

# **2018 Annual Report of the Integrity Commissioner**

# Commissioner's Remarks

I am pleased to present City Council with my 2018 Annual Report.

This marks my sixth annual report to City Council as Integrity Commissioner, Lobbyist Registrar and Meetings Investigator for the City of Ottawa. This report will focus on the activities of my Office for the period of October 1, 2017 to September 30, 2018 and will provide context for my recommendations with respect to the updates to Council's Accountability Framework, most notably the addition of a code of conduct for local boards.

When the final pieces of Council's Accountability Framework were implemented in 2013, it was recognized that the individual elements were intended to be part of a living ethical framework that would be reviewed and renewed on a regular basis as part of the regular governance reviews. Ottawa City Council has been a leader in the province over the years, proactively implementing several of the discretionary accountability and transparency measures set out in the *Municipal Act, 2001*.

Over the course of five years, municipal accountability and transparency has been at the forefront of discussions regarding legislative reforms and is now set to begin a new chapter, province wide. During the past Term of Council, several Ontario municipalities have dealt with many code of conduct investigations and reports dealing with a wide range of ethical breaches and scandals. Along the way, the Province has made significant changes to the legislative framework. In 2016, Bill 8 broadened the mandate of the Ontario Ombudsman to include oversight over municipalities, including the authority to review complaints from those dissatisfied with decisions made by locally-appointed integrity commissioners. More recently, under Bill 68, the previously discretionary authority to adopt codes of conduct and appoint an integrity commissioner will now be mandatory for all Ontario municipalities and the role of the municipal integrity commissioner has been expanded. Specifically, integrity commissioners will now have the legislated responsibility of providing advice and education to Members of Council, members of local boards, municipal staff and the public and will oversee a new process for *Municipal Conflict of Interest Act* complaints.

My primary focus this past year was the implementation of Bill 68, specifically the development of a code of conduct for members of local boards and updates to Council's existing Accountability Framework. This work will continue into 2019 as Bill 68 amendments come into effect on March 1, 2019. I also continue to collaborate with my

colleagues across the Province on addressing issues and/or challenges related to the implementation of the new provisions.

In 2018, I conducted my first investigation as the City's Meetings Investigator since I assumed the role in 2012. My investigation respecting the meeting practices of the Budget Review Board found no violations of the open meetings rules. Even so, I felt it was prudent to file a report with City Council to both clarify my jurisdiction as Meetings Investigator and draw attention to the evolution of the open meeting rules as set out in the *Municipal Act, 2001*.

In my capacity as Integrity Commissioner, my work mostly centered around providing Members of Council with guidance regarding their obligations under the Code of Conduct for Members of Council, and its associated policies, in the context of a municipal election. The demand for intervention or complaint resolution continued this past year. In addition to complaints submitted through the informal and formal processes outlined in the Complaint Protocol for Council Code of Conduct, my Office received several inquiries from individuals expressing a grievance that was either outside my jurisdiction or not in accordance with the established complaint processes. In each case, individuals are provided with information on the appropriate complaint mechanism for their grievance or the necessary steps for addressing the complaint under the informal or formal complaint process.

As Lobbyist Registrar, I continue to take progressive steps towards bolstering education and enforcement of the *Lobbyist Registry By-law* through measures such as Letters of Direction and targeted interventions. I am careful not to unduly interfere in the normal activities of municipal political activity, but continue to promote the principle of transparency upon which the Lobbyist Registry was founded. In the coming year, I intend to continue my ongoing education mandate as Lobbyist Registrar, in particular for new Members of Council and their staff, as well as leveraging new tools to monitor compliance with the *Lobbyist Registry By-law*.

I would be remiss if I did not acknowledge the highly efficient and professional administrative support provided to my Office by the City Clerk and Solicitor's Department. Despite an increased workload in an election year, the staff's commitment to fulfilling the demands of the Accountability Framework was and continues to be exemplary.

Looking to the year ahead, education will be a key priority in all aspects of my work. In addition to preparing for the implementation of the new elements of Council's

Accountability Framework in the coming year, I look forward to meeting with the new Members of the City of Ottawa's 2018-2022 Council, as well as continuing to support those returning Members in their renewed mandate.

Respectfully submitted,

Robert Marleau C.M.  
Integrity Commissioner, City of Ottawa

# Integrity Commissioner

## MANDATE

The statutory role of the Integrity Commissioner is set out in Section 223.3 of the *Municipal Act, 2001*:

### **Integrity Commissioner**

223.3(1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to,

- a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;
- b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them; or
- c) both of clauses (a) and (b).

As of March 1, 2019, my statutory role as Integrity Commissioner is expanding. Section 223.3 of the *Municipal Act, 2001* will be amended as follows:

### **Integrity Commissioner**

223.3(1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to any or all of the following:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards.
2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards.
3. The application of sections 5, 5.1 and 5.2 of the Municipal Conflict of Interest Act to members of council and of local boards.

4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
6. Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.
7. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of council and members of local boards and about the *Municipal Conflict of Interest Act*.

As Integrity Commissioner, I have the powers of inquiry and delegation as well as a duty of confidentiality and reporting requirements as follows:

- I report directly to Council on matters related to the Code of Conduct and other policies, rules or procedures related to ethics for Council, the Transit Commission and the Built Heritage Sub-Committee;
- As of March 1, 2019, I will also report to Council on matters related to the code of conduct for local boards, including adjudicative boards;
- I, and all those acting under my instruction, must preserve secrecy with respect to all matters that come to my attention;
- I have the power to undertake investigation into complaints alleging contraventions of the applicable code of conduct while respecting confidentiality; and
- My reports are public and I am permitted to disclose necessary information related to the findings while maintaining confidentiality. I can make recommendations to City Council relating to Code of Conduct breaches, but only Council can sanction one of its Members.

Council also has the authority to assign additional powers and duties to the Integrity Commissioner.

## **OVERVIEW**

In December 2010, City Council endorsed the development of an Accountability Framework for Members of Council. The portions of the Accountability Framework that fall within my mandate as Integrity Commissioner include the Code of Conduct for Members of Council and its related policies (the Council Expense Policy and the Community, Fundraising and Special Events Policy), all of which came into effect on July 1, 2013. I also have oversight over the Code of Conduct for Citizen Members of the Built Heritage Sub-Committee.

In addition to the legislated role of an Integrity Commissioner as set out in Section 223.3 of the *Municipal Act, 2001*, Council assigned both an advisory and education function to the position when it was first established in July 2012. I believe these are important functions of the Office and I am encouraged to see them incorporated into the expanded legal mandate of all municipal integrity commissioners in Ontario as of March 1, 2019.

My workload as Integrity Commissioner during the 2018 reporting cycle (October 1, 2017 to September 30, 2018) was higher than in the past few years. This is largely due to consultation with Members of Council and local boards and work related to the development of a code of conduct for members of local boards. As was the case with the implementation of the Code of Conduct for Members of Council, I expect the volume of work to stabilize after an initial period of education and adjustment. However, I note a growing awareness and interest in the Accountability Framework in the general public and Council should not be surprised if citizen engagement increases significantly in the future.

## **COMPLAINT INVESTIGATION AND ADJUDICATION**

Anyone who identifies or witnesses behaviour or an activity that they believe to be in violation of a Code of Conduct may pursue the matter either through the informal or formal complaint procedures. All complaints received are handled in accordance with the Complaint Protocol. There is no fee charged for making a complaint.

During the 2017-2018 reporting period, my Office received two formal complaints and three informal complaints which fell within my jurisdiction as Integrity Commissioner. I also continued work on two informal complaints that remained open at the end of the 2017 Annual Report reporting period.

This year was a municipal election year in the City of Ottawa. It is important to note that the Complaint Protocol includes specific parameters around complaints and

investigative reports in a municipal election year. Sections 8 and 12 address these restrictions, as follows:

### **No Complaint Prior to Municipal Election**

8. Notwithstanding any other provision of this Protocol, no complaint may be referred to the Integrity Commissioner, or forwarded by the Clerk for review and/or investigation after the last meeting of Council in July, in any year in which a regular municipal election will be held.

### **No Reports Prior to Municipal Election**

12. Notwithstanding Section 8 or any other provision of this Protocol, the Integrity Commissioner shall not make any report to Council or to any other person after the last City Council meeting of June in any year in which a regular municipal election is to be held, until the first official meeting of Council following the election.

In addition to complaints received through the informal or formal complaint process, my Office also received a number of inquiries that were either related to matters outside of my jurisdiction or did not follow the established complaint processes. In many cases, these complaints were related to matters concerning City Staff or City services. Where possible, complainants are provided with an appropriate contact for their grievance.

### **Formal Complaints**

As required by the Complaint Protocol, formal complaints are submitted on the appropriate form, with a signed affidavit, to the City Clerk and Solicitor and must include information to support the allegation(s) made against a Member including dates, locations, other persons present and all other relevant information.

My Office conducts an intake analysis of each formal complaint to determine whether the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct for Members of Council and not covered by other legislation or other Council policies. I also consider whether the complaint is frivolous, vexatious or not made in good faith, or whether there are sufficient grounds for an investigation.

The first formal complaint received during this reporting cycle began as an informal complaint, as will be discussed below, and concerned the involvement of a Member of Council in a matter before Council. The formal complaint specifically alleged the Member had contravened Sections I (General Integrity) and Section V (Improper Use of



Influence). The formal complaint also alleged breaches of other Council policies and legislation outside of my jurisdiction.

After conducting a thorough intake analysis, I concluded that the supporting documentation did not establish a prima facie breach of the Code of Conduct for Members of Council and there were not sufficient grounds to pursue an investigation. I issued a response to the complainant advising them of my conclusion and suggested if the complainant had additional supporting information (as had been indicated in the formal complaint), I would be open to conducting a second intake analysis of the formal complaint.

Shortly thereafter, the complainant contacted my Office with supplementary information and documentation. The complainant disputed some of my determinations following the initial intake analysis and made new arguments to support the allegations set out in the formal complaint. I conducted a second intake analysis and continued to take the position there were insufficient grounds for an investigation into the matter. The complainant was advised accordingly and the matter was closed.

At the end of the 2018 reporting cycle, the second formal complaint, filed before the blackout period, remains open.

### **Informal Complaints**

Informal complaints are generally initiated by email or telephone and are addressed at a high level without a formal investigation. As a first step, my Office tries to separate general grievances from those complaints which qualify for some intervention on my part.

From October 1, 2017 to September 30, 2018, I received three informal complaints about matters within my jurisdiction as Integrity Commissioner and continued work on two informal complaints that remained open at the end of the 2017 Annual Report reporting period:

1. Representatives of a community association contacted my Office regarding a breakdown in their relationship with a Member of Council and sought assistance through the informal complaint procedure. Both parties agreed to mediation and fully co-operated in the process. Though full agreement was not reached on all issues, communication was re-established to the point where the Member and the representatives of the community association could continue working together productively.

2. A member of the public contacted my Office regarding a range of issues, many of which were outside my jurisdiction. However, one of the grievances alleged a Member of Council and their staff had not been responsive to numerous phone calls and emails from the complainant. The member of the public opted to pursue the informal complaint procedure. I met with the Member of Council who advised, and demonstrated to my satisfaction, that the complainant had been disrespectful and abusive in their interactions with the Member and their staff, with the exception of one staff member. In an effort to ensure a workplace that was free from harassment and abuse, the Member had assured staff they were not required to take calls from the complainant.

After meeting with both the Member and the complainant, I was of the opinion that mediation would not be a viable option. However, the Member did formally respond to the complainant, addressed the complainant's behaviour that had led to restricted access to the office, clarified that many of the issues the complainant raised were not within the Member's jurisdiction to address and advised the complainant that they could reach out directly to the Member regarding any other matters in the future. Consequently, I advised the complainant that I considered the matter resolved and closed.

3. A member of the public initiated an informal complaint against a Member of Council who they perceived to have a conflict of interest in a matter before Council. The complainant formally advised the Member of Council. The Member acknowledged the informal complaint and advised that they believed their conduct was in keeping with their responsibilities and statutory obligations. In light of the complainant's stated position that the Member cease to participate in the matter and refrain from voting, I did not believe mediation was a viable option to reach a resolution to the complainant's satisfaction. I advised the complainant of their option to submit a formal complaint and identify the specific sections of the Code of Conduct for Members of Council the Member was alleged to have breached. The complainant opted to submit a formal complaint, as noted above.
4. A Member of Council initiated an informal complaint against another Member of Council. Following consultation with myself, the complainant formally advised the respondent of the informal complaint and outlined the behaviours perceived to be in contravention of the Code of Conduct for Members of Council. Mediation was not required as the two Members were able to reach an understanding without an intervention on my part.

5. A member of the public reached out to my Office to discuss their grievances respecting the actions of a Member of Council and to seek information on the appropriate way forward. I provided information related to the informal and the formal complaint procedures under the Complaint Protocol. The complainant opted to pursue the informal complaint procedure and formally advised the Member of Council. The Member acknowledged the informal complaint and responded to allegations raised by the complainant. As the parties did not mutually agree on mediation, the complainant chose to pursue the matter through the formal complaint procedure.

At the end of the 2018 reporting cycle, there were no open informal complaints.

## **INQUIRIES AND ADVICE**

Providing written advice and interpretations to inquiries from Members of Council and their staff is a core function of the Integrity Commissioner mandate and will soon form part of the statutory role of the Office.

As described in my 2017 Annual Report, Bill 68 established new rules around advice provided by integrity commissioners:

- **All requests for advice and advice provided shall be in writing** – Under the new subsection 223.3 (2.1) of the *Municipal Act, 2001*, all requests for advice shall be made in writing. Presently, requests for advice are received by way of email, telephone call, or in-person meeting. Accordingly, in future, all official advice provided must also be made in writing. In order to uphold a standard of timely advice while meeting my obligation with respect to this new requirement, urgent requests that are received through a telephone call or in-person meeting will be promptly documented by the Integrity Commissioner to [integrity@ottawa.ca](mailto:integrity@ottawa.ca) and copied to the Member. I encourage Members and their staff to continue contacting me informally as the needs arise.
- **Release of advice by Member and/or the Integrity Commissioner** – An Integrity Commissioner will now have authority to release confidential advice with the written permission of the Member. Further, where a Member elects to release part of the advice provided by the Integrity Commissioner, the Integrity Commissioner may release part or all of the advice without the Member's consent. The premise of this new provision is that it is in the public interest for the Integrity Commissioner to fully inform the public. As I firmly believe in respecting the confidentiality of my advice to Members of Council, it is my intent to carefully consider the use of my authority

under this section. In turn, Members of Council should be cautious in their own disclosures and consult with my Office before doing so.

### **Sample of Inquiries**

The following are samples of inquiries I have received and the interpretation or advice that has been provided. The anonymized summaries have been provided in an effort to ensure the Code is applied consistently and to assist Members with applying the Code to real life situations.

It is important to note that each inquiry is accompanied by its own specific context and facts. The following anonymized summaries should not be relied upon as rulings nor be considered a substitute for calling or writing my office when in doubt.

The majority of inquiries this year focused on clarifying the acceptance of tickets or attendance at events and providing guidance on the restrictions of the Community, Fundraising and Special Events Policy respecting community events in a municipal election year. As these inquiries are relatively standard, I have summarized the guidelines and restrictions in lieu of sample inquiries:

#### ***Acceptance of Tickets***

Guidelines for the acceptance of tickets as outlined in the Code of Conduct are as follows:

- Tickets/hospitality/benefits may not be accepted from lobbyists or their clients and employees with active lobbying files;
- A limit of two tickets for up to two events from one source in a calendar year is permitted and requires quarterly disclosure in the Gifts Registry; and
- A ticket with an estimated value exceeding \$30 that is not exempted based on the Member's municipal representative role requires disclosure, along with the disposition thereof (e.g. who attended with the Member, or if donated, to whom or what organization).

It is important to note that where a Member is attending an event in an official capacity, tickets may be exempt from disclosure. Each exemption is based on the specific context of the event and the connection to the Member's role as an elected official.

Attendance at some events may well have a political risk and controversy. The final decision to accept tickets to events remains with the Member. My Office cannot offer advice beyond the ethical ramifications of such a decision.

### ***Community, Fundraising and Special Events Policy***

Community events organized by a Member of Council, which is supported by sponsorships and donations, must comply with the Community, Fundraising and Special Events Policy. When consulted, I provide Members with guidance on the requirements of the policy and how to manage specific aspects of the event to meet the terms of the policy. Terms and Conditions are issued to the Member to document the expectations related to the solicitation of sponsorships and donations, documentation of expenses and disbursements and public disclosure at the end of the year. Members are encouraged to share this document with their community partners.

Under the policy, there are specific municipal election year rules. Specifically, Members of Council must not seek donations and sponsorships for any event that has not been staged in the previous two years nor accept donations or stage any new event (supported by donations and sponsorships) after he or she has filed nomination papers for election to any office in the City of Ottawa.

For clarity, an event is considered to have been staged in the previous two years if it meets the following criteria:

- has a very similar, if not the same, event name/title;
- takes place at approximately the same time; and
- has the same general purpose.

### ***Inquiry***

A Member of Council was approached by a business associated with active lobbying files who offered the Member an opportunity to host a community fundraising event at their facility. The Member inquired as to whether collaboration with the business for the purposes of a charitable event created a conflict.

### ***Interpretation***

Under the Code of Conduct for Members of Council, Members are expected to avoid the improper use of influence, as well as apparent and/or real conflicts of interest. The Community, Fundraising and Special Events Policy echoes these principles, requiring

that events supported or organized by Members be carried out in a manner that promotes public confidence.

In the context of this particular situation, the significance of the active lobbying files with which the business was associated meant there was a high risk that an attempt to collaborate with the business to organize a community fundraising event would create a perception of undue influence or a conflict of interest. As such, I strongly advised the Member to refrain from hosting an event in collaboration with the business at that point in time.

### *Inquiry*

A Member of Council sought guidance with respect to what level of involvement was appropriate in a liquor license application process, overseen by the Alcohol and Gaming Commission of Ontario.

### *Interpretation*

In situations regarding established application processes, Members of Council should consider the reasons for their involvement and the extent of that involvement.

Section V (Improper Use of Influence) of the Code of Conduct for Members of Council states as follows:

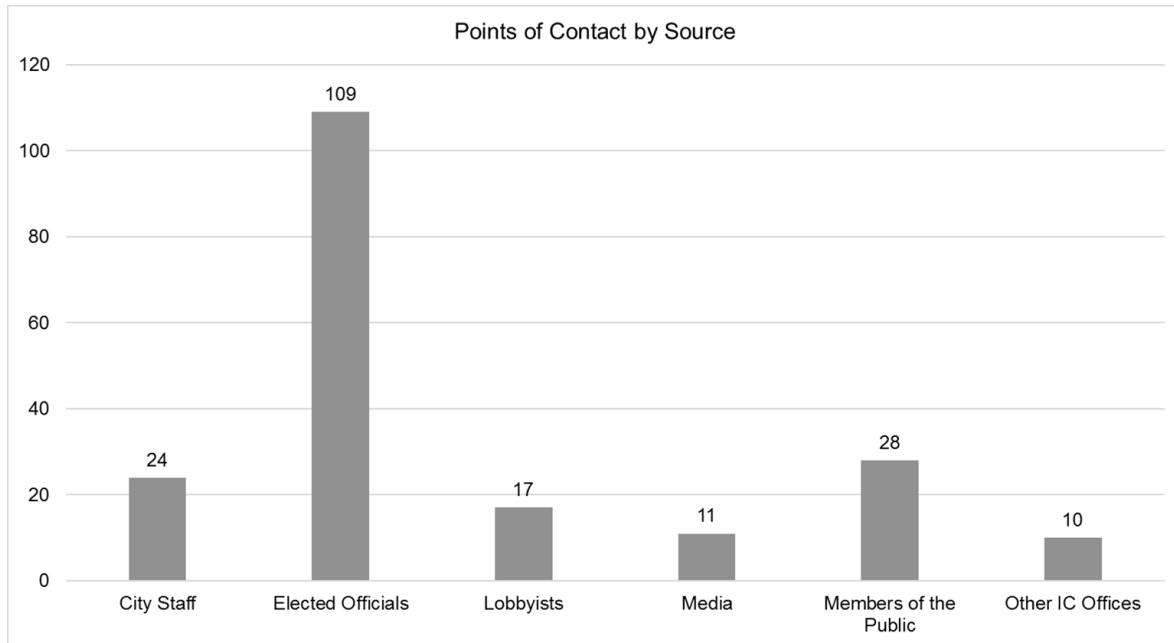
*As an elected official, Members of Council are expected to perform their duties of office with integrity, accountability and transparency. Members of Council should not use the status of their position to influence the decision of another individual to the private advantage of oneself, or one's parents, children or spouse, staff members, friends, or associates, business or otherwise.*

*In the same manner, and as outlined in the Provincial Offences Act – Conflict of Interest Policy, Members of Council shall not attempt to influence or interfere, either directly or indirectly, financially, politically or otherwise with employees, officers or other persons performing duties under the Provincial Offences Act.*

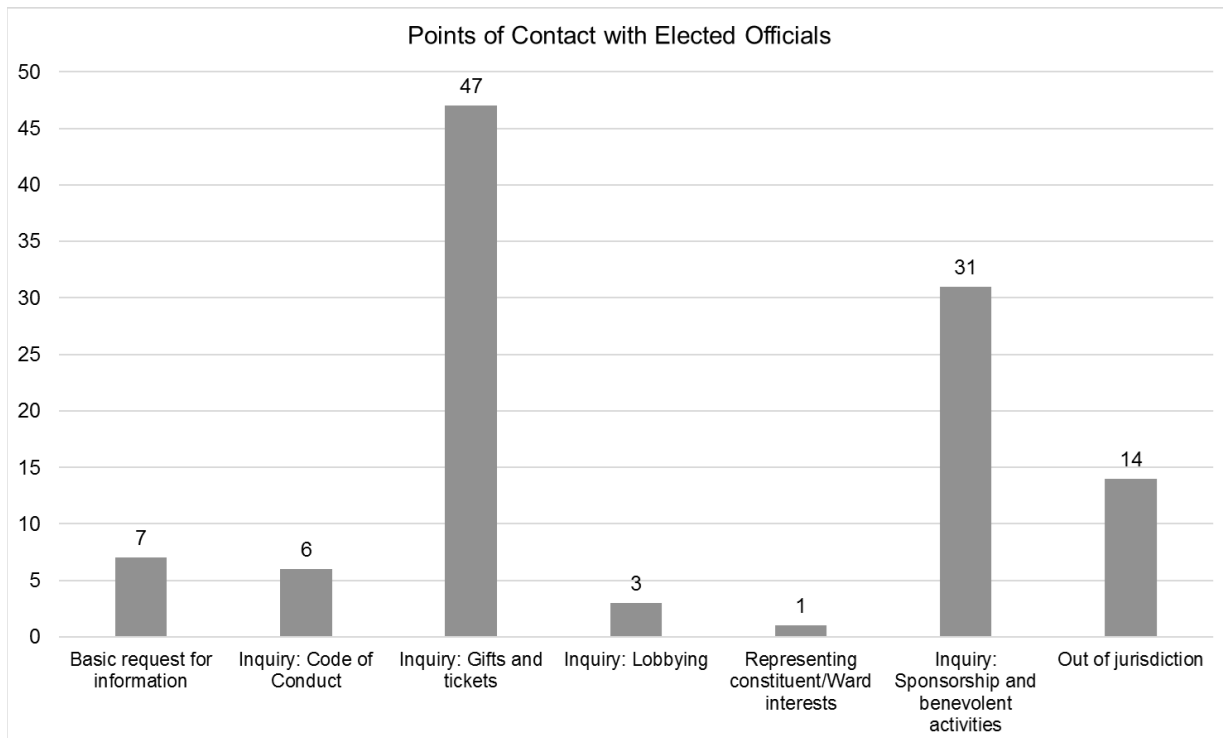
It is my position that where a Member of Council is not intervening to the private advantage of an individual or a specific business, formal participation in this established process is not an abuse of influence and the Code of Conduct does not restrict a Member's ability to participate.

Opposing or supporting the application, in the general interests of the community and within the established processes, would not be considered a breach of the Code of Conduct.

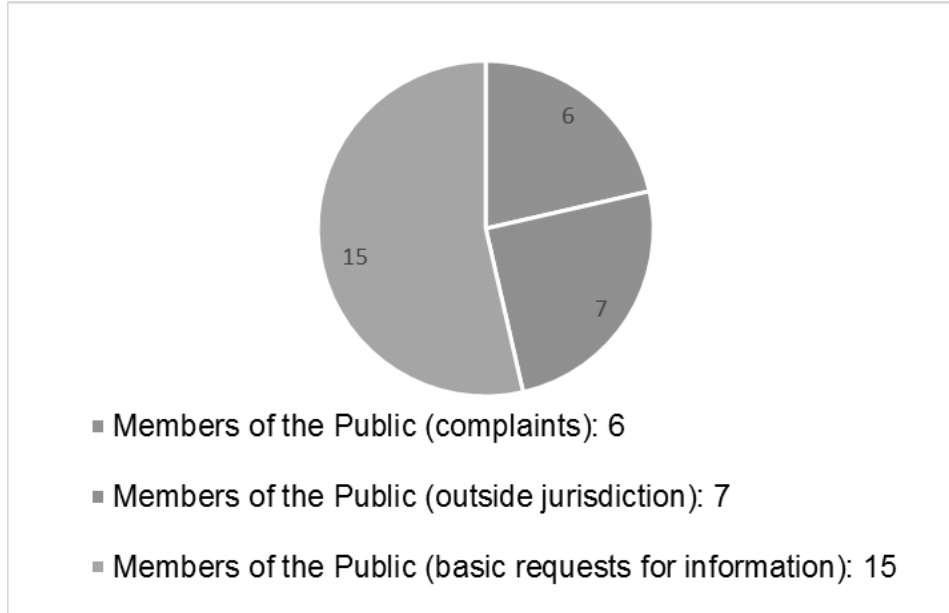
**Figure 1 – Total Points of Contact by Source**



**Figure 2 - Points of Contact from Elected Officials by Type**



**Figure 3 - Breakdown of Points of Contact with Members of the Public**



### **AMENDMENTS TO EXISTING CODES OF CONDUCT AND THE COMPLAINT PROTOCOL**

As of March 1, 2019, Section 223.2 of the *Municipal Act, 2001*, as amended by Bill 68, will require that all Ontario municipalities establish a code of conduct for Members of Council as well as members of local boards. The revised Section 223.2 also provides that the Minister may make regulations prescribing specific subject matters that must be addressed in a code of conduct. In March 2018, the Minister issued Ontario Regulation 55/18 and set out four subject matters that must be included in a code of conduct, as follows:

1. Gifts, benefits and hospitality.
2. Respectful conduct, including conduct toward officers and employees of the municipality or the local board, as the case may be.
3. Confidential information.
4. Use of property of the municipality or of the local board, as the case may be.

The Code of Conduct for Members of Council and its corresponding Complaint Protocol came into effect on July 1, 2013. A distinct code was established for the citizen members of the Built Heritage Sub-Committee as part of the 2014-2018 Governance Review on December 3, 2014. Both Codes of Conduct currently include the four prescribed subject matters. A code of conduct for members of local boards will be discussed in the following section.



The Codes of Conduct are before Council primarily so that they may be approved as by-laws within Council's statutory framework. If approved, the draft by-laws will come into effect on March 1, 2019, in line with the new provisions of the *Municipal Act, 2001*. I am also recommending a few technical and housekeeping amendments, as outlined below.

**Code of Conduct for Members of Council (and citizen members of the Transit Commission) and Code of Conduct for Citizen Members of the Built Heritage Subcommittee**

- **Code of Conduct By-laws** – The existing Codes of Conduct are formatted as draft by-laws for Council approval with the intent that they will form part of Council's statutory framework.

Currently, the Code and Complaint Protocol exist in a report/policy format that is encompassed in a confirmation by-law which, enacted at the end of every meeting of Council, provides that every decision of Council is made by by-law.

By way of background, the 2016 Divisional Court decision in *Di Biase v. Vaughan* emphasized the significance of building a standard of practice with respect to codes of conduct and complaint procedures that provides for the highest standard of procedural fairness. In his application to the Divisional Court, Di Biase's counsel advanced the objection that the City of Vaughan and its Integrity Commissioner had denied Di Biase natural justice and breached procedural fairness by relying on a non-transparent investigation process in relation to a Code of Conduct investigation concerning alleged complaints against the Regional Councillor and Deputy Mayor.

The Court found that the Integrity Commissioner had followed the Complaint Protocol, which, as a by-law, had been codified by Council. As part of the statutory scheme governing the Integrity Commissioner, the Complaint Protocol met the Court's test of natural justice and procedural fairness.

The decision indicated the importance of establishing the Code and Complaint Protocol as by-laws to confirm these items are unquestionably part of the statutory scheme governing the work of the Integrity Commissioner.

- **Updated references to legislation and municipal by-laws and policies** – a few technical amendments are highlighted in the draft by-laws that update references to legislation under which Members of Council have statutory obligations and references to City by-laws or policies that are out-of-date.

- **Unfinished Code of Conduct business from the 2014-2018 Council Re: Committee of Adjustment** – As part of the initial consultations held with Members on the Code of Conduct for Members of Council, I raised the notion of specific rules with respect to appearing before quasi-judicial tribunals such as the Committee of Adjustment. However, no specific recommendation was incorporated into the draft Code of Conduct.

When City Council was considering the draft Code of Conduct for Members of Council in May 2013, concerns about Members' involvement in tribunal and staffing matters was raised. Specifically, a motion was put forward to clarify the obligations of Members of Council in respect of their involvement in matters before quasi-judicial tribunals, as well as Members' involvement in specific staffing and labour relations matters. The motion was deferred for further investigation and staff brought forward additional information to the Finance and Economic Development Committee in the staff report entitled, "Code of Conduct Motion 54/3 – Tribunals and Staffing Matters". The Committee referred the matter back to staff and took no other action on the report. I brought the matter forward again as part of the Governance Review report in December 2014, but ultimately no specific rules have been incorporated in the Code of Conduct for Members of Council.

Notwithstanding the above, Section V (Improper Use of Influence) of the Code of Conduct for Members of Council states as follows:

*As an elected official, Members of Council are expected to perform their duties of office with integrity, accountability and transparency. Members of Council should not use the status of their position to influence the decision of another individual to the private advantage of oneself, or one's parents, children or spouse, staff members, friends, or associates, business or otherwise.*

*In the same manner, and as outlined in the Provincial Offences Act – Conflict of Interest Policy, Members of Council shall not attempt to influence or interfere, either directly or indirectly, financially, politically or otherwise with employees, officers or other persons performing duties under the Provincial Offences Act.*

Members of Council should carefully consider getting involved in matters before the Committee of Adjustment. The Committee of Adjustment, as a quasi-judicial tribunal appointed by Council, is independent and autonomous from the City Administration and City Council. Participating in matters before a quasi-judicial tribunal such as the Committee of Adjustment, risks the perception, even by a reasonable observer, that

a Member may be using her/his influence improperly, particularly where Council has a role in the appointment or reappointment of tribunal members.

Members must also be mindful of the position they wish to take and whether that position could be perceived as an improper use of the Member's position or status as an elected official to the private advantage of a specific individual or business.

My general position is that Members should not intervene in matters before the Committee of Adjustment. However, where a Member chooses to get involved in a matter before the Committee of Adjustment, in the interests of their community and/or constituents, I have strongly advised and continue to advise that the Member refrain from appearing before the Committee of Adjustment and provide a written submission instead.

As noted earlier and below, Bill 68 requires local boards to have a code of conduct as of March 1 2019. This includes the Committee of Adjustments.

Members of adjudicative boards will be required to operate at arms-length from Council and the City administration. Members of adjudicative boards will be required to ensure that their actions are consistent with the arms-length, quasi-judicial nature of the adjudicative board. Members of adjudicative boards must at all times be seen to be impartial and independent.

With the new term of Council about to begin, I am bringing this issue forward again.

I believe it is timely and important for Council to revisit my earlier recommendation and address what I feel is an outstanding ethical and political risk.

### **Complaint Protocol**

- **Appendix to each Code of Conduct By-law** – A separate Complaint Protocol has been incorporated into each draft by-law to form a complete regulation. Each Complaint Protocol includes the informal and formal complaint procedures.
- **Reporting out timelines** – The Complaint Protocol requires that I report out to the complainant and the respondent no later than 90 days after a complaint is received. The Complaint Protocol also speaks to the initial classification conducted for each formal complaint to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct and whether there are sufficient grounds to proceed with an investigation. I recommend amending Section 9 (Recommendation Report) of the Complaint Protocol to provide that I must report out

to the complainant and the respondent no later than 90 days “after the intake process has been completed and an investigation has been commenced.” I make this recommendation in recognition of the fact that the intake process can take considerable time, should not be rushed in reviewing documents and facts and should not take away from the time necessary to conduct a full and fair investigation.

- **Election-year restrictions on complaints and inquiries** – As of nomination day for a regular municipal election, as set out in the *Municipal Elections Act, 1996*, the following restrictions will apply:
  - Any ongoing inquiry must be terminated;
  - No complaints may be received;
  - No reports shall be issued; and
  - No sanctions shall be imposed.

These new restrictions closely reflect the municipal election year restrictions already found in the Complaint Protocol.

## **CODE OF CONDUCT FOR MEMBERS OF LOCAL BOARDS**

As noted above, Council will need to establish a code of conduct for the City’s local boards by March 1, 2019. As Integrity Commissioner, I will be responsible for the oversight and administration of the Code of Conduct for Local Boards.

It is important to note that a code of conduct for members of local boards will not apply to all entities that may appear to be local boards of the municipality. Specifically, the Act explicitly excludes the following entities from a code of conduct for local boards:

- a board of directors of a children’s aid society;
- a board of health;
- a board or committee of management of a long-term care home;
- a police services board;
- a library board;
- a municipal corporation; or
- other local boards as may be prescribed.

The City Clerk and Solicitor’s Office regularly reviews the status of the City of Ottawa’s local boards at each governance review. The entities that have been defined as local boards of the City at this point in time include the following:

1. Business Improvement Areas (“BIAs”)

2. City of Ottawa Superannuation Fund
3. Committee of Adjustment
4. Crime Prevention Ottawa
5. Sparks Street Mall Authority

New entities will be established by Council or by legislation from time to time. I will monitor the City Clerk and Solicitor's review of the City's local boards as part of each governance review to determine if the Code of Conduct for Local Boards will apply to additional bodies.

The recommended Code of Conduct for Local Boards was developed through consultation with Members of Council and local boards as well as experiences in other jurisdictions. I observed that many municipalities have simply created one code of conduct that applies to both Members of Council and members of local boards. Alternatively, the City of Toronto and the City of Mississauga have both adopted two distinct codes of conduct for members of local boards: (1) for local boards generally, and (2) for members of adjudicative boards.

Members of local boards are largely volunteers, appointed by Council, who contribute their time and expertise for the betterment of their community. I believe a separate code of conduct for members of local boards is the appropriate model. In fact, my initial intention was to recommend a model similar to Toronto and Mississauga (i.e. a code for local boards generally and another for adjudicative boards). However, following consultation with Members of Council and local boards, I am recommending one code of conduct for all members of local boards. To recognize the independent and arms-length nature of adjudicative boards, the recommended code incorporates two specific provisions that strictly apply to members of adjudicative boards.

With respect to practical experience in terms of complaints against local board members, there appears to be few examples to draw from. The City of Toronto's Integrity Commissioner has issued three investigation reports respecting the conduct of local board members since the codes were established in 2008.

The recommended Code of Conduct for Local Boards is attached to the Governance Review Report for Council's consideration and approval. The Code is presented as a draft by-law that would come into effect on March 1, 2019, in line with the new provisions of the *Municipal Act, 2001*.

The following is a list of the provisions incorporated into the draft Code of Conduct for Local Boards, along with a brief summary of each provision.

## **Mandatory Provisions**

As noted above, Ontario Regulation 55/18 sets out four subject matters that must be included in a code of conduct for Members of Council and members of local boards.

The following is a summary of the mandatory provisions included in the recommended Code of Conduct for Local Boards:

### *Gifts, Benefits and Hospitality*

Members of local boards are appointed to their positions to fulfill a public role. The general principle of this provision is that members must not accept gifts, benefits, tickets or hospitality that, to a reasonable member of the public, appear to be in gratitude for influence, to induce influence, or that otherwise go beyond the necessary and appropriate functions of the position to which the member was appointed.

The recommended provision reflects the same provision in the Code of Conduct for Members of Council, including a similar list of authorized exceptions.

The importance of transparency cannot be understated and regular disclosure through the Gifts Registry is an effective means of maintaining accountability with respect to gifts and benefits. As public appointees to a Council body, citizen members of the Transit Commission and the Built Heritage Sub-Committee are also expected to disclose gifts, benefits and hospitality on a quarterly basis.

Recognizing that local board members are mainly volunteers and the frequency and volume of gifts, benefits, tickets and hospitality will not be equivalent to what is experienced by Members of Council, I recommend annual disclosure of gifts, benefits, tickets and hospitality received by local board members that individually exceed \$100 and which are not otherwise exempted under the list of exceptions. Declarations will be added to the online, public Gifts Registry.

### *Conduct Respecting Staff*

A common provision in many codes of conduct before becoming mandatory, this provision recognizes that members of local boards must respect the role of board staff, and City staff where applicable, and refrain from using or attempting to use their authority or influence for the purpose of intimidating or coercing board staff.

By way of an example, one of the cases in Toronto dealt with a situation involving a former board staff member and a member of a BIA Board. The complainant (the staff

member) alleged that the board member had breached the Code when the member sent two emails to the complainant, other board members and a board contractor, accusing the complainant of not properly carrying out the complainant's duties, injuring the complainant's professional and ethical reputation, and engaging in threats. Ultimately, the Integrity Commissioner determined the member had breached the Code's 'Discreditable Conduct' provision for engaging in threats and found that, in light of the limited distribution of the statements and that the complainant did not feel their reputation had been harmed, there was no breach of the 'Conduct Respecting Staff' provision.

### *Confidential Information*

Members are expected to maintain the confidentiality of sensitive information that they acquire by virtue of their position. In some cases, the information may be protected under the *Municipal Freedom of Information and Protection of Privacy Act*.

Further to the obligation to protect confidential information, board members must not use confidential information to further the private interests of themselves or others.

### *Use of Board Property and Resources*

This provision concerns the use of local board property and resources. In effect, no member of a local board shall use or permit the use of board resources for activities other than purposes connected with the discharge of local board duties.

The provision also prohibits members of local boards from financially profiting from the use or sale of board-developed intellectual property, computer programs, technological innovations or other patent, trademark, copyright held by the board.

### **Additional Provisions**

In addition to the mandatory provisions outlined above, I recommend the inclusion of the following provisions to achieve a complete code of ethics. Many of the following provisions are found in the Code of Conduct for Members of Council but are adapted to reflect the role and function of members of local boards.

### *General Integrity*

The Code of Conduct for Local Boards opens with a similar statement of overarching principles related to integrity, accountability and transparency as the Code of Conduct

for Members of Council. This provision is intended to reinforce the values upon which the code of conduct has been established.

#### *Conduct at Local Board Meetings*

This provision reinforces the responsibility of members of local boards to conduct themselves with decorum at all local board meetings and in accordance with the provisions of the local board's procedure by-law as required under Section 238 of the *Municipal Act, 2001*. Generally speaking, matters concerning the conduct of members in meetings will be dealt with by the Chair in keeping with the local board's procedure by-law. It is anticipated this provision will be reserved for circumstances where the local board requests the intervention of the Integrity Commissioner or where the Chair is the subject of the complaint.

#### *Discrimination and Harassment*

Members of local boards serve a public role and have a duty to treat members of the public, one another and board staff with respect and without abuse, bullying or intimidation. It is incumbent upon members of local boards, as those responsible for the oversight and administration of the local board, to ensure the work environment is free from discrimination and harassment.

#### *Improper Use of Influence*

Members of local boards are expected to maintain integrity, accountability and transparency in the discharge of their board duties. Members should not use the status of their position to influence the decision of another individual to the private advantage of oneself, or one's parents, children or spouse, staff members, friends, or associates, business or otherwise.

By way of example, the City of Toronto's Integrity Commissioner investigated complaints filed by two candidates for election in the City of Toronto after a local board member endorsed the incumbent Councillor who was seeking re-election. The endorsement appeared in the Councillor's re-election campaign material and identified the member by name and role as a board member of the local BIA. The member intended to endorse the Councillor as a ward resident but, through a series of missteps, the member permitted the use of their title in the endorsement. Though the member had resigned by the time the Integrity Commissioner brought forward her report, the Integrity Commissioner found the member had contravened the 'Improper Use of Influence' provision of the Code of Conduct. Notwithstanding this finding, the Integrity



Commissioner advised that had it been necessary to recommend a penalty (if the member was still a member of the local board) she would have declined to do so.

During consultations with the BIAs, at least two members raised a question respecting the practice of a BIA Board to purchase goods and services from within the BIA's boundaries, which may include a business owned by a Board member. Generally speaking, I see no issue with the Board's policy/approach to purchasing goods and services from within the BIA's boundaries. My hope would be that this practice would be clearly set out in a board policy respecting purchasing. Further, while I do not have authority to provide specific advice related to the *Municipal Conflict of Interest Act* until after March 1, 2019, I would caution members to refrain from influencing a matter before the Board that would result in a financial benefit to his or her business.

### *Election-Related Activity*

In June 2016, Bill 181 (*Municipal Elections Modernization Act, 2016*) significantly amended the *Municipal Elections Act, 1996* (MEA). Section 88.18 of the MEA now requires all municipalities and local boards to establish rules and procedures with respect to the use of municipal resources (or board resources, as the case may be), during the election campaign period, as follows:

#### **Use of municipal, board resources**

88.18 Before May 1 in the year of a regular election, municipalities and local boards shall establish rules and procedures with respect to the use of municipal or board resources, as the case may be, during the election campaign period.

This code of conduct provision serves to reinforce the responsibilities and obligations of local board members under their respective board policies concerning the use of board resources for election-related activity.

### *Outside Activities*

The matter of potential conflicts with other board appointments was raised during my consultation with the local boards. Acknowledging that the majority of local board members are volunteers, it is possible a member may serve or wish to serve on multiple bodies.

The proposed provision focuses on appointments where the objectives or mandate of another body may be in conflict with those of the City's local board. Prior to accepting a

new position on another board, the member is expected to consult with my Office to ensure no such conflict exists.

### **Provisions for Adjudicative Boards**

Initially I intended to bring forward a distinct code of conduct for members of the City's adjudicative boards. I have considered the need for two codes and have opted to recommend one single code of conduct that includes specific provisions which apply strictly to members of the City's adjudicative boards.

These provisions recognize the independent and arms-length nature of these bodies.

#### *Communications with Adjudicative Boards*

Communications with members of an adjudicative board by a party or their representative must be through the board administrator and/or during the appropriate proceeding.

#### *Independent Nature of Adjudicative Boards*

Members of adjudicative boards operate at arms-length from Council and the City administration. Members are required to ensure their actions are consistent with the arms-length, quasi-judicial nature of the adjudicative board. Members must at all times be seen to be impartial and independent.

### **Compliance with the Code of Conduct**

The *Municipal Act, 2001* sets out two penalties that may applied where a contravention of the Code of Conduct has been determined.

#### **Penalties**

(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days.

The majority of local board members are appointed to the local board in a volunteer capacity and are not remunerated for their service. In those cases where members do

receive some remuneration, members are paid meeting honoraria or per diem. For this reason, the suspension of remuneration will rarely be an appropriate penalty for Code of Conduct contraventions by local board members.

Accordingly, in addition to the penalties set out in the Act, I have included four supplementary remedial actions I may recommend the local board or Council consider imposing in the event I determine a breach of the Code of Conduct has occurred, as follows:

- Removal from membership of a committee of the local board;
- Removal as chair of the local board or a committee of the local board;
- Written or verbal public apology; and
- Return of property or reimbursement of its value or of monies spent.

In serious cases, I reserve the right to bring a report forward to City Council and recommend Council consider revoking a member's appointment to the local board.

The draft by-law includes a Complaint Protocol for the Code of Conduct for Local Boards. As is the case under the Complaint Protocol for Council's Code of Conduct, there will be no fee charged for filing a complaint.

## **MUNICIPAL CONFLICT OF INTEREST**

Legislative amendments to the *Municipal Conflict of Interest Act* ("MCI") and the *Municipal Act, 2001* as a result of Bill 68 have established a new municipal conflict of interest framework including additional obligations for public office holders and a new complaint process which come into effect on March 1, 2019.

The following is a summary of the pending changes to the municipal conflict of interest framework:

- **Duty to avoid conflicts of interest outside of a meeting** – Members of Council and members of local boards must not attempt to influence those with delegated powers and duties on matters in which they have a conflict of interest. This duty extends beyond a formal meeting on the matter.

The MCI, as amended, specifies that this duty does not apply where Council has delegated the authority to suspend the remuneration paid to a Member of Council to an Integrity Commissioner. In effect, a Member continues to have the right to procedural fairness in matters relating to an investigative report of an Integrity Commissioner where an Integrity Commissioner has the authority to suspend a

Member's pay as a penalty for a breach of the Code of Conduct. It is not common for municipal councils to delegate the authority to apply penalties and, more specifically, Ottawa City Council has retained its authority in this regard.

- **Obligation to submit declaration of interest in writing** - Members of Council and members of local boards will now be required to file their declaration of interest in writing, including the general nature of the interest, as opposed to simply making a public declaration at the meeting where the matter is under consideration. The written statement must be filed with the Clerk or the secretary of the board at the meeting, or as soon as possible following the meeting at which the relevant matter was considered.
- **Public registry of declarations of interest** - The City is now also required to establish and maintain a public registry of declarations of interest. The registry will include two items for each declaration: a copy of each written statement that a Member files with the Clerk, and a copy of each declaration of interest that the Clerk records in the minutes. As the registry must be available for public inspection, it will be posted in the Accountability Framework section on [ottawa.ca](http://ottawa.ca).
- **Conflict of interest advice and education** - Presently, Members of Council and members of local boards are personally responsible for obtaining independent legal advice regarding a potential conflict of interest. However, as of March 1, 2019, the Integrity Commissioner will be responsible for providing advice on the application of the MCIA to Members of Council, as well as members of the City's local boards.

The conflict of interest advice provided by the Integrity Commissioner will be considered by a judge should an application be filed against a Member of Council or a member of a local board. The MCIA, as amended by Bill 68, expressly permits a judge to consider whether a Member requested, obtained and followed advice from the Integrity Commissioner when considering penalties for a contravention of the MCIA.

The 2018-2022 Governance Report includes my recommendation that my Office retain the services of an external lawyer(s), on retainer, who would be accessible to my Office for the provision of legal advice on the MCIA as well as to Members of Council and members of local boards.

The *Municipal Act, 2001* will also require that I provide conflict of interest education to Members of Council, members of local boards, City staff and the public.

- **Enforcement and new complaint process** - Under the existing MCIA, an elector must personally bring an application to a judge within six weeks of becoming aware of a conflict of interest. The cost of an application is borne directly by the applicant. An application may concern an alleged conflict of interest of a sitting or former Member of Council, though there is a limitation period of six years from the date of the alleged contravention for an application to be brought forward.

As of March 1, 2019, the *Municipal Act, 2001* will include a new process for conflict of interest applications through the City's Integrity Commissioner. When the new rules come into effect, an elector or "a person demonstrably acting in the public interest" may apply to the Integrity Commissioner who will review applications and conduct conflict of interest investigations as necessary.

An application must be made within six weeks after the applicant became aware of the alleged contravention except if the applicant became aware during the legislated municipal election 'blackout period' (as discussed below), and the applicant makes the application within six weeks after Voting Day in a regular municipal election. The MCIA continues to include the six-year limitation period.

In those cases where I determine a contravention may have occurred, I must decide whether to make an application to a judge for a determination. After deciding whether or not to apply to make an application to a judge, I must publish written reasons for my decision.

A judge alone has the authority to determine if a contravention of the MCIA has occurred and apply penalties as appropriate.

The new process for conflict of interest applications through my Office includes a municipal election year 'blackout period'. During this period (Nomination Day to Voting Day in a regular election year), no application can be made, any ongoing inquiry must be terminated and I cannot bring forward an application to the Court. For those inquiries terminated as a result of the 'blackout period', there is a process for the inquiry to be resumed which requires the applicant, or the Member whose conduct was in question, to apply in writing to my Office within six weeks after Voting Day.

- **Procedural fairness for code of conduct investigative reports** - Currently, it is understood that the MCIA requires that a Member of Council, who is the subject of a code of conduct investigation report which recommends a suspension of remuneration, must disclose an interest at the meeting where the relevant matter is

being considered, and take the necessary actions to refrain from influencing the matter (including not voting on the matter).

As of March 1, 2019, a Member of Council or a member of a local board who is the subject of an Integrity Commissioner report that is under consideration at a meeting or part of a meeting (including a closed meeting), may:

- Participate in discussions, including making submissions to Council; and
- Attempt to influence the voting on any question in respect of the matter (before, during and after the meeting).

However, Members of Council and members of local boards will still be precluded from voting on any question relating to the matter.

- **Wider range of penalties for contraventions of MCIA** - Presently, a judge who has determined that a Member has contravened the MCIA is limited to the following sanctions:
  - Declare the Member's seat vacant;
  - Disqualify the Member, or former Member, from being a Member during a period of time not exceeding seven years; and
  - Where applicable, order restitution of any financial gain.

As of March 1, 2019, the range of penalties has been expanded under Bill 68 to include:

- Reprimand;
- Suspension of remuneration for a period of up to 90 days;
- Member's seat declared vacant;
- Disqualification from being a Member for a period of time not exceeding seven years; and
- Where applicable, restitution of financial gain.

A judge will also now be permitted to consider whether the Member,

- a) Took reasonable measures to prevent the contravention;
- b) Disclosed the pecuniary interest and all relevant facts known to him or her to an Integrity Commissioner in a request for advice from the Commissioner and

acted in accordance with the advice, if any, provided to the Member by the Commissioner; or

- c) Committed the contravention through inadvertence or because of an error in judgment made in good faith.

## **EDUCATION AND OUTREACH**

As is evidenced in this report, there is a great deal of change pending for my Office, for Members of Council and for members of local boards.

I intend to reach out to the local boards and make myself available for education on their new obligations under a code of conduct as well as their ongoing and new responsibilities under the *Municipal Conflict of Interest Act*.

I will participate in the orientation of new Members of Council and their staff and provide education with respect to all elements of Council's Accountability Framework. I will also seek additional opportunities to educate Members of Council with respect to the pending changes to the *Municipal Conflict of Interest Act*.

My Office will also be more proactive in providing timely information and reminders. We will publish a series of information bulletins relating to the new legislative changes on ottawa.ca.

## **CONCLUSION**

My consultation with Members of Council this past year suggests that Members are satisfied with the assistance they receive through my Office. I would like to acknowledge that Members are regularly engaged in the day-to-day application of the Accountability Framework. As Justice Bellamy remarked in her report respecting the Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry:

*"[v]alues must be more than "ethical art": a nicely framed code of conduct hanging on the wall. The ethical dimensions of each decision must be taken into account, and must be seen to be taken into account. They should animate everyday decisions by everyone at all levels of activity. What makes an ethical culture strong is acceptance and internalization of ethical values by individuals through involving them in the process of articulating those values."*

The coming year will continue to be focused on the implementation of Bill 68 and the changes to Council's Accountability Framework.

# Lobbyist Registry

## MANDATE

The Lobbyist Registrar is responsible for general compliance of the *Lobbyist Registry By-law* (By-law 2012-309) in addition to oversight and administration of the Lobbyist Registry.

The Lobbyist Registry is an online bilingual public search tool that documents instances of substantive communications between individuals who lobby public office holders, such as Members of Council and/or City staff, in a centralized database that is easy to access and search by the public and interested stakeholders.

The requirements of the Registry and the position and duties of the Lobbyist Registrar are set out in By-law 2012-309 which was approved in accordance with Section 223.9 of the *Municipal Act, 2001*.

## OVERVIEW

On August 29, 2012, Ottawa City Council enacted and passed By-law 2012-309 (“the *Lobbyist Registry By-law*”) establishing the Lobbyist Registry.

The City of Ottawa’s Lobbyist Registry was officially launched on September 1, 2012, and has now been in operation for six years. Upon the official launch of the Registry, the City of Ottawa became the second Canadian municipality to establish a formal Lobbyist Registry, and the first to do so voluntarily and in the absence of a scandal.

The Lobbyist Registry is one of the key components of the Accountability Framework for Members of Ottawa City Council. Along with its appended Lobbyist Code of Conduct, the *Lobbyist Registry By-law* advances accountability and transparency at City Hall.

As I highlight in all outreach sessions on the Lobbyist Registry, lobbying is a legitimate activity that can occur in both planned and unplanned scenarios. For this reason, the *Lobbyist Registry By-law* does not include any requirement for the lobbyist to pre-register to the database before communicating with a public office holder or in advance of a meeting in which lobbying will occur.<sup>1</sup>

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<sup>1</sup> The City of Ottawa’s system differs from others across Canada in this regard. For example, those who lobby City of Toronto or Province of Ontario public office holders are required to register before undertaking to lobby.



Instead, under the *Lobbyist Registry By-law*, any individual who represents a business or financial interest, and communicates with a City of Ottawa public office holder with the aim of furthering that interest, must register his or her activity to the Lobbyist Registry within 15 business days following the initial instance of lobbying communication.

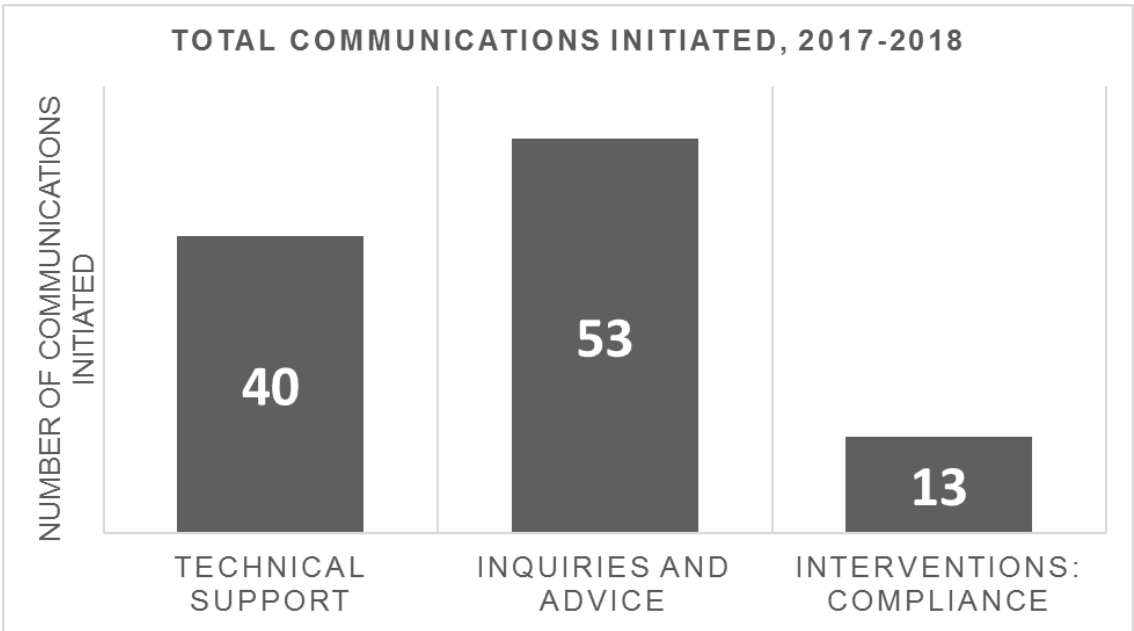
**OPERATIONS**

The day-to-day operations of the Lobbyist Registry are administered by a Support Assistant from the City Clerk and Solicitor’s Department. Approximately 85% of the Support Assistant’s time is spent providing administrative and technical assistance by approving registrations, responding to inquiries, monitoring compliance, and intervening when necessary. The staff member also assists the Registrar in communicating with Lobbyist Registry stakeholders through notices, interpretation bulletins, individualized correspondence, and group presentations.

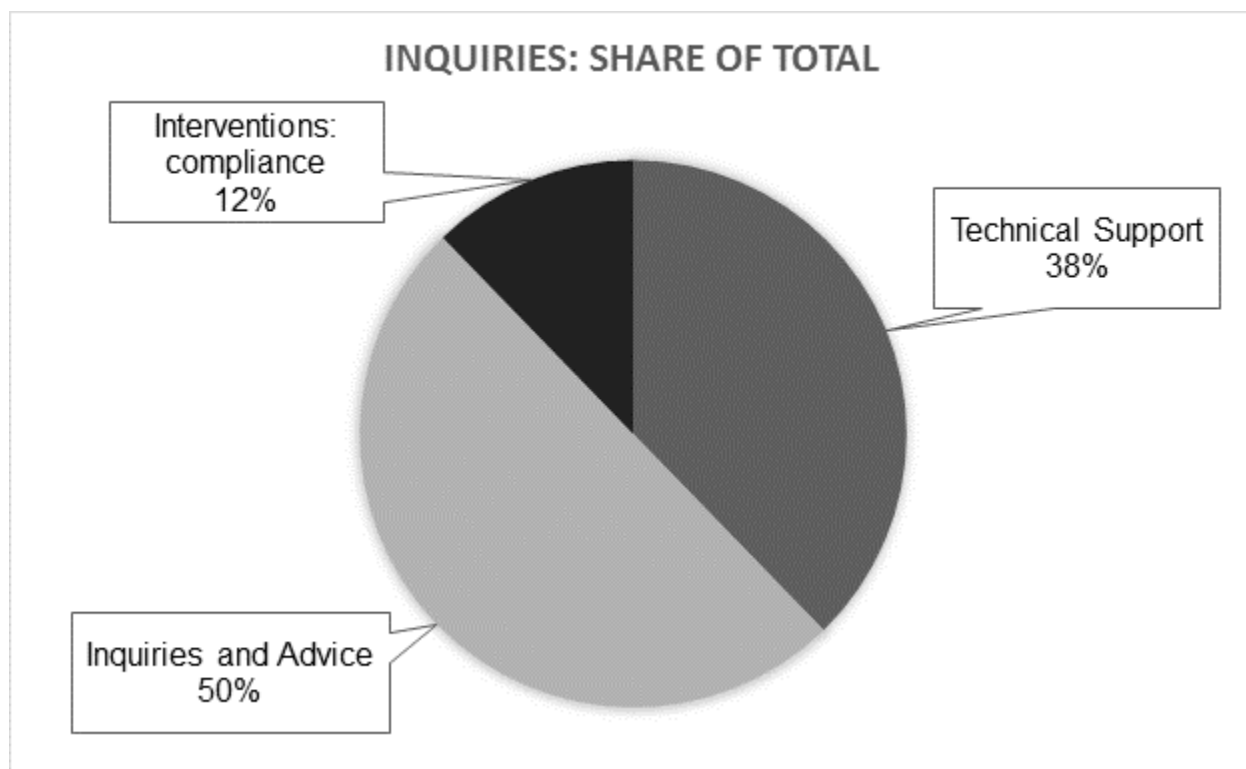
**Inquiries**

Overall, my Office received correspondence on 106 items over the course of the 2017-2018 reporting period. The following data represents the initial points of contact for these inquiries.

**Figure 4: Total Communications Received (October 1, 2017 to September 30, 2018)**



**Figure 5: Share of Total Inquiries Received**



### *Requesting Technical Support*

During the 2017-2018 reporting cycle, the Office of the Lobbyist Registrar received 40 requests for technical support. My office continues to use these inquiries to inform changes to the Lobbyist Registry application.

Common requests for technical support include:

- Retrieving a forgotten username and/or password;
- Re-registration following an unsuccessful attempt at creating a profile;
- Requesting assistance with creating a profile or lobbying file or activity; and
- Resolving issues regarding internet browser compatibility.

### **Advice and Interpretations**

This year, the Office of the Lobbyist Registrar received 53 requests for clarification or interpretation of the *Lobbyist Registry By-law*.

The following are samples of inquiries I have received and the interpretation that has been provided. It is important to note that each inquiry is accompanied by its own specific context and facts. The following anonymized summaries should not be relied upon as rulings nor be considered a substitute for calling or writing my Office when in doubt.

#### *Inquiry*

Through ongoing conversation, staff at another municipality contacted City staff and recommended a vendor that could provide a solution for a specific project at a City department. City staff inquired to confirm the registration requirements where a vendor is referred to the City by a contact at another municipality. City staff indicated that the vendor's product could provide a solution for a project at their department, and as such would warrant a request for a demonstration.

#### *Interpretation*

Generally, vendors that engage in unsolicited communication with public office holders in an attempt to substantively advance a business and/or financial interest outside of the City's normal business processes are required to register their communications as lobbying. If the vendor in this scenario initiates unsolicited contact with the City department to market their products, the vendor would have to register that communication as lobbying.

In this instance, however, the City office may consider initiating contact with the vendor directly, or through the office expressing interest to the vendor through their contact at the other municipality. The *Lobbyist Registry By-law* aims to capture unsolicited communication originating from vendors, and as such does not capture conversations initiated by the City. In either of these cases, should the vendor approach the office to demonstrate the product of interest, the solicitation requirement would not be met and the vendor would not be required to register.

#### *Inquiry*

A consultant lobbyist indicated that they had arranged meetings on behalf of a client, but would not be attending those meetings. As the rules for these kinds of situations differ across jurisdictions, the lobbyist sought advice as to whether registration would be necessary, and how the registration should be filed.

#### *Interpretation*

Generally, under the City of Ottawa *Lobbyist Registry By-law*, simple meeting requests are not considered substantive attempts to lobby, and do not need to be registered. In the specific case of a consultant lobbyist coordinating a meeting on behalf of a client, however, the act of contacting a public office holder to request a meeting needs to be registered.

In this scenario, the substantive attempt to lobby is in creating a point of contact between the public office holder and the client. As such, unsuccessful attempts to set up a meeting on behalf of a client do not need to be registered.

As the consultant lobbyist is not representing their client during the meeting, the client would have to create a separate file to declare their lobbying communications.

### *Inquiry*

In light of the municipal election, and in the interest of avoiding the deed and appearance of impropriety, a lobbyist for a government relations firm asked the following questions with regard to their consultant lobbyists:

1. If a consultant lobbyist were to work as a volunteer for a candidate's campaign during the municipal election, would there be any restrictions with regard to:
  - a. The ability of that person to lobby that candidate, should that candidate later become a public office holder; and
  - b. The ability of any other consultant lobbyists at the firm, not acting as volunteers for that candidate, to lobby that candidate should they become a public office holder?
2. During a municipal campaign, individuals are permitted to contribute a maximum of \$1,200 per candidate and up to a maximum of \$5,000 in total to all candidates. Provided that individuals contribute within these limits, are there any restrictions on these individuals lobbying candidates, should they later become public office holders?

### *Interpretation*

1. Neither the *Lobbyist Registry By-law* nor Lobbyist Code of Conduct prohibits a lobbyist with active lobbying files from volunteering in the election campaign of a candidate for City Council. Similarly, there are no restrictions on those who have

previously volunteered in an election campaign from lobbying the candidate should they be successfully elected to City Council.

Nevertheless, the Lobbyist Code of Conduct does require that lobbyists conduct themselves with honesty and avoid both the deed and appearance of impropriety. Depending on the degree of involvement, a lobbyist who is concerned that their participation in a candidate's election campaign may give rise to the perception of a conflict of interest or potential contravention of the Lobbyist Code of Conduct, is encouraged to reach out to my Office to review the specific details of the relationship. Based on the circumstances, consideration may be made as to whether measures are required to mitigate or eliminate the risk of either party breaching the duties in their respective Codes.

2. Regarding contributions to election campaigns, the Lobbyist Code of Conduct does not prohibit lobbyists with active files in the Lobbyist Registry from making political contributions. The rules governing campaign contributions are governed by the *Municipal Elections Act*, and are not within the Lobbyist Registrar's jurisdiction.

With respect to lobbying elected officials, if a lobbyist has previously made contributions to a Member's election campaign, there are no restrictions imposed in these circumstances. Lobbyists must always conduct themselves in compliance with the Lobbyist Code of Conduct, and contributions to an election campaign should not be connected in any way with an individual's lobbying activities.

Notwithstanding the above, the most prudent course to avoid the perception of conflict of interest, and to protect the integrity of the lobbyist, their firm and their clients, is to refrain from engaging in any electoral activity or financial support of any candidate or incumbent.

While that may seem unreasonable for a democratic society, only the individual can make that decision by weighing the pros and cons, the risks, costs and consequences of a possible future breach or perceived breach of the Code of Conduct after the election is over.

### *Inquiry*

A lobbyist wanted to confirm whether it would be possible to create a profile to represent their entire company.

### *Interpretation*

The *Lobbyist Registry By-law* only recognizes individual lobbyists and places specific obligations on lobbyists to register their lobbying activity. Accordingly, an entire organization cannot be represented by a single profile. Lobbyist Profiles are for individual use only, and cannot be shared among employees of a company.

Each employee that engages in lobbying must create their own profile. That said, companies may choose to designate an administrator to manage employees' profiles on their behalf. The individual lobbyist is ultimately accountable for the accuracy of his or her profile.

### **Confidentiality Codes**

Lobbyists can apply to my Office for a confidentiality code in cases where transparency is a business risk or confidentiality is required to ensure the potential success of a proposal. If I approve such a code, the lobbying activity will eventually be reported out when an agreement is successful. This year, my office received one request for a confidentiality code.

### **Interventions**

Upon registration, lobbyists are provided comprehensive information regarding the requirements of the *Lobbyist Registry By-law* and use of the Lobbyist Registry. In some cases, however, further intervention is required to ensure full compliance.

In 2018, my office continued its effort to improve the accuracy and integrity of the Lobbyist Registry's public records. Activities were focused on promoting awareness of the requirements of the *Lobbyist Registry By-law*, and ensuring greater compliance in respect of lobbyist registrations.

To this end, staff intervened on 13 occasions in 2018 to assist with issues related to compliance - cases necessitating the correction of inaccurate or incomplete registrations. These interventions could involve:

- Requests to register following reports of non-registration from a Member of Council or a public office holder;
- Requests to update incomplete, vague, or old lobbying files; or
- Notification of profile closure due to unnecessary registration.

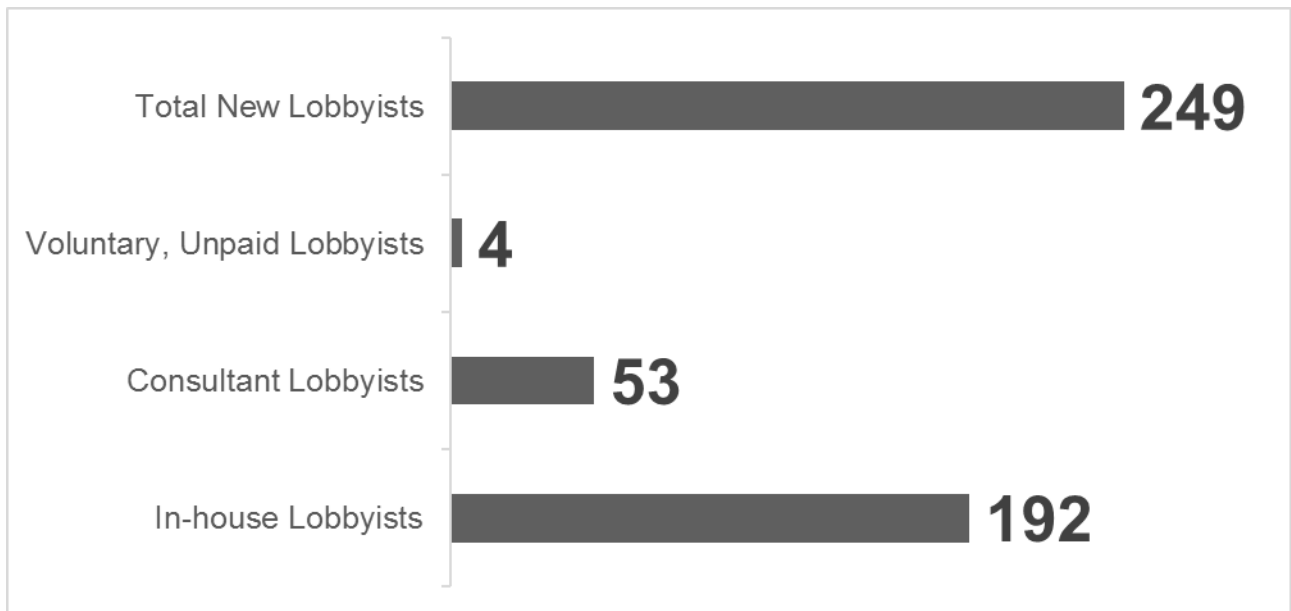
### **Technical Enhancements to the Lobbyist Registry System**

This year, my office worked with the City’s IT department to enhance various aspects of the Lobbyist Registry application. For external users, the registration and profile management sections of the Registry were updated to reduce the rate of technical and user errors when related to these functions.

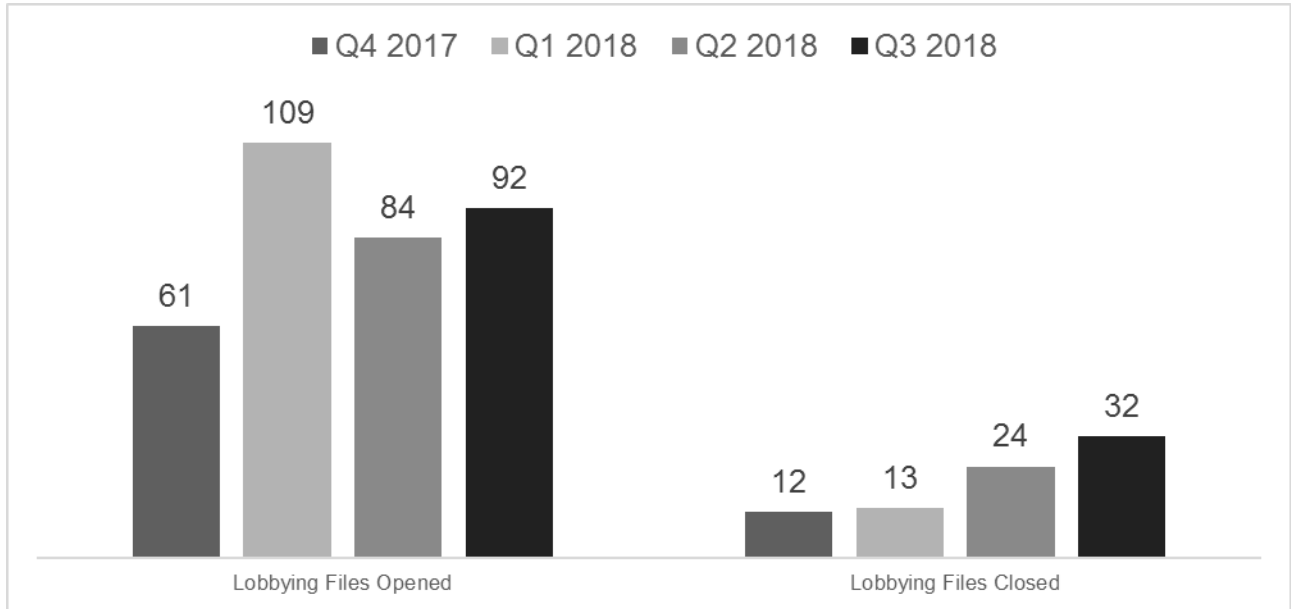
Notably, Lobbyist Registry staff are now able to generate a Late Lobbying Report that shows when lobbyists have missed the 15-business day deadline to register lobbying activities. In the future, I intend to leverage this report as a tool for monitoring and enforcing compliance with the registration of lobbying activities.

**Registration Activity**

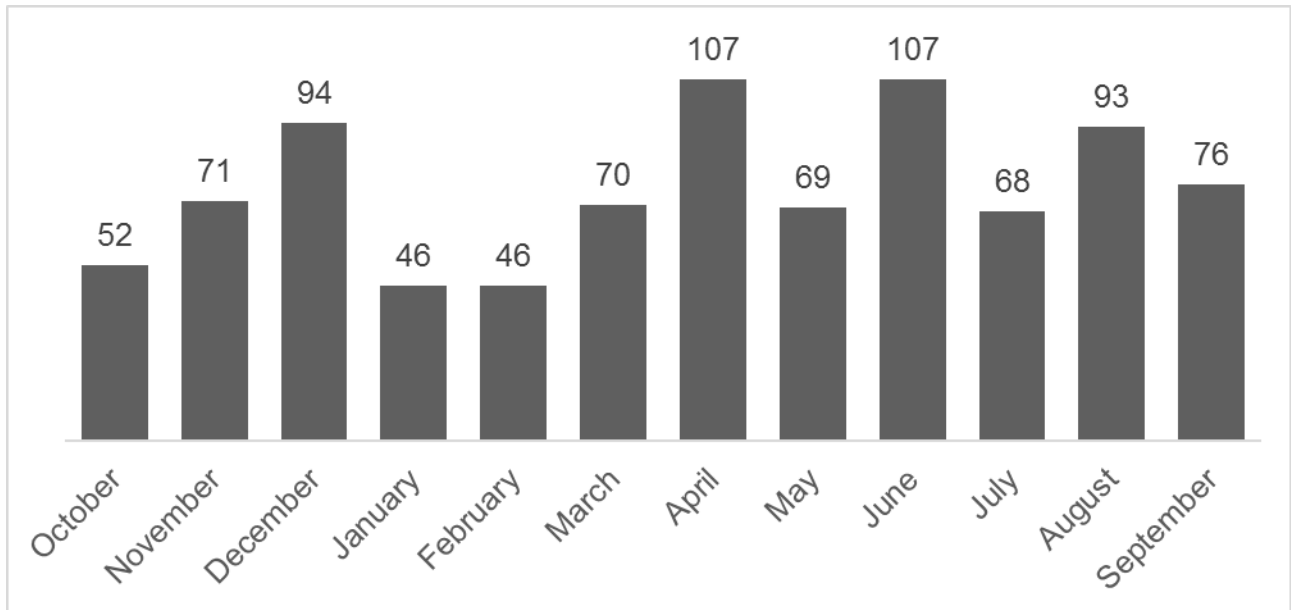
**Figure 6: Annual Lobbyist Registry Statistics**



**Figure 7: Lobbying Files Opened and Closed (by quarter)**



**Figure 8: Total Lobbying Activity (by month)**





**Figure 9: Top Ten Registered Subject Matters**

<b>Rank</b>	<b>Subject</b>	<b>Total Lobbying Files Registered, 2018</b>
<b>1</b>	Information Technology	57
<b>2</b>	Zoning By-law	28
<b>3</b>	Infrastructure	27
<b>4</b>	Parks and Recreation	27
<b>5</b>	Transportation	21
<b>6</b>	Planning and Development	20
<b>7</b>	Construction	17
<b>8</b>	Water/Sewer	14
<b>9</b>	Economic Development	13
<b>10</b>	Procurement	13

## **COMPLIANCE AND ENFORCEMENT**

Under the *Lobbyist Registry By-law*, the Lobbyist Registrar has a general authority to enforce the By-law in addition to a responsibility to conduct investigations or inquiries where a contravention may have occurred. In the six years that I have been responsible for the administration and oversight of the Lobbyist Registry, I have taken various steps to ensure compliance with the By-law. These include proactive compliance audits, compliance agreements, Letters of Direction, communication bans and formal investigation with a public report to Council.

In addition to periodic review of the Lobbyist Registry, my office receives inquiries related to existing lobbying files and activities that may require the use of these enforcement tools. I am encouraged to note that stakeholders are increasingly engaged in monitoring and questioning entries in the Lobbyist Registry.

## **Letters of Direction**

In the 2016-2017 reporting period, I introduced the Letter of Direction to act as a first step in an escalating compliance scheme for lobbyists, and to help address cases where a compliance agreement may not be suitable. The Letter is used:

- as an enforcement tool designed to address apparent or inadvertent breaches of the Lobbyist Code of Conduct that come to my attention but where my authority does not fully extend;
- as an education tool, where a formal explanation can reinforce the provisions of the *Lobbyist Registry By-law* and help a company or lobbyist meet their compliance requirements moving forward; and
- as documentation to inform action to be taken in the case of a future breach.

These instances tend to involve companies with active in-house lobbyists or clients of consultant lobbyists who may not be fully aware of the restrictions placed on individuals and companies associated with active lobbying files.

Employees of large companies may not be aware that their company is represented in the Lobbyist Registry, and as such are required to abide by certain provisions in the Lobbyist Code of Conduct. While the *Lobbyist Registry By-law* and the Lobbyist Code of Conduct impose some obligations on companies and clients of lobbyists, my authority as Lobbyist Registrar is largely restricted to enforcing compliance for the registered lobbyist.

Over the past year, I found that the issues brought to my attention required compliance action in the absence of a clear or direct breach of the *Lobbyist Registry By-law* and the Lobbyist Code of Conduct. In these instances, I opted to rely on the Letter of Direction as a solution after determining that the use of compliance agreements would not be appropriate.

In 2017-2018, I issued six Letters of Direction. I have selected the following examples to provide an idea of the considerations that go into issuing a Letter of Direction:

### **Letter of Direction 1:**

An in-house lobbyist for a not-for-profit organization with paid staff inquired as to whether they needed to report a meeting. At the time of the inquiry, they were unaware that they had exceeded the 15-business day deadline to register their meeting. The

inquiry provided details of the meeting, and as well as an apology for a possible breach. While the lobbyist was forthcoming, I am required to address known breaches of the By-law.

To remedy what seemed to be an inadvertent breach of the By-law caused by ignorance of the requirements therein, I opted to send a Letter of Direction addressed to the lobbyist's organization, providing directives for immediate action, as well as outlining expectations for future behaviour.

### **Letter of Direction 2:**

While reviewing the Gifts Registry, it had come to my attention that a representative for a large company had offered a Member of Council tickets to an event.

Because the company was associated with active lobbying files that had been registered by a consultant lobbyist acting on their behalf, the company was bound by the Lobbyist Code of Conduct to refrain from providing hospitality to Members of Council under Section 6(3) of the Lobbyist Code of Conduct:

*"Lobbyists with active lobbying registrations, their registered clients or their employees shall not, directly or indirectly, offer or provide any gift, benefit or hospitality to Members of Council or their staff." (Section 6(3), Improper Influence)*

After meeting with the representative who had offered the tickets, it was clear that they were unaware of the restrictions placed upon them by the Lobbyist Code of Conduct, by nature of the breadth of their organization. Furthermore, the representative explained that the company's lobbying on that matter had long been concluded, and that the consultant lobbyist had failed to update their active lobbying file.

While my authority as Lobbyist Registrar is largely restricted to enforcing compliance with the lobbyist themselves, I saw this as an opportunity to educate the representative and their company by issuing a Letter of Direction. The Letter required the company to ensure that lobbying files and activities for their in-house and consultant lobbyists were updated for accuracy, and to seek permission from my office before extending invitations to Members of Council while associated with active lobbying files.

### **Letter of Direction 3:**

While reviewing the Gifts Registry, it had come to my attention that a lobbyist for an organization had offered a Member of Council tickets to an event that took place within

the larger context of an annual conference. I had previously met with this lobbyist to discuss a different potential breach of the Lobbyist Code of Conduct, though as a result of that meeting neither a Letter of Direction nor compliance agreement was ultimately issued. As this was my second time meeting with this lobbyist regarding a potential breach, I decided to begin by moving beyond a Letter of Direction, and drafted a compliance agreement in anticipation of our meeting.

During the meeting, however, the lobbyist explained that the invitation had not been sent directly to the Member as a Member of Ottawa City Council. Rather, the invitation was for a specific event within a larger annual conference that had municipal significance, and the Member was invited because of their attendance at the annual conference. Furthermore, while the invitation had directly referenced the organization with active lobbying files, this was because the organization was a major sponsor of the annual conference—the event itself was organized by a different entity.

Following this meeting, I decided that a compliance agreement was no longer warranted, and instead issued a Letter of Direction to the lobbyist. The Letter warned the lobbyist that further breaches of the Lobbyist Code of Conduct would result in an escalation of compliance measures, and reminded them to seek permission from my office before offering invitations to Members of Council while associated with active lobbying files.

While it is still a powerful tool, the compliance agreement is better suited to address breaches falling under my full authority, or for repeat offenders of the By-law or Code. The Letter of Direction acts as a preventative measure to reduce the likelihood of further offences, and a foundation to use stronger measures in the future, if necessary.

## **CONCLUSION**

As the Lobbyist Registry continues to grow, I observe increased engagement on the part of lobbyists, public office holders and members of the public. While I observed an overall decrease in the number of registrations and inquiries this year, I note that new registrations have become more accurate, and that the issues requiring compliance action from my office have grown more complex.

To that end, I intend to build on the value of the Lobbyist Registry by leveraging new tools to ensure the accuracy of future registrations, and to aid in my efforts to enforce compliance with the requirements of the *Lobbyist Registry By-law* and the Lobbyist Code of Conduct. I will also continue using the Letter of Direction where possible to

educate lobbyists and related organizations regarding their obligations under the *Lobbyist Registry By-law* and Lobbyist Code of Conduct.

During consultations with the current Members of Council, I received suggestions to shorten the 15-business day deadline for reporting lobbying communications. While I have considered this suggestion, I am satisfied that the *Lobbyist Registry By-law* is functioning as intended, and do not currently recommend any changes to the 15-business day deadline for reporting lobbying communications.

It is important to note that different Lobbyist Registrar jurisdictions have developed their reporting requirements to suit specific needs, and that an ideal standard for this type of deadline does not exist. The *Lobbyist Registry By-law* for the City of Ottawa was designed to enhance the transparency of lobbying while reducing impact on natural conversations between consenting parties—this is reflected in a robust definition of lobbying, the absence of a pre-registration requirement, and ample time to declare lobbying communications. While the Registry cannot capture 11th hour lobbying as it takes place, public office holders are empowered to remind lobbyists to register their activities within 15 business days, and approach my office in cases of non-compliance.

The new Term of Council also presents an opportunity to exercise my mandate to provide education on the Lobbyist Registry. As the new Term begins, I will conduct educational sessions for both Members of Council and lobbyists and City Staff.

I also intend to publish additional detailed information bulletins on [ottawa.ca](http://ottawa.ca).

# Meetings Investigator

## MANDATE

The *Municipal Act, 2001* (“the Act”) provides that all meetings of Council, its committees or local boards shall be open to the public, except as provided through the following discretionary exceptions. Section 239 of the Act permits closed meetings of City Council, a local board or a committee of either, to discuss the following:

- (a) The security of the property of the municipality or local board;
- (b) Personal matters about an identifiable individual, including municipal or local board employees;
- (c) A proposed or pending acquisition or disposition of land by the municipality or local board;
- (d) Labour relations or employee negotiations;
- (e) Litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- (f) Advice that is subject to solicitor-client privilege, including communications necessary for that purpose; and
- (g) A matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act;
- (h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
- (i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or

- (k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

Further, section 239 requires that a meeting or part of a meeting shall be closed to the public if the subject matter being considered is:

- (a) a request under the *Municipal Freedom of Information and Protection of Privacy Act*, if the council, board, commission or other body is the head of an institution for the purposes of that Act; or
- (b) an ongoing investigation respecting the municipality, a local board or a municipally-controlled corporation by the Ombudsman appointed under the *Ombudsman Act*, an Ombudsman referred to in subsection 223.13 (1) of the Act, or the investigator referred to in subsection 239.2 (1).

Finally, meetings of City Council, a local board or a committee of either may be closed to the public if:

1. The meeting is held for the purpose of educating or training the members.
2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

Anyone who wishes to question the appropriateness of a meeting of Council, its committees or local boards (with some exceptions) that was closed in full or in part, may request an investigation under Section 239.1 of the Act.

Section 239.2 of the Act outlines my authority as Council-appointed Meetings Investigator. Operating in an independent manner and respecting confidentiality, I investigate, on receipt of a complaint made to me by any person, regarding a meeting or part of a meeting that was closed to the public. I first determine whether an investigation is warranted and, if so, investigate and submit my findings and recommendations in a public report to City Council or the local board. Where I have determined that a meeting or part of a meeting was closed improperly, City Council must pass a resolution stating how it intends to address the report.

In carrying out these functions, I may exercise such powers and perform such duties as may be assigned to me by Council. As required by Subsection 239.2(5) of the Act, I operate with regard to the importance of:

- My independence and impartiality as investigator;
- Confidentiality with respect to my activities; and
- The credibility of the investigative process.

## **OVERVIEW**

During the 2017-2018 reporting period, I received two requests for investigation of a closed meeting. The first request concerned the meeting practices of the Budget Review Board, as outlined in further detail below.

The second request concerned a meeting of the Site Plan Review and Programming Advisory Committee, a working group of Members of Council, City staff and community stakeholders established to provide input into the site plan application process for the Salvation Army relocation development (i.e. 325, 327 and 333 Montreal Road, 334 Montfort Street and 272 Ste. Anne Avenue). Following an intake review, I determined the Site Plan Review and Programming Advisory Committee does not constitute a body subject to the open meeting provisions of the *Municipal Act, 2001*. This determination was based both on the fact that the Committee's composition does not meet the 50% membership threshold (i.e. a body whose membership includes at least 50 per cent Members of Council) and that the Committee has no decision-making authority and a limited advisory function.

### **Budget Review Board**

On April 11, 2018, I issued my first report as Meetings Investigator for the City of Ottawa since assuming the role in August 2012: "[Report to Council on an Inquiry by the Meetings Investigator: Budget Review Board](#)" (ACS2018-CCS-GEN-0014). The report focused on an investigation of a complaint respecting the meeting practices of the Budget Review Board (the "BRB"), a group of City staff and Members of Council established by City Council during the 2016 Budget process to provide a budget challenge function to the annual budget process. The Request also referenced statements made on a local radio program suggesting unreported information had been shared with the BRB and an unreported meeting took place a month prior to Council's consideration of the 2018 Operating and Capital Budgets, which was not reflected in the BRB's confidential minutes obtained by the complainant.

While my investigation found no violations of the open meeting rules set out in the *Municipal Act, 2001*, there was considerable public discourse on the issue and I felt it was in the public interest that I file a report with City Council to provide guidance on the



evolution of the open meeting rules as well as to elucidate my jurisdiction as Meetings Investigator.

I concluded that the Budget Review Board does not qualify as a committee under the *Municipal Act, 2001* or the City's *Procedure By-law*. For this reason, the Budget Review Board is not subject to the open meeting provisions nor my jurisdiction as the City's Meetings Investigator.

I further concluded there was no evidence to substantiate claims that formal or informal, unreported meetings of Members of Council occurred leading up to Council's budget deliberations on December 13, 2017 that were in violation of the open meeting provisions.

### **Council and Committee In Camera Meetings**

As I have noted in every annual report that I have issued to date, Members of Council and City Staff continue to be committed to holding open meetings and to publicly disclosing as much information as possible.

From October 1, 2017 to September 30, 2018, Council and its Committees went into closed session three times:

#### *City Council*

- November 22, 2017:
  - Collective Bargaining Mandates - Amalgamated Transit Union (ATU), Local 279 (Para Transpo) and ATU Local 1760
  - Collective Bargaining Mandate – Amalgamated Professional Fire Fighter's Association (OPFFA)

#### *Audit Committee*

- November 30, 2017: Office of the Auditor General – Annual Report and Detailed Audit Reports

#### *Transit Commission*

- May 16, 2018:
  - Collective Bargaining Mandate for CUPE 5500
  - Labour Relations Update – Bus-Rail Transition

As part of the City's ongoing commitment to open government, the City Clerk and Solicitor's Department regularly consults with my Office and has initiated a practice whereby my Office is advised in advance of the public notice of any Committee, Commission or Council meeting where it is expected that confidential matters will be considered. This notice provides the opportunity to review the appropriateness of the planned closed session before the Clerk's Office issues public notice as part of the meeting agenda.

In addition to the meetings where Council or Committee went *in camera* as noted above, the following are additional instances where *in camera* agenda items were listed or there was potential for an *in camera* meeting but where no closed session occurred:

#### *City Council*

- November 8, 2017: Collective Bargaining – Civic Institute of Professional Personnel (CIPP) - Ratification of Tentative Agreement
- April 25, 2018: Sponsors Group Report on the Selection and Appointment of a new Medical Officer of Health
- May 23, 2018: Collective Bargaining Mandate for CUPE 5500
- August 29, 2018: Appointment of Associate Medical Officers of Health

#### *Audit Committee*

- June 14, 2018: Follow-up to the 2011 Audit of Contract Management Practices – Springhill Landfill Site Contract and Additional 2018 Audit Procedures

I was also advised of *in camera* meetings of the Hiring Panel for the Light Rail Regulatory Monitor and Compliance Officer and the potential for an *in camera* session when City Council considered the Hiring Panel's final recommendation. The Hiring Panel met twice *in camera*: once to create a short-list of candidates (November 27, 2017) and a second time to conduct interviews (December 11, 2017). City Council approved the Hiring Panel's final recommendation in open session on February 28, 2018.

#### **CONCLUSION**

I have no recommendations related to open and closed meetings at this time.

# Outreach, 2018-2019 Goals and Financial Statement

## EDUCATION, OUTREACH AND MEDIA RELATIONS

After six years, the responsibility for providing education and advice remains a cornerstone of the City of Ottawa's Integrity Commissioner position. These functions have been an ongoing priority for me since my appointment as Integrity Commissioner and I believe both functions have contributed to the overall success of Council's Accountability Framework.

As of March 1, 2019, municipal integrity commissioners will have a legislated responsibility to provide advice and education with respect to codes of conduct and related ethical policies. I believe these amendments are a valuable step forward for municipal accountability and transparency.

Below is a list of events and activities that took place during the 2017-2018 reporting period:

### Outreach

- Ethics Practitioners' Association of Canada – Webinar – “Punish or Engage? The Positive Option of Compliance Agreements.” (October 27, 2017 - Ottawa)
- LRCN Sub-Committee: International Lobbying Principles

### Conferences/Seminars

- Municipal Integrity Commissioners of Ontario (MICO) Fall Meeting (October 16-18, 2017 – Town of Blue Mountains)
- Lobbyist Registrars and Commissioners Network (LRCN) Winter Conference (February 6, 2018 - Ottawa)
- Municipal Integrity Commissioners of Ontario (MICO) Spring Meeting (April 27, 2018 - Toronto)
- Lobbyist Registrars and Commissioners Network (LRCN) Fall Conference (September 24-25 - Toronto)

### Publications

This year, I granted Thomson Reuters permission to reproduce Lobbyist Registrar interpretation bulletins in *Lobbying in Canada* by Pierre B. Meunier, Andre Turmel, Guy W. Giorno, and Peter Hyndman. These bulletins include:

- Lobbyist registration and professional standards
- Unsolicited written and electronic communications
- Closing a lobbying file
- Lobbying Members-elect
- Provisions regarding gifts, benefits, hospitality and tickets
- Lobbyist Registry Registration
- Ottawa 2017 and Sponsorships
- Lobbying and the Ottawa Public Library Board

### **Media**

- Radio interview regarding closed meeting rules under the *Municipal Act, 2001* for COGECO Nouvelles en Outaouais
- Quotation in The Lobby Monitor article, “OCL turns 10, reflects on past and looks to future”

### **GOALS FOR 2018-2019**

In the coming year, my primary focus will continue to be the implementation of Bill 68. On March 1, 2019, my expanded jurisdiction and responsibilities as municipal integrity commissioner will come into effect. As predicted in last year’s Annual Report, these changes will require the adaptation of existing processes, and the development of new processes and procedures.

I have consulted with Members of Council and members of local boards regarding the upcoming changes, and will use their feedback to inform the implementation of the new mandatory accountability provisions.

Finally, I will begin to turn my attention to laying the groundwork for my successor.

### **Education**

The next year will again include a significant focus on education as my Office prepares for the provisions of Bill 68 to take effect. The orientation sessions of the new 2018-2022 City Council will be an ideal opportunity to provide education and training on both the existing elements of the Accountability Framework as well as the new elements to be established as a result of Bill 68.

The implementation of a code of conduct for members of local boards will involve an intense period of adjustment for both my Office and local board members. This coming year, I will conduct an education program for members of local board to familiarize them with the work of my Office as well as their new obligations under a code of conduct for members of local boards.

I will also be looking to prepare educational material with respect to the *Municipal Conflict of Interest Act* in keeping with my new legislative responsibilities under Section 223.3 of the *Municipal Act, 2001*.

Finally, I will continue to encourage and seek opportunities to educate both City staff and lobbyists about the requirements of the Lobbyist Registry.

**Compliance**

My focus on compliance will be ongoing. I will continue to rely on an escalating compliance scheme to address contraventions of the *Lobbyist Registry By-law* that come to my attention. I will also use the digital tools developed this year to ensure that lobbying files and lobbying activities continue to be created within the deadlines set out in the *Lobbyist Registry By-law*.

**FINANCIAL STATEMENT**

The Integrity Commissioner’s remuneration consists of a \$25,000 annual retainer and a per diem of \$200 per hour to a daily maximum of \$1,000.

**Figure 10: Financial Breakdown (October 1, 2017 to September 30, 2018)**

	<b>Q4 2017</b>	<b>Q1 2018</b>	<b>Q2 2018</b>	<b>Q3 2018</b>	<b>TOTAL</b>
<b>Retainer*</b>				\$25,440.00	\$25,440.00
<b>Salary*</b>	\$20,962.56	\$16,586.88	\$19,334.40	\$23,506.56	\$80,390.40
<b>Ancillary Costs (Parking, cell phone, business travel)</b>	\$1,096.58	\$771.96	\$1,496.84	\$5,616.35	\$8,981.73
<b>Hours Logged</b>	103	81.5	95	115	394.5

\*includes tax less eligible municipal rebates

## Appendix 1 - Anonymized Letter of Direction for failure to report lobbying



Office of the Integrity Commissioner  
Bureau du Commissaire à l'intégrité

### Letter of Direction

On [DATE], my office received details regarding your lobbying communication with \_\_\_\_\_, as well as a confirmation that this meeting was not registered in the Lobbyist Registry.

You are receiving this Letter of Direction as a consequence of an inadvertent breach of the *Lobbyist Registry By-law* by failing to register a lobbying communication. This letter provides information regarding the requirements of the *Lobbyist Registry By-law* and Lobbyist Code of Conduct, and issues directives for the late registration and guidelines for your future lobbying activity.

With regard to the requirement to register lobbying, the *Lobbyist Registry By-law* states that:

“All lobbyists shall file a return regarding a specific lobbying communication within fifteen (15) business days of the communication occurring.” (Section 6(1), Registration and Reporting of Lobbying Activity)

The details we received confirmed that you attended a meeting with \_\_\_\_\_ on [DATE]. As lobbying communication took place during the meeting, you were required by the *Lobbyist Registry By-law* to create a profile in the Lobbyist Registry and record the meeting.

This letter serves as notice of your obligation to create a profile in the Lobbyist Registry. Once you have done so, the following steps must be taken, without delay, to ensure full compliance:

- Creating a lobbying file indicating the subject matter of the lobbying communication; and
- Creating a lobbying activity identifying the date of the meeting and those public office holders present.

Henceforth, you will be required to abide by the *Lobbyist Registry By-law* and Lobbyist Code of Conduct by following the provisions therein, specifically:

- Registering all lobbying communications accurately;
- Registering all lobbying communications within the legislated timeframe (i.e. within 15 business days of the communication occurring);
- Ensuring that all members of your organization that engage in lobbying communication create profiles in the Lobbyist Registry; and
- Refraining from placing public office holders in a conflict of interest, or in breach of their own codes of conduct.

Failure to comply with the *Lobbyist Registry By-law* or the terms of this letter may lead to an investigation and the imposition of sanctions.

Any questions or concerns regarding the *Lobbyist Registry By-law* or Lobbyist Code of Conduct can be sent to [integrity@ottawa.ca](mailto:integrity@ottawa.ca). Questions related to technical difficulties with the Lobbyist Registry can be sent to [lobbyist@ottawa.ca](mailto:lobbyist@ottawa.ca).

Please send acknowledgement to my office once you have received and read this letter.

Regards,

**Robert Marleau**

**Office of the Integrity Commissioner**

**Bureau du commissaire à l'intégrité**

110 Laurier Avenue West/Ouest

Ottawa, ON K1P 1J1

Direct Line/ Ligne directe (613) 580-2424 Ext./poste 21978

Fax/ Télécopieur (613) 580-9609

[integrity@ottawa.ca](mailto:integrity@ottawa.ca)/[integrite@ottawa.ca](mailto:integrite@ottawa.ca)

## Appendix 2 - Anonymized Letter of Direction for invitations in breach of the Lobbyist Code of Conduct



Office of the Integrity Commissioner  
Bureau du Commissaire à l'intégrité

### Letter of Direction

[NAME],

It has come to my attention that you extended [INVITATION/GIFT] to [MEMBER OF COUNCIL] while your company was associated with active lobbying files.

With regard to the expectations guiding the improper use of influence, the Lobbyist Code of Conduct states that:

*“Lobbyists with active lobbying registrations, their registered clients or their employees shall not, directly or indirectly, offer or provide any gift, benefit or hospitality to Members of Council or their staff.”* (Section 6(3), Improper Influence)

This [INVITATION/GIFT] inadvertently placed [MEMBER OF COUNCIL] in breach of the Code of Conduct for Members of Council, and your company in breach of the Lobbyist Code of Conduct. I acknowledge that you may not have offered [INVITATION/GIFT] with the intent of advancing a lobbying interest, or in the knowledge that doing so would place others in breach of any Code of Conduct requirements.

As a result, no penalties need to be imposed. In keeping with my mandate as Lobbyist Registrar, however, I am sending this Letter of Direction to educate your company on the requirements of the *Lobbyist Registry By-law* and Lobbyist Code of Conduct. This letter also issues directives for updating old lobbying files, and guidelines for your organization's future lobbying activity.

Once this Letter of Direction has been issued, I ask that your company take the following steps without delay:

- Update any existing Lobbyist Registry profiles to ensure that any company information is accurate; and
- Review existing lobbying files for all of your in-house and consultant lobbyists, and inform my office whether they need to be closed.



Your organization will be expected to abide by the requirements of the *Lobbyist Registry By-law* and Lobbyist Code of Conduct, specifically:

- Registering all lobbying communications accurately, and within the legislated timeframe (i.e. within 15 business days of the communication occurring);
- Ensuring that all members of your organization that engage in lobbying communication create profiles in the Lobbyist Registry;
- **While maintaining active lobbying files, seeking permission from my office before issuing any invitations to Members of Council;** and
- Refraining from placing public office holders in a conflict of interest, or in breach of their own codes of conduct.

Any questions or concerns regarding the *Lobbyist Registry By-law* or Lobbyist Code of Conduct can be sent to [integrity@ottawa.ca](mailto:integrity@ottawa.ca). Questions related to technical difficulties with the Lobbyist Registry can be sent to [lobbyist@ottawa.ca](mailto:lobbyist@ottawa.ca).

Please send acknowledgement to my office once you have received and read this letter.

Regards,

**Robert Marleau**

**Office of the Integrity Commissioner**

**Bureau du commissaire à l'intégrité**

110 Laurier Avenue West/Ouest

Ottawa, ON K1P 1J1

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[integrity@ottawa.ca](mailto:integrity@ottawa.ca)/[integrite@ottawa.ca](mailto:integrite@ottawa.ca)

### **Appendix 3 - Anonymized response to Letter of Direction**

To: Mr. Robert Marleau  
Office of the Integrity Commissioner  
City of Ottawa  
110 Laurier Avenue West  
Ottawa, ON  
K1P 1J1

Subject: **Letter of Direction**

Dear Mr. Marleau,

Thank you for your Letter of Direction, dated [DATE], relating to the requirements of the Lobbyist Registry By-law and the Lobbyist Code of Conduct.

[COMPANY NAME] is committed to abide by all the requirements of the Lobbying Registry By-law and the Lobbyist Code of Conduct.

Having read your proposed directives, [COMPANY NAME] undertakes to:

- Update the in-house Lobbyist Registry profiles of its employees on a regular basis to ensure that all information is accurate;
- Monitor the Lobbyist Registry profiles of its consultant lobbyists to ensure these are regularly updated; and
- Contact your office to seek advice or approval prior to extending hospitality to Members of Council or their staff.

Yours truly,

[NAME OF REPRESENTATIVE]

[TITLE OF REPRESENTATIVE]