

**2020 Annual Report of the  
Integrity Commissioner**

# Commissioner's Remarks

*"The end of politics is the best of ends; and the main concern of politics is to engender a certain character in the citizens and to make them good and disposed to perform noble actions."*

- Aristotle *Ethics* at 1099b30

I am pleased to present City Council with my 2020 Annual Report.

This is my eighth 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, 2019 to September 30, 2020.

As my term as Integrity Commissioner will come to an end in August 2021, this will be the last Annual Report that I will submit to City Council.

When I was appointed to the position of Integrity Commissioner, Lobbyist Registrar and Meetings Investigator in August 2012, Council had already begun implementing the Accountability Framework. The public disclosure of office expenses had begun in January 2011. Between July 2012 and May 2013, Council put in place the remaining major pieces of the Framework, including enacting the By-law establishing the Lobbyist Registry and Lobbyist Code of Conduct, and approving the Code of Conduct for Members of Council and its related policies.

Components of the Accountability Framework have evolved in response to emerging best practices and legislative changes. In 2018, Council supported my recommendation to approve the Code of Conduct for Members of Council and its associated Complaint Protocol as a by-law, to form part of Council's overall statutory scheme. As Lobbyist Registrar, I have introduced a number of initiatives including an escalating compliance scheme for lobbyists. The most significant change to my role came about with Bill 68 (*Modernizing Ontario's Municipal Legislation Act, 2017*) which came in to force on March 1, 2019. The new legislation expanded my mandate to include overseeing the application of a code of conduct for members of local boards and providing advice to Members of Council and members of local boards with respect to their obligations under the *Municipal Conflict of Interest Act*, as well as receiving complaints related to pecuniary conflicts of interest.

This report recommends several additional amendments to the Lobbyist Registry By-law as well as Codes of Conduct under my jurisdiction. The interpretation bulletin “Use of Social Media”, developed in response to a Council Member Inquiry, is also attached to this report. I have observed that members of the public and elected officials themselves are increasingly attuned to the content and nature of Members’ discourse. This is true for both online and offline communication, including that which occurs during both in-person and virtual meetings of Council and its committees. While the Code of Conduct for Members of Council applies to Members’ behaviour during Council and Committee meetings, my authority in that regard is reserved for extenuating circumstances. I believe that the Mayor or Committee Chair, as the case may be, should manage in-meeting decorum and that the Integrity Commissioner should not be called upon to intervene in proceedings. I anticipate the subject of Members’ decorum in general, as well as the content and tone of their discourse in particular, will continue to be of interest going forward.

From Council’s initial endorsement of the Accountability Framework to its ongoing commitment to upholding the values at its core, I believe that our ethical framework not only functions well in our City but also serves as a practical model for other municipalities. I was honoured to have participated in a panel relating to lobbying for the recently-released Collingwood Judicial Inquiry with my colleagues Suzanne Craig (Integrity Commissioner and Lobbyist Registrar for the City of Vaughan) and Linda Gehrke (former Lobbyist Registrar for the City of Toronto). Our own City Clerk Rick O’Connor was also a participant at the Inquiry as a member of the Conflict of Interest Panel.

I am encouraged to see that Ottawa’s Accountability Framework featured prominently as sources for Associate Chief Justice Marrocco’s recommendations regarding lobbying and a lobbyist registry, and our Code of Conduct provisions regarding matters such as gifts and the improper use of influence.

In Volume I of his report *Transparency and the Public Trust: Report of the Collingwood Judicial Inquiry*, Associate Chief Justice Marrocco writes: “When the answers to legitimate questions are dismissive, spun, or obfuscated, public trust further erodes. When trust is lost, the relationship between the public and its municipal government may never be the same. The road back is arduous. Repairing the relationship requires self-reflection and a commitment to change.”<sup>1</sup>

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<sup>1</sup> Associate Chief Justice Frank N. Marrocco, *Transparency and the Public Trust: Report of the Collingwood Judicial Inquiry*, [Volume I: Executive Summary and Recommendations](#), 2020, p. 14.

I believe that the work to maintain an ethical framework requires vigilance. It also requires the acceptance, from all stakeholders, that components will change to meet emerging demands. I am encouraged to see that the City of Ottawa and its elected officials continue to show leadership and support for this vital work, and I am confident that they will continue to do so.

This year has been one of the busiest for the Integrity office since the beginning of my term. The Covid-19 pandemic crisis has added major challenges to the work of Members of Council and all who are in the service of the public at City Hall. The small staff that supports my work, assigned to me by the Clerk's office, was also impacted by the crisis. Yet, our timeline standards for response to inquiries, intake analysis of complaints, and conduct of investigations were largely met. I am grateful for their assistance and their commitment in sustaining an ethical framework that matters and promotes "the best of the ends of politics"

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert Marleau". The signature is fluid and cursive, with a large initial "R" and "M".

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

# Integrity Commissioner

## MANDATE

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

### **Integrity Commissioner**

223.3(1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to 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 codes of conduct and other policies, rules or procedures related to ethics for Council, members of local

boards (including adjudicative boards) and the citizen members of the Transit Commission and Built Heritage Sub-Committee;

- 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 responsibility for the application of sections 5, 5.1 and 5.2 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.

The enhanced integrity commissioner role established by Bill 68 (the *Modernizing Ontario’s Municipal Legislation Act, 2017*) has now been in effect for more than a year and a half. The new responsibilities have certainly contributed to an increase in workload. However, the growing awareness of and interest in the Accountability Framework by the general public, observed over the past couple of years, has also continued. As is demonstrated in the number of complaints and inquiries filed by members of the public, residents are engaged.

As Integrity Commissioner, I am focused on oversight and administration of the codes of conduct and my interest is strictly limited to ensuring adherence to the established

values and rules. This is accomplished both in a proactive manner through education and advice and through the handling of complaints, formal and informal.

At the core of each code of conduct and ethical policy is the principle of respect – respect for people, respect for applicable legislation and regulations, respect for the public institution. I encourage Members to apply the values set out in the codes of conduct in their daily interactions.

## **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**

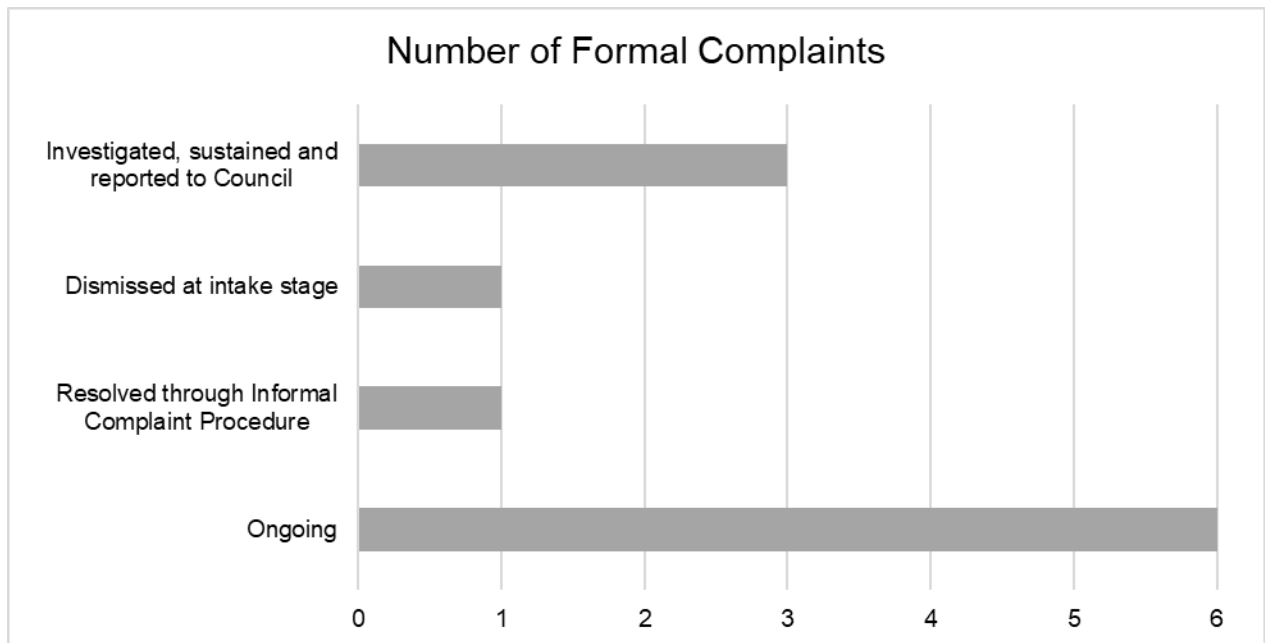
As required by the Complaint Protocol, formal complaints are submitted on the appropriate form, with a signed affidavit, and must include information to support the allegation(s) made against a Member including dates, locations, other persons present and all other relevant information.

My Office conducts a thorough 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, 2019 to September 30, 2020, I received nine (9) formal complaints about matters within my jurisdiction as Integrity Commissioner. I also completed work on one (1) formal complaint which was ongoing at the end of the last reporting cycle. The disposition and status of those formal complaints are discussed below.

I also received a request to resurrect a formal complaint from 2019 which had been dismissed at the intake stage. The complainant supplied new information which they believed substantiated their original allegation(s). I reviewed the material and determined the information did not establish a *prima facie* breach of the Code of Conduct. I informed the complainant the formal complaint would not be re-activated.

**Figure 1 – Number of Formal Complaints**



*Investigated, sustained and reported to Council*

Between September 6, 2019 and October 8, 2019, I received three formal complaints alleging that a Member of Council had contravened Sections 4 (General Integrity) and Section 7 (Discrimination and Harassment). The formal complaints were filed by members of the public who had interviewed for a job in the Member’s office. The specific allegations suggested the Member had asked questions or made comments that were sexual in nature, including asking two of the complainants if they would be willing to go bra-less when discussing how they would dress for certain events they would attend while employed by the Member.

Following an intake analysis of each complaint, I concluded that each individual complaint was not frivolous or vexatious. I also determined that I had jurisdiction over the complaints (including consulting the City’s *Violence and Harassment in the Workplace Policy* and the *Council-Staff Relations Policy*) and that there were sufficient grounds to proceed with a formal investigation.



I retained the services of an independent investigator to complete the investigation and delegated my powers to investigate in accordance with Section 223.3 of the *Municipal Act, 2001*. I retained a seasoned investigator with specific experience in conduct harassment investigations to conduct the investigation.

As is well documented in my report to Council on July 15, 2020, the Member did not participate in the investigation. At the outset of the investigation, the Member challenged my jurisdiction to investigate and advised he would not participate in the investigation. In the course of the investigation, the Member faced some significant health challenges. In the interest of procedural fairness and natural justice, I offered several opportunities for the Member to provide his definitive commitment to participating in the inquiry once he was medically cleared to participate. No commitment was provided. While the Member did not respond to the allegations in the course of the investigation, the Member did make a public statement to the media. I relied on the Member's public statement as his substantive response to the formal complaints.

My report to Council found that the Member had contravened Section 4 of the Code of Conduct for Members of Council, and specifically subsections 4.1 and 4.4. I concluded, on a balance of probabilities, 1) that the conduct of the Member in interviewing and seeking to recruit all three complainants for employment did not serve the interest of his constituents nor was he acting in a conscientious and diligent manner, and 2) that in the interviews with Complainant 1 and 2, the Member was planning to objectify the two women by using their sexuality for the purpose of recruiting male volunteers and assist in his re-election efforts.

The report further found that the Member had contravened Section 7 of the Code of Conduct for Members of Council. I concluded, again on a balance of probabilities, that the Member did make comments to and ask questions of the complainants that were sexual in nature or focused on women's bodies.

Council received the report and carried its recommendations, which included the finding that the Member contravened Section 4 and Section 7 of the Code, and that Council consecutively impose a suspension of pay for 90 days for each of the three individual complaints. Following Council's deliberations, the Member filed an application for Judicial Review. The matter is expected to proceed before the Ontario Divisional Court in January 2021.

### *Dismissed at intake stage*

A member of the public filed a request for investigation alleging that a Member of Council had failed to uphold their obligations as an elected representative by: (1) failing to provide their constituents with information relating to a major policy review; (2) providing inadequate responses to emails concerning the major policy review; (3) and failing to participate in the deliberations and vote on the major policy review.

I believe it is outside my jurisdiction as Integrity Commissioner to assess the general performance of a Member of Council in the course of that Member's duties. That evaluation is appropriately made by the electors every four years.

Furthermore, I do not believe Members of Council are obligated to engage into a policy debate with a resident. I encourage Members of Council to be responsive to their constituents and, in this case, the Member did provide the complainant with a response. I determined the documentation I received did not demonstrate a *prima facie* breach of the Code.

Finally, with respect to the Member's alleged failure to participate in the debate and vote on the matter, I informed the complainant that a Member's attendance at Council meetings is subject to the requirements of Section 259 of the *Municipal Act, 2001* and to my knowledge, the Member had continued to meet those requirements. The formal complaint was dismissed.

### *Resolved through the Informal Complaint Procedure*

A member of a Committee of Council filed a request for investigation regarding the behavior of another member of the Committee, exhibited during a meeting of the Committee.

As a general rule, my jurisdiction to intervene in matters concerning the behaviour of members during Council and Committee meetings is limited. I, along with other current and former municipal Integrity Commissioners, believe the conduct of members during Council and Committee meetings is the responsibility of the Chair, as set out in the Procedure By-law:

*"In general, the Integrity Commissioner does not have authority under the Code of Conduct to review complaints about the behaviour of Councillors at Council and Committee meetings. The behaviour of Councillors at Council, while regulated by the Code of Conduct, is the responsibility of Council (acting primarily through the Mayor or his deputy). Absent a resolution of Council*

*requesting the Integrity Commissioner to become involved, this self-policing is part of the statutory rights and privileges of Council.”*

- Professor David Mullan, former Integrity Commissioner for the City of Toronto

*“The strong policy principle behind this approach is that the Integrity Commissioner ought not to interfere with the conduct and management of any particular meeting. This makes good sense. The Speaker, or any Chair of a meeting, requires a certain degree of autonomy to ensure that a meeting is conducted in accordance with the procedural bylaw and as specifically stated therein, to oversee order and behaviour of members (s. 27-43(C)). So, if a councillor uses an insulting term against another councillor, in an effort to ensure decorum, the speaker might rule the question out of order and seek some remedial measure such as an apology or – in a serious case – an ejection from the meeting. In most cases, these issues are resolved and the meeting proceeds. There would be little gained by a subsequent referral to the Integrity Commissioner to review the actions.”*

- Valerie Jepson, former Integrity Commissioner for the City of Toronto

Like many municipal codes of conduct, the City’s Code of Conduct for Members of Council does apply to the behaviour of Members during Council and Committee meetings; however, my authority is reserved for extenuating circumstances such as a request from City Council as a whole or where behaviour is not addressed by the Chair in the course of the meeting.

In consultation with the Complainant, I elected to pursue the matter through the Informal Complaint Procedure. Following discussions with both parties, the Respondent committed to issuing a formal, public apology at a meeting of the Committee. The apology was delivered, though delayed because of the COVID-19 pandemic and multiple meeting cancellations.

### *Ongoing*

At the close of the reporting period on September 30, 2020, I was finalizing my report to Council on one (1) outstanding complaint from 2019 and one (1) complaint from 2020 that had been combined for investigative purposes. At the time of writing, my report to Council is scheduled for the November 25, 2020 meeting of City Council. Some matters

that arose during that investigation have been suspended pending the outcome of referrals made pursuant to Section 223.8 of the *Municipal Act, 2001*:

***Reference to appropriate authorities***

**223.8** *If the Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act, other than the Municipal Conflict of Interest Act, or of the Criminal Code (Canada), the Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to council. 2006, c. 32, Sched. A, s. 98; 2017, c. 10, Sched. 1, s. 23.*

Four additional formal complaints remain open at the end of the 2020 reporting cycle. The disposition of these matters will be reported out either directly through a report to Council, if the results of an investigation so require, or through the 2021 Annual Report of the Integrity Commissioner.

**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 three (3) informal complaints in the 2019-2020 reporting cycle. In one of those, the complainants and respondents involved worked towards resolution through the informal complaint procedure. The other two informal complaints were dismissed at the intake stage.

***Resolved through the Informal Complaint Procedure***

Twenty members of the public contacted my Office regarding the behaviour of three Members of Council, during a public virtual meeting of one of the City's Standing Committees, in response to a public delegation. Some of those who contacted my Office requested that one or more of the Members issue an apology.

I acknowledged the issues raised regarding the Members' behaviour and encouraged the complainants to address the Members in writing, indicating that they were initiating the informal complaint resolution process, outlining the actions/behaviour they believed

to be in contravention of the Code of Conduct and requesting the Members to acknowledge and address the behaviour.

I am aware that eight of the individuals contacted the Members as I recommended. In response, I am aware that one Member issued an apology to the public delegation and addressed the behaviour in reply to those members of the public who had contacted him with their informal complaints. I advised another Member to undertake the same action.

One of the twenty complainants notified me that one of the Members did not acknowledge their informal complaint. I replied that I cannot compel a Member to participate in the informal complaint process, and that the individual could choose to file a formal complaint. No formal complaints were filed with respect to this matter.

#### *Dismissed at intake stage*

1. A member of a Committee of Council requested to file a complaint regarding comments made by a Member of Council during a City Council meeting with respect to the member. The individual stated a preference for pursuing resolution of the complaint through the informal process. After conducting a comprehensive intake analysis, I concluded that the matter did not satisfy the test for either the informal or formal complaint procedure.

As set out above, as a general rule, my jurisdiction to interfere in matters concerning the behaviour of Members of Council during Council and Committee meetings is limited. As I note above, I believe the conduct of members during Council and Committee meetings is the responsibility of the Chair, as set out in the Procedure By-law. The Mayor, as the presiding officer for City Council, is responsible for enforcing “the observance of order and decorum among the members” (Section 3(9) of the Council Procedure By-law). After reviewing video of the Council meeting in question, I concluded that the matter was adequately dealt with by the Mayor during the City Council meeting.

2. A Member of the public filed an informal complaint regarding the content of some tweets of a member of a Committee of Council. The member of the public was also displeased at having been blocked by the member on twitter. I requested certain information in order to proceed with the informal complaint process, including a clear articulation from the individual of the behaviour or activity that gave rise to the complaint, and which sections of the Code of Conduct for

Members of Council the individual believed the member contravened. I did not receive clarification from the individual on those matters. Furthermore, after having provided the individual with information on how to file a formal complaint, I received no indication that the individual wished to pursue the complaint through the formal complaint procedure, either. As a result, I dismissed the complaint at the intake stage.

## **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](mailto: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.

Inquiries from Members of Council decreased during the 2019-2020 reporting cycle.

#### *Inquiry*

A resident requested a Member of Council provide a letter of support for an item that was proceeding to a hearing of the Committee of Adjustment. The Member contacted me to ask if it would be appropriate to provide a letter of support.

### *Interpretation*

My general position is that Members of Council should not intervene in matters before the Committee of Adjustment. The Committee of Adjustment, as a quasi-judicial tribunal appointed by Council, is independent and autonomous from the City Administration and City Council. Participating in matters before a quasi-judicial tribunal such as the Committee of Adjustment risks the perception that a Member may be using their influence improperly, particularly where Council has a role in the appointment or re-appointment of tribunal members.

It has always been my position that Members of Council should not appear before the Committee of Adjustment. In March 2019, the Code of Conduct for Members of Local Boards (By-law 2018-399) was enacted, including a provision respecting the independent nature of the City's adjudicative boards:

#### **Independent Nature of Adjudicative Boards**

15. Members of adjudicative boards operate at arms-length from and independently of City Council and the City administration. Members should maintain the board's independence and ensure their actions are consistent with the arms-length, quasi-judicial nature of an adjudicative board.

In consideration of the Code of Conduct for Members of Local Boards, I strongly advise against submitting written submissions to the Committee of Adjustment. In this case, particularly because the letter of support would serve to benefit an individual resident, I believed that the risk to the Member of Council was even higher that a reasonable member of the public could perceive that Member's letter of support to be an improper use of the Member's influence.

### *Inquiry*

A Member of Council sought my advice on participating in fundraising activities to benefit a local board to which the Member had been appointed by Council. The activities could include soliciting donations from lobbyists with active files in the City's Lobbyist Registry. The Member wished to know if rules that governed the relationship between Members of Council and lobbyists applied in this scenario.

### *Interpretation*

I advised the Member to refrain from directly interacting with individuals/companies associated with active lobbying files for the purposes of fundraising. My rationale

included that the Member's role on the board was directly linked to that Member's position as a Member of Council and, for this reason, obligations under the Code of Conduct for Members of Council continue to apply.

I further noted that any conflict of interest or perceived conflict of interest erodes public confidence in government decision-making. For that reason, both the Code of Conduct for Members of Council and the Lobbyists' Code of Conduct prohibit the acceptance or the offer of benefits in what is or might be perceived as an attempt to influence a decision.

Providing or promising a gift, favour, or other benefit to a public office holder could create a sense of obligation, which could in turn generate a tension between the public office holder's primary duty to the public interest and their private or electoral interest. The risk to the Member, I noted, was the perception that in exchange for donations/sponsorships provided by lobbyists or their clients with active registrations, possible favours could be returned by way of favourable decisions at Committee or Council, if and when files or applications associated with those donors are submitted to the City for review or approval.

Lobbyists and their clients with active files in the Lobbyist Registry are bound by the Lobbyists' Code of Conduct in relation to the Member as a Member of Council even when you are acting as a member of a local board. For this reason, lobbyists or their clients with active files in the Lobbyist Registry are prohibited from offering any donations directly through the Member.

Finally, I noted that the Member was not precluded from providing other individuals involved with fundraising with suggested donors, participating in the execution of the fundraising strategy and interacting directly with potential donors who are not associated with active lobbying files.

### *Inquiry*

Seeking to avoid promoting specific businesses, a Member of Council sought my advice before issuing a communication to Ward residents that listed local grocery delivery sources during the Covid-19 pandemic crisis.

### *Interpretation*

I noted that Section 4 (General Integrity) of the Code of Conduct for Members of Council provided several overarching principles expected of Members of Council. Of those, the following principles were most relevant to the Member's scenario:

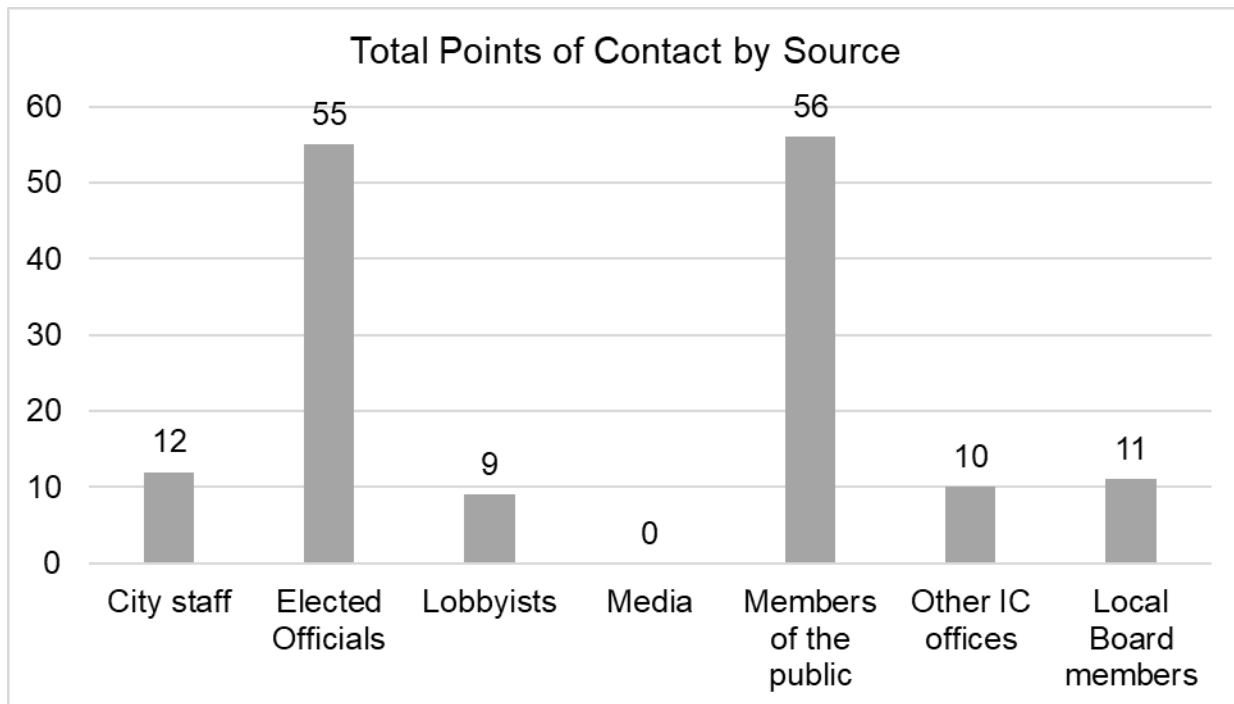


- Members of Council shall at all times serve and be seen to serve the interests of their constituents and the City in a conscientious and diligent manner and shall approach decision-making with an open mind.
- Members of Council shall not extend in the discharge of their official duties preferential 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.

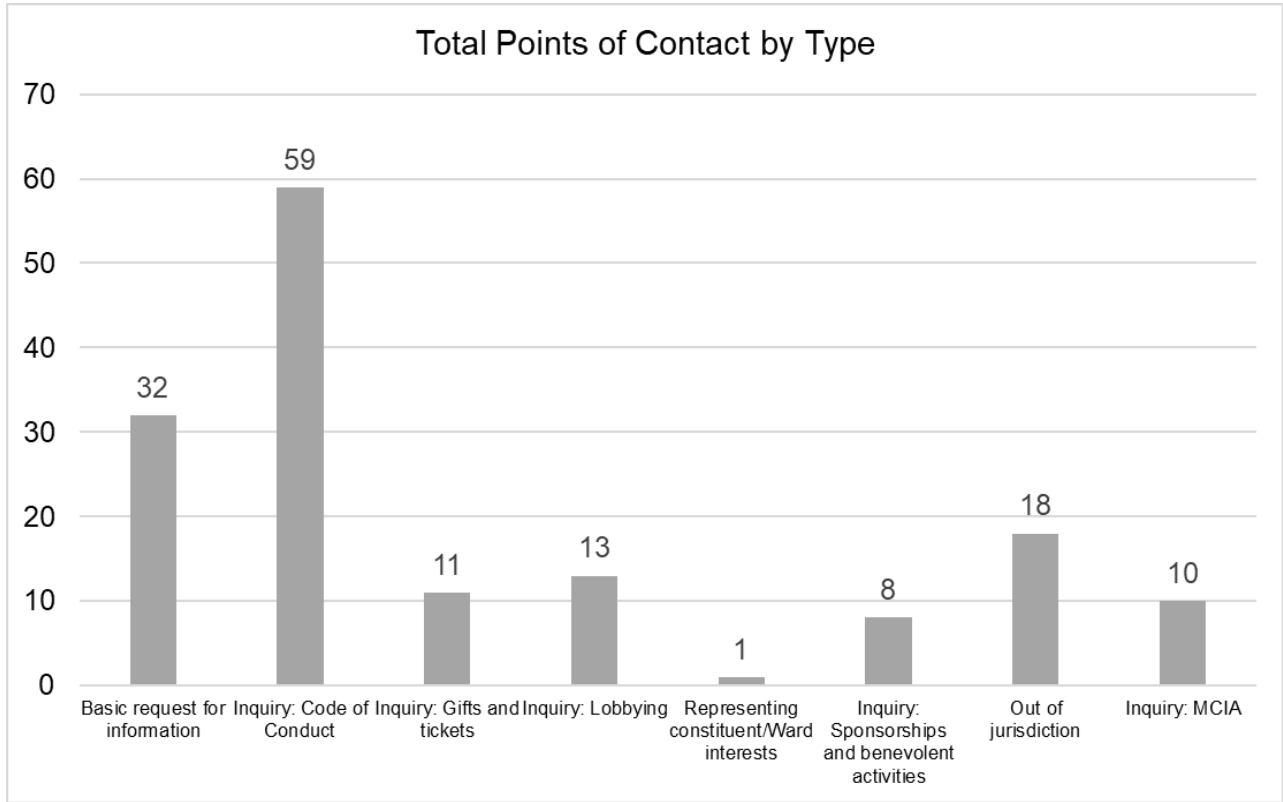
Members of Council must exercise caution when using their office or status as an elected official to promote a specific business. As a result, I cautioned the Member that, if at all possible, I would recommend providing links to external sources of information.

I did acknowledge, however, that provided the list does not selectively highlight or promote specific businesses, offering residents a comprehensive list of local grocery delivery options is consistent with the Councillor’s role in serving the interests of constituents, especially during an emergency situation such as the COVID-19 pandemic.

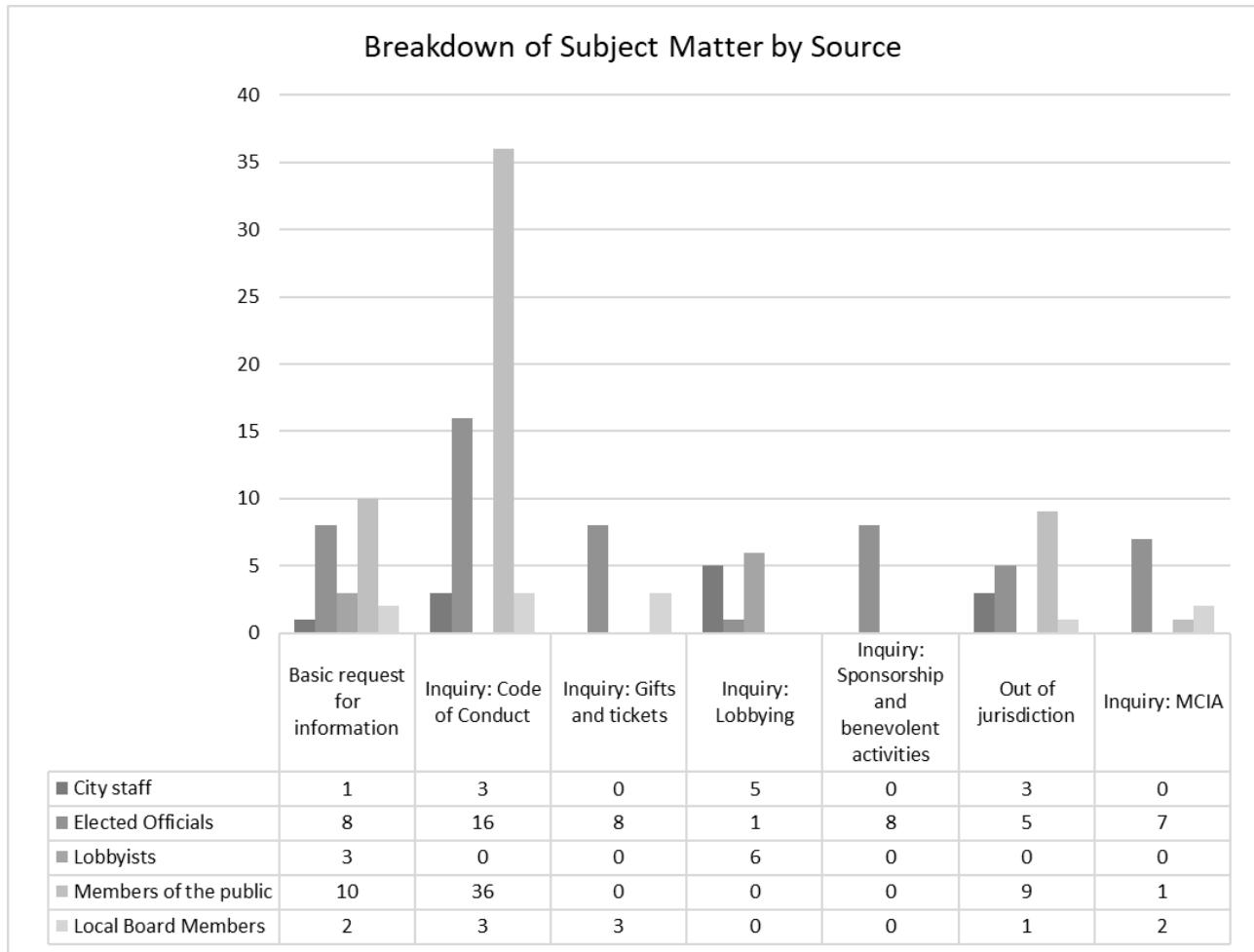
**Figure 2 – Total Points of Contact by Source**



**Figure 3 – Points of Contact by Type**



**Figure 4 – Breakdown of Subject Matter by Source**



**AMENDMENTS TO EXISTING CODES OF CONDUCT AND COMPLAINT PROTOCOLS**

**Definition of Municipal Staff**

Since the Code of Conduct for Members of Council was approved in May 2013, I have not recommended significant changes to the provisions of the Code. I believe the Code, as established, provides a broad and comprehensive set of values that are relevant and adaptable to an evolving political environment.

The findings in my most recent report to Council identified a gap in one provision that overlooks a Member’s obligation to treat their own staff with professionalism and without intimidation or undue influence.

Specifically, Section 10 (Conduct Respecting Staff) of the Code of Conduct for Members of Council reads as follows:

### **Conduct Respecting Staff**

10.

1. The *Municipal Act, 2001* sets out the roles of Members of Council and the municipal administration, including specific roles for statutory officers such as the Chief Administrative Officer, Clerk, Treasurer, Auditor General and the Integrity Commissioner.

2. Members of Council are expected to:

- (a) represent the public and to consider the well-being and interests of the municipality;
- (b) develop and evaluate the policies and programs of the municipality;
- (c) determine which services the municipality provides;
- (d) ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
- (d.1) ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- (e) maintain the financial integrity of the municipality; and
- (f) carry out the duties of council under the *Municipal Act, 2001* or any other Act.

3. Municipal staff is expected to:

- (a) implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
- (b) undertake research and provide advice to council on the policies and programs of the municipality; and
- (c) carry out other duties required under the *Municipal Act, 2001* or any Act and other duties assigned by the municipality.

4. City Council as a whole has the authority to approve budget, policy, governance and other such matters. Under the direction of the City Manager, city staff, and the staff of the Offices of the Auditor General and the Integrity Commissioner, serves Council as a whole and the combined interests of all members as evidenced through the decisions of Council.

5. Members of Council shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from an individual Member or group of Members of Council.

6. Members of Council should not:

(a) Maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff;

(b) Compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities; or

(c) Use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering in staff's duties.

At present, "municipal staff" is not defined in the Code of Conduct for Members of Council and Section 10 focuses strictly on how Members of Council are expected to treat members of the City administration. I recommend adding a definition of municipal staff to the Code of Conduct, and that the definition make explicit reference to Members' staff as municipal staff:

#### Definitions

3. In this by-law,

"Integrity Commissioner" means the Integrity Commissioner appointed by the City who is responsible for performing in an independent manner all of the functions described in Subsection 223.3(1) of the *Municipal Act, 2001*;

the terms "child", "parent" and "spouse" have the same meanings as in the *Municipal Conflict of Interest Act*:

(a) "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;

(b) “parent” means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child;

(c) “spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage;

“Municipal staff” includes all employees, dependent contractors and volunteers of the City of Ottawa and, for purposes of certainty, extends to employees, dependent contractors and volunteers engaged to support Members' offices.

It is understood that Members’ staff do not have the same statutory role as the municipal administration outlined in Section 227 of the *Municipal Act, 2001*. In addition to recommending the addition of a definition for municipal staff to the Code of Conduct, I recommend some specific technical changes to Section 10 to recognize this distinction [additions underlined]:

### **Conduct Respecting Staff**

10.

1. The *Municipal Act, 2001* sets out the roles of Members of Council and the municipal administration, including specific roles for statutory officers such as the Chief Administrative Officer, Clerk, Treasurer, Auditor General and the Integrity Commissioner.

2. Members of Council are expected to:

(a) represent the public and to consider the well-being and interests of the municipality;

(b) develop and evaluate the policies and programs of the municipality;

(c) determine which services the municipality provides;

(d) ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;

(d.1) ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;

(e) maintain the financial integrity of the municipality; and

(f) carry out the duties of council under the *Municipal Act, 2001* or any other Act.

3. The municipal administration ~~staff~~ is expected to:

(a) implement council's decisions and establish administrative practices and procedures to carry out council's decisions;

(b) undertake research and provide advice to council on the policies and programs of the municipality; and

(c) carry out other duties required under the *Municipal Act, 2001* or any Act and other duties assigned by the municipality.

4. City Council as a whole has the authority to approve budget, policy, governance and other such matters. Under the direction of the City Manager, city staff, and the staff of the Offices of the Auditor General and the Integrity Commissioner, serves Council as a whole and the combined interests of all members as evidenced through the decisions of Council.

5. Members of Council shall be respectful of the role of ~~staff~~ the municipal administration to provide advice based on political neutrality and objectivity and without undue influence from an individual Member or group of Members of Council.

6. Members of Council should not:

(a) Maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of municipal staff;

(b) Compel municipal staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities;  
or

(c) Use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any municipal staff member with the intent of interfering in staff's duties.

## **Remove administrative role of City Clerk in transmittal of formal complaints and recommendation reports**

At the time when I brought forward the Code of Conduct for Members of Council and the associated Complaint Protocol in collaboration with the City Clerk and Solicitor (May 2013), it was recommended that the City Clerk would assume certain tasks to ensure I was not unduly burdened by administrative matters.

Two of the specific administrative requirements assigned to the City Clerk in the Complaint Protocol are as follows:

- That a complainant file their formal complaint with the City Clerk who, in turn, forwards the complaint to the Integrity Commissioner (Section 4 (1) of the Formal Complaint Procedure); and
- That, upon the completion of the Integrity Commissioner's recommendation report, the City Clerk give a copy of the report to the complainant and the Member whose conduct is concerned. For complaints under the Code of Conduct for Local Boards, the Complaint Protocol provides for this function to be undertaken by the secretary of the local board (Section 11 (3) of the Formal Complaint Procedure).

Through practical experience over the course of the past few years, I have come to find that the administrative requirements noted above, have not functioned entirely as intended. Most importantly, the administrative requirements have had the unintentional consequence of compromising my duty of confidentiality, specifically by unnecessarily informing the City Clerk of the identity of a complainant.

As required by the Complaint Protocol, all formal complaints shall be signed by an identifiable individual and anonymous complaints are not accepted. However, I do have a statutory duty to "preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties" (Section 223.5 of the *Municipal Act, 2001*). Where possible, the identity of the complainant is protected. And, in cases where no contravention by the Member is found following an investigation, the Respondent's identity is also protected when the disposition of the complaint is summarized in an annual report.

In order to maintain confidentiality to the fullest extent possible, I recommend these requirements be amended such that complaints are filed directly with my office, and that my office is responsible for providing a copy of a recommendation report to the



complainant and the Member whose conduct is concerned. As I continue to receive administrative support from City Clerk's staff (bound by the same duty of confidentiality), these amendments are strictly intended to limit the extent to which a complainant's identity may be known to others.

### **Respondent comment on draft report to Council**

The Complaint Protocol sets out the framework for receiving complaints, conducting investigations and reporting to Council in each of the Council-approved codes of conduct. At the outset of an investigation, Section 9 of the Formal Complaint Procedure provides the Respondent with an opportunity to respond to the allegations detailed in the formal complaint. If an investigation occurs, the Respondent also has an opportunity to be interviewed and provide relevant materials and documents.

Presently, there is no requirement to seek the Respondent's comments on a draft report to Council. Under Section 11 of the Complaint Protocol, I am only required to report to a Respondent in order to provide an interim report or a final recommendation report.

In an effort to uphold the principle of procedural fairness, I have established a practice whereby I provide the Respondent with a copy of the draft report to Council with an invitation to the Respondent to provide comments. These comments are taken into consideration in finalizing the report and making my recommendations to Council on potential penalties and/or remedial actions.

I recommend formalizing this practice by adding a provision to the Complaint Protocols of each Council-approved code of conduct which requires that the Respondent is provided with a copy of the draft final report and invited to provide comment on the draft final report within five business days.

### **Align the notice requirements set out in the Complaint Protocol and Council Procedure By-law**

Recent experience has revealed that the notice requirements set out in the Complaint Protocol and the *Procedure By-law* do not align. The two sections set out the notice requirements as follows:

1. Subsection 29(6)(b) of the *Procedure By-law* [emphasis added]:

29(6)(b) Notice of a report from the Integrity Commissioner or the Election Compliance Audit Committee shall be given **at the meeting of Council prior to the meeting where the report is to be considered** by Council and shall

be released with the Agenda five calendar days in advance of the Council meeting at which it is to be considered.

2. Section 13 of the Complaint Protocol of the Code of Conduct for Members of Council (Appendix A of By-law 2018-400) [emphasis added]:

Report to Council

13. **Upon receipt of a report**, the Clerk shall indicate, **on the next regular agenda of City Council**, Notice of Intent from the Integrity Commissioner to submit a report for consideration at the following regular meeting of City Council.

In practice, the specificity of the notice requirement as set out in the Complaint Protocol has proven to be a challenge when a regular meeting of City Council has been cancelled. The intention is to provide City Council and the public with adequate notice of a forthcoming report. I recommend that the notice requirement in Section 13 of the Complaint Protocol be aligned with Section 29(6)(b) of the *Procedure By-law* and be amended to require that notice is placed on the agenda of the meeting of City Council, regular or special, immediately preceding the meeting of Council at which the report is to be considered.

## **SOCIAL MEDIA INTERPRETATION BULLETIN**

In February of this year, Councillor Laura Dudas brought forward a Council Member Inquiry regarding online harassment and cyberbullying. The inquiry asked about existing policies that protect and guide the social media behaviour of elected officials, and requested recommendations if there were no existing policies. Staff issued a response to the inquiry in June, where I offered to produce an interpretation bulletin on the application of the Code of Conduct on Members' use of social media. I was directed by Council in September to produce this interpretation bulletin for publication alongside my annual report.

The Interpretation Bulletin on the Use of Social Media is attached as Appendix 1 to this report, developed after consultation with Councillor Dudas. The Interpretation Bulletin lays out guidance regarding specific sections of the Code of Conduct for Members of Council and the Code of Conduct for Members of Local Boards and their application on Members' social media activity. Credit is owed to Val Jepson, Toronto's former Integrity Commissioner, whose work on Toronto's own Interpretation Bulletin regarding social media informed the direction taken here.

## **Political context**

This request for guidance on social media usage is timely. Social media continues to prove itself as an essential tool for communicating with constituents, and the ubiquity of these platforms means that the comportment of elected officials is under greater scrutiny than before. In recent years, Integrity Commissioners across Ontario have received a steady influx of complaints related to elected officials' use of social media.

Examples that span a breadth of behaviour from mild to extreme could undoubtedly form a lexicon of do's and don'ts. But a glossary or checklist would turn out to be an endlessly growing litany of bad behaviour. The common theme that emerges is the necessity for elected officials to govern themselves—and to be given tools that set them up for success. Ottawa's City Council is an excellent example in this regard, having imposed an Accountability Framework on itself in the absence of scandal. This proactive request for an interpretation bulletin under similar conditions is also encouraging.

## **Ethical context**

The need for guidance on the intersection of social media usage and the ethical responsibilities of elected officials is understandable. Social media platforms have grown at a rapid pace over the past few years, and in their current manifestation, represent relatively “new” spaces for human interaction and behaviour.

Social media platforms are not, however, separate spaces. As with any space where a Member of Council interacts with members of the public, the general spirit of the Code of Conduct already applies, because social media platforms are simply extensions of physical spaces. While the line between private and public roles may blur over social media, positions of authority persist online—along with the power to misuse that authority. As such, public office holders using accounts representing the City will always be perceived to be acting in their public capacity, and will always be expected to practice “sober second thought” before speaking, and to maintain the same decorum expected of them during Council proceedings.

The need to contextualize the specific provisions of the Code arises when considering how social media platforms alter these traditional political power dynamics. Unlike physical spaces where authority is codified into formal social, oral and visual cues, social media platforms are largely informal settings where hierarchies are flattened, access is uncontrolled, agendas are unstructured and there is no presiding officer to manage fair and balanced debate. Unfortunately, the civility thresholds for discourse

and language are often lower. As Toronto's former Integrity Commissioner wrote for their own social media interpretation bulletin, "successful social media use requires authenticity, interactivity and a blending of the personal with the professional." The overlap of formal power and informal language, coupled with the inherent difficulty of communicating tone and context online, opens new vulnerabilities for Members of Council. These vulnerabilities are magnified by the increased reach of elected officials' social media profiles.

Both members of the public and Members of Council require safeguard from these issues that emerge from the contradictions inherent to social media interactions. While this interpretation bulletin is being produced as a separate document, it is important to remember that it is not a stand-alone policy—this bulletin supplements the structured piece of legislation that already provides these protections: the Code of Conduct as it applies to Members of Council and members of local boards.

## **AMENDMENT TO EXISTING POLICY**

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

Council approved the Community, Fundraising and Special Events Policy on May 8, 2013. With respect to Council Member-Organized Community Events, the Community, Fundraising and Special Events Policy includes the following requirement:

"In an election year, a Member of Council must not seek donations and sponsorships for any event that has not been staged in the previous two years, nor accept donations or stage any new event supported by donations and sponsorships after he or she has filed nomination papers for election to any office in the City of Ottawa."

This provision was included in order to guard against the perception that a community event hosted by a Member of Council in an election year is in fact a form of campaigning.

The two By-elections that have occurred in the 2018-2022 term (Ward 13 – Rideau-Rockcliffe and Ward 19 – Cumberland) have highlighted that the restriction on events held in an election year may disproportionately disadvantage new Members of Council. As a result, I recommend that Section 2 of the Community, Fundraising and Special Events Policy be amended to allow for an exemption to the restriction with the approval of the Integrity Commissioner [addition underlined]:

## 2. Council Member-Organized Community Events

There are cases where Members seek and receive donations or sponsorships to organize events that benefit their ward, the city or a local charity. For the purposes of this and related policies, these are termed 'benevolent activities'.

Where Members undertake a benevolent activity, Members shall:

- Open a City account with the Manager, Council Support Services;
- Account for all funds, goods and services donated, including a list of all individuals and organizations who donated;
- Account for all expenses and distributions undertaken for that activity;
- Not solicit or accept donations from lobbyist or their clients or their employees with active registrations in the Lobbyist Registry without pre-approval from the Integrity Commissioner;
- Not use any funds, goods or services received for the benevolent activity for any other purpose;
- Report on these activities as part of Public Disclosure on an annual basis in recognition of the fact that preparation for a benevolent activity can take several months; and
- In an election year, a Member of Council must not seek donations and sponsorships for any event that has not been staged in the previous two years nor accept donations or stage any new event supported by donations and sponsorships after he or she has filed nomination papers for election to any office in the City of Ottawa. Exemptions may be granted on a case-by-case basis with the approval of the Integrity Commissioner.

An event is considered to have been staged in the previous two years if it meets the following criteria:

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

- In the case of repeat annual events, a reasonable operational amount may carry over to a subsequent year; and
- At end of a Member's term, any funds remaining in such accounts shall revert to the appropriate charity or organization or to the Council Administration Budget in the same manner as a surplus of a Member's Constituency Budget as the case may be.

*Public Disclosure of in-kind Donations*

I have also recently received several requests for interpretation from Members of Council with respect to the public disclosure of in-kind donations for Council Member-organized Community Events. Common in-kind donations are food items for events.

The Community, Fundraising and Special Events Policy does not explicitly address the public disclosure of in-kind donations. I consider in-kind donations to be captured as "goods and services" under Section 2 of the Community, Fundraising and Special Events Policy. Accordingly, beginning in 2021, I will advise Members to comply with the following policy requirements when accepting in-kind donations under the Community, Fundraising and Special Events Policy:

- Account for all funds, goods and services donated, including a list of all individuals and organizations who donated;
- Not solicit or accept donations from lobbyist or their clients or their employees with active registrations in the Lobbyist Registry without pre-approval from the Integrity Commissioner;
- Not use any funds, goods or services received for the benevolent activity for any other purpose; and
- Report on these activities as part of Public Disclosure on an annual basis in recognition of the fact that preparation for a benevolent activity can take several months.

It is my current practice to provide an interpretation, as well as Terms and Conditions, to Members who reach out to my Office with questions about receiving donations and/or sponsorships for community events. Beginning in 2021, I will reference this matter in all interpretations and Terms and Conditions I prepare in response to Members' inquiries. I encourage Members to continue to consult with my Office about receiving donations and/or sponsorships for community events. I am not recommending any change to the Community, Fundraising and Special Events Policy with respect this matter at this time, but I will publish a related interpretation bulletin as soon as practicable.

## **CODES OF CONDUCT – LOCAL BOARDS**

On March 1, 2019, the Code of Conduct for Members of Local Boards came into effect. The 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 perceives 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 October 1, 2019 to September 30, 2020, 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 likewise 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.

#### *Inquiry*

A member of a local board also served on a board of directors of a non-profit organization supported, in part, by corporate sponsorships. The member sought my advice as to whether, when acting in their capacity as local board member, they would be required to declare a pecuniary conflict of interest when deciding on a matter involving a corporate sponsor of the non-profit organization.

#### *Interpretation*

I provided the member with a response, developed in consultation with external legal counsel, which advised that, based on the specific facts of the case, the member would not have a pecuniary interest in the scenario described. The member would not be required to declare a conflict of interest under the MClA. I further advised that I saw no impediment to the member's continued service on the board of directors of the non-profit organization.

I recommended, however, that the member remained mindful of conflicts of interest in a more general, non-pecuniary sense. Section 4 of the Code of Conduct for Members of Local Boards speaks to this matter with the following provisions:

- (5) Members of local boards shall avoid the improper use of the influence of their position and shall avoid conflicts of interest, both apparent and real.
- (6) Members of local boards 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.

These considerations are echoed in Section 8 of the Code (“Improper use of Influence”):

- (8) Members of local boards are expected to perform their duties of office with integrity, accountability and transparency. Members of local boards should not use the status of their position to influence the decision of another individual to the private advantage of oneself, or one’s parents, children or spouse, staff members, friends, or associates, business or otherwise.

I advised the member, when carrying out their public duty as member of the local board, to be mindful of any action that is influenced, or could be perceived to be influenced, by matters within their role as a member of the board of directors of the non-profit. Unlike when a pecuniary conflict exists, the member would not be required to disclose the conflict, refrain from participating in discussion, voting and influencing the vote on the matter. I noted that the member may wish to recuse themselves, however, when a matter that presents a non-pecuniary conflict arises in the course of their work on the local board.

### *Inquiry*

A supplier to one of the City’s Business Improvement Areas (BIAs) offered hockey tickets to staff of the BIA. One member of staff contacted me to inquire whether staff could accept the tickets, and, if so, if they would be required to declare the tickets to the Integrity Commissioner or to the BIA.

### *Interpretation*

Staff members of BIAs are not bound by the Code of Conduct for Local Boards. Only members of the BIA Board of Directors are bound by the Code of Conduct and must



adhere to the specific rules set out in the Code of Conduct respecting gifts and hospitality. Accordingly, I advised that it was not within my authority to provide the staff member with specific guidance on the appropriateness of accepting the tickets.

However, in the interests of transparency, I recommended that the staff member consider proactively disclosing the gift to the Chair of the BIA and seek direction accordingly. I further noted that the individual's terms of employment may also speak to such situations.

### *Inquiry*

A member of a local board expressed concern when a fellow member's e-mail signature, appended to a communication to other BIA members, contained information about the individual's business. The member who had sent the e-mail contacted me with concern about having made an inadvertent misstep.

### *Interpretation*

I confirmed that that the member's action had neither breached the Code of Conduct for Local Boards nor created a conflict of interest under the MCI Act. The very nature of a BIA, as a body representing the interests of businesses within its boundaries, means that all those who serve on the Board have an intrinsic 'conflict of interest'. The responsibility and obligation of BIA members is to avoid using their position and status as a member of the BIA to expressly further the interests of their business. I explained that this is accomplished by recusing oneself from decisions, discussions and votes on matters that directly impact one's business. Finally, I recommended that, going forward, the member may wish to create a BIA-specific signature to be used on BIA correspondence.

## **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."*<sup>2</sup>

*Moll v. Fisher*

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<sup>2</sup> Moll v. Fisher

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 October 1, 2019 to September 30, 2020, I did not receive any requests for investigation respecting an alleged contravened the *Municipal Conflict of Interest Act*.

### **Inquiries and Advice**

As part of my new expanded mandate under the *Municipal Act, 2001*, I am obligated to provided 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 into a judge's decision when considering penalties for a contravention of the MCIA.<sup>3</sup>

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.

From October 1, 2019 to September 30, 2020, I provided two (2) legal opinions in response to requests for advice under the *Municipal Conflict of Interest Act*.

### *Deemed Interest*

Members are expected to avoid their own direct pecuniary conflicts of interest, but also the conflicts of interest of certain family members as set out in the MCIA. Specifically, under Section 3 of the MCIA, the legislation stipulates that the interests of the following persons are deemed to be interests of the Member:

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.

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<sup>3</sup> 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.”

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*

The MCIA includes an 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.

Members must 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.

### *Exceptions*

There are circumstances in which a Member may have a pecuniary interest, but are exempted from the obligations in the MCIA (i.e. requirement to disclose the conflict of interest and refrain from participating in debates and votes on the matter).

There are eleven (11) exceptions (nine specific and two general):

#### **Where ss. 5 and 5.2 do not apply**

4 Sections 5 and 5.2 do not apply to a pecuniary interest in any matter that a member may have,

(a) as a user of any public utility service supplied to the member by the municipality or local board in like manner and subject to the like conditions as are applicable in the case of persons who are not members;

(b) by reason of the member being entitled to receive on terms common to other persons any service or commodity or any subsidy, loan or other such benefit offered by the municipality or local board;

(c) by reason of the member purchasing or owning a debenture of the municipality or local board;

(d) by reason of the member having made a deposit with the municipality or local board, the whole or part of which is or may be returnable to the member in like manner as such a deposit is or may be returnable to all other electors;

(e) by reason of having an interest in any property affected by a work under the *Drainage Act* or by a work under a regulation made under Part XII of the *Municipal Act, 2001* or Part IX of the *City of Toronto Act, 2006*, as the case may be, relating to local improvements;

(f) by reason of having an interest in farm lands that are exempted from taxation for certain expenditures under the *Assessment Act*;

(g) by reason of the member being eligible for election or appointment to fill a vacancy, office or position in the council or local board when the council or local board is empowered or required by any general or special Act to fill such vacancy, office or position;

(h) by reason only of the member being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board or by reason only of the member being a member of a board, commission, or other body as an appointee of a council or local board;

(i) in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member may be entitled by reason of being a member or as a member of a volunteer fire brigade, as the case may be;

(j) by reason of the member having a pecuniary interest which is an interest in common with electors generally; or

(k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the

member. R.S.O. 1990, c. M.50, s. 4; 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 33 (1); 2017, c. 10, Sched. 3, s. 2.

A significant portion of case law focuses on the final two general exceptions. As noted in the decision in *Gammie v. Turner*, a reasonableness test must be applied to these exceptions:

“Both this exemption [4(j)] and the one in s. 4(k), (pecuniary interests so remote as unlikely to affect a councillor’s vote), can be regarded as involving circumstances in which an informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude that the pecuniary interest would not affect the councillor’s ability to make an impartial decision.”<sup>4</sup>

## **CONCLUSION**

As noted above, I recommend the addition of a definition for “municipal staff” to the Code of Conduct for Members of Council as well as some technical amendments to the Complaint Protocol.

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<sup>4</sup> *Gammie v. Turner*, 2013 ONSC 4563 (CanLII), <<http://canlii.ca/t/fzjb5>>, para 72.

# 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 eight 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.<sup>5</sup>

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<sup>5</sup> The City of Ottawa’s system differs from others across Canada in this regard. For example, those who lobby City of Toronto or Province of Ontario public office holders are required to register before undertaking to lobby.

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

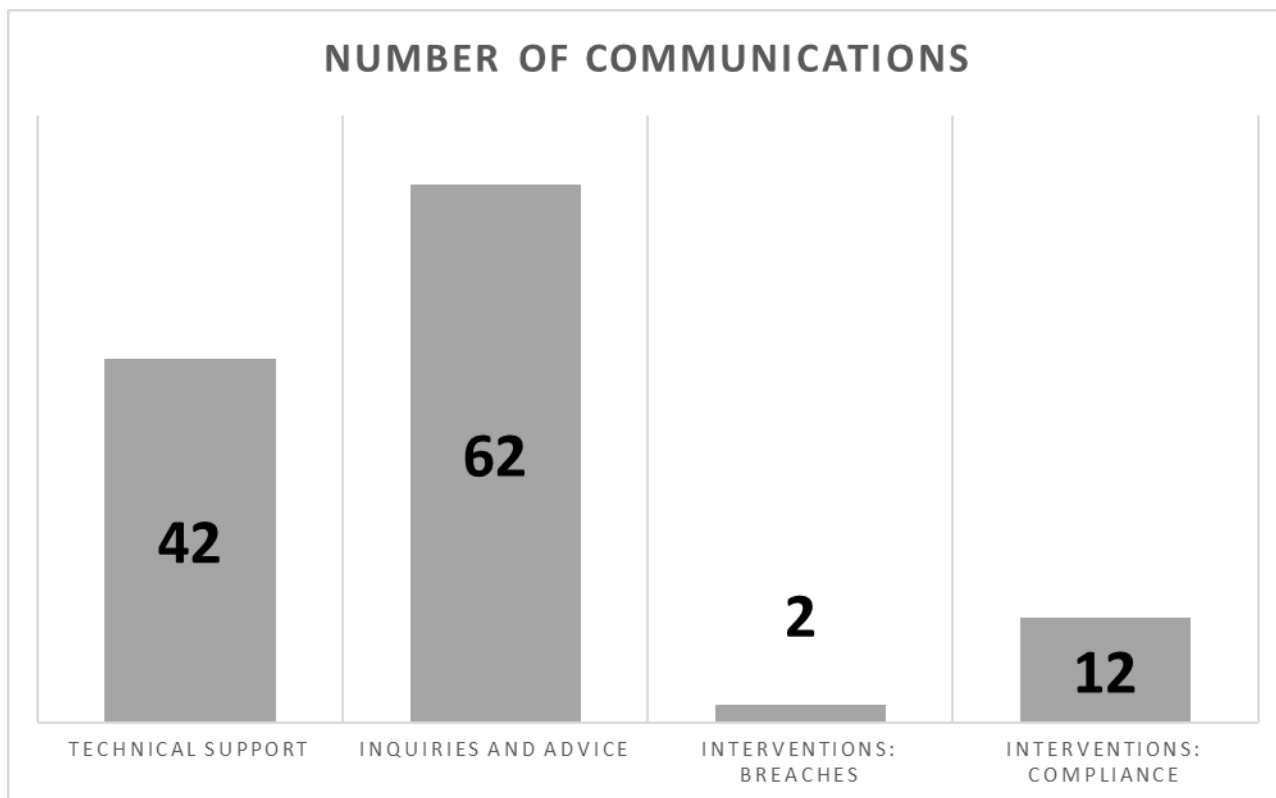
The day-to-day operations of the Lobbyist Registry are administered by a Support Assistant from the City Clerk and Solicitor's Department. Approximately 85% of the Support Assistant's time is spent providing administrative and technical assistance by approving registrations, responding to inquiries,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

### **Inquiries**

Overall, my Office received correspondence on 99 items over the course of the 2019-2020 reporting period. The following data represents the initial points of contact for these inquiries.



**Figure 5: Total Communications Received (October 1, 2019 to September 30, 2020)**



### **Requesting Technical Support**

During the 2019-2020 reporting cycle, the Office of the Lobbyist Registrar received 42 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;
- Requesting assistance with creating lobbying files or activities; and
- Requesting assistance with searching the Registry.

### **Inquiries and Advice**

This year, the Office of the Lobbyist Registrar received 62 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 staff member forwarded a concern from a member of the public, regarding lobbying by a former public office holder. The member of the public inquired about the potential for a conflict of interest resulting from the lobbyist's former role at the City.

#### *Interpretation*

The City of Ottawa's Lobbyist Registry By-law does not require former public office holders to refrain from lobbying City officials for any period of time. Any former public office holder lobbying the City is bound by the same obligation to register all of their communications that constitute lobbying under the By-law. In addition, as a noteworthy layer of transparency in the absence of a "cooling-off" period, all lobbyists must disclose, in their Lobbyist Registry profile, whether they have ever held a senior public office position at the City of Ottawa.

#### *Inquiry*

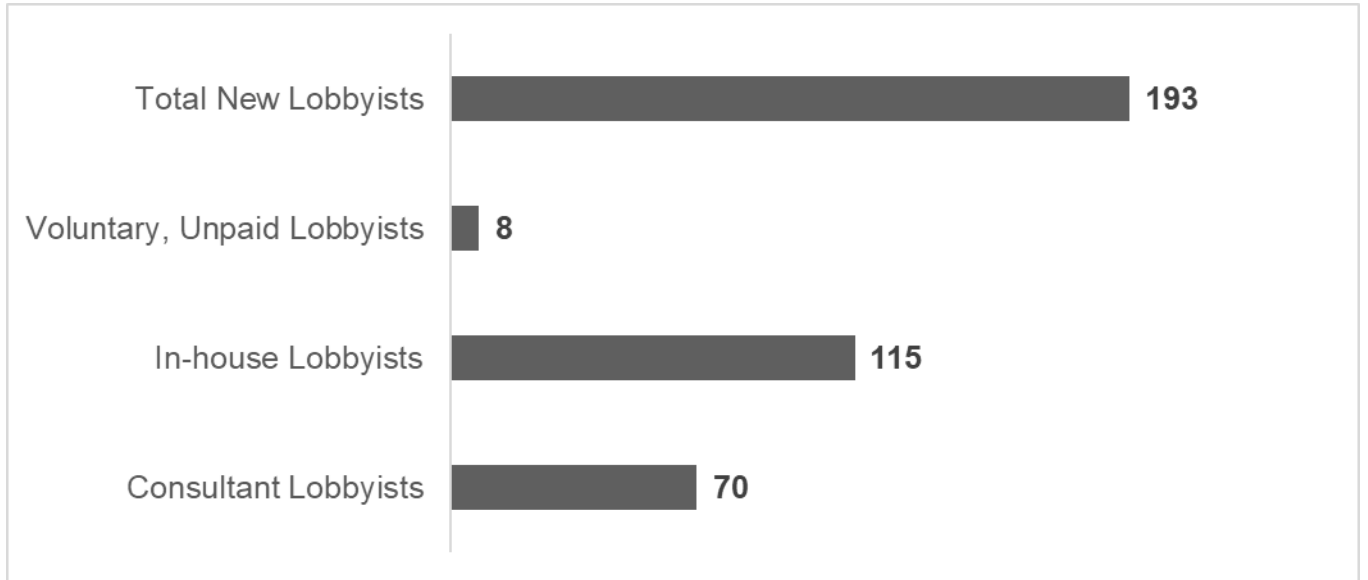
A Member of Council inquired as to whether they would be permitted to attend or speak at independent events held at a location owned by a company with active lobbying files.

#### *Interpretation*

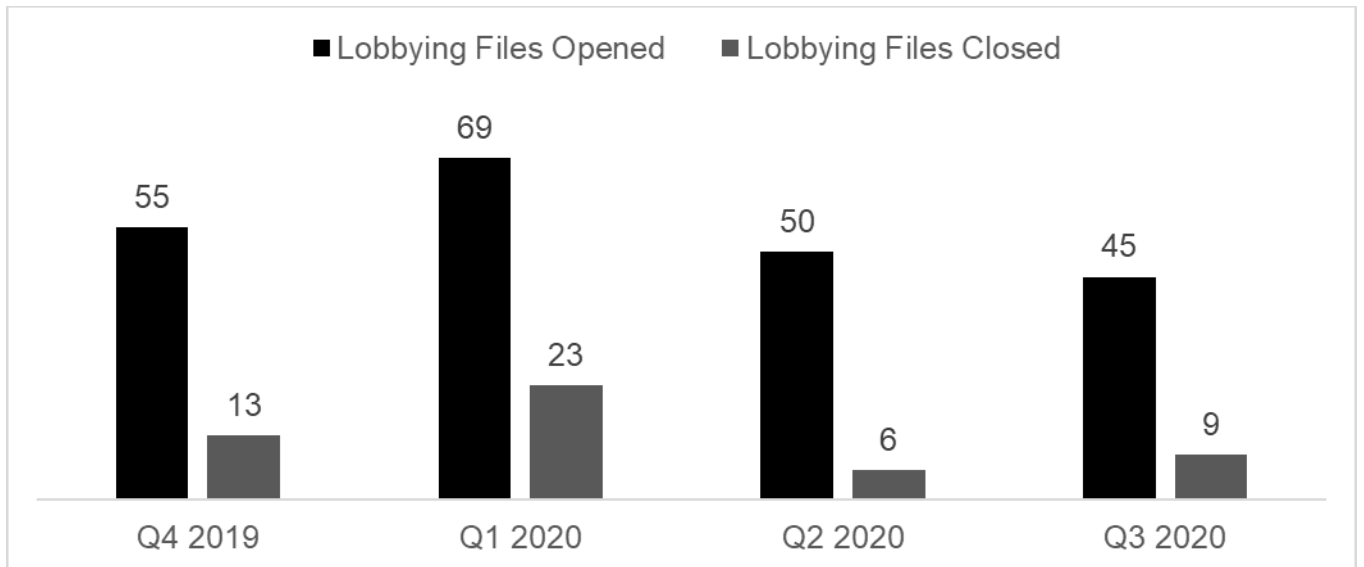
The use of an event space belonging to a company with active lobbying files is not an issue. The Member can attend or speak at events held at such a location if the event or its organizers are not partnered with the company in question. The Member should still attempt to maintain a low media profile in relation to independent events held at locations owned by companies with active lobbying files to manage the perception of undue influence.

**Registration Activity**

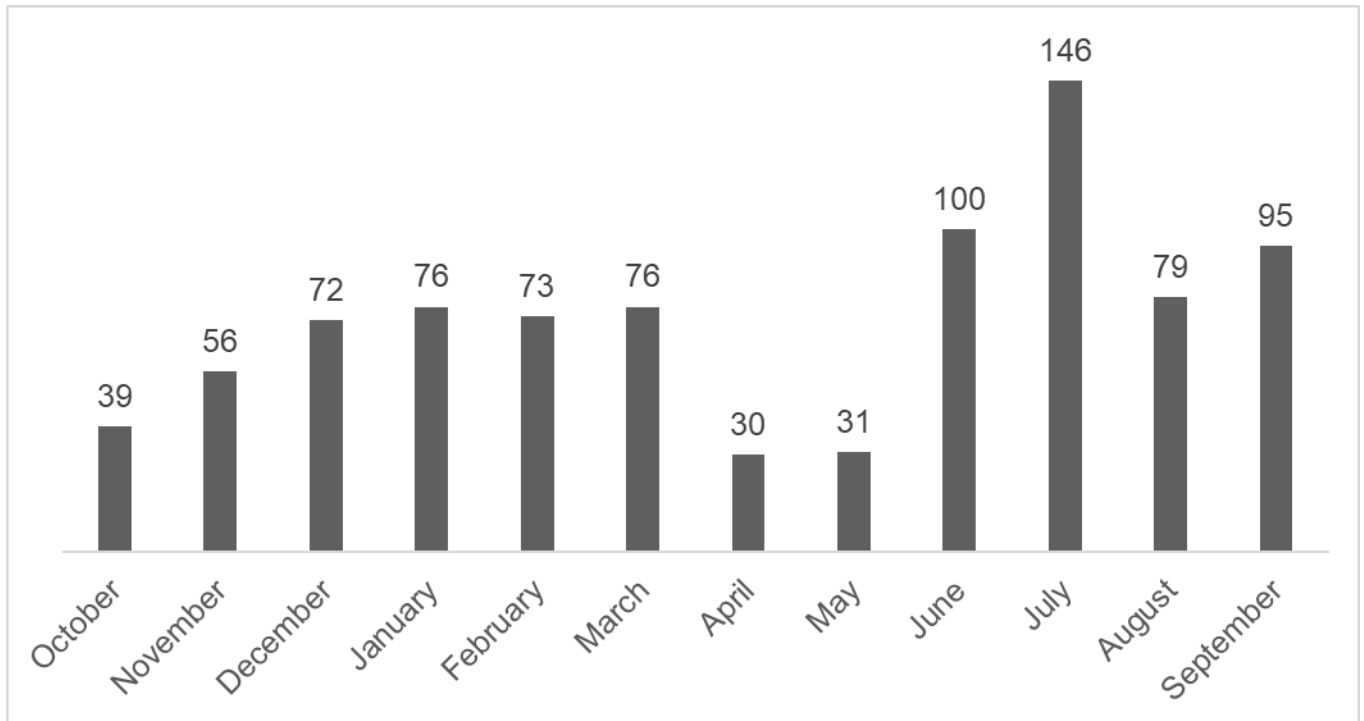
**Figure 6 - Annual Lobbyist Registry Statistics**



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



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



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

Rank	Subject	Total Lobbying Files Registered, 2020
1	Information Technology	22
2	Infrastructure	22
3	Transportation	21
4	Procurement	19
5	Planning and Development	17
6	Health & Safety	15
7	Parks/Recreation	14
8	Garbage/Recycling	12
9	Financial Services	10
10	Water/Sewer	8

## EDUCATION

### Collingwood Judicial Inquiry

This year, I appeared on a panel with Suzanne Craig (Lobbyist Registrar for Vaughn) and Linda Gehrke (former Lobbyist Registrar for Toronto), speaking on my experience as Lobbyist Registrar for the Collingwood Judicial Inquiry.

A summary of the Inquiry, paraphrased from the report, follows:

Part One of the Collingwood Judicial Inquiry examined the sale of a 50 percent interest in the Town's electric utility. The Inquiry found that the successful bidder enjoyed several unfair advantages throughout the procurement process, many of which were facilitated by the mayor's brother, whom the company hired as a consultant over a 17-month period. These advantages included the sharing of confidential information, the improper use of influence, and manipulation of the sale process.

These problems persisted into the situation described in Part Two of the Inquiry, where the mayor's brother continued to manipulate the normal business process to profit off the building of new recreational facilities. The mayor's brother lobbied on behalf of the construction company that was eventually chosen for a percentage of the construction contract, without mentioning that the mayor was his sister. Other strategic omissions marred the process, including the lobbyist's failure to mention his personal financial interest to his sister, as well as the failure of public office holders to disclose the nature of the lobbyist's relationship with the construction company to the rest of Council.

At the time of writing this annual report, Justice Marrocco made his report on the Collingwood Judicial Inquiry public, with 36 recommendations on lobbying, including:

- A recommendation that lobbying should be viewed as having a legitimate role in municipal government, provided it is properly conducted, controlled and reported;
- A recommendation to establish a lobbyist registry in Collingwood, with restrictions, reporting requirements, and sanctions;
- A recommendation to establish a Code of Conduct for lobbyists to delineate permissible and prohibited lobbying activities;
- A recommendation to appoint a lobbyist registrar in Collingwood to advise, educate, and enforce compliance with lobbying rules; and
- A recommendation to update Codes of Conduct for council members and staff to reflect responsibilities to report lobbying and to keep lobbyists at arms' length.

The City of Ottawa's Lobbyist Registry By-law and Lobbyist Code of Conduct feature prominently as sources for these recommendations.

### **Lobbyist Registry Newsletters**

In 2020, my office launched inaugural Lobbyist Registry Newsletters for Members of Council and lobbyists. These newsletters were created to supplement stakeholder education by consolidating one-time memos and reminders into a digestible format. Topics covered in the inaugural newsletters included:

- A summary of new developments in different jurisdictions;
- Reminders of responsibilities under respective Codes of Conduct; and
- General interpretations regarding the application of the Lobbyist Registry By-law and other City policies in certain situations.

I will continue to use the newsletter as an educational tool and intend to produce more newsletters in the future on a regular basis.

## **COMPLIANCE**

### **Late registration of lobbying activities**

This year, my office began reviewing the Registry on a quarterly basis to identify lobbyists who had registered activities beyond the 15-business day reporting period prescribed by the By-law.

As a result of these audits, my office issued 12 notices related to the late registration of lobbying activities. These notices:

- Provide details of the activities leading to the breach of the By-law;
- Remind lobbyists of their reporting requirements; and
- Warn lobbyists that further late registrations could require the use of escalated compliance measures.

## **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.

In 2019-2020, I issued 2 Letters of Direction. Both Letters were issued after receiving reports of non-registration from staff. While both lobbyists eventually registered after intervention from my office, the reported activities were well-past the 15-business day reporting period. In considering the circumstances surrounding their registration, I issued the Letters to educate the lobbyists on how they had breached the By-law and provide guidelines to help them avoid future breaches.

### **CONCLUSION**

With my time as Lobbyist Registrar drawing to a close, my efforts have been focused on educating current users to promote the long-term health and accuracy of Registry records. While the COVID-19 pandemic has made our traditional education sessions impossible to organize, I will continue to leverage and hone the educational materials produced by my office this year.

### **Areas identified for interpretation of the By-law**

I have also identified developing issues that may require a formal interpretation of the Lobbyist Registry By-law this year. These include:

- Establishing a defined link between public office holders' Codes of Conduct and the Lobbyist Code of Conduct on gifts, benefits and hospitality;
- Identifying the application of the Lobbyist Registry By-law to grassroots organizations; and
- Identifying the application of the Lobbyist Registry By-law to lobbyist interactions with public office holders on social media.

I intend to publish related interpretation bulletins early in 2021.

### **Proposed amendments to the Lobbyist Registry By-law**

I am also recommending one minor change to the Lobbyist Registry By-law.

Currently, the only formal sanction prescribed by the By-law is the ban on lobbying. While the ban is a powerful tool, the conditions for applying a ban are strict, with only one having been issued in the past five years. As it stands, the By-law does not reflect the regular compliance measures used by my office. I suggest that both the Letter of Direction and the compliance agreement be added to the By-law as part of an escalating set of disciplinary measures.



# 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 2019-2020 reporting period, I did not receive any requests for investigation of a closed meeting.

### **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, 2019 to September 30, 2020, Council and its Committees went into closed session six times:

#### *City Council*

- October 9, 2019: Update from City Manager respecting the positions of the Chief Financial Officer/City Treasurer and Director of Long-Term Care
- March 9, 2020 (Special Council Meeting): O-Train Confederation Line LRT Stage 1 – Update on Legal Issues and Options
- July 15, 2020:
  - Investigation of a complaint against Councillor Chiarelli pursuant to the City’s Violence and Harassment in the Workplace Policy and the Occupational Health and Safety Act
  - O-Train Confederation Line LRT Stage 1 – Legal Update

#### *Audit Committee*

- November 26, 2019: Audit of Planning, Infrastructure and Economic Development Department – Land Management System

### *Finance and Economic Development Committee*

- March 9, 2020: Strategic Collective Bargaining/Mandate for Negotiations (Civic Institute of Professional Personnel, CUPE 503 Part-Time Recreation and Culture and CUPE 503 Summer Aquatics)

### *Transit Commission*

- June 10, 2020 (Special Transit Commission Meeting): Tentative Collective Agreement with Amalgamated Transit Union (ATU) Local 279

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 11, 2019: Appointment of an Associate Medical Officer of Health
- March 25, 2020:
  - Strategic Collective Bargaining/Mandate for Negotiations (Civic Institute of Professional Personnel, CUPE 503 Part-Time Recreation and Culture and CUPE 503 Summer Aquatics)
  - Strategic Collective Bargaining/Mandate for Negotiations (Amalgamated Transit Union, Local 279 (Conventional) and Amalgamated Transit Union, Local 1760)
- June 10, 2020: Tentative Collective Agreement with Amalgamated Transit Union (ATU) Local 279

## **CONCLUSION**

The informal practice described above whereby the Office of the City Clerk consults with my Office when it is anticipated that confidential matters will be considered *in camera* is above and beyond what is required in the *Municipal Act, 2001*. I acknowledge the City Clerk's commitment to open government by initiating and encouraging this proactive consultation. As noted in the 2018-2022 Mid-term Governance Review, I recommend that Council endorse this informal practice as a formal protocol of the Office of the City Clerk through an amendment to the Council Procedure By-law.

# Outreach, 2020-2021 Goals and Financial Statement

## EDUCATION AND OUTREACH

The education mandate has been a cornerstone of the integrity commissioner role since the position was first established by City Council in July 2012. In 2017, as part of legislative changes brought about by Bill 68 (the *Modernizing Ontario's Municipal Legislation Act, 2017*), the provincial legislature recognized the value of an education and advisory function and formally expanded the statutory role of the integrity commissioner to include these responsibilities.

Specifically, as of March 2019, municipal integrity commissioners have a legislated responsibility to provide education with respect to codes of conduct, related ethical policies and the *Municipal Conflict of Interest Act* to Members of Council, members of local boards, the municipality and the general public.

The COVID-19 pandemic and its associated restrictions had an impact on my ability to offer in-person opportunities for education and outreach. Virtual meetings and presentations have made it possible to resume these activities and I look forward to scheduling training sessions with various stakeholders, particularly for members of local boards.

Below is a list of events and activities that took place during the 2019-2020 reporting period:

### **Outreach**

- Town of Collingwood Judicial Inquiry – Panel on Lobbying (December 2, 2019)
- Delegation from the Ministry of Personnel Management, Republic of Korea (December 19, 2019)

### **Conferences/Seminars**

- Municipal Integrity Commissioners of Ontario (MICO) Fall Conference (October 24, 2019 – City of Vaughan)
- Municipal Integrity Commissioners of Ontario (MICO) Meeting (May 14, 2020 – Virtual meeting)

- Lobbyist Registrars and Commissioners Network (LRCN) Fall Conference (September 17, 2020 – Virtual meeting)

### **Education**

- Two presentations to local boards regarding the new code of conduct and municipal conflict of interest framework (October 2019 – September 2020)
- Newsletter:
  - Members of Council: May 2020
  - Lobbyists: June 2020

### **GOALS FOR 2020-2021**

2020-2021 is my last year as Integrity Commissioner of the City of Ottawa. My primary focus in the coming year will be to ensure a seamless transition for my successor.

### **Education**

The COVID-19 pandemic has necessitated a reimagining of my education and outreach mandate. In the coming year, I will invest some time into adapting how I offer education to Members of Council, members of local boards, the City administration and the public. In addition to finding opportunities to participate in virtual meetings and training sessions, I hope to develop informative and engaging resources on the codes of conduct, the *Municipal Conflict of Interest Act* and my role as Integrity Commissioner.

### **Compliance**

Through tools such as the late-lobbying report and escalating compliance scheme, I will continue to enforce certain requirements of the Lobbyist Registry By-law.

The success of the Lobbyist Registry model, as it was established, also relies on the disclosure of nonreporting. While the obligation to report lobbying activities lies with the lobbyist, both Members of Council and City staff have a duty to inform my office of instances of lobbying that are not registered. In my final year as Lobbyist Registrar, I will find opportunities to reinforce the reporting obligations set out in both the Code of Conduct for Members of Council and the Employee Code of Conduct.

## 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 frequency and complexity of the investigations conducted by my Office has increased over the course of the past two years. I have retained the services of independent investigators, as necessary. The cost of those services is reflected in the breakdown below.

The following is a breakdown of the period of October 1, 2019 to September 30, 2020.

**Figure 10: Financial Breakdown (October 1, 2019 to September 30, 2020)**

	<b>Q4 2019</b>	<b>Q1 2020</b>	<b>Q2 2020</b>	<b>Q3 2020</b>	<b>TOTAL</b>
<b>Retainer*</b>				\$25,440	\$25,440
<b>Salary*</b>	\$39,686	\$26,458	\$17,299	\$29,409	\$112,852
<b>Ancillary Costs</b>	\$4,134	\$988	\$3,357	\$1,747	\$10,226
<b>Materials and Services</b>	\$109,502	\$28,970	\$11,384	\$13,300	\$163,156
<b>Hours Logged</b>	148.5	130	85	144.5	508

\*includes tax less eligible municipal rebates



# Appendix 1

## INTERPRETATION BULLETIN ON THE USE OF SOCIAL MEDIA

### Purpose

This Interpretation Bulletin provides guidance for Members of Council and Members of local boards on the application of the Code of Conduct regarding their social media activity.

### Definitions

#### *Social media*

“Social media” refers to Internet-based applications that allow users to post, share and engage with information. By default, information shared by users is public and permanent. Users manage their own social media experiences—and affect the experiences of other users—by participating in social networks of other users and controlling access to their own social networks.

Examples of popular social media platforms include Facebook, Twitter, Instagram, YouTube and LinkedIn. Comments posted on interactive websites and blogs are also a form of social media communication.

### Principles

For Members, social media applications act as platforms for interacting with the public to provide updates on new work, inform users on specific issues, or to advocate on behalf of constituents. This content can be interacted with by users both within and without Members’ jurisdictions, giving public officials greater reach while allowing the public more access.

Social media platforms exist as largely informal spaces, and the way the applications are structured place Members and the public on more equal footing than would be in a physical or formal setting. While this flattening of hierarchy may blur the line between private and public, Members using accounts representing the City will always be perceived to be acting in their public capacity. The use of titles, “verified” accounts and City branding reinforce Members’ positions the same way a letterhead might.

Administrators of these accounts can manipulate who has access to a Member’s platform, and, consequently, the ability for users to access information and express

themselves. Social media applications allow for varying degrees of control over user interactivity, including muting and blocking users or deleting their comments.

As these formal relationships carry weight in this informal setting, the entirety of the Code of Conduct for Members of Council and the Code of Conduct for Members of Local Boards apply to Members' social media activity.

## **Guidelines**

The following areas of both Codes of Conduct have been highlighted to provide specific guidance on unique interactions with social media activity. This list is non-exhaustive and may be updated over time.

### *Confidential Information*

Section 5 of the Code of Conduct for Members of Council and the Code of Conduct for Members of Local Boards prohibit Members from disclosing confidential information obtained over the course of their official duties. Under this provision, Members are barred from posting confidential information on social media platforms, either through the creation of a public post or through a private message.

### *Online Conduct*

Section 7 of the Code of Conduct for Members of Council and the Code of Conduct for Members of Local Boards impose a duty on Members to treat members of the public, one another and staff with respect and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment.

These provisions set standards for the behaviour of Members, both offline and online. Members should be aware that their positions as public officials cannot simply be turned off and should treat their social media presence as extensions of their public personas. Members are expected not to use offensive language when interacting with members of the public or each other online. While heated language and debate are part and parcel of informal expression on social media, civility and respect should remain the overriding concern for Members.

Members of Council work with a diverse group of colleagues, constituents and citizens at large who benefit from workplaces free from discrimination and harassment. As administrators of their accounts, Members of Council should treat public-facing pages as extensions of their offices. Members of Council should be mindful of the safety of

their constituents regarding content they create, and the content created by other users on their platforms.

Members of Council should actively monitor their public pages for language that constitutes harassment and discrimination towards groups falling under the categories defined in the Ontario Human Rights Code (e.g. sexism, racism, homophobia and transphobia). When such language is found, Members of Council should report offending statements to the social media provider.

To protect themselves and other users on their platforms, Members of Council may need to modify a user's access to their content. Social media applications allow users to do so in several ways, from disabling notifications when a user posts, to hiding a user's posts from view, to blocking a user's access entirely. In cases where such actions are required, Members of Council should opt to be minimally invasive, preserving as much access to information and expression as possible. Before blocking an individual, Members of Council should approach the Integrity Commissioner for advice.

### *Influence*

Section 8 of the Code of Conduct for Members of Council and the Code of Conduct for Members of Local Boards forbid Members from using the status of their position to influence the decision of another individual to the private advantage of the Member, their parents, children or spouse, staff members, friends, or associates, business or otherwise.

Members can reach wide audiences through their social media networks. While the ability to disseminate information quickly and informally is one of the many useful features of social media platforms, Members should always be aware of the risk for the perception of undue influence.

Members of local boards should refrain from including their title as a board member without first seeking advice from the Integrity Commissioner. When publicly identified as a Member of a local board, or when using an account as a Member of Council, Members should not post content that promotes or advances a private, personal or financial interest.

Members of Council and Members of local boards may sometimes use social media to advocate for causes that support a general community benefit. When unsure as to the risk of the perception of undue influence, Members should contact the Integrity Commissioner for advice before posting.

## *Lobbying*

Section 12 of the Code of Conduct for Members of Council require Members of Council to notify individuals who lobby them of their requirement to register under the Lobbyist Registry By-law.

The Lobbyist Registry By-law defines lobbying as:

any communication with a public office holder by an individual who is paid or who represents a business or financial interest with the goal of trying to influence any legislative action including development, introduction, passage, defeat, amendment or repeal of a by-law, motion, resolution or the outcome of a decision on any matter before Council, a Committee of Council, or a Ward Councillor or staff member acting under delegated authority.

Essentially, the Lobbyist Registry was designed to capture 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. Individuals who engage in lobbying are required to register their activity within 15 business days of the date the communication occurred.

The Lobbyist Registry By-law does not exclude interactions over social media from being captured under definition of lobbying. Social media platforms can, however, make it more difficult to determine when lobbying is taking place. Members of Council have a duty to monitor their accounts for lobbying activity, and to inform lobbyists to register when appropriate.

## **Compliance**

Contraventions of the Code of Conduct for Members of Council or the Code of Conduct for Members of Local Boards witnessed on social media can be addressed through the Complaint Protocol attached to both Codes.

## **Questions**

Questions regarding this Interpretation Bulletin from Members of Council, Members of Local Boards and members of the public can directed to [integrity@ottawa.ca](mailto:integrity@ottawa.ca).