

**2019 Annual Report of the
Integrity Commissioner**

Commissioner's Remarks

I am pleased to present City Council with my 2019 Annual Report.

This is my seventh 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, 2018 to September 30, 2019.

In my last two Annual Reports, I have commented on the significance of the legislative amendments introduced by Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017*. On March 1, 2019, the last legislative reforms of Bill 68 came into effect, bringing the most substantial change to my mandate since the position of Integrity Commissioner was established at the City of Ottawa in 2012.

The reforms have significantly expanded the Integrity Commissioner's mandate as set out in the *Municipal Act, 2001*. I am now responsible for overseeing a municipal conflict-of-interest regime, which includes the legislated mandate to provide education and advice to Members of Council and Members of local boards on conflicts of interest under the *Municipal Conflict of Interest Act* (MCIA). I am now also responsible for receiving and investigating complaints of non-compliance with the conflict-of-interest provisions of the MCIA.

Since this new municipal conflict-of-interest framework has been in place, I have received a number of requests for advice from Members of Council about their obligations under the MCIA. Members are aware of their responsibilities, are asking important questions and are seeking advice so as to avoid conflicts of interest. I am encouraged that Members are putting this part of my expanded mandate to good use.

As of March 1, 2019, municipal integrity commissioners also have a legislated responsibility to provide education with respect to codes of conduct and related ethical policies. While I have, in past years, provided education on the Code of Conduct for Members of Council and related policies, this education mandate now extends to codes of conduct for members of local boards. In the spring, I was pleased to participate in a joint presentation with the City Clerk and Solicitor at the Ontario Business Improvement Area Association National Conference on matters including the "New accountability framework" for local boards. Over the past year, I have also met with most of the City's Business Improvement Areas to introduce their Members to their responsibilities under the new Code of Conduct for Members of local boards, and to advise them of changes to the municipal conflict-of-interest framework.

With my expanded mandate has come an increased workload. The number of inquiries my Office received has increased notably in the past year. Also, in the 2018-2019 reporting cycle, my Office received the highest number of Code of Conduct complaints, including the highest number of formal complaints under the Code, of any year since the Integrity Commissioner position was established at the City of Ottawa in 2012. With respect to my total hours worked, 2018-2019 came second only to my first year as Integrity Commissioner – which was also the first year of the Office – in which I assisted in the development of foundational documents such as the Code of Conduct for Members of Council and provided sessions with Members and their staff on the then-new framework. I have noticed similarities to that first year in much of my education and outreach work over 2018-2019.

With an increase in the number of complaints received over the past year, I have sought practical approaches to increase coordination and collaboration between accountability officers at the City of Ottawa. As a result, I have worked with the City's Auditor General to develop a Memorandum of Understanding (MOU) between our two Offices to facilitate the sharing of information where appropriate and as necessary (Appendix A). Using as an example the MOU between the City of Toronto's four Accountability Offices, the Memorandum establishes a formal mechanism for the exchange of information between the Auditor General and the Integrity Commissioner, both statutory officers of the City under the *Municipal Act, 2001*. Under the terms of the MOU, information shared will be strictly limited to that which is necessary to allow the Officers to effectively fulfill their respective mandates. The MOU preserves the independence of each Office and allows for the continued preservation of secrecy in accordance with each Office's respective duty of confidentiality set out in the *Municipal Act, 2001*. Finally, information shared under the MOU will remain confidential indefinitely.

In my capacity as Lobbyist Registrar, as in past years, I have continued to focus on providing education on the *Lobbyist Registry By-law* and enforcing compliance. I have prioritized meeting with lobbyists this year to discuss various specific compliance concerns and approaches at enforcement with the *By-law*. At a Lobbyist Registry stakeholder session, I held in May, I provided general information regarding the Registry itself, the *Lobbyist Registry By-law*, registration requirements and the Lobbyist Code of Conduct. Attendees took the opportunity to ask questions and speak to their experience of using the Registry. Among the topics raised by attendees were the provision of gifts, personal relationships with public office holders, and registration requirements for community associations.

As an additional aide to all Lobbyist Registry stakeholders, I also published an interpretation bulletin to provide a quick reference guide on requirements imposed on lobbyists by the *By-law* and the Lobbyist Code of Conduct, as well as the compliance and enforcement tools at my disposal. In general, efforts on the part of my Office to provide enhanced education to lobbyists and other stakeholders leads me to hold higher expectations regarding compliance with the *By-law* and Lobbyist Code of Conduct.

In order to increase compliance with the *Lobbyist Registry By-law*, an enhancement was applied to the Lobbyist Registry this year that now allows staff in my Office to generate a Late Lobbying Report. With the report, I can easily track compliance with the *By-law* requirement that a lobbyist register a communication within 15 business days of it occurring. In the coming year, I will use the Late Lobbying Report to monitor compliance on the part of lobbyists, as well as a starting point for enforcing compliance with the 15-business day requirement to register activity.

Recently, matters such as legislative developments and best practices in jurisdictions across Canada were topics of discussion at the Fall Conference of the Lobbyist Registrars and Commissioners Network. Staff of my Office and I always benefit from participating in sharing information at these bi-annual meetings. This fall, I was pleased to have the opportunity to host the opening night reception at Ottawa City Hall, with the remainder of the proceedings taking place at the Office of the Federal Commissioner of Lobbying, Nancy Bélanger.

I would be remiss if I did not underline the excellent support my Office receives from the staff assigned to me by the Clerk's Office. In a year of activity growth the staff has been a key factor in a successful transition to an expanded mandate, the communication with new stakeholders, all the while meeting our service and response obligations.

In the coming year, I look forward to continuing to meet with local boards of the City to provide education and training on their codes of conduct and responsibilities under the new municipal conflict of interest framework. I will also continue to work towards fulfilling my expanded education mandate by developing new, practical communication and training tools, including a regular newsletter for various stakeholders.

Respectfully submitted,

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

Integrity Commissioner

MANDATE

Prior to March 1, 2019, the statutory role of the Integrity Commissioner was set out in Section 223.3 of the *Municipal Act, 2001*, 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,

- (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).

On March 1, 2019, my statutory role as Integrity Commissioner expanded. Section 223.3 of the *Municipal Act, 2001* was 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 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

My mandate as Integrity Commissioner for the City of Ottawa now covers three codes of conduct and related policies including:

- The Code of Conduct for Members of Council;
- The Community, Fundraising and Special Events Policy;

- The Code of Conduct for the Citizen Members of the Built Heritage Sub-Committee; and
- The Code of Conduct for Members of Local Boards.

In addition, I also have a new responsibility for the oversight of the *Municipal Conflict of Interest Act* (“MCIA”). Finally, I have an advisory function associated with the Council Expense Policy and the Public Conduct Policy.

My role as Integrity Commissioner represents the largest part of my time commitment and this past year was the busiest since I took on the role in 2012. This spike in workload can be attributed to the introduction of the new code of conduct for members of local boards, the new oversight over the MCIA (and particularly advice with respect to members’ obligations), and an increase in formal complaints.

In last year’s annual report, I indicated that I expected the volume of work to stabilize after an initial period of education and adjustment. Given the breadth of my new mandate and the number of individuals impacted (230+ local board members compared to 24 Members of Council), this adjustment period will be longer than it was when Council approved the first components of the Accountability Framework.

I also noted a growing awareness of and interest in the Accountability Framework by the general public. The increased citizen engagement in the form of formal complaints is evidence of this growing awareness. Formal complaints are taken seriously, and each complaint is given thorough consideration. Those formal complaints which merit an investigation must follow the established process in the Complaint Protocol. While the 90-day completion goal for an investigation, set in the Complaint Protocol, remains a target, investigations cannot be rushed just to meet that goal. Any investigation must meet the tests of natural justice and procedural fairness. Investigations must be methodical, rigorously documented and thorough.

I continue to promote my Office as a resource for Members of Council, members of local boards, City staff and the public. The Code of Conduct for Members of Council was prepared as a hybrid of a values-based and a rules-based code. The intention was to promote and encourage ethical behavior by establishing overarching values or principles that Members of Council are expected to hold themselves to, while including specific rules that must be followed for compliance purposes. Overall, I believe the Code of Conduct is working as intended.

Members of Council, and now members of local boards, must apply the principles of their respective code of conduct on a daily basis, in their interactions with each other, staff or the public and as part of their everyday decisions.

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.

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.

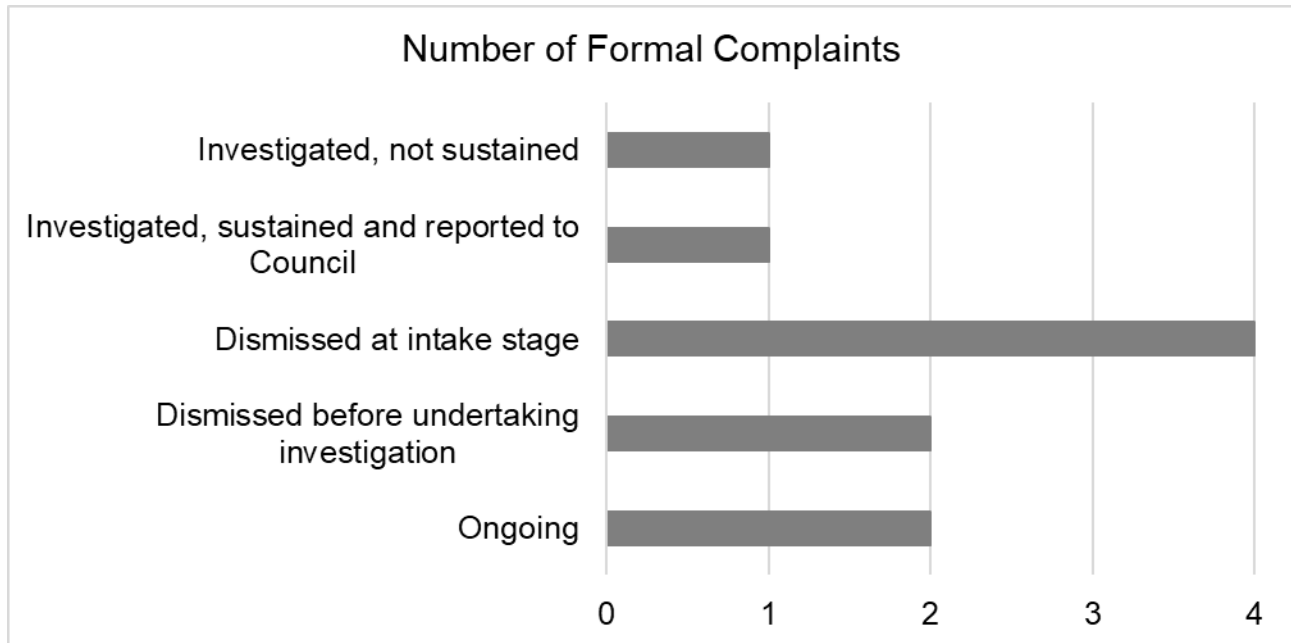
Formal Complaints

As required by the Complaint Protocol, formal complaints are submitted on the appropriate form, with a signed affidavit, 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 (“the Code”) 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.

From October 1, 2018 to September 30, 2019, I received nine formal complaints about matters within my jurisdiction as Integrity Commissioner. I also completed work on one formal complaint which was ongoing at the end of the last reporting cycle. The disposition and status of those formal complaints is discussed below.

Figure 1: Total Number of Formal Complaints



Investigated, not sustained

I finalized one formal complaint which had been ongoing at the end of the 2017-2018 reporting cycle. Originally filed as an informal complaint, it alleged a Member of Council acted in contravention of the Code in furthering a personal disagreement with the complainant. The informal complaint specifically alleged the Member had contravened Section 4 (General Integrity) and 7 (Discrimination and Harassment) of the Code.

In accordance with the Complaint Protocol, the complainant forwarded a letter and request for mediation to the Councillor. The Councillor declined mediation. Shortly thereafter, the complainant submitted a formal complaint regarding the alleged contraventions of the Code by the Member.

The formal complaint was submitted prior to “Nomination Day,” the date on which candidates for the 2018 municipal election were able to start filing their nomination papers. Section 14 of the Complaint Protocol prohibits the Integrity Commissioner from making any report on findings of an investigation during the period that begins on Nomination Day and ends on Voting Day for a municipal election, as follows:

No Reports Prior to Municipal Election

14. Notwithstanding any other provision of this Protocol, the Integrity Commissioner shall not make any report to Council or to any other person during

the period of time starting on Nomination Day and ending on Voting Day in any year in which a regular municipal election will be held, as set out in the *Municipal Elections Act, 1996*.

The Complaint Protocol does not, however, prevent the Integrity Commissioner from continuing with an inquiry during this period. I proceeded in accordance with the investigation provisions set out in the Complaint Protocol and held my report on the matter until after Voting Day.

My report concluded that the evidence did not support the two allegations of harassment and one allegation that the Member exerted improper influence over a City administrative process, the result of which had not been in the Complainant's favour.

As the complaint was not sustained, I decided it was not in the public interest to submit a report to Council on the matter, except in this summary as part of my Annual Report. Subsection 11(4) of the Compliant Protocol provides direction on this matter as follows:

(4) Where the complaint is not sustained, except for in exceptional circumstances, the Integrity Commissioner shall not report to Council the result of the investigation except as part of an annual or other periodic report.

Investigated, sustained and reported to Council

Two members of the public filed a request for investigation alleging contraventions of Sections 5 (Confidential Information) and 7 (Discrimination and Harassment) of the Code on the part of a Member of Council. Specifically, the Complainants alleged that the Member improperly obtained and used personal information to establish a spousal relationship between the Complainants and confirm the male Complainant's employment with the Ottawa Police Service. The Complainants further alleged that the Member used this information to harass the male Complainant at his workplace with the intent of intimidating the female Complainant, who had engaged the Member on social media and criticized the Member's claims regarding police service.

Following a preliminary review of the information submitted, I met with the Complainants and determined the complaint was not frivolous or vexatious. The Complainants declined the option of proceeding with an informal complaint, and I concluded there were sufficient grounds for a formal investigation.

I retained the services of an independent investigator to complete the investigation and delegated my responsibility for the investigation in accordance with Section 223.3 of the

Municipal Act, 2001. Based on the investigation report, I prepared my own report to Council with my findings and recommendations.

My report to Council found that the Member did not breach Section 5 (Confidential Information) of the Code. The report agreed with the investigator's findings that the Member obtained personal information of the male complainant in his official capacity, but that at the time the Member gathered the information it is not clear that it was to further his private interest. The report found that the Member did not violate any confidences and, therefore, did not breach Section 5.

The report further found that the Member contravened Section 7 (Discrimination and Harassment) when he sent an email to the then Chief of Police alerting him to the social media activity of the female Complainant, identifying her as the wife of an OPS Officer, implying that the Officer was sharing internal police information with his wife and asking for the Chief's attention to the matter.

On September 25, 2019, Council received the report and carried its recommendations, which included the finding that the Member contravened Section 7 of the Code, and that Council direct the Member to issue a written apology to the complainants, that the Member issue a communication to the interim Chief of OPS requesting corrective action relating to the personnel file of the OPS Officer and that the Member be reprimanded by Council. The Member fully complied with Council's directives and this case is now closed.

Dismissed at intake stage

During the intake analysis process, I determined that the following formal complaints did not establish a prima facie breach of the Code. In the absence of further supportive details or documentation from the complainants in each case, I dismissed four complaints under Section 5 of the Formal Complaint Procedure (emphasis added):

Complaints Outside Integrity Commissioner Jurisdiction

5. If the complaint, including any supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or complaint procedure under another Council policy, the Integrity Commissioner shall advise the complainant in writing as follows:

Criminal Matter

- (a) If the complaint on its face is an allegation of a criminal nature consistent with the Criminal Code of Canada, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate Police Service.

Municipal Freedom of Information and Protection of Privacy Act

- (b) If the complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter must be referred to the City Clerk and Solicitor for Access and Privacy review.

Other Policy Applies

- (c) If the complaint seems to fall under another policy, the complainant shall be advised to pursue the matter under such policy.

Lack of Jurisdiction

- (d) If the complaint is, for any other reason not within the jurisdiction of the Integrity Commissioner, the complainant shall be so advised and provided with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

Matter Already Pending

- (e) If the complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a Human Rights complaint or similar process, the Integrity Commissioner may, in his/her sole discretion and in accordance with legislation, suspend any investigation pending the result of the other process.

1. A member of the public filed a request for investigation setting out a series of particulars and describing actions alleged to be in contravention of the Code. I summarized the complaint into two specific allegations, the first of which alleged that a Member had contravened the General Integrity provisions of the Code (Section 4) in concealing information, making misleading statements and lying about the Member's own awareness of facts in an effort to circumvent open government, accountability and transparency. After reviewing extensive

documentation that the complainant had provided, I concluded there was insufficient evidence to support the allegation that the Member deliberately undertook any such action.

The complaint also alleged a breach of Section 12 (Conduct Respecting Lobbying), alleging that the Member failed to advise a lobbyist of the requirement to register lobbying activities and continued to communicate with the organization despite awareness of the non-registration. While I found that there was insufficient evidence to support the specific allegation, the evidence did suggest potential gaps in the organization's reporting of lobbying activities. In my capacity as Lobbyist Registrar, I met with the organization to identify its principal lobbyist, understand the perceived gaps in reporting, and to ensure that the principal lobbyist understood reporting obligations moving forward.

2. A member of the public submitted a request for investigation alleging that a Member of Council contravened Section 4 of the Code (General Integrity) by improperly influencing the appointment of individuals to a Board of Directors of an arms-length entity. The complaint made particular reference to the following subsections of Section 4:

(5) Members shall avoid the improper use of the influence of their office and shall avoid conflicts of interest, both apparent and real.

(6) Members of Council shall not extend in the discharge of their official duties preferential treatment to any individual or organization if a reasonably well-informed person would conclude that the preferential treatment was solely for the purpose of advancing a private or personal interest.

After conducting a preliminary review of the recruitment and selection process for members of the Board of Directors, I found that the Member of Council had a specific, Council-authorized role in recruiting and selecting the Board of Directors. Given that specific role, I found that the Member's participation in the recruitment and selection process was appropriate. Furthermore, I found that the complainant did not provide sufficient evidence to support the specific allegations set out in the complaint.

3. A member of the public presented several allegations regarding one Member of Council, including that the Member interfered with the process of an independent Committee, and used municipal resources to provide a favour to a 2018

municipal election campaign supporter. The complaint also challenged a decision of the independent Committee on a matter within its jurisdiction.

I found that the formal complaint neither provided sufficient information to establish a prima facie breach of the Code nor sufficient grounds to proceed with an investigation into the matter. I also determined that the remainder of allegations in the formal complaint were out of my jurisdiction as they pertained to matters such as the process and decision of an independent Committee and the conduct of its Members. As I have no authority over those matters, I directed the complainant to the proper process for appeal of the Committee's decision.

4. A Member of the public contacted my Office with a complaint concerning municipal processes, decisions and proceedings, as well as the alleged actions of a former Member of Council in relation to the matter. After meeting with the complainant, reviewing extensive documentation the complainant had provided and carefully considering whether I had the authority to investigate any part of the complaint, I concluded that the matter fell outside of my jurisdiction as Integrity Commissioner.

I communicated to the complainant that I do not take positions on the outcomes of municipal processes, decisions or proceedings, and that it is not within my authority to reverse outcomes or direct City staff. With specific respect to my jurisdiction to investigate the former Member, Section 3 of the Complaint Protocol sets out the following basic requirements (emphasis added):

Formal Complaints

3. Any individual who identifies or witnesses behaviour or an activity by a sitting Member of Council or a citizen member of the Transit Commission, that they believe is in contravention of the Code of Conduct for Members of Council, may file a formal complaint in accordance with the following conditions:

As the individual in question was no longer a sitting Member of Council, I concluded I did not have jurisdiction to cause an investigation into an alleged breach of the Code that occurred while the individual was a sitting Member of Council.

Dismissed before undertaking investigation

After completing an intake analysis and before undertaking an investigation, I dismissed two complaints under Section 7 of the Formal Complaint Procedure (emphasis added):

Refusal to Conduct Investigation

7. If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not investigate and, where this becomes apparent in the course of an investigation, shall terminate the investigation.

1. A member of the public filed a request for investigation alleging that a Member of Council contravened Section 14 of the Code of Conduct (Election-Related Activity). Specifically, the complaint alleged that the Member of Council, when attending an event as a candidate in the month prior to the 2018 municipal election, had used material that had originally been purchased with the Member's Constituency Services Budget.

I conducted an intake analysis, including a review of supplementary documentation provided, and determined an inquiry into the matter was necessary. After issuing a Notice of Inquiry, I received a written response from the Member of Council. In accordance with Section 9(b) of the Complaint Protocol, I provided the response to the complainant with a request for a written reply within ten business days. I did not receive a response from the complainant after multiple requests. Based on the documentation provided by the Councillor, I determined there were insufficient grounds to continue with an investigation and advised the Complainant that in the absence of further documentation or information I would consider terminating the inquiry under Section 7 of the Complaint Protocol. Finally, after receiving no response after approximately one month, I notified the complainant I was terminating the inquiry.

2. A member of the public initiated a complaint alleging that a Member of Council contravened sections of the Code related to General Integrity, Confidential Information, Discrimination and Harassment, and Improper Use of Influence. I conducted an initial review of the formal complaint and affidavit and decided further clarification was necessary to determine if the matter was, on its face, a complaint with respect to non-compliance with the Code and was not covered by other legislation or other Council policies.

At an intake meeting, the Complainant provided me with information not originally included in the complaint with respect to the Member's alleged actions and stated an intention to supply additional documentation to support the complaint. The Complainant provided some of the supplemental documentation; however, the remainder was not delivered despite repeated requests by the staff of my Office over approximately two months.

To date, staff has not received the requested materials. My analysis of the documentation provided by the Complainant concluded that, in the absence of further supportive details or documentation, there were insufficient grounds for an investigation. The Complainant was advised that I would not be proceeding with an investigation.

Ongoing

Two formal complaints remain open at the end of the 2019 reporting cycle. I will report on these matters in my next Annual Report or directly to Council if the results of an investigation require a specific complaint report.

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.

My Office received one informal complaint in the 2018-2019 reporting cycle.

A member of the public contacted me with a complaint about difficulty she was having communicating with a Member of Council. After discussions with the complainant and with the complainant's approval, because of my duty to accommodate, I provided assistance in drafting the informal complaint and mediated a conversation between the individual and the Member's Office.

While I found the Member's Office to be responsive to the complainant and willing to work towards a solution, I found the complainant unwilling to move the matter forward. I attempted mediation for several weeks; however, the complainant met my attempts to facilitate a resolution with disrespectful and aggressive behaviour. As a result, I officially dismissed the informal complaint.

INQUIRIES AND ADVICE

Under subsection 223.3 (2.1) of the *Municipal Act, 2001*, a request by a member of council or of a local board for advice from the Integrity Commissioner must be made in writing. In order to uphold a standard of timely advice while meeting my obligation with respect to this requirement, urgent requests that I receive through a telephone call or in-person meeting are promptly documented to integrity@ottawa.ca and copied to the Member. I encourage Members and their staff to submit written requests for advice when the situation permits; however, I also encourage Members and their staff to continue contacting me informally as necessary.

The *Municipal Act, 2001*, subsection 223.3 (2.2) also requires that the advice I provide to a member of council or of a local board be made in writing.

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 neither be relied upon as rulings nor be considered a substitute for calling or writing my office when in doubt.

As has been the case in past years, a significant number of inquiries I received in 2018-2019 requested advice on Members' acceptance of tickets. As these inquiries are relatively standard, I have summarized the guidelines and restrictions in lieu of providing a sample inquiry:

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.

Inquiry

A Member of the Board of Directors for a registered charity offered a Member of Council a seat at a table for an "invitation only" fundraising event. There was no ticket price associated with the invitation. The Member of Council sought my advice on whether to accept the invitation.

Interpretation

I noted that the individual extending the invitation is associated with active lobbying files in the City's Lobbyist Registry. Subsection 12(4) (Conduct Respecting Lobbying) of the Code of Conduct reads as follows:

"Unless pre-approved by the Integrity Commissioner, the acceptance of any gift, benefit or hospitality from lobbyists with active lobbying registration or from their registered clients or their employees by Members of Council or their staff is strictly prohibited."

I advised the Member that the principle for this restriction, as also set out in the Code provisions on lobbying, is to: "...ensure that companies and individuals who may be seeking to do business with the City do not do so by giving gifts or favours to people in a position to influence vendor approval or decision-making".

As a parallel provision, Section 6 (Improper Influence) of the Lobbyist Code of Conduct prohibits lobbyists, their registered clients or employees from directly or indirectly offering or providing gifts, benefits or hospitality to public office holders, including Members of Council and their staff.

I acknowledged that, from time to time, I have granted exemptions to this restriction, provided that a Member could reasonably demonstrate that the event was related to

their role as an elected official/community leader. When I have granted exemptions, it is usually for benevolent events or Ward events where a Member is either speaking or attending in an official capacity.

In this specific case, the invitation was offered by an individual with active lobbying files that were specifically associated with the organization hosting the event. I believed there was a high risk that, if the Member attended, the Member could be perceived to be in a conflict of interest. I recommended the Member decline the invitation. I noted that should the Member receive an invitation from another individual not associated with any lobbying files, I would not see anything preventing the Member from accepting the invitation and attending the event as part of the Member's municipal duties.

Note

I received a number of questions regarding events of this nature this year. For these types of invitations, I encourage Members of Council to consider the following matters:

- Is the individual who is extending the invitation a lobbyist with active lobbying files, or a client/employee of a lobbyist with active files?
- Who is inviting you to the event? The event organizer, or a third party?
- While an invitation may not state a ticket cost, is there value associated with the hospitality offered?
- Be aware that you may be lobbied at the event.
- If a Member is lobbied at an event, obligations under Section 12 of the Code (Conduct Respecting Lobbying) apply.

I believe that Members of Council should be able to attend events that contribute to the well-being of our City, and I do not provide advice to decline invitations lightly. The duty to engage with community stakeholders and the public by attending events is important, but it must be balanced against the duty to adhere to the Code of Conduct, especially where it requires Members to avoid apparent or real conflicts of interest.

Inquiry

A Member of Council was invited to become a member of a board of directors for a not-for-profit entity. The Member sought my advice on whether it was acceptable to take on the position.

Interpretation

I concluded that there was no impediment to accepting the position. In consultation with external legal counsel, I determined that the Member's acceptance of the position did not, in and of itself, present a conflict under the *Municipal Conflict of Interest Act* ("MCIA"). In undertaking duties as a board member; however, should the Member encounter a situation that could present a pecuniary (financial) conflict of interest, I recommended the Member consult with my Office in advance of the item rising for consideration to a meeting of Council, one of its Committees, or a local board on which the Member sits.

Furthermore, as City Council did not appoint the Member to the board position, I also encouraged the Member to be careful to not appear to be officially representing Council in any board activities. With respect to non-pecuniary conflicts of interest, I also asked the Member to avoid taking any action as a Member of Council that is influenced, or could be perceived to be influenced, by matters within the Member's role on the board of the not-for-profit. Conversely, when acting as a board member, I asked the Member to avoid participating in discussions and voting on matters that could potentially intersect with the Member's public duties.

I also requested that the Member be mindful of the following matters set out in the Code of Conduct for Members of Council:

- Confidential Information (Section 5) – In this scenario, to avoid disclosing information gained as Member of Council, that is not also publicly available, to fellow Board members; and
- Conduct Respecting Lobbying (Section 12) – As the possibility exists that the Member may be lobbied while undertaking work of the board, to be mindful of the responsibilities of Members of Council with respect to lobbying.

Inquiry

An Assistant to a Member of Council requested my advice on amending an established process by which the Member supports an annual benevolent event benefitting a community organization. Specifically, an administrative change to the management of the event meant that the Assistant would now be required to create a website with registration and payment options for participants/donors. In previous years, a third party had managed these matters independently. The Assistant wished to confirm that taking

on this new role in relation to the event would be in compliance with agreed-upon guidelines.

Interpretation

Several years ago, at the Member's request, I had created Terms and Conditions for the annual benevolent event that included the following:

1. Funds are neither directly solicited nor directly received by the Member or the Member's staff;
2. All financial donations are payable to the recipient community organization and all in-kind donations go directly to the recipient community organization;
3. The Member's commitment and support does not require significant staff time and/or City resources;
4. Decisions on the disbursement of funds or in the determination of the beneficiaries of the funds be made by the recipient community organization and the Member shall remain at arm's length from the financial aspects of the event without pre-approval from the Integrity Commissioner; and
5. If more than \$25,000 in funds net of expenses is raised, the recipient organization is encouraged to publicly disclose audited statements, which should include a list of receipts, expenses, donors and disbursements to beneficiaries.

In response to the Assistant's new request, I noted no specific concerns with the Assistant's role, as described, in creating a website for the event with a registration and payment option. If the donation payments flowed directly to the recipient organization, I confirmed that the Assistant's involvement would remain in agreement with the financial aspects of the established Terms and Conditions for the event.

In reference to condition #3, I cautioned the Assistant to be mindful of the amount of time spent on the task. I explained that the condition is in place to ensure that Members' (and their staff's) involvement in community projects promotes public confidence. While it is reasonable that the Assistant's duties might include spending a limited amount of time on the project, I advised that it may become problematic if the project begins to comprise a significant portion of the Assistant's workload in the Member's Office.

Note

Community events organized by a Member of Council, which are 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.

Figure 2 – Total Points of Contact by Source

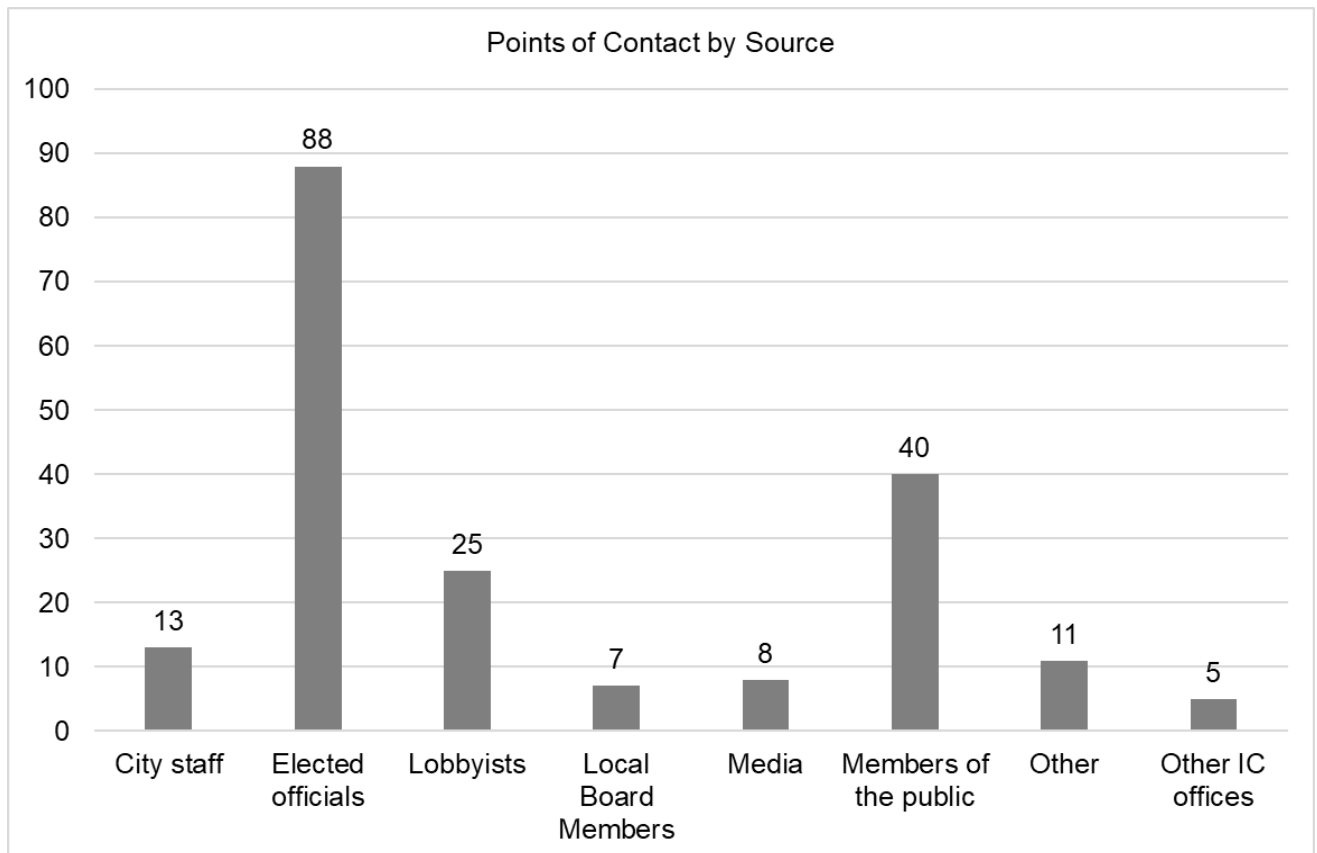


Figure 3 – Points of Contact by Type

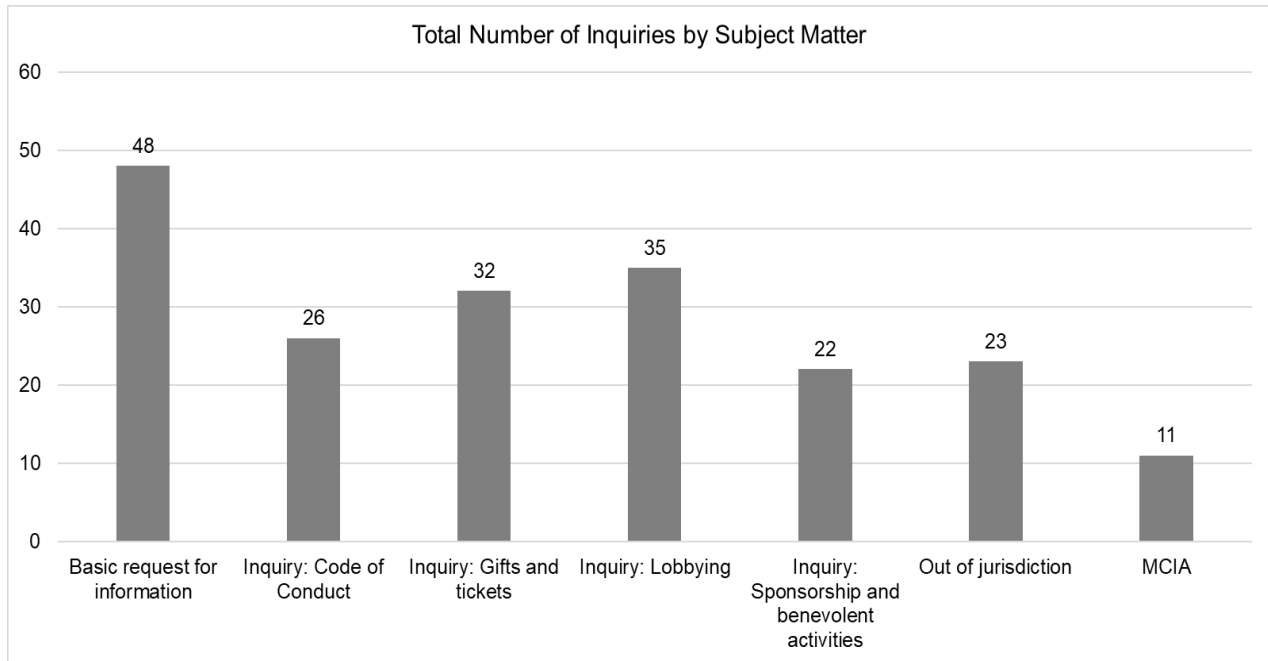
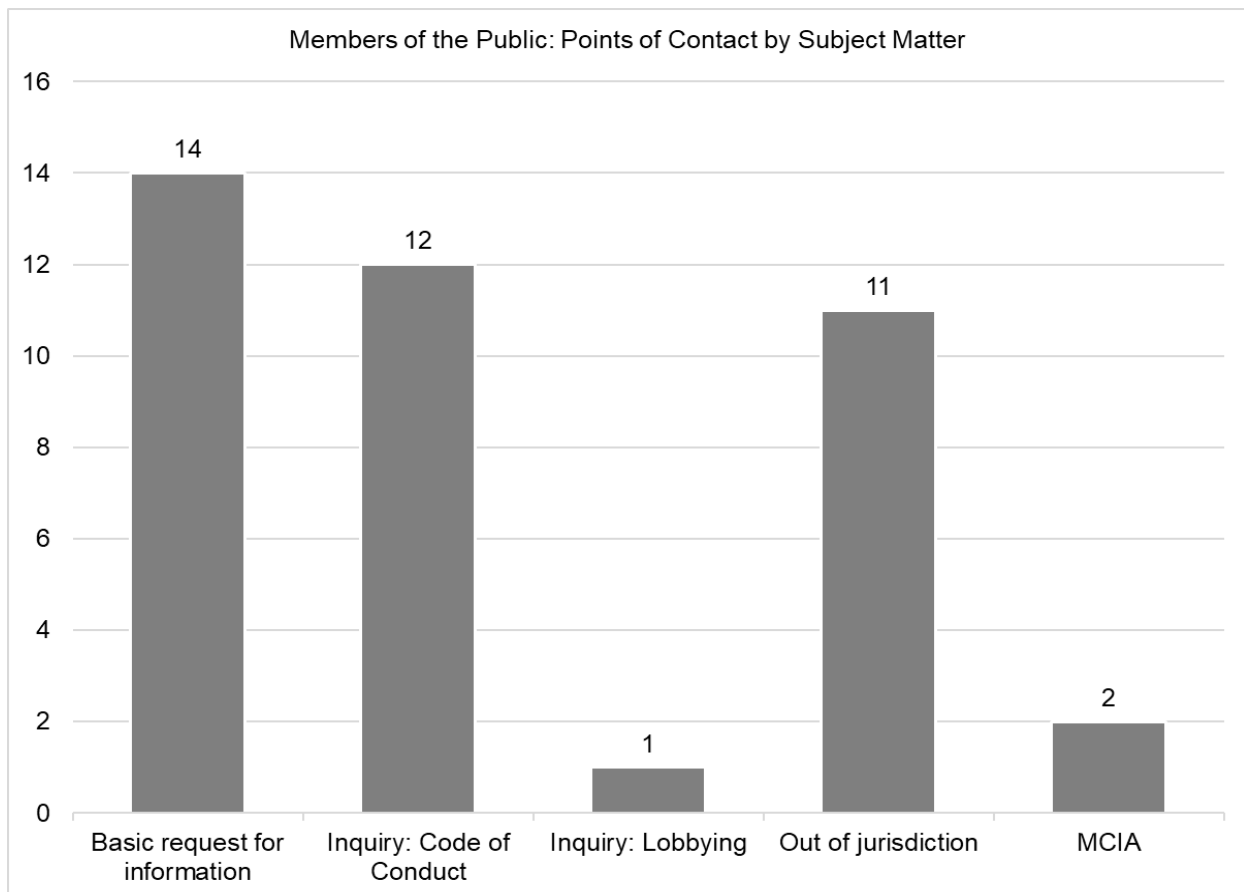


Figure 4 – Breakdown of Points of Contact with Members of the Public



CODES OF CONDUCT – LOCAL BOARDS

On March 1, 2019, the Code of Conduct for Members of Local Boards into effect. This code of conduct was established by City Council in response to legislative changes to the *Municipal Act, 2001* which now requires all Ontario municipalities to have a code of conduct for members of local boards.

Complaint Investigation and Adjudication

In the same manner as complaints against elected officials, anyone who identifies or witnesses behaviour by a member of a local board that they believe to be in violation of the applicable code of conduct, may pursue the matter either through an informal or formal complaint process. All complaints are handled in accordance with the Complaint Protocol. There is no fee charged for filing a complaint.

From March 1, 2019 to September 30, 2019, I did not receive any informal or formal complaints regarding the conduct of local board members.

Inquiries and Advice

Consistent with my statutory duties under the *Municipal Act, 2001*, I am responsible for responding to inquiries and providing advice to members of local boards. All requests for advice and the advice provided must be made in writing.

As the code of conduct has only been in effect for seven months, I have not received a great deal of inquiries from members of local boards. Since the codes of conduct were established by City Council, I have been meeting with the various local boards to provide a primer on the new code of conduct and the related Complaint Protocol.

MUNICIPAL CONFLICT OF INTEREST

“Public office is a trust conferred by public authority for public purpose. And the Act, by its broad proscription, enjoins holders of public offices within its ambit from any participation in matters in which their economic self-interest may be in conflict with their public duty. The public's confidence in its elected representatives demands no less.”¹

Moll v. Fisher

¹ *Moll v. Fisher* (1979), 8 M.P.L.R. 266 (Ont. Div. Ct.)

As of March 1, 2019, a new conflict of interest framework is in effect which provides me, as Integrity Commissioner, with the jurisdiction to receive and investigate complaints with respect to alleged contraventions of the *Municipal Conflict of Interest Act* (“MCIA”). Within this framework, I am also responsible for providing advice to Members of Council and members of local board respecting their obligations under the MCIA.

Complaint Investigation and Adjudication

An eligible elector or a person demonstrably acting in the public interest who believes a Member of Council or a member of a local board has violated the conflict of interest rules in the *Municipal Conflict of Interest Act*, may apply to my Office for an inquiry into the matter.

An applicant must make an application, in writing, within six weeks after they became aware of the alleged violation. The only exception is when the applicant becomes aware of the violation during the period of time between Nomination Day and Voting Day in a municipal election year.

In accordance with the *Municipal Act, 2001*, I must complete an investigation within 180 days after receiving the completed application. If, after completing an investigation, I determine it is appropriate to do so, I may apply to a judge for a determination as to whether the member has a conflict of interest. Only a judge may make a final determination and apply any or all of the penalties provided in the MCIA.

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 MCIA.

From March 1, 2019 to September 30, 2019, I received one complaint respecting an alleged contravention of the *Municipal Conflict of Interest Act*.

Dismissed at intake stage

A member of the public submitted an application alleging that a Member of Council had contravened the *Municipal Conflict of Interest Act* when the Member voted on matters that directly affected individuals who had made campaign contributions to the Member’s election campaign.

As part of my intake analysis, I conducted an initial examination of whether campaign contributions, made in accordance with the requirements of the *Municipal Elections Act, 1996*, create a direct, indirect or deemed pecuniary interest of a candidate who accepts a contribution and is elected as a Member of Council.

Campaign contributions do not, in and of themselves, create a pecuniary interest on the part of a Member of Council. This does not mean that it cannot be established that an agreement was made that in exchange for campaign contributions, a Member promised to vote a certain way. In this case, as presented, I concluded there was insufficient evidence to support the allegation that the Member had a pecuniary interest.

Inquiries and Advice

As part of my new expanded mandate under the *Municipal Act, 2001*, I am obligated to provide Members of Council and members of local boards with advice regarding their obligations under the MCIA.

This advice not only helps guide Members of Council and members of local boards who have sought the advice, but may also factor in to a judge's decision when considering penalties for a contravention of the MCIA.²

For these reasons, I retained the services of an external lawyer, on retainer, who is accessible for the provision of legal advice respecting the MCIA. Given the nature of advice under the MCIA, I will not provide anonymized summaries of the advice provided. However, I will highlight those areas of the MCIA that were relevant to the advice provided.

Direct pecuniary interest

While not defined in the MCIA, a direct pecuniary interest applies to situations where the member would sustain a positive or negative financial impact as a result of the decision on the matter.

A frequently cited decision in *Moll v. Fisher* articulates the purpose of the MCIA and emphasizes that a member cannot "serve two masters":

"The obvious purpose of the Act is to prohibit members of councils and local boards from engaging in the decision-making process in respect to matters in which they have a personal economic interest. The scope of the Act is not limited by exception or proviso but applies to all situations in which the member has, or is deemed to have, any direct or indirect pecuniary interest. There is no need to find corruption on his part or actual loss on the part of the council or board. So long as the member

² Subsection 9 (2) of the MCIA sets out the powers of a judge and what he or she may consider when exercising his or her powers respecting a contravention of the Act. A judge may also consider whether the Member "took reasonable measures to prevent the contravention," or "committed the contravention through inadvertence or by reason of an error in judgment made in good faith."

fails to honour the standard of conduct prescribed by the statute, then, regardless of his good faith or the propriety of his motive, he is in contravention of the statute. And I should say at once, that in so far as this case is concerned there is no suggestion that the appellants acted out of any improper motive or lack of good faith.

This enactment, like all conflict-of-interest rules, is based on the moral principle, long embodied in our jurisprudence, that no man can serve two masters. It recognizes the fact that the judgment of even the most well-meaning men and women may be impaired when their personal financial interests are affected.”³

Members must be diligent about separating their personal financial interests from their public duties, whether elected or appointed.

Indirect pecuniary interest

Members must not only be cognizant of the pecuniary interests pertaining directly to them but must also be aware of those pecuniary interests they have as a result of their involvement or employment with other persons or bodies who may serve to benefit from matters before City Council or a local board.

Section 2 of the MCIA provides specific detail with respect to when a member has an indirect pecuniary interest:

2. For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,
 - (a) the member or his or her nominee,
 - (i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,
 - (ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or
 - (iii) is a member of a body,
that has a pecuniary interest in the matter; or
 - (b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

This section is particularly relevant for members of local boards who generally serve in a voluntary capacity and are associated with or employed by a person or entity who

³ *Moll and Fisher* (1979), 23 O.R. (2d) 609 (Div. Ct.)

may have a pecuniary interest in a decision of that local board. Even in cases where the member does not have a direct pecuniary interest and does not stand to personally gain or lose based on the outcome of the decision, their particular connection with persons or bodies who do have a pecuniary interest may be an indirect pecuniary interest of the member.

Deemed Interest

A number of requests for advice dealt with potential “deemed” pecuniary interests. Under Section 3 of the MCIA, the legislation clarifies that the interests of certain persons are deemed to be interests of the Member, as follows:

3. For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member.

Further, the MCIA further provides specific definitions for those persons whose interests are deemed to be interests of the member as follows:

“child” means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family;

“parent” means a person who has demonstrated a settled intention to treat a child as a member of his or her family;

“spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage.

In order to establish if a member has a deemed pecuniary interest, it must be first be determined that the member’s child, parent or spouse, as the case may be, has a pecuniary interest in the matter in question. Further, as specified in Section 3, the member must also be aware of the pecuniary interest.

Influence

Before March 1, 2019, the focus of the MCIA was on in-meeting discussions and votes.

In his final report for the Mississauga Judicial Inquiry titled “Updating the Ethical Infrastructure”, Justice Cunningham identified shortcomings in the MCIA including the limited scope of the legislation:

“...the MCIA is limited in its reach to deliberative and legislative work where a direct or indirect pecuniary interest exists. Section 5 of the MCIA requires members of council to disclose any direct or indirect pecuniary interest and its general nature. Their obligations are to recuse themselves from any discussion of or vote in respect of the matter or any aspect of it. However, the MCIA is silent with respect to the executive and administrative functions of council, which consume far more of the time of mayors and members of executive committees.”⁴

In his recommendations, Justice Cunningham recommended that the types of meetings captured by the MCIA must be clarified to include “all meetings attended by members of council in their official capacities.”⁵

When the MCIA was amended by Bill 68 in May 2017, the legislation was expanded to include a new statutory obligation for members to refrain from attempting to influence the decisions or recommendations of officers or employees of the municipality, in matters where the Member has a pecuniary interest:

5.2 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter that is being considered by an officer or employee of the municipality or local board, or by a person or body to which the municipality or local board has delegated a power or duty, the member shall not use his or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter.

It is incumbent upon members to refrain from attempting, in any way, to influence the recommendations and decisions of City staff in matters where they have a direct, indirect or deemed pecuniary interest.

CONCLUSION

My mandate as Integrity Commissioner has expanded significantly with respect to the oversight of codes of conduct and the *Municipal Conflict of Interest Act*, including advice and education for members, the administration and the public. I will continue to fulfill these important statutory duties in a diligent and timely manner.

⁴ The Honourable Justice J. Douglas Cunningham, *Updating the Ethical Infrastructure: Report of the Mississauga Judicial Inquiry*, 3 October 2011, p. 159.

⁵ *Ibid*, p. 171

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 seven 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 Lobbyists’ 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.⁶

⁶ 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. A complete registration includes at least:

- One lobbying file, indicating the subject matter of the communication; and,
- One lobbying activity, indicating when, how and with whom the lobbyist spoke.

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, group presentations and drafting annual reports to Council.

Inquiries

Overall, my Office received correspondence on 112 items over the course of the 2018-2019 reporting period. The following data represents the initial points of contact for these inquiries.

Figure 5: Total Communications Received (October 1, 2018 to September 30, 2019)

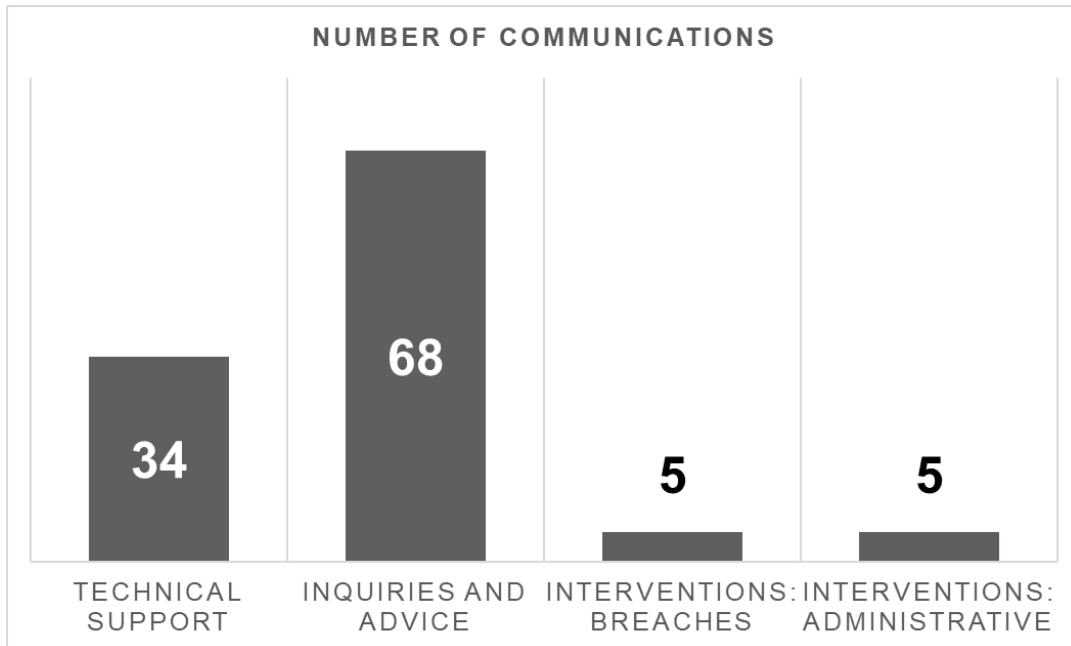
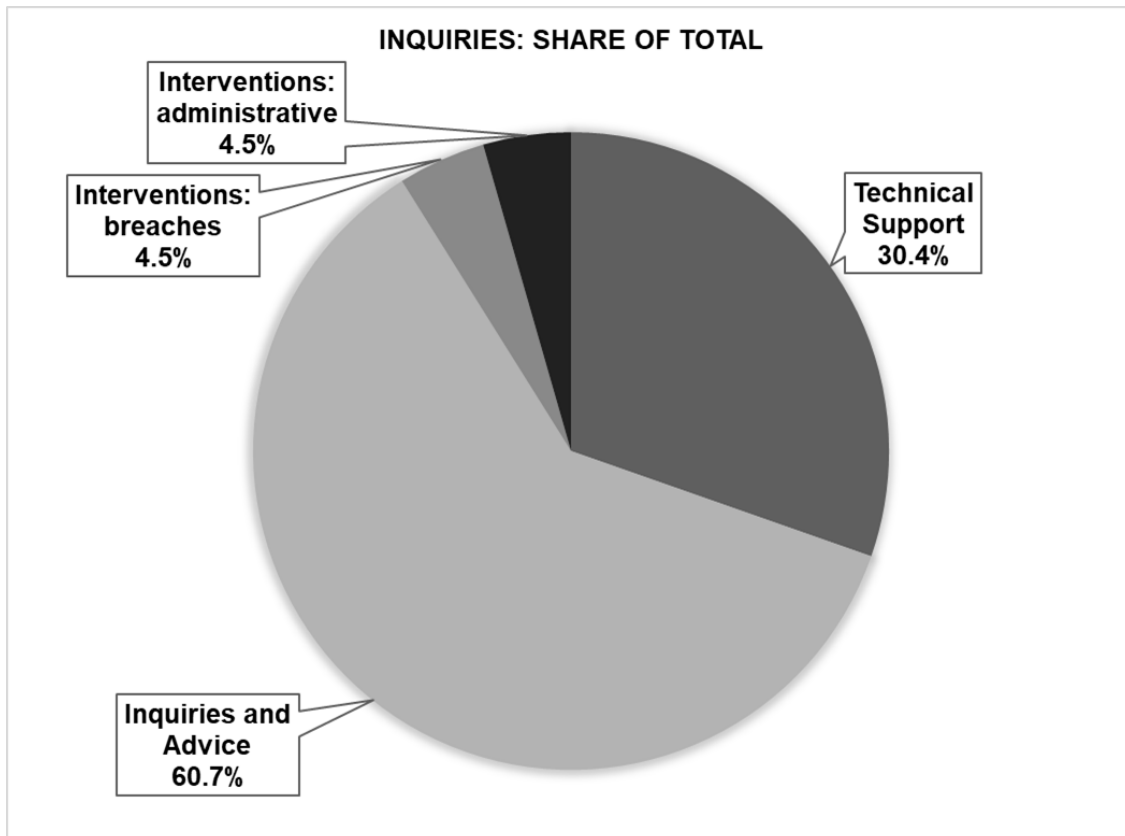


Figure 6: Share of Total Inquiries Received



Requesting Technical Support

During the 2018-2019 reporting cycle, the Office of the Lobbyist Registrar received 34 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; and
- Requesting assistance with creating lobbying files or activities.

Inquiries and Advice

This year, the Office of the Lobbyist Registrar received 68 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:

A lobbyist was told that any communication with the City must be registered. As this proved onerous, the lobbyist inquired as to whether this was correct.

Interpretation:

The *Lobbyist Registry By-law* requires that lobbyists register any communication that falls under the definition of lobbying. Essentially, lobbying communications are instances of unsolicited communication to influence a matter before public office holders, initiated by individuals seeking to substantively advance a business and/or financial interest outside of the City's normal business processes. This does not mean that every interaction with the City needs to be registered. Any communication that does not constitute lobbying or that falls under one of the exemptions present in the By-law do not need to be registered.

Lobbyists need to create distinct lobbying files for distinct issues. In the same way, lobbyists need to create distinct lobbying activities for each distinct lobbying

conversation—each conversation that differs in subject matter or method of communication would need to be registered. For example:

- A lobbyist lobbies a public office holder about subject matter A, and the conversation on subject matter A takes place using email. In this case, the method and topic are consistent throughout the conversation, and only the original email needs to be logged as an activity. New conversations about subject matter A raised in the future should be logged as a separate activity.
- A lobbyist lobbies a public office holder about subject matter A, but brings up subject matter B at some point during the conversation. As a new subject matter is raised during the conversation, both the original email on subject matter A and the email on subject matter B must be registered as separate lobbying activities.
- A lobbyist lobbies a public office holder about subject matter A via email. At some point during their exchange, the lobbyist calls the public office holder to lobby further on subject matter A. As the method of communication changed during the conversation, both the email and the phone call would have to be logged as separate activities.

Inquiry:

A lobbyist inquired about accessing the content of lobbying emails listed on the Lobbyist Registry.

Interpretation:

The *Lobbyist Registry By-law* only requires that lobbyists report the subject matter of their lobbying, as well as when, how and with whom their lobbying took place. The Office of the Lobbyist Registrar does not receive nor keep records of conversations between public office holders and lobbyists.

Inquiry:

A person created a profile in the Lobbyist Registry in anticipation of lobbying that would be taking place but had not yet registered any lobbying files or activities. The individual inquired about a proposed meeting between public office holders and their organization at which food would be served. The individual inquired as to whether food could be served to the invited public office holders, in light of the rules regarding hospitality under the Lobbyist Code of Conduct.

Interpretation:

The Lobbyist Code of Conduct prohibits a lobbyist with active lobbying registrations, their registered clients or their employees from, directly or indirectly, offering or providing gifts, benefits or hospitality to Members of Council or their staff. The restriction on providing hospitality does not apply to individuals without active lobbying files and would therefore not apply to the proposed meeting.

In this case, the Lobbyist Registrar advised against offering hospitality to public office holders for this meeting. While the individual would not have had an active lobbying file prior to inviting public office holders, they intended to lobby at the meeting.

The Code of Conduct for Members of Council prohibits the acceptance of any gift, benefit or hospitality from lobbyists with active lobbying registrations or from their registered clients, unless pre-approved by the Integrity Commissioner. A similar provision in the Employee Code of Conduct prohibits City Staff from accepting gifts, hospitality and entertainment from people who do or want to do business with the City. These provisions are in place to ensure that lobbyists avoid the perception of the improper use of influence, and that public office holders avoid any real or perceived conflicts of interest.

Registration Activity

Figure 7: Annual Lobbyist Registry Statistics

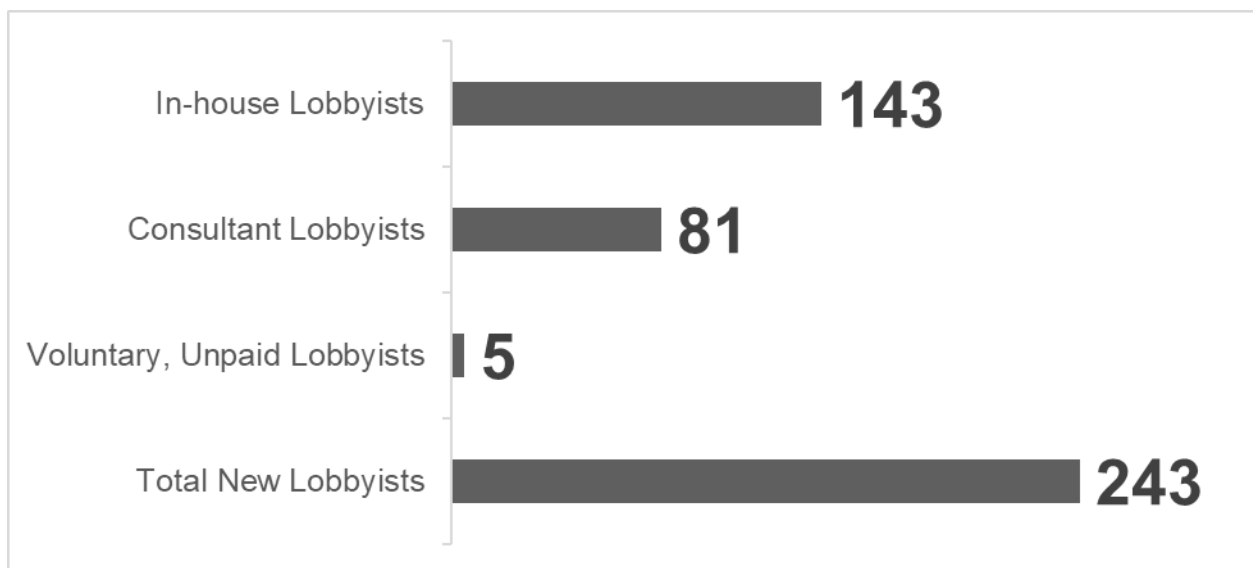


Figure 8: Lobbying Files Opened and Closed (by quarter)

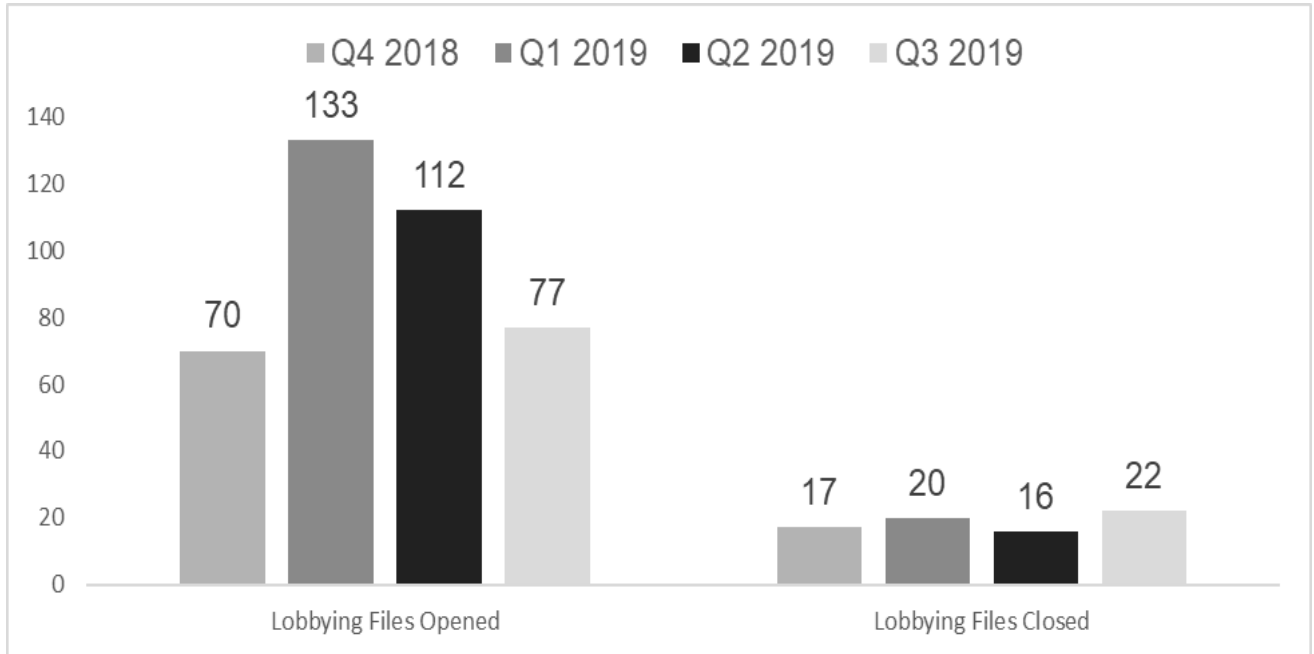


Figure 9: Total Lobbying Activity (by month)

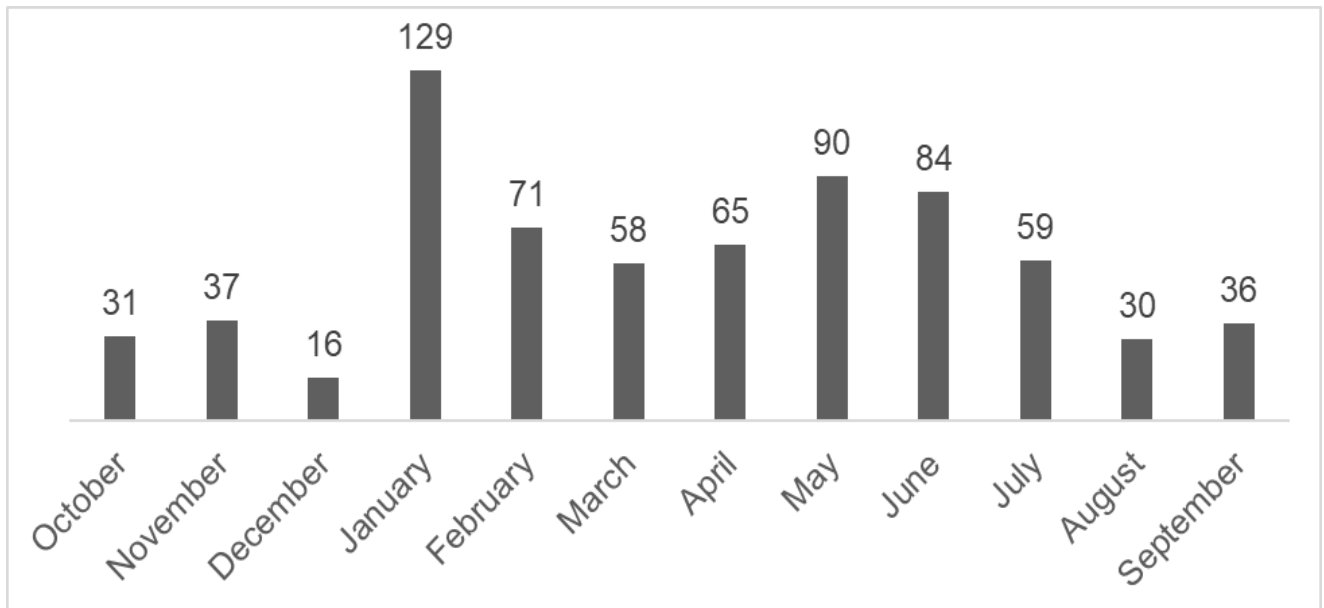


Figure 10: Top Ten Registered Subject Matters

Rank	Subject	Total Lobbying Files Registered, 2019
1	Information Technology	73
2	Transportation	63
3	Infrastructure	48
4	Planning and Development	33
5	Procurement	20
6	Water/Sewer	18
7	Health & Safety	15
8	Construction	13
9	Affordable Housing	10
10	Site Plan	10

EDUCATION

Lobbyist Registry Stakeholder Session

As the Registry reaches its seventh year in operation, the number of registered lobbyists continues to grow. To accommodate new lobbyists, and to provide older lobbyists a chance to refresh their knowledge of the requirements under the By-law and Code of Conduct, I held a Lobbyist Registry Stakeholder Session — a follow-up to a similar session held at the inception of the Registry.

The Stakeholder Session covered basic information for lobbyists, including registration requirements, an overview of the Lobbyist Code of Conduct, and compliance measures. Attendees were also given the opportunity to ask questions regarding the registration, the By-law and the Code of Conduct.

Interpretation bulletins

As part of an increased focus on education regarding the Registry this year, I published three new Interpretation Bulletins:

- Lobbyist Registry Quick Guide
- Compliance Tools
- Creatures of the City

COMPLIANCE

Administrative 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 2019, 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 5 occasions in 2019 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.

Late lobbying reports

Last year, technical enhancements to the Registry allowed my office to begin producing reports of activities registered beyond the 15-business day reporting period prescribed by the By-law. This year, I met with one lobbyist to discuss the frequency of their late filings. I continue to review these reports and intend to meet with more lobbyists as appropriate. I also intend to send reminders to public office holders regarding their obligations to review the Registry under their respective Codes of Conduct.

Reports of non-compliance

This year, I received one report of non-compliance regarding non-registration of a lobbying activity. The individual alleged that an organization had lobbied public office holders, presenting social media exchanges between both parties to support their claim.

During the intake process, I discovered that the company had hired a third party to lobby public office holders on their behalf. As the third party had properly registered the activities in question, I chose not to pursue the matter further.

To receive these kinds of inquiries in the future, my office has drafted a Lobbyist Registry non-compliance report form. The form will be posted online to provide lobbyists, public office holders and members of the public the opportunity to report non-compliance under the *Lobbyist Registry By-law* or the Lobbyist Code of Conduct.

ENFORCEMENT

Under the *Lobbyist Registry By-law*, the Integrity Commissioner 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.

To enforce the *Lobbyist Registry By-law*, I have developed an escalating compliance scheme to address breaches at different levels of severity. These tools include administrative interventions, Letters of Direction, compliance agreements, communication bans and formal investigation with a public report to Council.

In addition to periodic reviews of the Lobbyist Registry, my office receives inquiries related to existing lobbying files and activities that may require the use of these enforcement tools.

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 Lobbyists' 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.

In 2018-2019, I issued two Letters of Direction. I have selected the following example to provide an idea of the considerations that go into issuing a Letter of Direction:

Letter of Direction 1:

A local organization with active lobbying files invited a Member of Council to an event, putting both parties in a perceived breach of the Lobbyist Code of Conduct. Under 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)

Upon meeting with a representative from the organization, I discovered that the in-house lobbyist whose files had caused the issue no longer represented the organization but had failed to close their active files. The representative attending the meeting expressed his regret for the breach and informed me that they would represent the organization moving forward.

To remedy an inadvertent breach of the By-law caused by a change in representation, I opted to send a Letter of Direction addressed to the new lobbyist, providing directives for immediate action and expectations for future behaviour, including:

- Reviewing the Registry and informing my office regarding any files that need to be closed;
- Ensuring that all members of the organization who engage in lobbying create profiles;
- Ensuring that all activities are registered accurately within the legislated timeframe; and,
- While maintaining active lobbying files, seeking permission from my office before issuing invitations to Members of Council.

Compliance Agreements

This year, I entered into one compliance agreement with a lobbyist over an inadvertent breach of the Lobbyist Code of Conduct. A Letter of Direction was subsequently sent to the lobbyist's company for distribution, to ensure that employees of that organization were aware of their responsibilities under the Lobbyist Code of Conduct.⁷

CONCLUSION

As the Lobbyist Registry matures, I observe continued engagement on the part of lobbyists, public office holders and members of the public. The Lobbyist Registry has been used by the media to inform reports, and concerns regarding compliance with the By-law and the Code of Conduct come from a variety of stakeholders.

My Office will continue to verify the accuracy of future registrations, and to ensure that conversations are reported within the 15-business day reporting period. I intend to use the Letters of Direction and compliance agreements where possible to educate lobbyists and enforce the By-law.

In the coming year, I look forward to bolstering stakeholder engagement by conducting educational sessions for City Staff and Councillors' Staff.

⁷ 2019 Compliance Agreement with Vice President of Land Development, Richcraft Group of Companies

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 2018-2019 reporting period, I did not receive any requests for investigation of a closed meeting. I did receive one request from the Chair of the Agriculture and Rural Affairs Committee (“ARAC”) and the City Clerk for my assessment of an informal gathering which occurred during a recess of an ARAC meeting.

Meeting of the Agriculture and Rural Affairs Committee on April 4, 2019

During a recess of the Agriculture and Rural Affairs Committee meeting on April 4, 2019, the Committee Chair, one other Committee member, legal counsel and a City staff member assembled in a room adjacent to the Chambers at Ben Franklin Place to discuss the implications of deferring an agenda item to a subsequent meeting.

In the course of this discussion, other Committee members also entered the room one-by-one until, at the end of the conversation, all Committee members were physically present in the room. However, the other Committee members physically present in the room did not participate in the discussion and may not have been aware of the nature of the discussion taking place.

At the request of the Chair and the City Clerk, I reviewed the circumstances of the informal gathering and considered the implications of the open meeting requirements set out in Section 239 of the *Municipal Act, 2001*. My assessment concluded that a quorum of ARAC was indeed physically present in the room, but it was not a quorum of members who assembled to discuss or otherwise deal with the matter in a way that materially advanced the business or decision-making of the Committee.

The open meeting provisions in the *Municipal Act, 2001* apply to those meetings which fall within the definition set out in Section 238 as follows:

“meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

- (a) a quorum of members is present, and
- (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

In my opinion, the definition requires that four conditions must be met: a quorum of members (1) must be physically present (2) and the quorum of members (3) discusses

or otherwise deals with a matter in a way that materially advances the business or decision making of the council, local board or committee (4).

Based on the information provided to me, I believe the common trappings of an inadvertent closed meeting were present: a quorum of Committee members was physically present in a room where a discussion was held that could impact the decision-making of the Committee.

However, I concluded that all the conditions were not met in this instance. My research could not establish that a quorum of ARAC (being 3 members) collectively discussed or otherwise dealt with the item in a way that advanced the business or decision-making of the Committee. In effect, because the other ARAC members physically present in the room did not form part of the discussion, there was not an agreement by a quorum of members on the course of action to be taken.

I believe it remains the collective obligation of City staff and Members of Council to be vigilant and adhere to the open meeting statutory provisions. In my discussions with all parties, I am satisfied that both City staff and the Members of Council are aware of and intend on upholding the open meeting requirements of the Act. My only recommendation in this instance was that City staff be provided with refresher training on the open meeting rules. This training took place on October 30, 2019. Both the Chair and the City Clerk were receptive to this guidance.

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, 2018 to September 30, 2019, Council and its Committees went into closed session three times:

City Council

- March 27, 2019: Succession Plan Update

Audit Committee

- May 29, 2019: Office of the Auditor General – Report on Audit Follow-ups and Detailed Audit Follow-up Reports – Follow-up to the 2015 Audit of IT Security Incident Handling and Response

Transit Commission

- February 20, 2019: Tentative Collective Agreement with the Canadian Union of Public Employees, LOCAL 5500 (CUPE 5500)

As part of the City's ongoing commitment to open government, the Office of the City Clerk 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

- December 12, 2018: Tentative Collective Agreements with Amalgamated Transit Union, LOCAL 1760 (ATU 1760)
- February 27, 2019: Tentative Collective Agreement with the Canadian Union of Public Employees, LOCAL 5500 (CUPE 5500)
- May 22, 2019: Tentative Collective Agreement with International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts, LOCAL 471 (IATSE)

Finance and Economic Development Committee

- May 10, 2019:
 - Tentative Collective Agreement with International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts, LOCAL 471 (IATSE)
 - Sunland Drive

CONCLUSION

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

Outreach, 2018-2019 Goals and Financial Statement

EDUCATION AND OUTREACH

This past year has been the busiest since I began my role as Integrity Commissioner for the City of Ottawa in 2012. This is in large part due to my expanded mandate as Integrity Commissioner under the *Municipal Act, 2001*.

As of March 1, 2019, municipal integrity commissioners now have a legislated responsibility to provide education with respect to codes of conduct, related ethical policies and the *Municipal Conflict of Interest Act*. I believe this is a valuable step forward for municipal accountability and transparency.

Below is a list of events and activities that took place during the 2018-2019 reporting period:

Outreach

- Ontario Business Improvement Area Association National Conference – Joint Presentation with City Clerk and Solicitor (April 1, 2019)

Conferences/Seminars

- Lobbyist Registrars and Commissioners Network (LRCN) Winter Conference (February 27, 2018 – Web conference)
- Lobbyist Registrars and Commissioners Network (LRCN) Fall Conference (September 24-26, 2019 - Ottawa)

Education

- Accountability Framework orientation session for new Members of Council (November 6, 2018)
- Accountability Framework orientation session for Councillor's Assistants (December 6, 2018)
- Accountability Framework orientation session for new citizen members of the Built Heritage Sub-Committee (March 12, 2019)

- 12 presentations to local boards regarding the new code of conduct and municipal conflict of interest framework (March – October 2019)
- Lobbyist Registry Stakeholder Session (May 31, 2019)

Publications

Interpretation Bulletins (*Lobbyist Registry By-law*):

- Compliance Tools (enforcement of the *Lobbyist Registry By-law* by the Lobbyist Registrar);
- Lobbyist Registry Quick Guide (overview of the registration process for lobbying communications); and
- Creatures of the City (organizations that operate in partnership with, but independently of, the City of Ottawa).

GOALS FOR 2019-2020

My expanded mandate as Integrity Commissioner under the *Municipal Act, 2001* has certainly contributed to an increase in workload. My primary focus in the coming year will be to ensure that I am providing Members of Council, members of local boards, City staff and the public with timely advice and responsive action in relation to my statutory duties.

Education

Education continues to be one of my top priorities and is now one of my statutory responsibilities under the *Municipal Act, 2001*. The Act specifically requires that I provide educational information to Members of Council, members of local boards, the City administration and the public.

As one of the earliest advocates for municipal accountability and transparency in Ontario, Justice Bellamy spoke strongly of the importance of “reinforcing and promoting” ethical behavior and policies:

“Important messages always need to be repeated, reinforced, taught by example, and explained once more in new contexts. Governments are not much different when it comes to the ongoing challenges of ensuring that key ethical messages remain current at all times, because governments themselves are always changing. Staff turnover, expansion or contraction of the public service, turnover

of elected officials, new policy directions, changing social conditions, and the simple fading of memory all combine to ensure that key ethical messages will fall off the radar screen unless ongoing attention is paid to keeping them fresh and relevant.”⁸

In the coming year I intend to launch a quarterly email newsletter in which I will provide education on the practical application of the various codes of conduct, associated ethical policies and the *Municipal Conflict of Interest Act*. This email communication will be tailored to the issues that apply to each group: Members of Council, lobbyists and their clients, local boards, the Built Heritage Sub-Committee and the Transit Commission. It will also allow recipients to proactively respond with questions, comments or concerns under the same confidentiality regime that applies to every interaction with my Office.

I will also focus on providing an orientation to the Code of Conduct of Members of Local Boards and the municipal conflict of interest framework to those remaining local boards I have not yet met with.

Finally, building on my stakeholder session with lobbyists this past year, I will continue to seek opportunities to educate City staff, lobbyists and Members of Council on the requirements of the *Lobbyist Registry By-law* and the applicable code of conduct provisions.

Compliance

As previously noted, my proactive compliance efforts this year were particularly focused on the registration deadlines for lobbying files and activities. I have heard from stakeholders that the 10-business day deadline is both too long and not long enough. I see no need to amend the current deadline. However, I do believe that adherence to the deadline is important to ensure the value of the transparency provided by the Lobbyist Registry. In the coming year, I will continue to build on the enforcement of the Lobbyist Registry registration deadline.

⁸ The Honourable Madame Justice Denise E. Bellamy, Report on the Toronto Computer Leasing Inquiry-Toronto External Contracts Inquiry, Volume 2, ‘Good Government’, 2005, Toronto, p. 29.

FINANCIAL STATEMENT

The Integrity Commissioner's Office is funded through the Office of the City Clerk. 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.

The following is a breakdown of the period of October 1, 2018 to September 30, 2019.

Figure 11: Financial Breakdown (October 1, 2018 to September 30, 2019)

	Q4 2018	Q1 2019	Q2 2019	Q3 2019	TOTAL
Retainer*				\$25,440	\$25,440
Salary*	\$19,029	\$22,387	\$20,556	\$30,223	\$92,195
Ancillary Costs	\$1,563	\$784	\$768	\$795	\$3,911
Materials and Services	\$7,420	\$0	\$17,733	\$6,282	\$31,435
Hours Logged	94	110	98	148.5	450.5

*includes tax less eligible municipal rebates

Appendix A

Memorandum of Understanding

Between

The Office of the Auditor General

AND

The Office of the Integrity Commissioner

Preamble

The Auditor General and the Integrity Commissioner (“the Officers”) are statutory officers of the City of Ottawa appointed under Part V.1 of the *Municipal Act, 2001*.

The purpose of this Memorandum of Understanding is to establish a formal mechanism for the exchange of information between the Officers, as may be required to ensure the effective carrying out of their respective mandates.

1. Legislative Authority and Mandates

The Auditor General is appointed under Section 223.19 of the *Municipal Act, 2001* with all the statutory duties and functions as set out in Part V.1 of the *Municipal Act, 2001*.

The Auditor General is responsible for assisting City Council in holding itself and its administrators accountable for the quality of stewardship over public funds and for the achievement of value for money in municipal operations. In doing so, the Auditor General is responsible for carrying out financial, compliance, and performance audits of all programs, activities and functions of all City departments and agencies, the offices of the Mayor and Members of Council, grant recipients and the City’s agencies, boards, commissions, and corporations.

The Integrity Commissioner is appointed under Section 223.3 of the *Municipal Act, 2001* and is also delegated the statutory roles of Lobbyist Registrar (Section 223.11) and Meetings Investigator (Section 239.2) with all the statutory duties and functions of each role as set out in Part V.1 and Part VI of the *Municipal Act, 2001*.

The Integrity Commissioner is responsible for the oversight and administration of codes of conduct for Members of Council and members of the City's local boards, application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act*, oversight and administration of the *Lobbyist Registry By-law* and investigating complaints respecting closed meetings.

2. Information Sharing

Under the terms of this Memorandum of Understanding, the Officers may consult, as appropriate, to share information.

Information, including case specific information containing personal information where necessary, may be shared between the Officers for the following purposes:

- To assess jurisdiction and refer matters that may be subject to inquiry by the other Officer as necessary;
- To evaluate whether inquiries relate to the same or similar matters in order to assess whether a joint inquiry or the sharing of information in concurrent inquiries being conducted by each Officer is appropriate;
- To provide information or to otherwise assist in an ongoing or potential inquiry by each Officer; and
- To assist the Officers in carrying out their respective functions and duties, as agreed by each Officer.

It is specifically understood that that sharing of such information will be strictly limited to the information that is absolutely necessary to allow each of the Officers to effectively fulfill his/her mandate, respectively.

3. Confidentiality

The Officers shall preserve secrecy with respect to all matters in accordance with each Office's respective duty of confidentiality set out in Sections 223.5 and 223.22 of the *Municipal Act, 2001*. Information shared between the Officers under this Memorandum of Understanding will remain confidential indefinitely.

Each Officer will notify the other Officer of any legally enforceable demand for information furnished under this Memorandum of Understanding and prior to compliance with the demand, the Officer from which the information was demanded will assert all appropriate legal exemptions or privileges with respect to such information as may be available.

4. Duration

This Memorandum of Understanding will come into effect upon the signature of both Officers and will remain in effect until modified or terminated. The terms of this Memorandum of Understanding may be modified by written mutual consent of both Officers. Either Office may terminate this Memorandum of Understanding by providing written notice to the other Officer.

All confidentiality provisions remain in force after termination of the Memorandum of Understanding.

(Original signed)

(Original signed)

Ken Hughes
Auditor General
City of Ottawa

Robert Marleau
Integrity Commissioner
City of Ottawa

Dated: November 4, 2019