

**2017 Annual Report of the  
Integrity Commissioner**

# Commissioner's Remarks

This marks my fifth 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, 2016 to September 30, 2017.

Over the course of the past five years, Council's Accountability Framework has evolved along with my Office's processes. I continue to believe the City of Ottawa's approach to accountability and transparency is an example of how an effective and comprehensive framework can be implemented with modest resources. I am regularly consulted on various aspects of the Framework and am proud to share the successes and lessons learned since the Framework was first established in 2010.

In 2017, Canada celebrated the 150<sup>th</sup> anniversary of Confederation and the City of Ottawa was, and continues to be, the epicentre of celebrations and events marking this occasion. The City was also a major partner with Celebrations Ottawa Inc., a federally incorporated non-profit organization established to manage Ottawa 2017 activities, and three Members of Council, including the Mayor, were appointed to the Board of Directors. As a result, the quantity and complexity of advice and guidance provided this past year required special consideration of the balance between a Member's representative role and duty to adhere to the Code of Conduct for Members of Council.

Consistent with a trend observed in my 2016 Annual Report, awareness and use of the informal complaint process has continued to grow. In those cases where a complaint requires some intervention on my part, I am encouraged by the willingness of all parties to work towards a resolution to the satisfaction of all involved. As I observe the growing number of reports from colleagues across the Province, I recognize the effectiveness of the informal complaint process to resolve some matters that do not benefit from a formal investigation and are more appropriately resolved through mediation.

In my capacity as Lobbyist Registrar, I have continued to use compliance agreements as an enforcement mechanism when minor or inadvertent contraventions of the *Lobbyist Registry By-law* or Lobbyists' Code of Conduct come to my attention. This tool, which I introduced as part of my last annual report, has served both as a means of enforcement as well as an important educational tool. The compliance agreements have generated a great deal of interest from colleagues at all levels of government and I recently presented a webinar for the Ethics Practitioners' Association of Canada on the effectiveness of this enforcement mechanism.

In addition to compliance agreements, I have recently introduced an additional enforcement/education tool designed to address situations where my authority does not fully extend but in which the By-law or the Lobbyists' Code of Conduct has been inadvertently contravened. These instances generally involve companies with active lobbyists or clients of lobbyists who may not be fully aware of the restrictions placed on individuals and companies associated with active lobbying files.

The past year also included the much anticipated introduction of amendments to the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act*. On November 16, 2016, the Minister of Municipal Affairs introduced Bill 68, the *Modernizing Ontario's Municipal Legislation Act, 2017*, which included significant changes intended to enhance municipal accountability and transparency.

Over the course of the past year, I have participated in discussions, consultations and meetings with respect to Bill 68. Overall, I am confident the City of Ottawa is well positioned to meet the new, mandatory accountability and transparency provisions included in Bill 68.

Having said this, enhancements to Council's Accountability Framework will be required for Council to meet its obligations. Specifically, Bill 68 requires the creation of a code of conduct for local boards and establishes a new process for conflict-of-interest complaints. Should Council see fit to extend my current engagement as Integrity Commissioner, I will have a responsibility, as of March 1, 2019, to receive conflict-of-interest complaints under the *Municipal Conflict of Interest Act*, investigate where warranted and, in those cases where there appears to be a pecuniary conflict-of-interest breach, consider making an application to a judge for a decision.

I continue to have some outstanding concerns and questions with respect to the implementation of the conflict-of-interest process. Over the course of the next year, I will continue to consult with my colleagues within the Municipal Integrity Commissioners of Ontario network and work closely with the City Clerk's Office to establish processes and procedures that respect the principles of procedural fairness and natural justice. I will also bring forward recommendations to City Council as part of my next annual report.

The upcoming year will be a busy one, but I look forward to the opportunity to continue to work with City Council to shape the Accountability Framework as it evolves in response to the new accountability measures.

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

# Integrity Commissioner

## MANDATE

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

### **Integrity Commissioner**

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

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

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

- I report directly to Council on matters related to the Code of Conduct and other policies, rules or procedures related to ethics for Council, the Built Heritage Sub-Committee and the Transit Commission.
- 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

During the 2016-2017 reporting period, my role as Integrity Commissioner involved a consistent level of advisory support to Members of Council as well as a significant amount of participation as an interested stakeholder in the legislative review of the *Municipal Act, 2001*, the *City of Toronto Act, 2006*, and the *Municipal Conflict of Interest Act*.

There have been no significant amendments to the Code of Conduct for Members of Council since it was first adopted, aside from amending the monetary threshold for gifts requiring disclosure.

The number of municipalities adopting codes of conduct and appointing Integrity Commissioners continues to grow. Not surprisingly, the body of work associated with ethical conduct at the municipal level has expanded significantly. I believe Council's Code of Conduct and related policies continue to be at the forefront of best practices in the Province.

Having reached ten years since Bill 130 came into effect and first introduced the discretionary accountability and transparency measures, and with Bill 68 now making some of these accountability mechanisms mandatory for all Ontario municipalities, there is a growing awareness and examination of municipal accountability officers. Earlier this year, the Institute on Municipal Finance and Governance, an academic research hub based in the Munk School of Global Affairs at the University of Toronto, released a research paper examining the functions and experience of municipal accountability officers, principally those in Ontario. The paper gave particular focus to the role of integrity commissioner:

“The role of integrity commissioners is examined in special detail, because they must make rulings about sensitive, sometimes controversial, issues relating to the ethical standards we expect of our local elected officials. The examples here illustrate these officers' authority to impose penalties, the need for them to follow due process and principles of natural justice, and the problems caused if their investigations overlap with other investigations into the same behaviour.”<sup>1</sup>

Though it is difficult to evaluate the true value of the advisory function of my Office<sup>2</sup>, I continue to consider this function to be beneficial both to elected officials and the public

---

<sup>1</sup> Sancton, Andrew, “Accountability Officers and Integrity in Canadian Municipal Government,” IMFG Perspectives, No. 17, 2017.

<sup>2</sup> Ibid., pg.10

they are elected to serve. I believe an accountability framework is working as it should when it is supporting elected officials, and those who interact with them in the course of their work, to conduct themselves in a manner that upholds the ethical standards established for them.

**Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017***

As noted in my opening remarks, the enactment of Bill 68 will require changes to Council's Accountability Framework, most notably a code of conduct for local boards and a new system for complaints under the *Municipal Conflict of Interest Act* ("MCIA").

The City Clerk and Solicitor has provided Council and the public with an overview of the new accountability and transparency measures in Bill 68. I am encouraged by some of the new provisions which place an emphasis on the advisory and educational roles of an integrity commissioner, away from a narrow focus on the complaint and investigative function. There continue to be outstanding questions and concerns related to the practical implementation of the new process for MCIA complaints, which I intend to consider thoroughly in the coming year.

As was the case with the development of the Code of Conduct for Members of Council, I will conduct comprehensive consultation with all Members of Council and relevant stakeholders to bring forward recommendations to Council which complement the existing elements of the Accountability Framework.

In addition to the more significant changes to Council's Accountability Framework, Bill 68 includes several more technical and procedural changes to my Office's processes. Outlined in more detail below, these changes do not come into effect until March 1, 2019 and any required amendments to Council's Code of Conduct and related policies will be brought forward as part of my next annual report.

- **All requests for advice and advice provided shall be in writing** – When the position of Integrity Commissioner was first established, staff recommended the position be designed such that the Integrity Commissioner was readily available to provide advice in a timely manner. Presently, requests for advice are received by way of email, telephone call, or in-person meeting. I will be considering options to uphold the standard of timely advice while meeting my obligation with respect to this new requirement.
- **Release of advice by Member and/or the Integrity Commissioner** – An Integrity Commissioner will now have authority to release confidential advice with the written

permission of the Member. Further, where a Member elects to release part of the advice provided by the Integrity Commissioner, the Integrity Commissioner may release part or all of the advice without the Member's consent. As I firmly believe in respecting the confidentiality of my advice to Members of Council, it is my intent to carefully consider the use of my authority in this section.

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

These restrictions closely reflect the municipal election year restrictions already found in the Code of Conduct for Members of Council Complaint Protocol. I will include recommended amendments to these timelines in my overall review of the Complaint Protocol in 2018.

## **COMPLAINT INVESTIGATION AND ADJUDICATION**

Anyone who identifies or witnesses behaviour or an activity that they believe to be in violation of the 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.

All complaints received in 2016 – 2017 were from members of the public.

During the 2016-2017 reporting period, my Office received two formal complaints and four informal complaints which fell within my jurisdiction as Integrity Commissioner.

In addition to these complaints, my Office also received a number of grievances related to matters outside of my jurisdiction. Most often, these complaints are related to matters concerning City Staff or City services. Complainants are provided with an appropriate contact for their grievance.

## **Formal Complaints**

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

I received both formal complaints in January 2017 from the same complainant. The first 2017 formal complaint related to a formal complaint previously reviewed and investigated in 2016. In the 2016 formal complaint, my investigation concluded the Member's actions did not contravene the Code of Conduct for Members of Council, and a formal report was provided the Member and the complainant. After reviewing the material, I concluded that the 2017 formal complaint was an attempt to re-open the 2016 formal complaint, previously investigated and decided, and formally advised that I would not be pursuing the matter as I had previously concluded my investigation into the allegations. In accordance with the Complaint Protocol, I elected to invoke the following provision:

### **Refusal to Conduct Investigation**

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

In response to the second 2017 formal complaint, I conducted an intake analysis and determined the complaint was lacking essential details. I formally contacted the complainant with a request for additional details, providing specific areas requiring additional information and supporting material. It was indicated to the complainant that the additional details were required to complete the formal intake of the complaint. The requested details were not provided and the complaint was not pursued.

## **Informal Complaints**

Informal complaints come in the form of emails, phone calls or letters and are addressed at a high level without a formal investigation. Generally, my Office attempts to separate general grievances from those complaints which qualify for some intervention on my part.



In 2016-2017, I received four informal complaints about matters within my jurisdiction as Integrity Commissioner:

1. It was alleged by a member of the public that a Member's actions related to a local issue were deceitful and an abuse of power. My review of the complaint determined that the grievance was of a political nature and that the complaint had not established an obvious breach of the Code of Conduct.
2. I received a complaint from a member of the public respecting comments made on a Member's Facebook page. Following a review of the material and offending comments, I determined the comments, reflecting the political/policy position of the Member, did not constitute an obvious breach of the Code of Conduct.
3. A member of the public contacted my Office regarding a response from a Member on a policy issue that included disrespectful language. With the agreement of the complainant, I met with the Member to address the complaint. The Member cooperated willingly and issued an apology to the complainant.
4. I received a question/complaint from a member of the public regarding a Member's social media behaviour. Based on the information provided and the absence of a social media policy for elected officials, I determined the matter to be political in nature, and not conducive to the informal complaint procedure. The complainant was provided with information regarding the formal complaint procedure in the event they believed an apparent breach of the Code of Conduct had occurred.

At the end of the 2016-2017 reporting period, my Office had two ongoing informal complaints that had not yet been resolved.

## **INQUIRIES AND ADVICE**

Providing written advice and interpretations to inquiries from Members of Council and their staff is a core function of the Integrity Commissioner mandate.

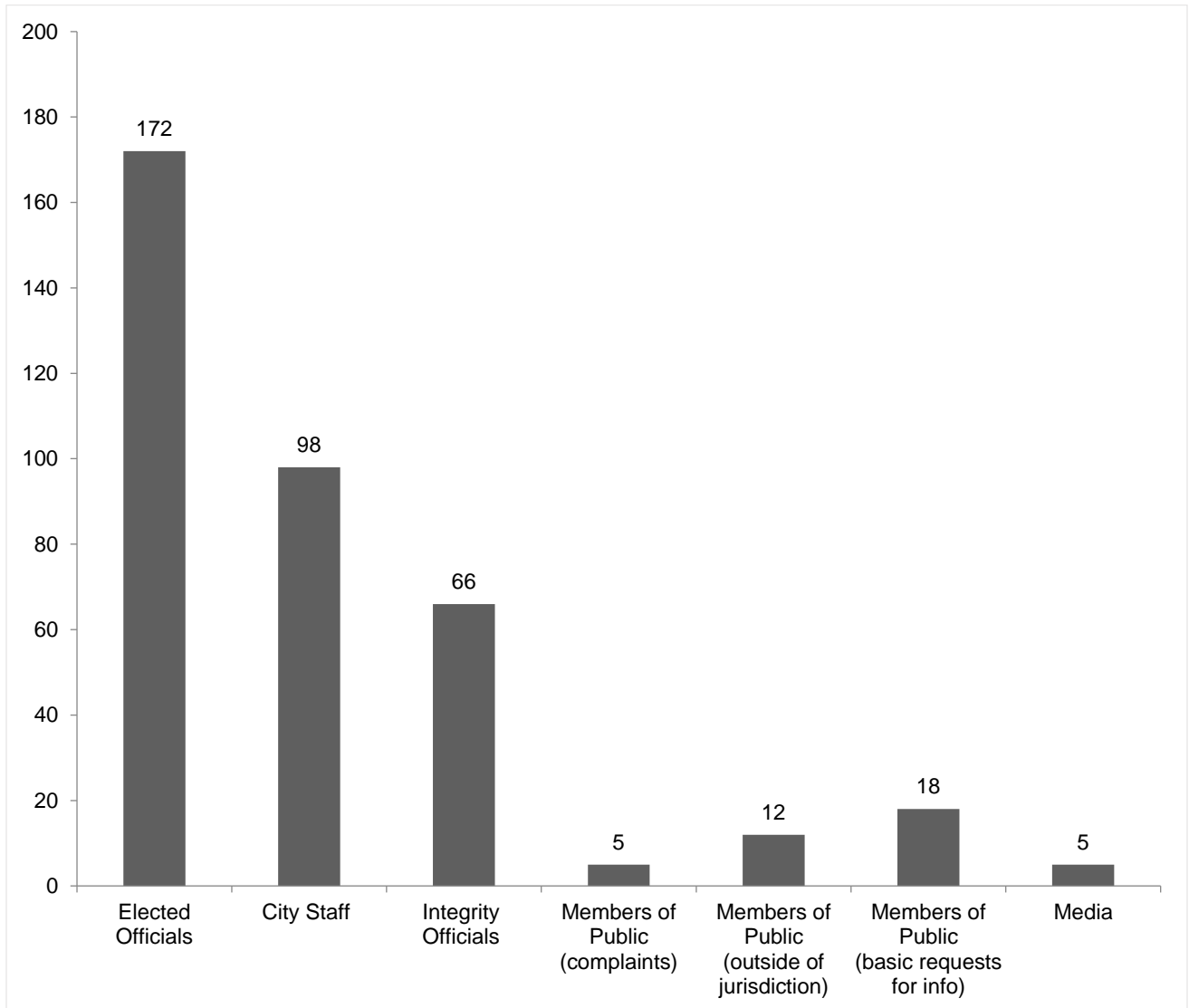
The majority of inquiries received this year were from Members of Council or their staff, the general nature of which was advice and guidance. In light of the increased number of events occurring in the City of Ottawa due to Ottawa 2017 celebrations, I have observed that ticket inquiries dominated requests for advice from Members of Council.

I consider the volume of request for advice and interpretation to be a sign of an accountability framework functioning as it should. I believe this opinion is reinforced by

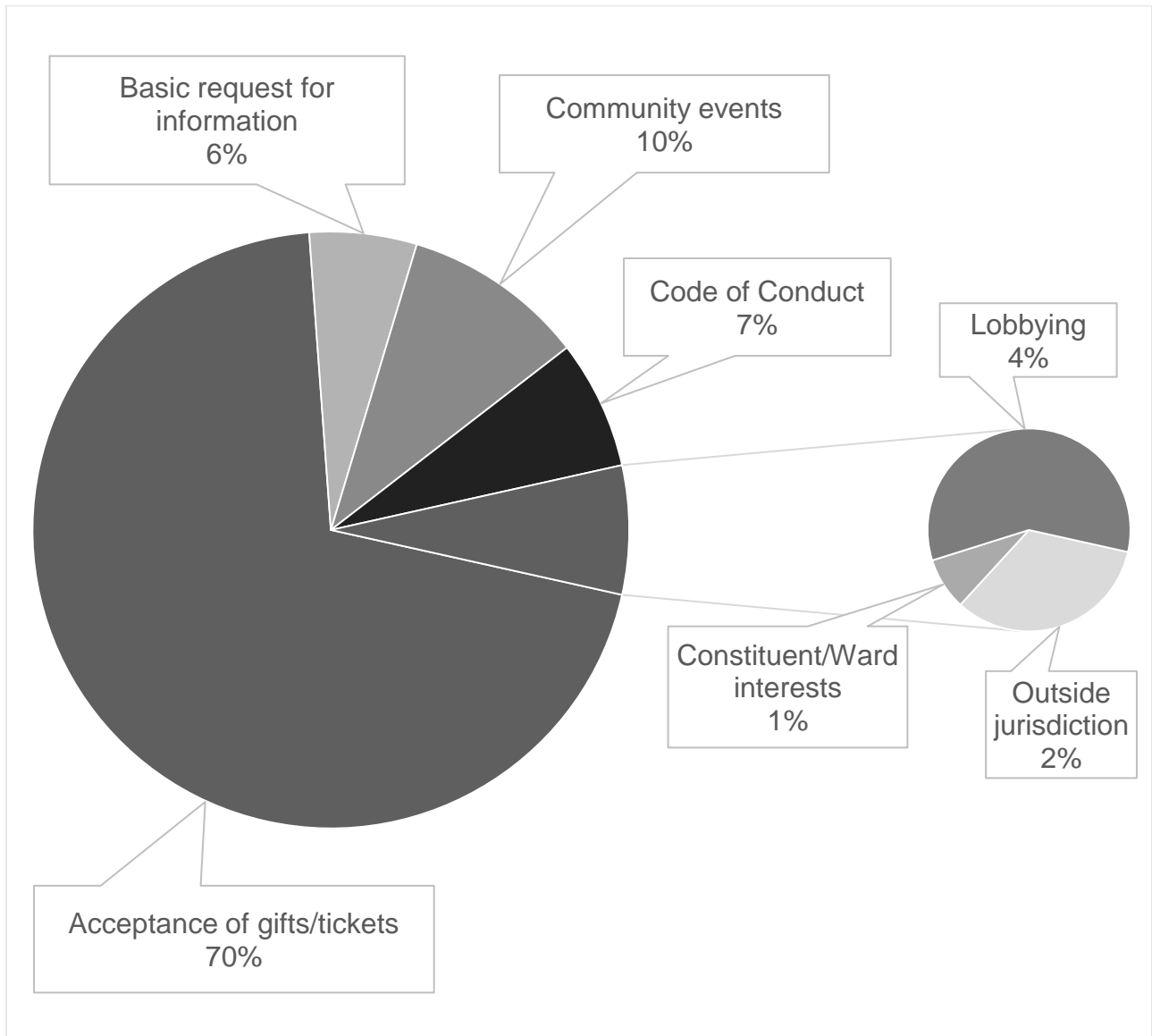
the inclusion of a mandatory advice and education function for municipal integrity commissioner as part of the changes coming into effect as a result of Bill 68.

On average, I respond to inquiries e-mailed to [integrity@ottawa.ca](mailto:integrity@ottawa.ca) within two business days.

**Figure 1: Origin and Nature of Inquiries Received by the Office of the Integrity Commissioner**



**Figure 2: Nature of Inquiries Received by the Office of the Integrity Commissioner from Members of Council**



### **Samples of Inquiries**

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

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

### *Inquiry*

A Member was provided with a large quantity of tickets to an event, for distribution to their community. The tickets individually fell below the \$30 threshold for tickets. The Member opted to donate the tickets to a local organization for distribution, which in turn asked if the tickets could be used for the purpose of fundraising to their own benefit. The Member sought advice as to whether this would be a breach of the Code.

### *Interpretation*

Tickets that individually fall below the \$30 monetary threshold are not captured by the Code of Conduct for Members of Council or the requirements of the Gifts Registry. Members are free to dispose with such tickets as the Member wishes. The Member may use the tickets, return them, donate them or throw them out.

Further, the Integrity Commissioner's authority to provide ticket-related advice and guidance extends only to Members of Council and their duties under the Code of Conduct for Members of Council and the Gifts Registry. The Integrity Commissioner has no authority over the actions of a third-party or local organization.

Nevertheless, it was suggested to the Member that a reasonable member of the public might perceive the donation of tickets (particularly tickets donated to the Member for distribution to the Member's community), and the subsequent use of the tickets for fundraising to the benefit of the local organization, as favourable treatment. In that regard, it was further suggested the Member may wish to urge the local organization to refrain using the donated tickets for fundraising.

### *Inquiry*

A Member was offered a package of tickets to multiple days of a significant, national event taking place in the Member's ward. The Member sought advice on two points: (1) whether the tickets were exempt from disclosure because the event was a "ward event" and (2) whether the Member was permitted to accept the entire package of tickets given the number of events to be held over the course of several days.

### *Interpretation*

This event, despite its geographic location, is not a community event and is not exempt from disclosure based on the Member's role as a Ward Councillor. To be considered a community/ward event, the event must be demonstrably organized by a community organization or in support/benefit/celebration of the community.

However, the Code of Conduct for Members of Council was designed to exempt events where it could reasonably be expected that Members of Council would be in attendance to support and represent the City on the basis of their municipal function. The significance of the event justified an exemption from disclosure based on the on the basis of the Member's representative role at the municipal level. This is distinct from an exemption based on a Member's status as a Ward Councillor.

#### *Inquiry*

A Member was invited to an event hosted by a provincial political party and sought advice as to whether accepting the invitation was a conflict-of-interest. The Member noted that acceptance of the invitation would be strictly with the intent of socializing and confirmed no funds would be expended from the Member's constituency services budget.

#### *Interpretation*

As there were no Lobbyist Registry implications with this specific invitation, there was nothing preventing the Member from accepting the invitation.

However, because the event did not observably relate to the Member's role as a municipal elected official or community leader, and the value of the invitation would exceed the \$30 monetary threshold, the Member was advised that disclosure would be required if the invitation was accepted.

#### *Inquiry*

A Member was invited to participate in an event hosted by a major not-for-profit organization in which participation required a commitment to fundraise a minimum amount in support of the organization's foundation. The Member sought advice regarding whether acceptance of the invitation was permissible and whether disclosure would be required.

#### *Interpretation*

Because the Member's participation required a minimum amount of fundraising in order to attend and this amount represented a "fee" for attending (according to the information provided to the Integrity Commissioner), it was found that the Member's attendance at the event did not constitute a gift under the Code of Conduct for Members of Council. The invitation, therefore, did not require registration on the Gifts Registry.

### *Inquiry*

A Member sought advice regarding an invitation to a private event taking place in the Member's ward and organized by a company who was the client of several active lobbying files in the Lobbyist Registry and a resident of the Member's ward. The Member inquired whether the invitation could be exempted from the restrictions on receiving invitations from lobbyists, given the host was a constituent and the event was taking place in the Member's ward.

### *Interpretation*

While it was agreed a connection could be made to the Member's role as a Member of Council and the event, the link was not strong enough to justify an exemption under Section IX (Conduct Respecting Lobbying) of the Code:

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

The principle for this restriction is to “...ensure that companies and individuals who may be seeking to do business with the City do not do so by giving gifts or favours to people in a position to influence vendor approval or decision-making.” Conversely, under Section 6 of the Lobbyist Code of Conduct (Improper Influence), lobbyists with active lobbying registrations (and their registered clients or employees of either) are prohibited from directly or indirectly offering or providing gifts, benefits or hospitality to public office holders, including Members of Council and their staff.

There have been instances where an exemption has been granted where a Member could reasonably demonstrate that an event was related to their role as an elected office/community leader. These kinds of events typically include benevolent events or Ward events where a Member is either speaking or attending in an official capacity.

Although the invitation comes from a Ward resident and is occurring in the Ward, these factors are not sufficient to classify the event as a Ward event, making it difficult to establish a strong enough case for an exemption based on the Member's role as a community leader. Further, the purpose of the event is not linked to the Ward and is not an event to which the community at large would be invited, making it more challenging to deem the event a Ward event.

Because it is understood that Members must attend events in their Wards in order to stay in touch with their constituents, advice to decline such invitations is not provided lightly. The duty to engage with constituents by attending Ward events is important, but it must be balanced against the duty to adhere to the Code of Conduct, especially where it requires Members to avoid apparent or real conflicts of interest.

### *Inquiry*

A Member was approached by a development firm (with active lobbying files) to appear in a live broadcast showcasing a development in the Member's Ward, a project of the development firm. The Member sought advice regarding whether an appearance on the broadcast was permissible under the Code of Conduct.

### *Interpretation*

The Member was advised that participation in the broadcast may give rise to questions from a reasonable member of the public with respect to the Member's responsibilities under the Code of Conduct and the development firm's obligations under the Lobbyists' Code of Conduct.

Specifically, due to the active lobbying files, a reasonable person might question the appropriateness of a Member making such an appearance, seemingly in support of the local developer.

A similar situation in Toronto led to an investigation and report by the City's Integrity Commissioner. In that case, a Member participated in a promotional video for a development project. The complaint suggested there was an appearance the Member maintained a close relationship with the developer in question, which was concerning and inappropriate given the Member's elected representative role. The Integrity Commissioner found that the Member had breached the Code of Conduct, specifically Section VIII (Improper Use of Influence), by participating in an endeavour that was unrelated to the Member's role as an elected ward representative of the City. Further, the potential financial and/or business rewards the developer stood to benefit from this appearance was deemed to be a misuse of the Member's authority, as Members of Council are required to serve their constituents in a transparent and open-minded manner, while adhering to all appropriate development application processes.

While the Toronto case was not specifically reflective of the scenario in question, the perception of undue influence and receipt of a benefit are the main concerns and a reasonable person observing the broadcast could come to the same or similar conclusion.

### *Inquiry*

A Member sought advice regarding a community event the Member was organizing in the Ward. The Member wished to solicit funds from a variety of sponsors, including a company with active lobbying files, in order to offset the significant costs of a portion of the event. The Member confirmed that the company with active lobbying files did not have any developments in the Member's Ward.

The Member indicated an intention to solicit the funds for this portion of the event through a community organization.

### *Interpretation*

A community event, hosted by a Member of Council, which includes the solicitation of funds from sponsors must adhere to the Community, Fundraising and Special Events Policy. Specifically, the Policy requires that Members:

- 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; 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.

Generally, where Members are participating in an event that intends to target individuals or companies with active lobbying files for sponsorship, Members are advised to find a community group or organization to manage the event to ensure the Member is not involved in the direct solicitation or disbursement of funds. This is to ensure that neither the Member and nor the individuals or companies with active lobbying files are in contravention of the Policy.



In this case, the Terms and Conditions provided to the Member included specific directives concerning the solicitation of funds for a particular aspect of the event to ensure the fundraising for the event remained transparent and free from perceived or real conflicts of interest. Specifically, the Terms and Conditions required that any funds raised by the community organization, in particular donations from those with active lobbying files, must only be raised and disbursed by the community organization and only for the specific purpose as identified by the Member. It was further strongly emphasized that these funds must not be used for any other portion of the event for which the Member was responsible for organizing.

## **EDUCATION AND OUTREACH**

In addition to my statutory role as Integrity Commissioner, I have a responsibility to provide education and advice on the application of the Code of Conduct for Members of Council and its related policies.

This past year I was specifically consulted by a colleague on the Code's gift and ticket rules. I had the opportunity to promote the made-in-Ottawa provision which places reasonable limits on the acceptance of tickets and the commitment to disclosure and transparency. I emphasized my belief that inviting public office holders to attend events can be a legitimate practice, so long as transparency is the foundation it rests on.

I also continue to be an active member in the Municipal Integrity Commissioners of Ontario network.

## **CONCLUSION**

I do not have any recommendations related to my role as Integrity Commissioner at this time. I will be focusing on the implementation of Bill 68 in the coming year and bringing forward recommendations to Council in my next annual report.

As noted in my 2016 Annual Report, I have been working to compile a comprehensive manual of standard practices for my Office. This effort is ongoing in light of Bill 68 and the impact it will have on the work of my Office. New processes and practices will need to be established for MCIA complaints, and existing practices must be updated to reflect the technical amendments to my advisory and investigative functions.

# 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 over five 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>3</sup>

---

<sup>3</sup> The City of Ottawa’s system differs from others across Canada in this regard. For example, those who lobby City of Toronto or Province of Ontario public office holders are required to register before undertaking to lobby.

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

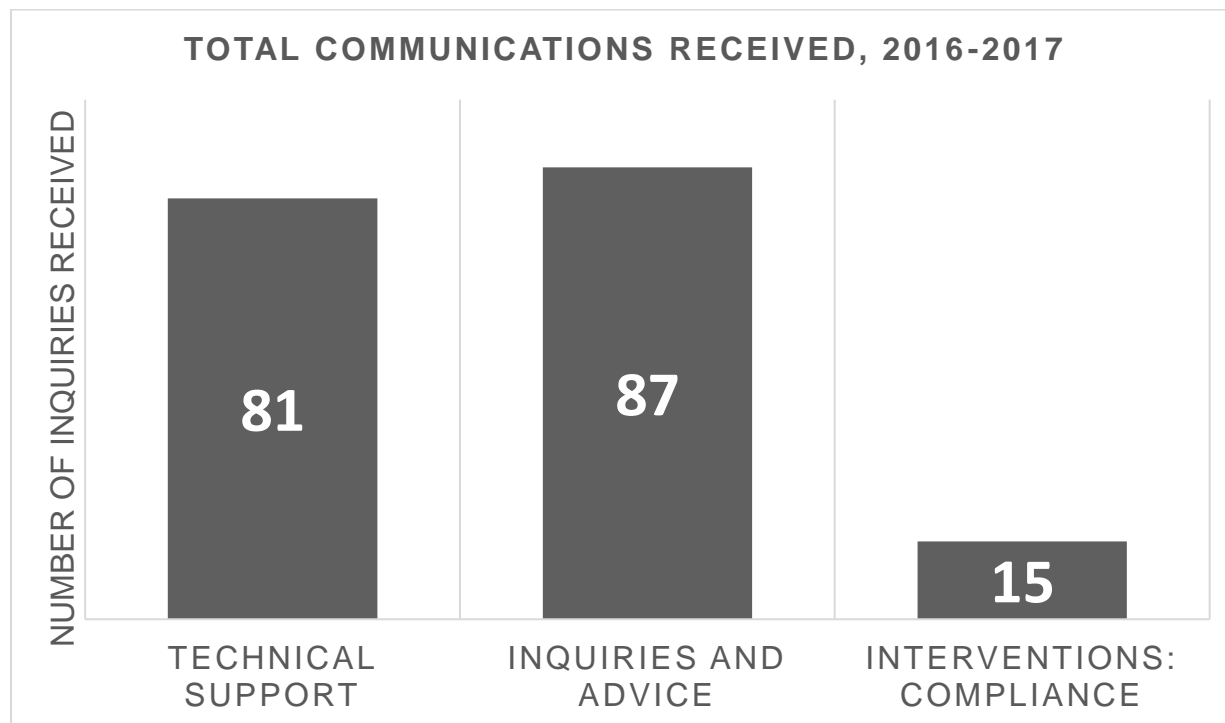
## OPERATIONS

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

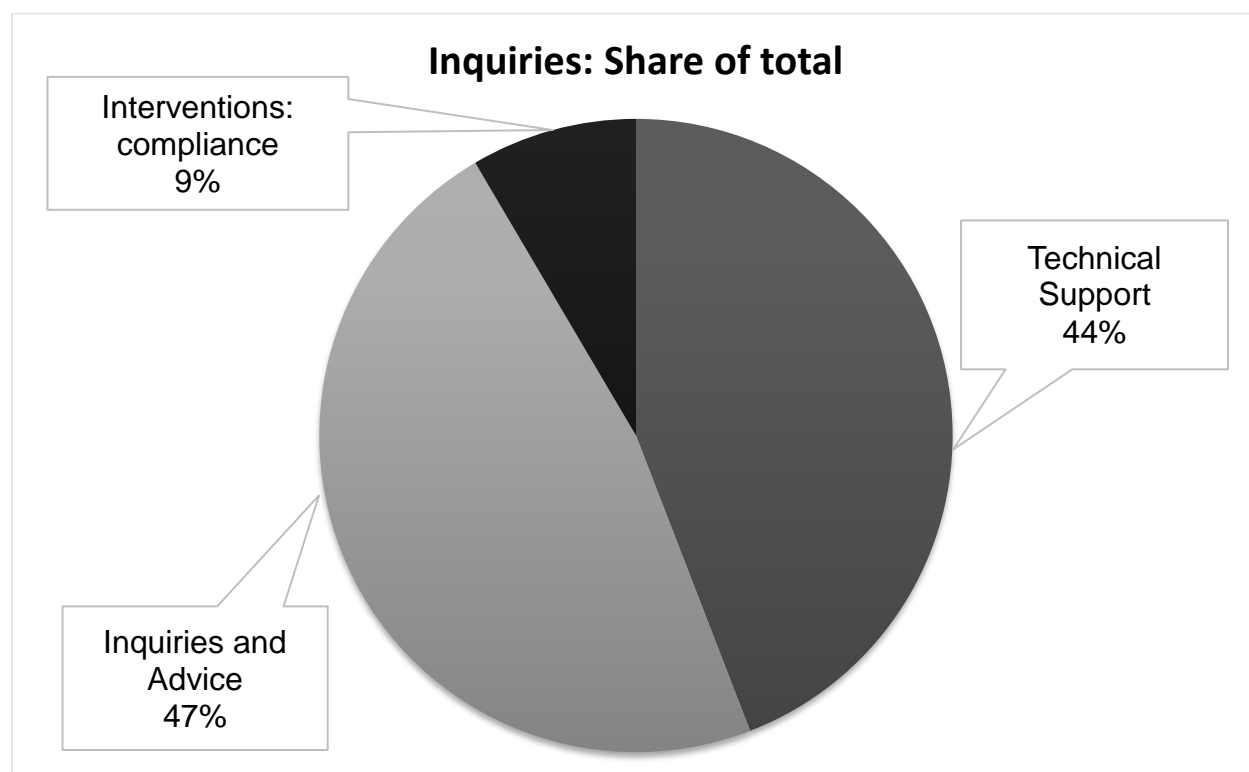
### Inquiries

Overall, my Office received more than 180 inquiries over the course of the 2016-2017 reporting period.

**Figure 3: Total Communications Received (October 1, 2016 to September 30, 2017)**



**Figure 4: Share of Total Inquiries Received**



#### Requesting Technical Support

During the 2016-2017 reporting cycle, the Office of the Lobbyist Registrar received 81 requests for technical support. My Office continues to use these inquiries to inform potential changes to the Lobbyist Registry application.

Common requests for technical support include:

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

#### Intervening for Compliance

In 2017, my Office continued its effort to improve the accuracy and integrity of the Lobbyist Registry's public records. Activities were focused on promoting awareness of the requirements of the *Lobbyist Registry By-law*, and ensuring greater compliance in respect of lobbyist registrations.

To this end, staff intervened on 15 occasions in 2017 to assist with issues related to compliance - cases necessitating the correction of inaccurate or incomplete registrations. These interventions could involve requests to register, following reports of non-registration from a Member of Council or a public office holder, or requests to update erroneous or old lobbying files.

### Inquiries and Advice

This year, 47% of inquiries received by the Office of the Lobbyist Registrar requested 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 member of the public inquired about specific communications listed in the Lobbyist Registry on a particular topic. The member of the public asked whether the Lobbyist Registrar could provide copies of any relevant emails, or details regarding the substance of these communications.

#### *Interpretation*

The specific substance of lobbying communications is not a requirement of the Lobbyist Registry, meaning that the Lobbyist Registrar possesses neither emails nor records of conversations that occur between public office holders and lobbyists. Consequently, the Lobbyist Registrar is not able to provide insight as to substance of the communications.

The intent of the Lobbyist Registry is to provide a layer of accountability and transparency to lobbying activities by giving the public access to a record of who is lobbying Members of Council and City staff on what subject matters. Lobbyists must indicate the general subject matter (e.g. zoning by-law), additional details of the specific issue addressed in their lobbying communications, the affected ward(s), who was person lobbied, how the lobbying occurred (e.g. e-mail), and the date of the lobbying activity.

### *Inquiry*

A representative from Company A, which had recently been sold to Company B, inquired about changing Company A's information on an employee's Lobbyist Registry profile. Specifically, the representative was looking to update the profile belonging to Company A's former president to reflect the information of Company B's president. It was confirmed that the subject matter of the company's lobbying would remain the same.

### *Interpretation*

City of Ottawa Lobbyist Registry profiles are designed for individual use only and cannot be transferred between individuals. The City's Lobbyist Registry does not recognize companies or organizations as lobbyists, but rather documents the lobbying activity of individuals either on behalf of a client, on behalf of their company/organization, or on a voluntary, unpaid basis.

If the status of an in-house lobbyist's company changes and renders their information obsolete, any lobbying files associated with that profile should be closed — even if the employee intends to continue lobbying on the same issue. Any individual lobbying on behalf of a different company must create a new profile, with their new company's information, and disclose their lobbying activity accordingly.

### *Inquiry*

An individual, who had recently registered as a lobbyist, inquired about the Lobbyists' Code of Conduct prohibition against gifts to Members of Council and their staff. Specifically, the lobbyist inquired whether political contributions (within the contribution limits/rules) were permitted while having active lobbying files.

### *Interpretation*

Section 6 (Improper Influence) of the Lobbyists' Code of Conduct states as follows:

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

This section corresponds with Section IX (Conduct Respecting Lobbying) in the Code of Conduct for Members of Council:

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

The corresponding sections are meant to ensure those who are seeking to do business with the City do not do so by giving gifts or favours to those in a position to influence the outcome of decisions.

Nevertheless, Section X (Gifts, Benefits and Hospitality) of the Code of Conduct for Members of Council includes a list of exceptions to the gift/benefit/hospitality rules including:

(c) a political contribution otherwise reported by law, in the case of members running for office.

For this reason, and save for rules and requirements related to political contributions set out in the *Municipal Elections Act, 1996*, nothing in the Lobbyists' Code of Conduct or the Code of Conduct for Members of Council prevents lobbyists with active lobbying files from making political contributions to a candidate in a municipal election.

### *Inquiry*

A Manager from one City department felt that representatives from another City department were advocating/lobbying the Manager's department on behalf of an external third party. The advocating/lobbying concerned particular initiatives both departments were involved in. The Manager sought guidance as to whether it was considered lobbying when approached by staff from another City department.

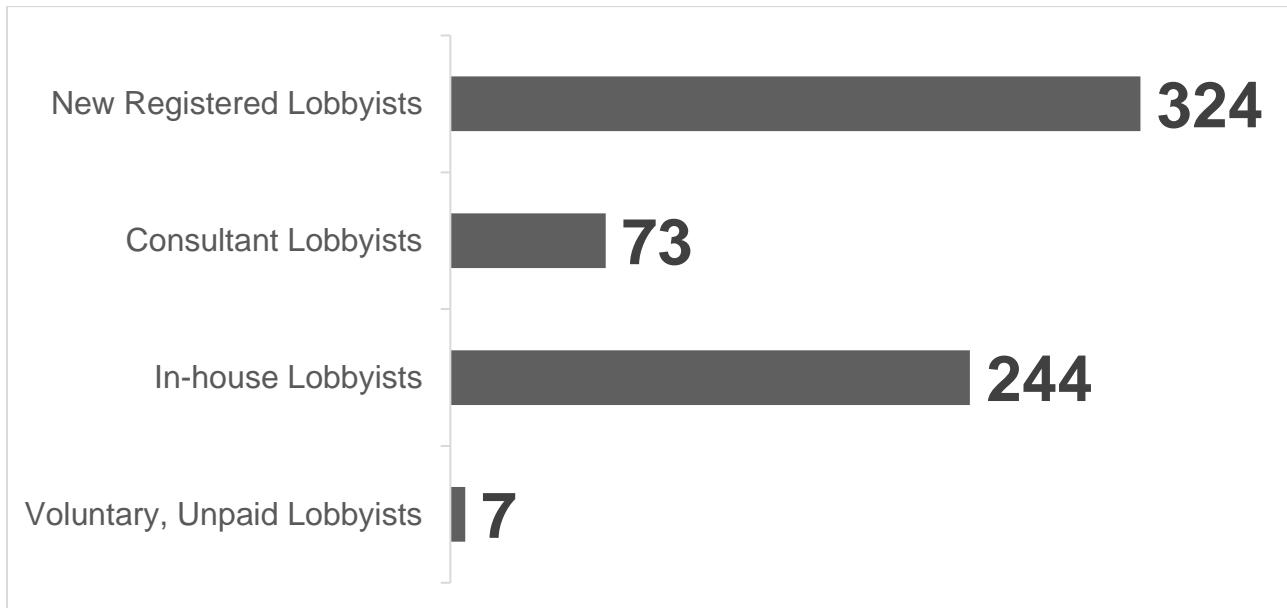
### *Interpretation*

Because a lobbyist sought to advance a financial interest outside of normal business processes by leveraging the support of one public office holder against the decisions of another public officer holder, the initial communication should be interpreted as an attempt to lobby. Whether lobbying is conducted directly with the appropriate Manager or by way of another public officer holder, lobbying requires registration.

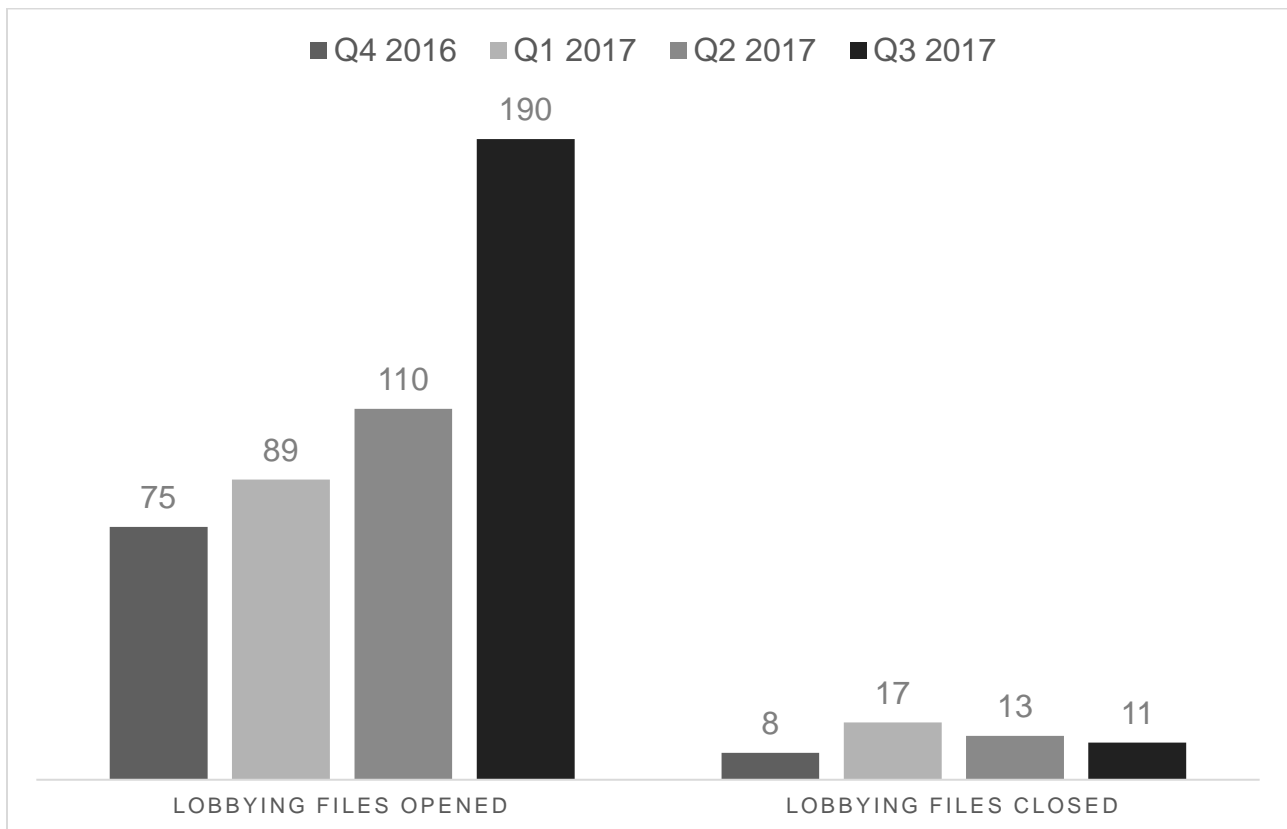
This is distinct from City staff placing interested parties in touch with the appropriate contact. A simple referral should not be construed as an endorsement or support for the business or financial interest seeking to influence a decision or outcome.

## Registration Activity

**Figure 5: Lobbyist Profile Registrations**

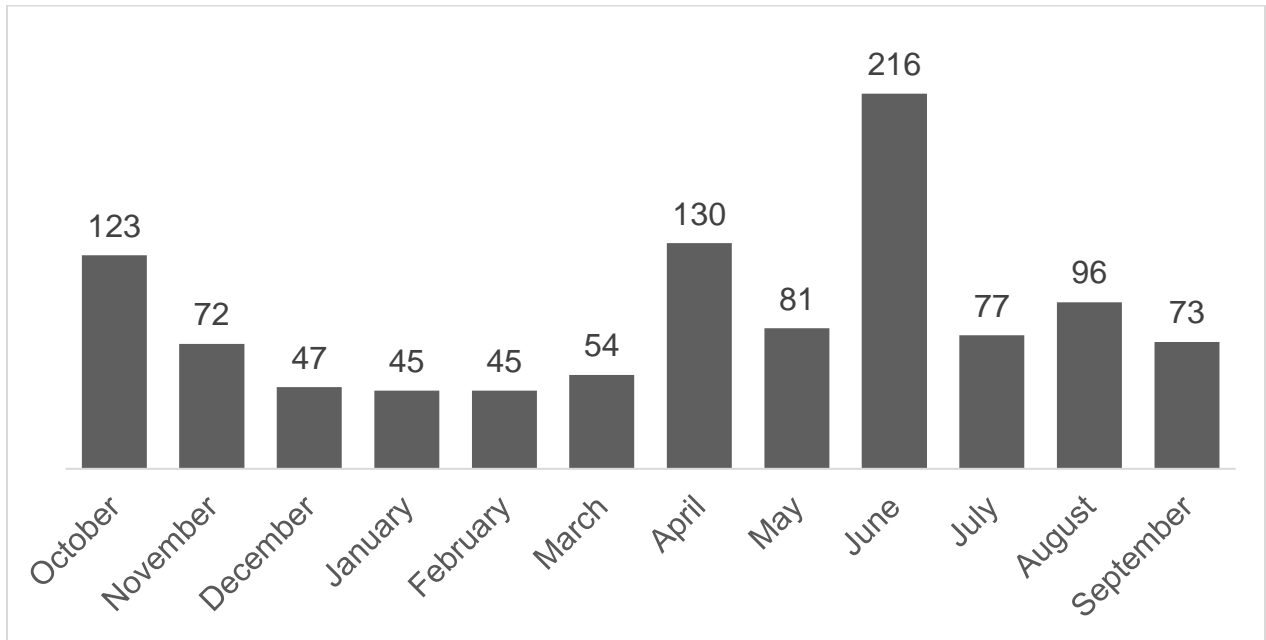


**Figure 6: Lobbying Files Opened and Closed (by quarter)**





**Figure 7: Total Lobbying Activity (by month)**



**Figure 8: Top Ten Registered Subject Matters**

Rank	Subject Matter	Total Lobbying Files
1	Planning & Development	81
2	Procurement	58
3	Information Technology	52
4	Environment	34
5	Health & Safety	26
6	Infrastructure	26
7	Economic Development	25
8	Real Estate/Property	21
9	Parks/Recreation	20
10	Water/Sewer	19

## **Confidentiality Codes**

Lobbyists can apply to my Office for a confidentiality code in cases where transparency is a business risk or confidentiality is required to ensure the potential success of a proposal. If I approve such a code, the lobbying activity will eventually be reported out when an agreement is successful. This year, my Office did not receive any requests for a confidentiality code.

## **COMPLIANCE AND 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. In the five years that I have been responsible for the administration and oversight of the Lobbyist Registry, I have taken various steps to ensure compliance with the By-law. These include proactive compliance audits, compliance agreements, communication bans and formal investigation with a public report to Council.

This year, though I did not receive any requests for formal investigation, my Office was approached by a member of the public regarding an observed discrepancy in a lobbying file. Specifically, it was observed that the client of a lobbying file, identified by a corporation number, appeared to be a corporation no longer registered after a Corporate Profile Search was conducted. My Office informally investigated the matter and discovered the corporation number listed in the Lobbyist Registry was incorrectly entered. The error was corrected and the member of the public who brought forward the discrepancy was notified.

I am encouraged to note that entries in the Lobbyist Registry are monitored and questioned. Using corporation numbers in lobbying files is discouraged due to the difficulty in confirming the identity of a client; however, it is understood that in some cases the numbered name is the legal name of the corporation.

## **Compliance Agreements**

As noted in my 2016 Annual Report, I have introduced an enforcement mechanism in the form of compliance agreements. I formulated these agreements to address inadvertent or minor contraventions of the *Lobbyist Registry By-law*, while reserving my ability to impose formal sanctions for more egregious breaches.

The compliance agreement is a voluntary agreement between myself as Lobbyist Registrar and a lobbyist who has found to have inadvertently contravened the *Lobbyist*

*Registry By-law* or the Lobbyists' Code of Conduct. The agreement includes an agreed-upon statement of facts regarding the specific violation and outlines the steps to be taken to address the breach, including a commitment from the lobbyist to adhere to the By-law and the Code of Conduct in the future. In response to the acknowledgment of the transgression and the commitment to compliant behaviour, I, as Lobbyist Registrar, commit to refrain from conducting a formal investigation with respect to the matter and applying additional sanctions. Compliance agreements are posted online and notice is circulated to Members of Council.

In the 2016-2017 reporting period, I have issued two compliance agreements. Both compliance agreements addressed situations where a lobbyist with active lobbying files had offered a gift/benefit/hospitality/ticket to a Member of Council while having active lobbying files.

There were two other occasions where a compliance agreement was prepared. However, following meetings with the lobbyists in question, details came to light which negated the need for a compliance agreement. In both instances where a compliance agreement was considered, the meetings and discussions initiated by the suspected breach provided an opportunity to review the responsibilities and obligations outlined in the *Lobbyist Registry By-law* and the Lobbyists' Code of Conduct to maintain up-to-date and accurate lobbying files and to consult with my Office on the need for a lobbying file or whether pre-approval is required to offer gifts/benefits/hospitality/tickets to a public office holder.

As I noted in my opening remarks, I have received a great deal of interest regarding the use of compliance agreements from colleagues in the field of ethics. Most recently, I was asked to present a webinar for the Ethics' Practitioner's Association of Canada. The webinar focused on the effectiveness of compliance agreements as a constructive response to a failure to comply with rules. Participants included ethics practitioners from both public and private organizations dealing with internal (e.g. employee) and external (e.g. lobbyists) ethics regimes.

### **Letters of Direction**

At the end of the 2016-2017 reporting period, I introduced another enforcement mechanism in the form of a Letter of Direction to complement the compliance agreements. As described earlier in my report, the Letter of Direction was designed as an enforcement/education tool in response to apparent or inadvertent breaches of the Lobbyists' Code of Conduct that came to my attention but where my authority did not

fully extend. These instances generally involve companies with active lobbyists or clients of lobbyists who may not be fully aware of the restrictions placed on individuals and companies associated with active lobbying files.

The *Lobbyist Registry By-law* and Lobbyists' Code of Conduct place the same responsibilities and obligations on the companies and clients of lobbyists to refrain from directly or indirectly offering a gift, benefit or hospitality to Members of Council or their staff. However, my authority as Lobbyist Registrar is largely restricted to enforcing compliance by the lobbyists themselves.

The Letter of Direction provides explicit steps for compliance and direction for expected behaviour in the future. There is no need for agreement from the offending party, as is the case for a compliance agreement – a simple acknowledgment of receipt is required. The Letter of Direction is not publicized, but remains on file with my Office in the event future breaches come to my attention.

The Letter of Direction serves an education/enforcement mechanism to address those breaches of the By-law and the Code that are minor in nature, self-disclosed, or committed by someone other than the lobbyist with active lobbying files (e.g. employee of the same company or client of the lobbyist with active lobbying files) who I, as Lobbyist Registrar, have limited authority to sanction.

### **Bill 68 – Limitation Period for Lobbyist Registry By-law Offences**

Currently, municipalities that seek to charge and convict any lobbyist for a violation of that municipality's lobbyist registry by-law do so under the *Provincial Offences Act*. Section 76 of that Act sets a default period for investigations of six months after the offence was alleged to have been committed.

In response to the legislative review of the *City of Toronto Act, 2006*, the City of Toronto requested an extension to the limitation period for investigating lobbyist registry by-law offences. The rationale provided for the request included that:

- an extension to the time limit would enable more investigations to be completed; and
- the default time limit of six months is insufficient "in most cases" to complete an investigation, as breaches of the Lobbying By-law "tend to be complex, requiring production of documents and interviews of witnesses."

In response to this request, Bill 68 added a new section to the *Municipal Act, 2001* and the *City of Toronto Act, 2016*, that provides municipalities with the discretionary authority to pass a by-law to extend the time period for investigations to two years. Under Bill 68, the by-law would not apply if the alleged offence occurred more than six months before the day the by-law is passed.

This provision came into effect upon Royal Assent on May 30, 2017. Shortly thereafter, on July 4, 5, 6 and 7, 2017, Toronto City Council enacted an amendment to the City's Lobbying By-law to extend the limitation period to two years.

Ottawa City Council enacted and passed the City of Ottawa's *Lobbyist Registry By-law* (By-law 2012-309) on August 29, 2012. The *Lobbyist Registry By-law* does not presently recognize a breach of the By-law as a provincial offence for which a conviction could be pursued through the Provincial Offences Court. In the five years that the By-law has been in place, Council has not sought, nor have I made any recommendation to amend the *Lobbyist Registry By-law* to allow for the charge and conviction of a lobbyist for a violation of the *Lobbyist Registry By-law*.

I believe the City's approach to enforcement through practical, reasonable sanctions and mechanisms is working well. However, I will continue to monitor the effectiveness of a provincial offence in the enforcement of a lobbying by-law.

## **CONCLUSION**

I continue to observe increased attention to the work of my Office in the wake of last year's investigation report, particularly on the part of public office holders. I would like to continue building on the increased awareness both inside and outside the corporation to further enhance the value of the Lobbyist Registry through accurate registrations and continued enforcement of the *Lobbyist Registry By-law* and the Lobbyists' Code of Conduct.

As a consequence of the adoption of Bill 68, 2017-2018 will place a heavier burden on my role as Integrity Commissioner. As Lobbyist Registrar, I will, however, continue to maintain the level of oversight and enforcement my Office has established over the past couple of years. I also intend to conduct several more targeted refresher sessions for City staff and prepare an article for the City's employee newsletter.

# 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:

1. The security of the property of the municipality or local board;
2. Personal matters about an identifiable individual, including municipal or local board employees;
3. A proposed or pending acquisition or disposition of land by the municipality or local board;
4. Labour relations or employee negotiations;
5. Litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
6. Advice that is subject to solicitor-client privilege, including communications necessary for that purpose; and
7. A matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act.

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

- The meeting is held for the purpose of educating or training the members.
- 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.

Finally, 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).

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, conduct an investigation and submit my findings and recommendations in a public report to City Council or the local board. 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 2016 – 2017 reporting period (October 1, 2016 to September 30, 2017), I did not receive any requests for investigation of a closed meeting.

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. For that reason, as has been the case since my August 2012 appointment as “three-in-one” Commissioner, the Meetings Investigator function continues to be the lightest of my mandate.

From October 1, 2016 to September 30, 2017, Council and its Committees went into closed session a total of six times:

#### *City Council*

- February 8, 2017: To receive a verbal update on the hiring of the General Manager of Planning, Infrastructure and Economic Development and a request for an exemption to the Bilingualism Policy for the selected candidate.
- June 14, 2017:
  - To receive a presentation with respect to the tentative agreements reached for the renewal of the collective agreements with CUPE Local 503 (Part Time Recreation and Culture) and CUPE Local 503 (Summer Aquatics); and
  - To receive a verbal update on two requests for exemptions to the Bilingualism Policy for the positions of Director of Planning Services and Paramedic Chief.

#### *Agriculture and Rural Affairs Committee*

- July 6, 2017: To receive a presentation and legal advice pertaining to the proposed settlement of the Maurice Yelle Excavation Ltd. Aggregate Resources Act application, OMB file no. mm160070 (no *in camera* session at Council).

#### *Audit Committee*

- June 22, 2017: To receive a presentation from the Auditor General with respect to his report on an investigation into three reported Client Service Centres deposit shortages (no *in camera* session at Council).

#### *Finance and Economic Development Committee*

- November 1, 2016: To receive an update with respect to collective bargaining mandates for collective agreements with Civic Institute of Professional Personnel, CUPE 503 (Part-Time Recreation and Culture) and CUPE 503 (Summer Aquatics).

#### *Planning Committee*

- June 27, 2017: To receive a verbal update on the Taggart settlement of appeal to Official Plan Amendment 150 (no *in camera* session at Council).



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

*City Council*

- June 28, 2017: Appointment of an Associate Medical Officer of Health

*Planning Committee*

- April 25, 2017: Development Charges: Conversion from Residential Use to Non-Residential Use

As part of the City's ongoing commitment to open government, the City Clerk and Solicitor's Office 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 with 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.

Finally, it should be noted that of the six closed meetings during the 12-month period, four relied upon the traditional exceptions for "labour relations and/or employee negotiations" as they pertained to the hiring of senior management following last year's realignment as well as various collective bargaining updates. Further, in all but two instances, the *in camera* item was reported out upon Council approval or resolution of the matter. Of the remaining two instances, one pertained to ongoing collective bargaining negotiations and the second related to an Auditor General's investigation that included details which may have constituted a breach of personal privacy or put at risk the security of the property of the City. In this case, a public version of the report's Executive Summary was prepared and the City Clerk and Solicitor provided a thorough explanation of why the matter would not be reported out, summarizing relevant precedents established by the Ontario Ombudsman's Office, the Closed Meetings Investigator for more than 200 municipalities, the Local Authorities Services Ltd., who provide Closed Meeting Investigator services to approximately 150 municipalities, and the Information and Privacy Commissioner of Ontario.

**Bill 68 – Changes to Open Meeting Provisions**

In my last annual report, I noted that legislative changes to the open meeting provisions of the *Municipal Act, 2001* were expected in the Fall 2016. As previously noted, Bill 68,

the *Modernizing Ontario's Municipal Legislation Act, 2017*, was introduced on November 16, 2016 and received Royal Assent on May 30, 2017.

As expected, Bill 68 includes changes related to the open meeting provisions for municipal councils and committees as well as the meetings investigator process. All of these provisions come into effect on January 1, 2018.

#### *New definition of a "meeting"*

The definition of "meeting", which applies to the open meeting sections of the *Municipal Act, 2001*, has been revised as follows (emphasis added):

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

**(a) A quorum of members is present, and**

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

#### *New closed meeting exceptions*

Bill 68 has added four new exceptions to the open meeting rules, permitting municipal councils, local boards and committees of either to go into closed session for any of the following reasons:

- (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.

During consideration of Bill 68 by the Standing Committee on Social Policy, both the Information and Privacy Commissioner and the Ontario Ombudsman expressed concern about the new expanded exceptions for closed meetings. Both argued there was little explanation or justification for the additional open meeting exceptions and both were particularly concerned with the new exception (k), suggesting this particular exception was too broad.

While I will continue to monitor reports from the Ontario Ombudsman and other municipal Meetings Investigators, I believe the City will continue to be a leader with respect to open meetings and will carefully consider the use of these new exceptions.

#### *New process requirements for Meetings Investigator reports*

Upon receipt of a Meetings Investigator report which finds that a meeting was improperly closed to the public, Council will now be required to publicly state how the report will be addressed. New Subsection 239.2 (12) reads as follows:

- (12) If a municipality or a local board receives a report from a person referred to in clause 239.1 (a) or (b) reporting his or her opinion, and the reasons for it, that a meeting or part of a meeting that was the subject-matter of an investigation by that person appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the municipality or the local board, as the case may be, shall pass a resolution stating how it intends to address the report.

Historically, Ottawa City Council have been receptive to reports and recommendations made by my predecessor and implemented recommended enhancements to process and procedures. For this reason, I am confident this new obligation is consistent with the City's current approach to Meetings Investigator reports.

#### **Hamilton (City) v. Ombudsman of Ontario**

In August 2017, a divisional court ruling in the City of Hamilton concluded that the City's Election Compliance Audit Committee and Property Standards Committee are not local boards under the *Municipal Act, 2001* and therefore not subject to the open meeting requirements of the Act nor within the jurisdiction of the Ontario Ombudsman, acting as a local Meetings Investigator.

The decision was in response to an application for judicial review, filed by the City of Hamilton, regarding the Ontario Ombudsman's closed meeting investigation of the City's Election Compliance Audit Committee in July 2016. At the time of the proceedings, the Ombudsman was in the process of conducting investigations of closed meetings held by both the Election Compliance Audit Committee and the Property Standards Committee.

The City's position was that the Election Compliance Audit Committee and the Property Standards Committee are adjudicative tribunals making quasi-judicial decisions and therefore not "local boards" under the Act. The City relied upon Ontario Regulation 582/06 by which councils can dissolve local boards and assume their duties and responsibilities. As a result, the committees are not bound by the open meeting provisions of the Act and the Ombudsman does not have jurisdiction to investigate private deliberations of the committees.

The Ombudsman's position was that the committees are in fact "local boards" based on the following specific criteria which the Ombudsman suggested places the committees within the broader definition of a "local board":

- The entity is carrying on the affairs of the municipality;
- There is a direct link with the municipality either by way of legislation or through authority from the municipality;
- There is a connection to or control by the municipality; and
- There is an element of autonomy.

Ultimately the court ruled that neither committee was a local board. As referenced above, the decision relied heavily on a municipality's power to dissolve a local board and assume its powers and functions. In the case of the Election Compliance Audit Committee, the court observed that, "[the Committee's] purpose, as set out in the *Municipal Elections Act*, is to make certain decisions that form part of the enforcement of election finance provisions in that Act, for which it is distanced from the municipality in a manner that is inconsistent with a municipality's power to dissolve a local board." Similarly, the court found that the Property Standards Committee, "is different in nature than most if not all of the listed entities, and a finding that it is a local board would be inconsistent with deliberative secrecy and inconsistent with a municipality's power to dissolve a local board." As a result of these determinations, the court further ruled that

that Ombudsman, as Closed Meetings Investigator, does not have jurisdiction to investigate either of the committees.

This decision is of particular interest for the City of Ottawa as the former Meetings Investigator conducted an investigation into a closed meeting of the 2010-2014 Election Compliance Audit Committee. At the time, and operating under the same understanding as the Ontario Ombudsman – that the Election Compliance Audit Committee was a “local board” under the Act – the Meetings Investigator concluded that the Committee erred in its decision to go into closed session for the purposes of receiving legal advice and having discussions which did not warrant a closed session. The former Meetings Investigator recommended changes to the Committee’s Rules of Procedure, all of which were implemented.

As part of Council’s regular governance reviews, the status of the City’s agencies, boards, committees and commissions as local boards is reviewed and updated as necessary. I understand that this ruling will be incorporated into future reviews and I will manage requests for closed meeting investigations based on the current interpretation of what entities qualify as local boards under the Act.

## **CONCLUSION**

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

# Outreach, 2017-2018 Goals and Financial Statement

## EDUCATION, OUTREACH AND MEDIA RELATIONS

A fundamental piece of the City of Ottawa's Integrity Commissioner position has been the responsibility for providing education and advice. These functions have been an ongoing priority for me since my appointment as Integrity Commissioner and I believe both functions have contributed to the overall success of Council's Accountability Framework.

Recently, the importance of these functions has been underscored by amendments to the statutory role of municipal integrity commissioners found in Bill 68. As of March 1, 2019, municipal integrity commissioners will have the mandatory responsibility to provide advice and education with respect to codes of conduct and related ethical policies. I believe these amendments are a valuable step forward for municipal accountability and transparency.

Below is a list of events and activities that took place during the 2016 – 2017 reporting period:

### Education

- Accountability Framework session for Councillors' Assistants (December 20, 2016)
- Lobbyist Registry session for 2017 Operations and Special Events Branch and Special Events Advisory Team (December 21, 2016)
- Lobbyist Registry Refresher Sessions:
  - Information Technology Services (June 23, 2017)
  - Water Services (July 24-27, 2017)
  - Economic Development Services (August 24, 2017)
  - Legislative Services (August 29, 2017)

### Outreach

- Mediation Centre of Southeastern Ontario – Dealing with Conflict in the Public Sector Presentation – “The Integrity and Accountability Framework of the Municipal Act of Ontario” (November 13, 2016 – Kingston)

- Ministry of Municipal Affairs Legislative Review (Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017*)
  - Municipal Integrity Commissioners of Ontario Bill 68 Working Group
  - Conference call involving Ministry of Municipal Affairs staff and MICO representatives (January 25, 2017)
  - Written submission to Standing Committee on Social Policy (April 2017)
- Canadian Institute Public Affairs Conference Presentation – “Successfully Navigating Lobbying Regulations and Compliance” (March 28-29, 2017 – Ottawa)
- School of Political Studies (Ottawa University) – Presentation on Lobbying (July 6, 2017 – Ottawa)

### **Conferences/Seminars**

- Lobbyist Registrars and Commissioners Network (LRCN) Winter Conference (February 21, 2017 - Ottawa)
- Municipal Integrity Commissioners of Ontario (MICO) Spring Meeting (May 10, 2017)

### **GOALS FOR 2017-2018**

In the coming year, my primary focus will be the implementation of Bill 68. There are a number of provisions that will require both changes to the Office's current procedures and the development of new processes and procedures. I expect to consult broadly with Members of Council, members of local boards, City staff and other relevant stakeholders on the implementation of the new mandatory accountability provisions.

In keeping with past practice, it is expected the new 2018-2022 City Council will undergo the end of term/beginning of term governance review. It is my intention to bring forward recommendations for legislative and policy changes resulting from Bill 68 and relating to the Accountability Framework's components under my jurisdiction, as part of this review.

Finally, as next year is also a municipal election year, I will continue to provide support and guidance to assist Members of Council in meeting their obligations under the Code of Conduct and its related policies taking into account the specific rules that apply during a municipal election year.

## **Education**

The next year will include a significant focus on education as my Office prepares for the provisions of Bill 68 to take effect. The new 2018-2022 City Council will require education and training on both the existing elements of the Accountability Framework as well as the new elements to be established as a result of Bill 68. There will also be a need to educate local board members on the work of my Office as part of my consultation on the development of a code of conduct for local boards.

I will also continue to encourage and seek opportunities to educate both City staff and lobbyists about the requirements of the Lobbyist Registry. The Lobbyist Registry Refresher sessions for City staff provide an opportunity to review the requirements of the Lobbyist Registry directly with staff and to offer guidance on how the Lobbyist Registry applies in hypothetical scenarios relevant to the particular branch or department. I must mention the cooperation I received from the City Manager on the latter sessions was invaluable.

## **Compliance**

My focus on compliance will be ongoing. As discussed previously in this report, I will continue to proactively use compliance agreements and letters of direction to proactively address minor contraventions of the *Lobbyist Registry By-law* that come to my attention.

## **FINANCIAL STATEMENT**

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

**Figure 9: Financial Breakdown (October 1, 2016 to September 30, 2017)**

	<b>Q4 2016</b>	<b>Q1 2017</b>	<b>Q2 2017</b>	<b>Q3 2017</b>	<b>TOTAL</b>
<b>Retainer*</b>				\$25,440	\$25,440
<b>Salary*</b>	\$16,994	\$15,060	\$10,990	\$14,552	\$57,596
<b>Ancillary Costs (Parking, cell phone, business travel)</b>	\$1,783	\$894	\$887	\$734	\$4,298
<b>Hours Logged</b>	83.5	74	54	71.5	283

\*includes tax less eligible municipal rebates