Telephone 780-837-3846 Fax 780-837-3849
Toll Free From All Areas 1-866-835-4988

Mr. Larry Heather
Page 2

However, as Minister of Municipal Affairs, I may conduct an inquiry into the operations of a municipality or actions of council, if a sufficient petition is received. For a petition to be sufficient, it must be signed by electors making up 20 per cent of the population of the municipality asking for an inquiry. To find petitioning information for electors online, please visit municipalaffairs.alberta.ca, choose the Municipalities and Communities tab, then select Services for Municipalities – Publications.

Thank you again for writing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hector Goudreau', with a long horizontal flourish extending to the right.

Héctor Goudreau
Minister of Municipal Affairs
MLA, Dunvegan-Central Peace

Alberta Municipal Government Act Nov. 24th, 2010

Effect of councillor being disqualified

540 No bylaw, resolution or proceeding of a council and no resolution or proceeding of a council committee may be challenged on the ground that

(a) a person sitting or voting as a councillor

(i) is not qualified to be on council,

(ii) was not qualified when the person was elected, or

(iii) after the election, ceased to be qualified, or became disqualified,

(b) the election of one or more councillors is invalid,

(c) a councillor has resigned because of disqualification,

(d) a person has been declared disqualified from being a councillor,

(e) a councillor did not take the oath of office,

(f) a person sitting or voting as a member of a council committee

(i) is not qualified to be on the committee,

(ii) was not qualified when the person was appointed, or

RSA 2000

Section 541 Chapter M-26

MUNICIPAL GOVERNMENT ACT

289

(iii) after being appointed, ceased to be qualified, or became disqualified,

or

(g) there was a defect in the appointment of a councillor or other person to a council committee.

1994 cM-26.1 s540