

**2015 Annual Report of the Integrity
Commissioner**

COMMISSIONER'S REMARKS

It has now been over three years since the final pieces of Council's Accountability Framework came into effect. I was appointed on August 29, 2012 as the City's "three-in-one" integrity officer: Integrity Commissioner, Lobbyist Registrar and Meetings Investigator. The City's Lobbyist Registry was launched on September 1, 2012 and the Code of Conduct for Members of Council and its related policies came into effect on July 1, 2013.

An assessment of the Accountability Framework in light of the expectations laid out in the development of the various elements suggests that the Accountability Framework is operating as it was intended to. As I have often stated that I firmly believe the manner in which City Council originally established the Accountability Framework – unanimously and in the absence of a scandal – has been integral to its success.

As Integrity Commissioner, the most substantial part of my mandate has been and continues to be providing advice to Members of Council and educating stakeholders as opposed to the investigation of Code of Conduct complaints. As noted in the original staff report, "[i]f the education and advice functions are promptly provided and well used, there should be reduced need for the complaint and investigation functions." I believe the commitment by Members of Council, and lobbyists in some cases, to seek advice in advance is a contributing factor to the frequency of complaints to my office.

In my capacity as Lobbyist Registrar, I have continued to take progressive steps towards bolstering enforcement of the Lobbyist Registry By-law. As I have referenced in previous reports, a large portion of the compliance issues are minor contraventions and do not constitute a serious breach of the Lobbyist Registry By-law. For this reason, I will be pursuing a new enforcement mechanism in the form of compliance agreements. These agreements will allow me to formally address minor contraventions without having to resort to the more punitive scheme of sanctions to be reserved for more egregious breaches of the By-law. Nevertheless, I should note that overall, the willingness to comply on the part of all stakeholders continues to be strong.

In my last annual report, I noted that debate had begun on Bill 8 – *Public Sector and MPP Accountability and Transparency Act, 2014*. On January 1, 2016, the remaining sections of Schedule 9 of the (Bill 8) will come into effect. From that point on, the Ontario Ombudsman will have authority to investigate complaints related to Ontario's municipalities including matters under the jurisdiction of local accountability officers.

To this point, the Office of the Ontario Ombudsman has maintained it is an office of last resort and “will not replace any local integrity commissioner, ombudsman, or other office that deals with complaints, but we can review decisions of those bodies to ensure the appropriate policies and procedures were followed.”¹

The Ontario Ombudsman will only have the authority to overrule municipal auditors general, lobbyist registrars or integrity commissioners in the following circumstances:

- The local accountability officer has refused to investigate a complaint;
- The deadline for bringing a complaint to the local integrity commissioner, auditor general, or lobbyist registrar has passed; or
- A local integrity commissioner, auditor general, or lobbyist registrar has finished his or her investigation of a specific complaint.

I remain optimistic the enhanced oversight of the Ontario Ombudsman will be valuable to those municipalities without the benefit of a local accountability framework but at the same time recognize the significance of existing local integrity officers as a reflection of a Council’s commitment to accountability and transparency.

In September, I hosted the fall meeting of the Municipal Integrity Commissioners of Ontario (“MICO”). This network brings together the locally appointed integrity commissioners from across the province to participate in an ongoing dialogue and information sharing with respect to municipal ethics. The semi-annual meetings often include other ethics officers such as lobbyist registrars and ombudsman, as well as our counterparts at the provincial and federal levels. An additional advantage this network has provided is a united voice to broad policy matters such as the debate on Bill 8 as well as the ongoing municipal legislative reviews of the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act*.

In the coming year, I look forward to continuing to build on the success of the previous years.

Robert Marleau

Integrity Commissioner
City of Ottawa

¹ Ontario Ombudsman “Municipalities, Universities and School Boards – Frequently Asked Questions”; <https://www.ombudsman.on.ca/About-Us/MUS-FAQ.aspx?lang=en-CA>

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

The Code of Conduct for Members of Council and its related policies have been in effect since July 2013. In my role as Integrity Commissioner, I have found the most significant contribution has been in the provision of guidance and interpretations with respect to the Code of Conduct for Members of Council and its related policies.

Members of Council and their staff consult me on a range of topics including accepting gifts/tickets, fundraising and participation in benevolent activities and occasionally issues related to representing constituent/ward interests.

No significant changes have been made to the Code since it was enacted save for an increase in the threshold for disclosure of gifts/benefits/hospitality to \$100 approved as part of the 2014-2018 Governance Review. The \$30 threshold for tickets was maintained.

Gifts and tickets, and the appropriateness of their acceptance, continue to be one of the primary inquiries my office receives. This is a common tension for elected officials at all levels. In a report on a violation of the federal Conflict of Interest Act (dubbed the Bonner Report) released earlier this year, Federal Conflict of Interest and Ethics Commissioner Mary Dawson articulated what she believes to be the test for accepting gifts or other advantages:

“I often hear from individuals subject to the regimes that I administer that they cannot be swayed by gifts or other advantages given to them in the course of their duties. That may be the case, and I believe in most instances that it may well be so. However, that is not the issue. The test is not whether the donor intended to influence the recipient, nor whether that recipient was indeed influenced. The test is whether a reasonable person might reasonably think that the gift or other advantage was given to influence the individual receiving the gift.”

Overall, oversight of the Code of Conduct for Members of Council and its related policies has occupied 71% of my hours over the past year. Much of this time is dedicated to providing direct, in-person advice to Members of Council and their staff or conducting the groundwork for issuing interpretations and guidance through writing and approving draft documents.

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 (“the Code”).

The City of Ottawa’s Code is a hybrid of a rules-based, and a values-based code. As such, it establishes high-level ethical standards but also provides some specific rules designed to enhance public trust and accountability.

The Code was not designed to provide for every scenario a Member of Council may encounter; rather, it establishes a model of ethical behaviour that forms the starting point of an ongoing conversation on matters of ethics and integrity. The Code is one part of a living Accountability Framework that is reviewed and renewed on a regular basis.

In developing the Code of Conduct for Members of Council and other elements of the Accountability Framework, I relied heavily on the philosophy and experience of Dean Lorne Sossin, both as former interim Integrity Commissioner in Toronto and as a member of an expert panel for the Mississauga Judicial Inquiry discussing ethics in the municipal context. On the matter of complaints and investigations, Dean Sossin presented the following perspective to the federal Standing Committee on Access to Information, Privacy and Ethics as part of the Statutory Review of the *Conflict of Interest Act*:

“What we don't want is just a system set up to catch people. We want a system that's set up to make people work more effectively in the public interest...If someone hasn't been prosecuting, I'd ask, what have you been doing? Some commissioner who hasn't been prosecuting, but has been engaging in educating politicians and dealing with them on an advisory basis and leading to much better conduct, may be in fact a success story. So it's not, in other words, just the number of complaints and investigations and outcomes by which we should judge the effectiveness of an accountability officer. It's how the culture is changing and whether the public interest is served. That approach to advance rulings and advice-giving is key.”²

² [Dean Lorne Sossin, Statutory Review of the *Conflict of Interest Act* by the Standing Committee on Access to Information, Privacy and Ethics (February 13, 2013)]

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.

For the period of October 1, 2014 to October 31, 2015, I have received one formal complaint and ten informal complaints.

Formal complaints are submitted on the appropriate form, with a signed affidavit, to the City Clerk and must include information to support the allegation(s) made against a Member including dates, locations, other persons present and all other relevant information. The heart of the issue in this case was that two Members of Council failed to respond in a professional manner to a request for assistance on a policy issue. Following a formal review of the complaint, including an interview with the complainant and review of supporting materials, I determined that the majority of the complaint predated the Code of Conduct for Members of Council and therefore was not within my jurisdiction to pursue and that the remaining documentation was did not constitute sufficient evidence of a breach of the Code of Conduct.

Informal complaints come in the form of emails, phone calls or letters and are addressed at a high level without a formal investigation. The majority of these complaints are grievances related to matters outside my jurisdiction all of which were sent to my office by members of the public. All but one were deemed outside my jurisdiction and most often fell within the jurisdiction of the City Manager or an outside agency. Similar to the formal complaint referenced above, the one informal complaint dealt with a member of the public who took issue with the lack of response and action from a Councillor's office on a matter where the complainant was a resident of another ward. As I advised the complainant, I believe it is at the discretion of an elected official to take on the case work of an individual who is not a resident of their ward. A resident's Ward Councillor is the appropriate champion for the concerns of his/her constituents. In fact, in other jurisdictions, advocating on behalf of a resident of another Ward has led to tension and animosity among colleagues. For these reasons, I do not believe that a Member's decision not to take on the case work of another Councillor's resident is an ethical matter nor would it constitute a breach of the Code of Conduct for Members of Council.

As Integrity Commissioner, my role is to ensure compliance with the Code of Conduct for Members of Council and promote the ethical behaviour expected of Members of Council. Where a Member of Council chooses not to enter in a political or policy debate or to take on case work for individuals who are not residents of their ward, I do not believe a contravention of the Code of Conduct has occurred.

INQUIRIES AND ADVICE

Providing written advice and interpretations to inquiries Members of Council and their staff sent to integrity@ottawa.ca or directly by phone continues to be the core function of my 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. When the Accountability Framework and the position of Integrity Commissioner were established, it was intended that the Integrity Commissioner’s advisory responsibilities be limited to those whom the Code of Conduct applied.

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

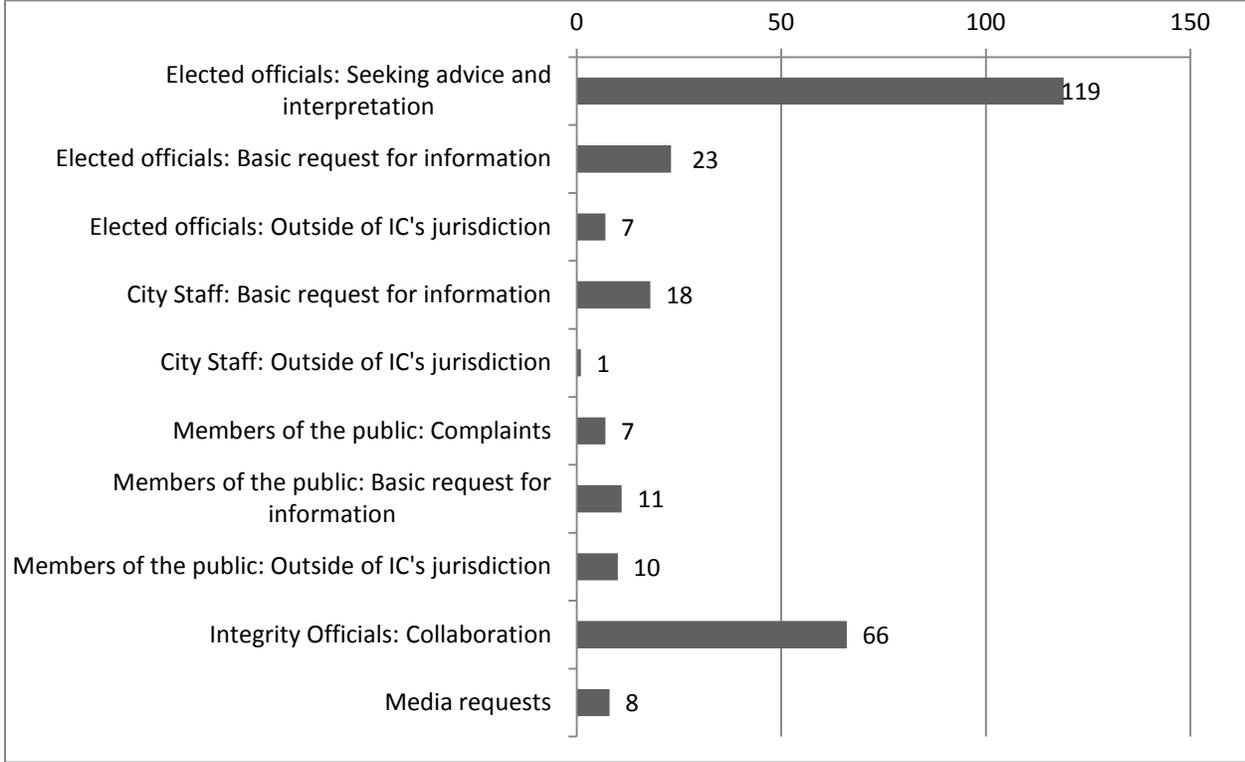
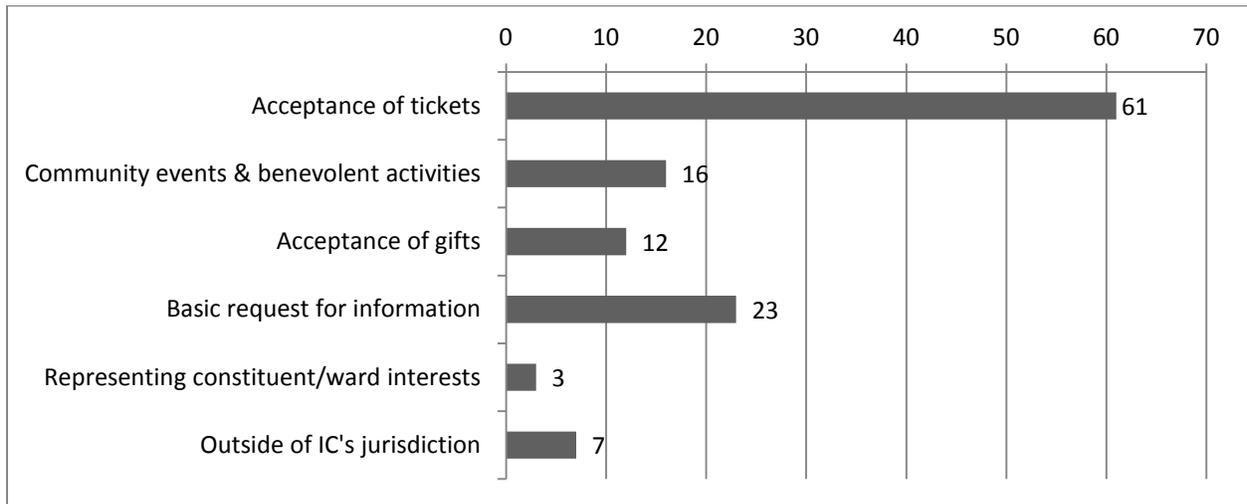


Figure 2 - Nature of inquiries received by the Office of the Integrity Commissioner from Members of Council



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.

Acceptance of Tickets

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

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

Inquiry:

A Councillor is invited to be the guest of the owners of a local company at an annual community fundraiser. Recently, the owners of the local company extending the invitation were the applicants of a zoning application which came before the Planning Committee for consideration. As applicants, the owners had met with the Councillor to discuss their plans for the project. The Councillor is also a member of the Planning Committee. The Planning Committee approved the zoning application a month and a half before the Councillor received the invitation.

The invitation is for a community event, unrelated to the local company's business. Neither individual is listed in the Lobbyist Registry. Is the Councillor permitted to accept the invitation?

Interpretation:

Given that neither individual extending the invitation is listed in the Lobbyist Registry with active lobbying files, the prohibition in the Code of Conduct for Members of Council prohibiting Members from accepting tickets from lobbyists, their clients or their employees with active files does not apply. The Code provision regarding the limit on accepting two tickets for up to two events from one source in a calendar year still applies. However, if the Councillor has not accepted tickets to one or more events from this source in the calendar year, there is no prohibition on the acceptance of the invitation.

Having said this, the Councillor would be strongly cautioned about the perceived conflict with respect to the planning application. Depending on the status of the planning application, the Councillor may continue to have some delegated authority over certain aspects of the project and continue to have potential to influence the outcome. While not strictly prohibited under the Code of Conduct if accepted and disclosed, the Councillor is strongly advised to decline the invitation in view of the short time lag between the approval of the zoning application and the offer of tickets.

Inquiry:

Is it acceptable for a Councillor to accept a \$100 ticket to an event where all proceeds go completely to charity?

Interpretation:

While a worthy incentive for attending an event, that the proceeds of a ticket go entirely to charity has no bearing on whether a Councillor may or may not accept a ticket nor does it affect the Councillor's requirement to disclose his/her acceptance of the ticket.

The Councillor continues to be bound by the guidelines for acceptance of tickets listed above.

Similarly, lobbyist gifting and charities has been a popular topic within the federal lobbying world. A panel discussion on 'Lobbyist Gifting: Challenges for Lobbyists, Political Staff and Bureaucrats', hosted by The Lobby Monitor, addressed the impact of lobbying and conflict of interest rules on the future for charities. As succinctly put by the Conflict of Interest and Ethics Commissioner, Mary Dawson, "...the fact of the matter is, you can't hide under the skirts of a charity to do your lobbying by giving a gift to a public office holder."

Acceptance of Gifts/Benefits/Hospitality

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

- The acceptance of a gift, benefit or hospitality can imply favouritism, bias or influence on the part of the Member; however
- At times, the acceptance of a gift, benefit or hospitality occurs as part of the social protocol or community events linked to the duties of an elected official and their representative role
- Members of Council are required to disclose all gifts, benefits, hospitality and sponsored travel received which individually exceed \$100 from one source in a calendar year.

Inquiry:

Are there guidelines and restrictions governing Councillors with respect to accepting lunch meeting invitations with property developers? Is there a differentiation made between those with active files and those without?

Interpretation:

Where a property developer has active lobbying files in the Lobbyist Registry, the Councillor would be prohibited from accepting the benefit or hospitality under the Code of Conduct for Members of Council. If the property developer does not have active

lobbying files, I would still caution the Councillor regarding accepting this type of benefit or hospitality as the Councillor could find themselves involved in a planning matter concerning this same property developer over the course of the Term of Council.

If the Councillor chooses to pay his/her own way, there is nothing in the Code of Conduct to prevent the Councillor meeting with a property developer. However, if the property developer lobbies the Councillor while meeting over lunch, the communication will need to be registered with the Lobbyist Registry.

The issue of meals offered by lobbyists was raised during the panel discussion on 'Lobbyist Gifting: Challenges for Lobbyists, Political Staff and Bureaucrats', hosted by The Lobby Monitor. In response to a question about whether meals should be exempted under lobbying rules, Guy Giorno, a Canadian lawyer recognized as an expert in the law of lobbying, provided his personal insight from his time in the Prime Minister's Office:

"I think this idea that meals confer no personal benefit is a fallacy. Of course they do. I just use my [own] example when I served in the federal government I took most of my meals at home and I never, or almost never, went out to lunch. And there are two reasons. Number 1: I didn't believe in accepting those gifts, but I could have as Commissioner Shepherd has said, gone and paid my own way. But I could not, I don't think, couldn't afford to do restaurant meals or restaurant lunches five lunches a week, and five evenings a week, so if I figure that I couldn't afford to do that consistently, presumably somebody was getting those lunches five a week and five dinners a week for free is getting some kind of personal benefit. It can't be otherwise whether you're getting a benefit from consistent free meals."

The principle behind the prohibition on gifting by lobbyists is that companies and individuals seeking to influence public office holders do not do so by giving gifts or sponsorship to those individuals in a position with decision making authority or the ability to influence outcomes.

Improper Use of Influence

Inquiry:

A representative of a company, who is also a resident, seeks the assistance of a Member of Council to approach the Board of Directors of another company with whom the City has a long-term agreement with. The requesting company is not in a position to directly contact the other company at such a high level and thought the Member of

Council could be of assistance. Would the Member be authorized to assist under the Code of Conduct?

Interpretation:

Under the Code of Conduct, it would be inappropriate for the Member of Council to use his/her position to connect the individual and company with the Board of Directors of the second company.

Section I (General Integrity) of the Code of Conduct for Members of Council provides the basic principles upon which the Code was founded and addresses the improper use of influence as follows:

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

Further, Section V (Improper Use of Influence) provides that:

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

Using one’s position to the personal advantage of one individual or company would be contrary to the basic principles of the Code of Conduct for Members of Council.

Representing Constituent/ward interests

Inquiry:

A local company reaches out to the Ward Councillor looking to give back to the community as part of its 25th Anniversary. The company would like the Ward Councillor to put them in touch with the community in search of volunteer opportunities. Would it be inappropriate for the Ward Councillor to put the company in touch with community associations? What if the offering company has an active lobbying file?

Interpretation:

It is both appropriate and within the municipal duties of a Ward Councillor to forward this type of information to community associations and groups. Regardless of whether the company has an active lobbying file or not, there is no perceived private advantage or benefit to the Ward Councillor by providing this information to the potential benefit of the community.

Participation in Community Events/ Support for Benevolent Activities

As confidentiality with my office is paramount to its effectiveness, it is difficult to anonymize inquiries and guidance provided to Members of Council with respect to community events and benevolent activities. While there were many such inquiries no specific inquiries can be provided here. However, a great deal of effort is expended supporting Members of Council in hosting and participating in these types of events. Below is some general guidance provided under the Community, Fundraising and Special Events Policy.

Community Events

Community Events are events for which Members themselves seek and receive donations or sponsorships to organize events that benefit their ward, a specific community within their ward, or a local charity.

For example, in undertaking a community event, a Member may seek sponsorship from a local business for an annual community breakfast. Other examples of community events include winter carnivals, seniors' teas, and events associated with celebrations such as Canada Day or Christmas.

As outlined in the *Community, Fundraising and Special Events Policy*, when undertaking community events, Members shall observe the following parameters:

- Unless pre-approved by the Integrity Commissioner, Members shall not solicit or accept donations from lobbyists or their clients or their employees with active files in the Lobbyist Registry.
- Members shall report on these activities as part of Public Disclosure on an annual basis.
- In an election year, Members must not seek donations and sponsorships for any event that has not been staged in the previous two years, and shall not accept

donations or stage any new event supported by donations and sponsorships after she or he has filed nomination papers for election.

Benevolent Activities

A Member undertakes a benevolent activity when he or she assists a third party entity, such as a charity, in activities run by or benefitting that entity. If a Member lends his or her name in support of a charity's fundraising campaign – for example, "The annual Jane Doe hockey tournament, benefitting community youth sports programs" – he or she is undertaking a benevolent activity. Other examples of benevolent activity include:

- Accepting honorary roles in organizations, such as that of an honorary Chair of a fundraising campaign.
- Signing letters to donors inviting them to a fundraising event for a new community playground.

CONCLUSION

I believe the Code of Conduct for Members of Council and its related policies are functioning successfully as envisioned. I have no recommendations related to the Code of Conduct for Members of Council or any of the related policies at this time.

Lobbyist Registry

MANDATE

As Lobbyist Registrar, the Integrity Commissioner is responsible for general compliance of the By-law in addition to oversight and administration of the Lobbyist Registry.

The Lobbyist Registry is an online bilingual 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

Launched on September 1, 2012, the Lobbyist Registry has been operational for three years. The Registry application was developed in-house by City IT staff and the costs absorbed within existing budgets. Those costs consisted mostly of staff time, as no hardware or software was required for the development or launch of the application. IT repurposed an existing application to create a very simple lobbyist registry system, with a focus on user-friendliness, simplicity and transparency.

The Lobbyist Registry is an integral piece of Council's Accountability Framework and was designed to add a layer of transparency to City business. Unlike other systems in the Province and across Canada, the City's Lobbyist Registry does not require pre-registration and instead requires that lobbying communication be registered after it has occurred. This distinction is in recognition that lobbying is a legitimate activity and can often occur in situations where it was not planned or orchestrated.

In its first year of implementation, I focused on the education and promotion of the Lobbyist Registry. Over the past two years, my office has expanded its goals to encapsulate another important facet of the Lobbyist Registry By-law: compliance. My office has continued work to ensure lobbyists profiles are complete and accurate as well as ongoing monitoring of the quality of the description of lobbying files.

OPERATIONS

Supporting the Lobbyist Registry on a part-time basis is a support assistant employed by the City Clerk and Solicitor's Department. Specifically, the support provided to the Lobbyist Registry is in the form of administrative and technical assistance, such as

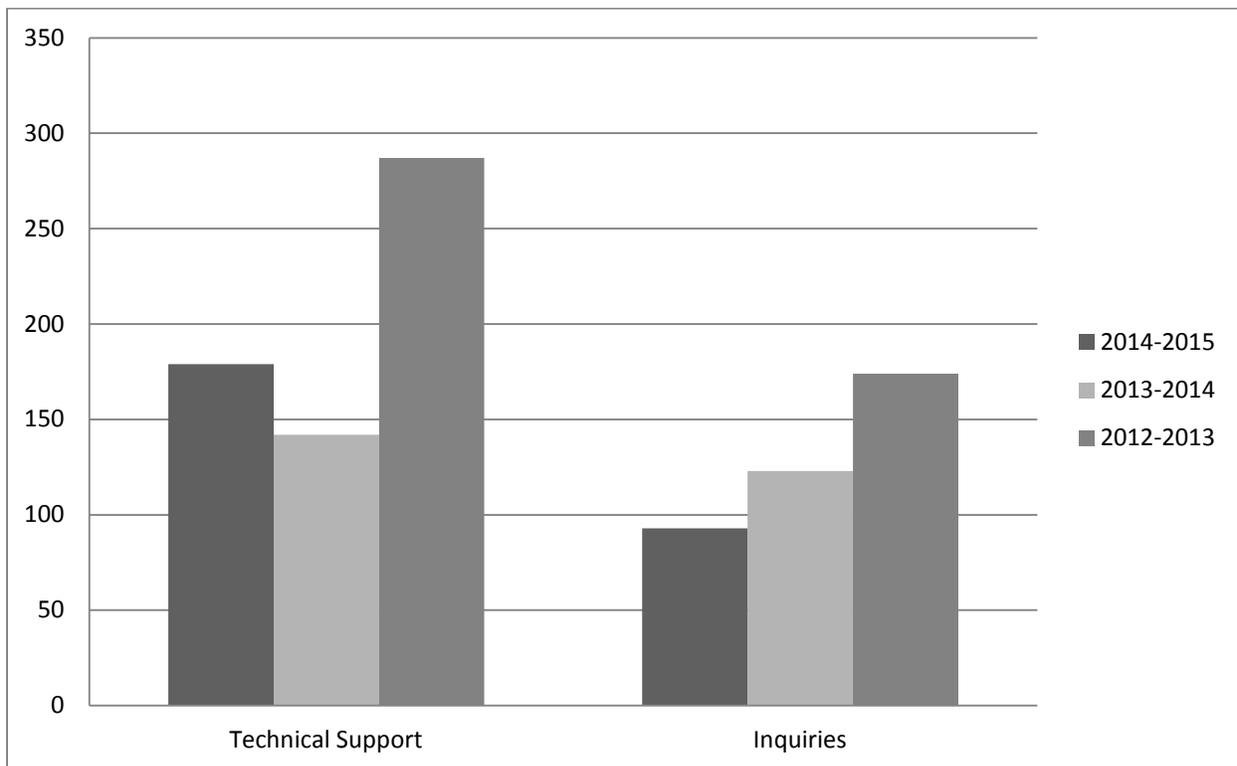
approving registrations, responding to inquiries, monitoring compliance and intervening when necessary, as well as providing technical support. Staff supporting the Lobbyist Registry also assists the Integrity Commissioner in communicating with Lobbyist Registry stakeholders through notices, interpretation bulletins and individualized correspondence as well as group presentations.

Inquiries

While inquiries requesting technical support in the first year of operation were due largely to technical issues with the tool itself, technical support in the subsequent years is more commonly due to technical issues encountered on the user's end including:

- Forgotten username and/or password;
- Assistance with creating a profile or lobbying file; and
- Internet browser compatibility view settings.

Figure 3 - Nature of Inquiries Received by the Office of the Lobbyist Registrar



In addition to technical support inquiries, my office receives other inquiries requiring clarification or interpretation of the Lobbyist Registry By-law. The following are samples of inquiries I have received and the interpretation or 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:

Can your office advise if there is any guidance on the issue of whether marketing and sales communications that do not involve lobbying about the form or rules associated with a tender or a procurement, but are confined to sales communications and the marketing of products/ services, constitute lobbying under the Ottawa by-law? I am aware of the prohibition on lobbying when submitting a bid proposal and the requirement to communicate strictly with designated employees of the City as permitted in the procurement policies of the City. The existence of this prohibition raises the question of whether other communications about potential procurements, such as sales and marketing communications or the potential for future procurements, are considered to be lobbying.

Interpretation:

There is a common misconception that marketing a product or service is not lobbying and rather a normal part of business with the City. However, there are established processes through the City's Supply Branch who is responsible for administering purchasing activities in accordance with the City of Ottawa Purchasing By-law.

For this reason, with respect to marketing, the short answer is yes, the Lobbyist Registry captures marketing of products/services outside the normal business processes established by the City of Ottawa Purchasing By-law.

To provide additional clarification, some FAQs related directly to marketing have been developed in consultation with the City's Supply Branch:

1. Communications with Purchasing Staff, excluding the Chief Procurement Officer, the Manager, Procurement and/or the Manager, Strategic Sourcing, for the purposes of marketing a product or service **is not considered lobbying** and does not have to be registered.

Example: An office supplies company contacts a Senior Purchasing Officer to market the products available from his/her company. This **is not considered lobbying** and does not have to be registered.

2. Communications with the Chief Procurement Officer, the Manager, Procurement and/or the Manager, Strategic Sourcing, for the purposes of marketing a product or service **is considered lobbying** and must be registered.

Example: A software developer contacts the Chief Procurement Officer to market the services available from his/her company. This **is considered lobbying** and must be registered.

3. Communications with Senior Management, Department Heads, Departmental Staff, and/or Councillors and their staff, for the purposes of marketing a product or service **is considered lobbying** and must be registered.

Example: A playground equipment company contracts the General Manager of the Public Works Department, or any departmental staff there under the GM, to market the products available from his/her company. This **is considered lobbying** and must be registered.

4. Communications with Senior Management, Department Heads and/or Departmental Staff initiated through a formal process (ex. Request for Information, Request for Expressions of Interest, etc) **is not considered lobbying** and does not have to be registered.

Example: The Supply Branch issues a Request for Information on behalf of the Information Technology Services Department seeking product demonstrations from software companies. The product demonstration would **not be considered lobbying**.

5. Communications with Senior Management, Department Heads and/or Departmental Staff initiated by a company **is considered lobbying** and must be registered.

Example: A software company contacts the Chief Information Officer, or any departmental staff there under the CIO, to market the services available from their company. This **is considered lobbying** and must be registered.

Inquiry:

A local resident came to speak to a Councillor as part of the Coalition for an Accessible Public Postal Service (CAPPS). The members of the meeting included: the resident, the resident's partner and another resident. All three are also active members of their local community association. During that meeting, CAPPS provided the Councillor with a great deal of information regarding Council resolutions respecting the introduction of

community mailboxes in other municipalities, as well as much information about why community mailboxes are not good for the community.

The resident in question also works for the Canadian Union of Postal Workers (“CUPW”). The resident has used their CUPW email address for all communications with the Councillor’s Office and has been very aggressive in recent weeks about wanting to know the status of the resolution etc. Does this activity constitute lobbying?

Interpretation:

The Lobbyist Registry does not apply to individual residents or not-for-profit organizations who have no paid staff (e.g. community associations). However, the individual in question is representing itself as an individual resident and active member of the local community association. However, in their correspondence with the Councillor, the individual has been using their CUPW email address. Given these facts, the following options are offered:

1. If in the meeting with the Councillor, the individual did in fact act in their capacity as a concerned resident and member of the local community association, the communication in this instance falls under the umbrella of advocacy and does not require disclosure in the Lobbyist Registry.
2. With respect to their subsequent communications with the Councillor in which the individual uses their CUPW email address:
 - a. If the individual is acting in their capacity as a member and employee of the union, the individual’s communication would require disclosure in the Lobbyist Registry.
 - b. If the individual continues to act in their capacity as a concerned resident and a member of the local community association, the individual should be notified that they must separate their role by using an email address not associated with the union. If the individual chooses to continue to use their union email address, those communications will require registration with the Lobbyist Registry.

Registration Activity

In its first year, the Lobbyist Registry witnessed a surge of registrations, with an average of 46 registrants per month, resulting in 552 approved lobbyists by September 30, 2013. Registrations have slowed over the course of the two years. Registrations have slowed

over the course of the past two years, with a decreasing average of 26 profiles being approved per month in 2014-2015, bringing the total number of registered lobbyists to 1200 by the end of August 2015.

Table 1 - Annual Lobbyist Registry Statistics

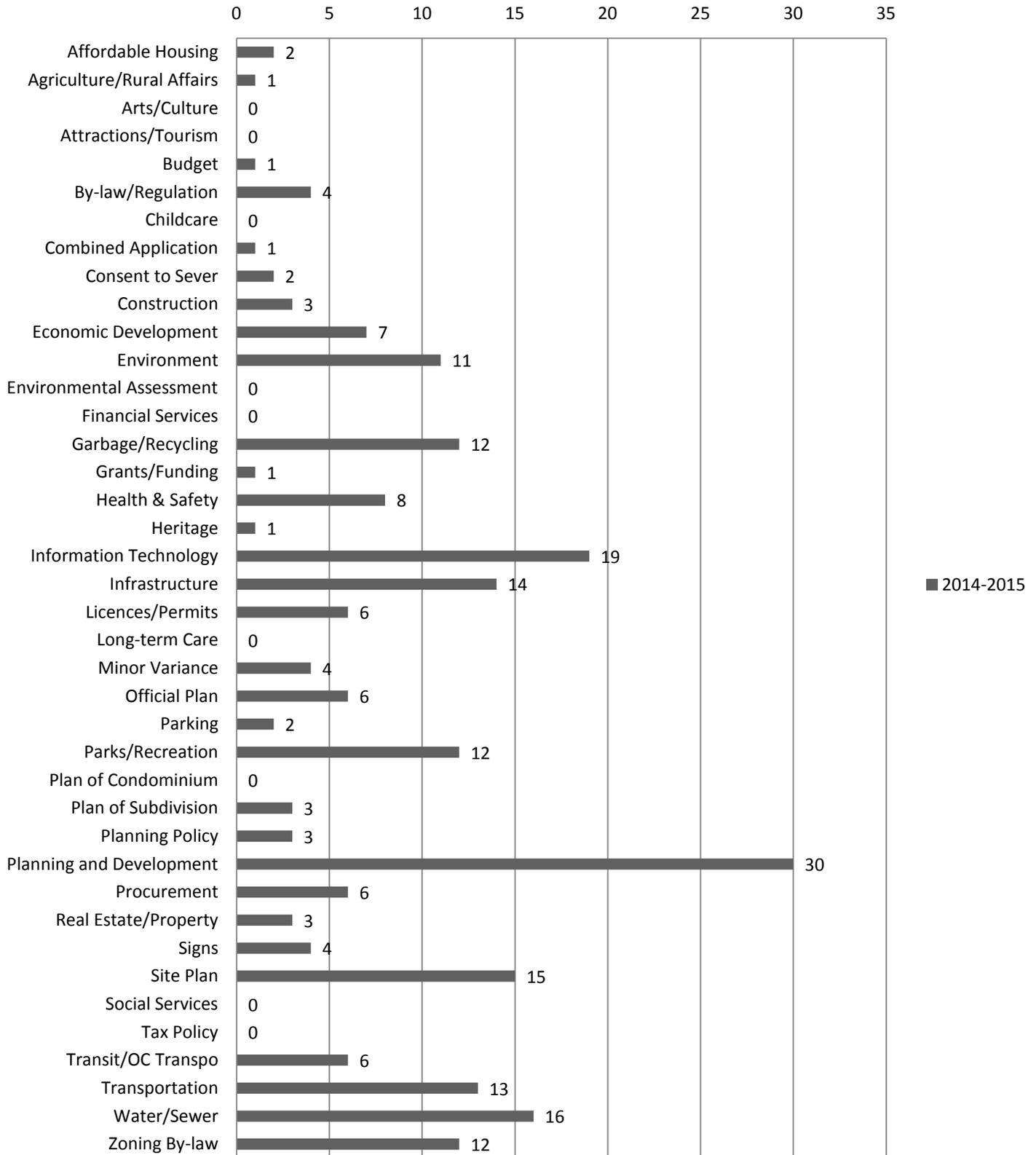
	2012-2013	2013-2014	2014-2015	Total
Registered Lobbyists	552	338	310	1200
Consultant Lobbyists	311	89	49	449
In-house Lobbyists	212	242	248	702
Voluntary, Unpaid Lobbyists	29	7	13	49
Lobbying Files	737	358	228	1323
Active	663	324	206	1193
Closed	74	34	22	130
Lobbying Activities	1921	1181	977	4079

*Annual statistics cover the period of September 1 to August 31

**Compliance audits performed in 2014 and 2015 have had an impact on totals as they compare to previous years for the following reasons:

- Empty lobbying files (those with no lobbying activities) were deleted
- Lobbying activities have been retro-actively inputted
- Errors in lobbyist self identification (e.g. as consultant lobbyist, when should have been in-house lobbyist) were corrected

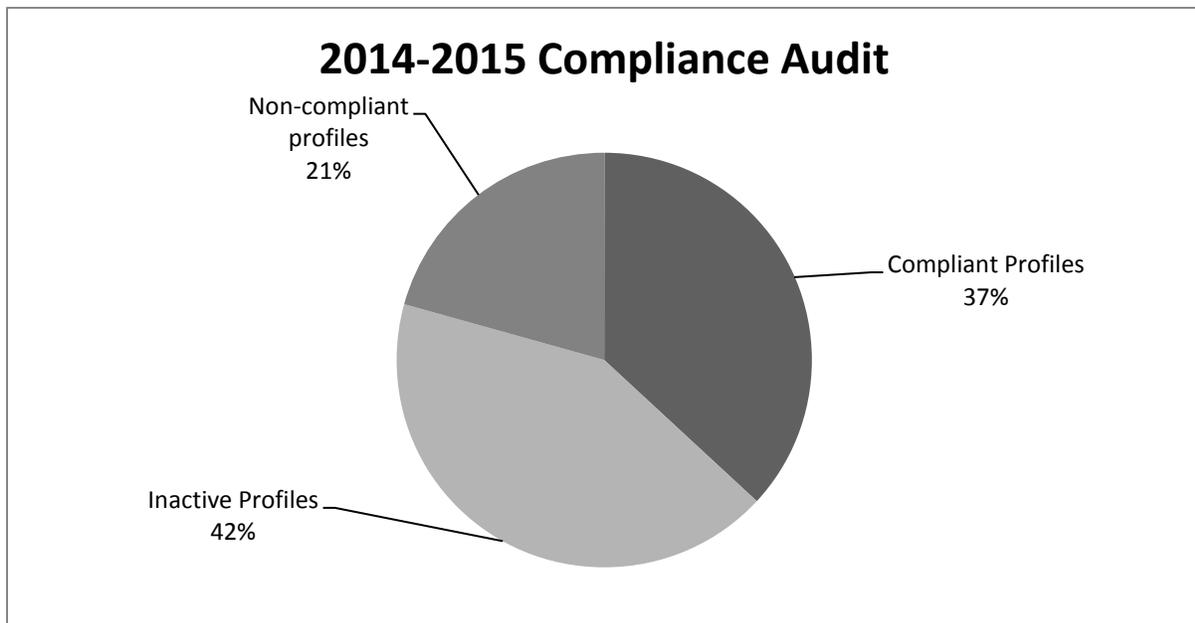
Lobbying by Subject Matter 2014-2015



Compliance

In my 2013-2014 Annual Report, I reported that my office had conducted a compliance quality audit of the Lobbyist Registry. In 2014 – 2015, my office initiated a second compliance audit to continue the work of the first audit and to address further issues requiring attention.

Individuals who lobby the City are expected to register with the Lobbyist Registry within fifteen business days of the communication occurring, and disclose their lobbying activities in a transparent and accountable manner, in accordance with the Lobbyist Code of Conduct. Pursuant to Section 3 of the Code “Disclosure of Identity and Purpose”, lobbyists are required to identify the specific subject matter of their communication and on behalf of whom they are lobbying, when submitting a lobbying file. They are subsequently required to add their lobbying activity against said lobbying file, in which they disclose who was lobbied, the method of their communication and the date the lobbying occurred.



Many of the issues of the first compliance audit continued to be issues during this second compliance audit. Following a total of 421 exchanges, staff was successful in amending 43% of non-compliant/inactive profiles. It is important to note that issues addressed were and continue to be minor contraventions, as the majority of the profiles found to be non-compliant were genuine user mistakes and/or misunderstandings of the tool/By-law.

For example, a significant number of compliance interventions over the course of the year relate to a misunderstanding of the By-law's definition of lobbyists. My office now personally touches base with every new lobbyist to confirm the Registration Type (e.g. Consultant, In-house, Voluntary). This has allowed my office to proactively address this inaccuracy when the profile is created.

Inactive Profiles

The 2013-2014 compliance audit highlighted the issue of inactive profile, in other words, without any registered lobbying files and/or activities. Staff discovered that profiles remained inactive mostly due to the misunderstood notion of pre-registration. Individuals who lobby the City are often under the impression pre-registration is required which is common in other jurisdictions. With this feedback, my office began to personally touch base with each new registrant to confirm their Registration Type, to highlight their obligations as newly registered lobbyists and to clarify the purpose of creating lobbying files and registering lobbying activities.

Despite these new efforts, the percentage of inactive files has remained relatively consistent. A large part of the second compliance audit was aimed at addressing these inactive profiles and determining if information was missing.

To uphold the Lobbyist Registry By-law and Lobbyist Code of Conduct's intent for transparency and accountability, registered lobbyists are required to disclose the subject matter of their lobbying, on behalf of whom they are lobbying, as well as the details surrounding the lobbying activity (person lobbied, and method and date of communication). Lobbyists found to not have disclosed the details of their communications were contacted to determine whether or not lobbying had in fact occurred on this file. As a result of these conversations, staff determined that many empty lobbying files were pre-registered by mistake, with the intention to eventually lobby on the disclosed subject matter. In such cases where lobbying did not ensue, the lobbying files were deleted. If, on the other hand, substantive communications were found to have taken place, said registered lobbyists were required to populate their lobbying files immediately.

ENFORCEMENT

The Lobbyist Registry and its By-law were designed to ensure not only the transparency of City business, but also that such business is conducted in an ethical and accountable manner. Since its inception, I believe there continues to be a great willingness among

lobbyists and public office holders to understand and comply with the Lobbyist Registry By-law and the Lobbyist Code of Conduct.

My focus on compliance has been progressive over successive years. As indicated earlier, successive compliance audits have focussed on the quality of entries and the accuracy of information.

Beyond the administrative compliance sought through the compliance audits, I have also turned part of my focus on enforcement to the Lobbyist Code of Conduct. As part of the 2014-2018 Governance Report, I recommended a new provision for the Lobbyist Code of Conduct such that lobbyists with active lobbying registrations, their registered clients or their employees are now expressly prohibited from directly or indirectly offering or providing any gift, benefit or hospitality to Members of Council or their staff. A direct provision of a gift is considered one offered by a lobbyist, registered client or employee with active lobbying files to a Member of Council or his/her staff such as a seat at a charity fundraising dinner. A lobbyist, client or employee with active lobbying files purchasing a seat at a charity fundraising dinner and requesting that the charity offer the seat to the Member would constitute an indirect provision of a gift/benefit.

The addition of this provision was an effort to address an inconsistency between the Code of Conduct for Members of Council and the Lobbyist Code of Conduct. This change provided additional clarity without changing the foundation of the accountability framework.

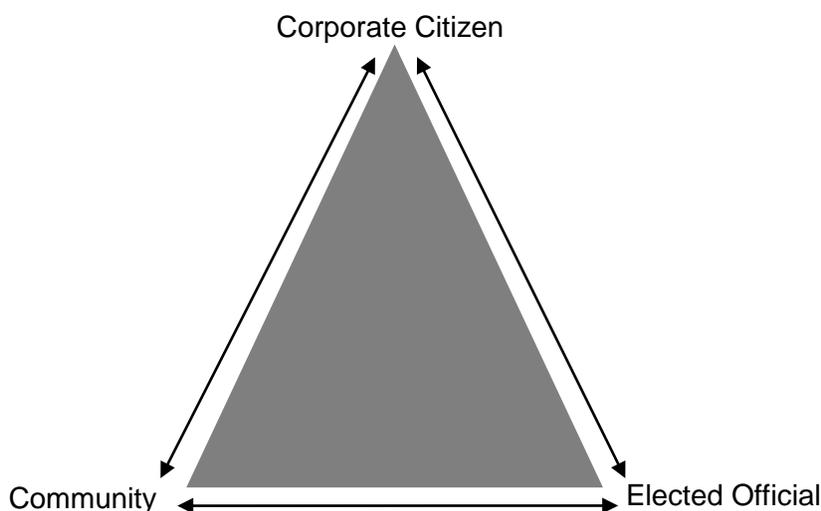
My enforcement of this provision has been a proactive intervention in instances where I have been advised of a gift, benefit or hospitality being offered by a lobbyist, their client or an employee of either with an active lobbying file(s). My intervention begins first with the individual offering the gift/benefit/hospitality to notify them they are potentially in contravention of the Lobbyist Code of Conduct as there is an active lobbying file(s) associated with them personally or the company they represent. The second step of my intervention involves reaching out to those with relevant active lobbying files to determine if the lobbying files continue to be active. If it is determined that the lobbying file(s) remain active, the individual offering the gift/benefit/hospitality is advised they are indeed in violation of the Lobbyist Code of Conduct. In at least one instance this past year, the individual offering the gift/benefit/hospitality was asked to take the necessary steps to rescind the invitation offered as lobbying files associated with the company continued to be active and this was the second instance of non-compliance in a short timeframe. In another instance, the relevant lobbying file was closed and the

gift/benefit/hospitality was permitted in line with the provisions of the Code of Conduct for Members of Council.

I have consistently maintained both locally and with my colleagues in other jurisdictions that the policies in place here at the City of Ottawa are reflective of both the principles of accountability and transparency as well as the culture already deeply rooted in the City of Ottawa. When I developed the provisions respecting lobbying and the acceptance of event tickets, I was cognizant that not only was the City of Ottawa home to many types of festivals, community, cultural and sporting events, but also that Members of Council are often expected to attend or frequently encouraged to attend these events. In other jurisdictions where a lobbyist registry exists, elected officials are wholly prohibited from accepting gifts/benefits/hospitality from anyone in the lobbyist registry. The principle being that companies and individuals seeking to influence public office holders do not do so by giving gifts or sponsorship to those individuals in a position with decision making authority or the ability to influence outcomes.

However, the balance struck here in the City of Ottawa is that Members of Council and their staff are prohibited from accepting gifts/benefits/hospitality from those who are *actively* seeking to influence public office holders. Where a company or individual is no longer actively seeking to influence, they are no longer precluded from extending invitations and hospitality to Members of Council.

Similarly, the Community, Fundraising and Special Events Policy recognizes the contributions those who might lobby public office holders have within the community. I often refer to the reciprocal relationship between the community, the elected official and the corporate citizen as a triangular relationship:



It is not surprising that companies and businesses wish to give back to the community in which they operate and often look to the local representative for those opportunities. Similarly, elected officials often rely on corporate citizens to sponsor events or programs to the benefit of the community. I firmly believe these interactions are reasonable and appropriate within the guidelines we have established to protect both the elected official and the corporate sponsor.

The guarantee that the public interest is protected is enshrined in both Codes of Conduct and in the following transparency requirements:

- Lobbyists with active lobbying files or their clients with active lobbying files are prohibited in offering any benefit;
- Members of Council are prohibited from accepting any benefit from lobbyists or their clients with active files; and,
- All tickets exceeding a value of \$30 or gifts, benefits or hospitality exceeding \$100, accepted by Members of Council are publicly disclosed quarterly in the Gifts Registry and posted on the City's website.

At the time of writing this report, I am issuing an interpretation bulletin respecting Ottawa 2017 and the implications related to the Lobbyist Registry and sponsorship.

CONCLUSION

As I have noted in previous annual reports, I continue to witness an overall willingness to comply with the Lobbyist Registry By-law and the Lobbyist Code of Conduct.

The 2014-2015 year was a more aggressive year with respect to monitoring compliance and violations of the Lobbyist Code of Conduct, particularly in relation to the new provision on gifts, benefits and hospitality.

Consequently 2015-2016 will be a year of strict compliance monitoring with sanctions invoked pursuant to the Lobbyist Registry By-law as may be necessary. In particular, I intend to introduce a new method of enforcement by way of compliance agreements. A compliance agreement will be a voluntary agreement between the Integrity Commissioner and the Lobbyist which will include a summary of the act or omission that constitutes a breach of the Lobbyist Registry By-law or Lobbyist Code of Conduct, and an agreement to terms and conditions that the Integrity Commissioner considers necessary to ensure compliance with the By-law or Code of Conduct. Compliance agreements would be issued for minor contraventions of the By-law or Code of Conduct including late registrations that are due to lack of knowledge.

Further, some minor technical enhancements are expected for the Lobbyist Registry tool itself not only to improve the tool for users but also to provide my office with the tools and information required to monitor of compliance and in particular adherence to the 15 business day deadline.

As always, I will continue to make education and promotion of the Lobbyist Registry and its obligations a priority.

Meetings Investigator

MANDATE

The *Municipal Act, 2001* provides that all meetings of Council, its committees or local boards shall be open to the public, except as provided through eight discretionary exemptions. 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
- (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:

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 in respect of a meeting or part of a meeting that was closed to the public. I determine whether an investigation is warranted and, if so, conduct an investigation and submit my findings and recommendations to an open meeting of 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 prescribed in Section 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

In 2015, I received two requests for investigation of a closed meeting. Upon review, I determined that the meetings in question were not meetings of a committee or local board over which the open meeting provisions of the *Municipal Act, 2001* apply. As such, it was not within my mandate to undertake an investigation.

The City of Ottawa is a leader in the province in open meetings. Members of Council and City Staff continue to be committed to holding open meetings and to disclosing as much information publicly as possible. For that reason, as in 2013-14, I can report that the Meetings Investigator function has been the lightest of my three-part mandate.

City Council and its Committees did not go into closed session between November 1, 2014 to the end of December 2014.

From January 1st, 2015 to October 31st, 2015, inclusive, Council and its Committees went into closed session a total of two times as follows:

- On March 25, 2015, the Transit Commission moved into closed session to receive an update related to collective bargaining with the Amalgamated Transit Unions and the Canadian Union of Public Employees; and
- On October 13, 2015, the Planning Committee moved into closed session to receive an update with respect to the resolution of Development Charges By-law appeals before the Ontario Municipal Board by the Greater Ottawa Home Builder's Association and the Building Owners and Managers Association of Ottawa.

As part of the City's ongoing efforts as a leader in open meetings, the City Clerk and Solicitor's Office 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.

Municipal Act, 2001 – Legislative Review

As part of its ongoing legislative review, the Ministry of Municipal Affairs and Housing has indicated that open meeting provisions are being reviewed. The Ministry's Public Consultation Discussion Guide poses the following three questions to stakeholders:

- Do you think there should be more options for municipal councils to use technology in holding meetings? (e.g., internet video conferences?) Please provide examples.
- Do you think that the public has appropriate access to council meetings? How could municipal council meetings be more transparent?
- Under what circumstances do you think it is appropriate for council to discuss matters in private? (e.g. personal information, security of the municipality)

The Association of Municipalities of Ontario ("AMO") issued its submission to the Ministry on September 8, 2015. Specifically, AMO has recommended that the *Municipal Act, 2001* contain a clear definition of what constitutes a 'meeting'. Specifically, AMO recommends that "... a meeting be defined as when a quorum of elected officials gathers to deal with matters which would ordinarily form the basis of council or a local board or committee's business and acts in such a way as to move them materially along the way."

Impact of Bill 8

An amendment to Section 239 of the *Municipal Act, 2001* under Bill 8 will come into effect on January 1, 2016 to include an additional exception for a closed meeting as follows (emphasis added):

- (3) 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 this Act, or the investigator referred to in subsection 239.2 (1).

Originally, Bill 8 would have also amended the *Municipal Act, 2001* to allow a person to request that the Ontario Ombudsman investigate a municipal closed meeting even if a municipality has appointed its own closed meetings investigator if:

- The investigator has “either refused or conducted and concluded an investigation into the matter,” or
- “The time, if any, for bringing a request respecting the matter to the investigator has expired.”

However, Bill 8 was revised at the Standing Committee stage such that the status quo remains in effect. Specifically, if a municipality has appointed a Meeting investigator then the Ombudsman has no jurisdiction and no right of review over the local Meetings Investigator.

CONCLUSION

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

Outreach, 2015-2016 Goals and Financial Statement

EDUCATION, OUTREACH AND MEDIA RELATIONS

Education and outreach have, and continue to be, a priority for me in my role as Integrity Commissioner for the City of Ottawa. From providing advice and guidance to Members of Council and their staff to educating stakeholders on obligations and compliance, an ongoing dialogue has contributed to the overall success of Council's Accountability Framework.

Below is a list of events that took place in the last year:

Meetings with Stakeholders

- One-on-ones with eight new Members of Council; December 2014
- Lobbyist Registry sessions:
 - Real Estate Partnership & Development Office – Vendor Information Session
 - Asset Management, Business & Technical Services Branch
 - Development Review Services (CRLs)

Education

- Council Orientation Session for new Members of Council; November 13, 2014
- Lobbyist Registry training for citizen members of the Transit Commissioner and Built Heritage Sub-Committee; February/March 2015
- Accountability Framework session for Members of Council and their staff; February 12, 2015
- Session on Gifts and Tickets for Councillors' Assistants; June 12, 2015
- Presentation – Client Relationship Leader Meeting; June 24, 2015

Outreach (and Presentations)

- Ministry of Municipal Affairs and Housing Legislative Review (Integrity Commissioners); June 18, 2015
- Consultation with Saskatchewan re: establishment of Lobbyist Registry; July 2015
- English Presentation to Ethics Class at University of Ottawa; July 16, 2015
- Ministry of Municipal Affairs and Housing Legislative Review (Lobbyist Registrars); July 21, 2015

Media Relations

- Interview with CBC Calgary (Accountability Framework); December 17, 2014
- Interview with CBC Yellowknife (Lobbyist Registry); July 23, 2015

Conferences/Seminar

- Lobbyist Registrars and Commissioners Network in Ottawa; February 9, 2015
- Lobbyist Gifting: Challenges for Lobbyists, Political Staff and Bureaucrats Panel Discussion (The Lobby Monitor); April 28, 2015
- Municipal Integrity Commissioners of Ontario Meeting in Toronto; May 28, 2015
- Municipal Integrity Commissioners of Ontario Meeting in Ottawa; September 23, 2015

Publications

- Marleau, Robert. "City of Ottawa's Lobbyist Registry Up and Running in Record Time" *Influencing B.C.* (Spring Issue)

GOALS FOR 2015-2016

The 2012-2013 year saw the introduction of the Lobbyist Registry. Dissemination of knowledge was the priority with the stakeholders, City staff and Members of Council.

2013-2014 was a year devoted to education and quality auditing of lobbying profiles and registrations. Considerable tolerance of late registrations was allowed to foster voluntary compliance and transparency.

2014-2015 was a more aggressive year in compliance monitoring and violations of the Lobbyist Code of Conduct and the Code of Conduct for Members of Council, particularly on the issue of gifts and benefits.

Consequently 2015-2016 will be a year of strict compliance monitoring with sanctions invoked pursuant to the Lobbyist Registry By-law as may be necessary.

Education

As Lobbyist Registrar, I continue to receive frequent complaints from lobbyists and Councillors that City staff mistakenly advise lobbyists that the creation of a lobbyist profile and pre-registration of the intent to lobby is a requirement of the Lobbyist Registry By-Law requirement.

This is wrong. This is a distinct feature of the City of Ottawa's Lobbyist Registry and lobbyist profiles with no lobbying files or activities distort the information provided by the Lobbyist Registry.

As Lobbyist Registrar, I will meet with the City Manager to seek to devise means of communication to reach as many City staff as possible to explain the requirements.

An Interpretation Bulletin will also be developed and posted on the City's website and intranet on this matter.

Compliance

In 2014-2015, I will continue to follow-up with lobbyists offering gifts/benefits/hospitality while having active lobbying files. I believe the resulting education and awareness of the obligations in the Lobbyist Registry By-law and the Lobbyist Code of Conduct will be valuable to all stakeholders.

As noted previously, I intend to introduce the use of compliance agreements to address minor contraventions such as late registrations that are due to lack of knowledge. Specifically, lobbyists have 15 business days following a lobbying activity to register.

Some minor technical enhancements are expected for the Lobbyist Registry tool itself not only to improve the tool for users but also to provide my office with the tools and information required to monitor of compliance and in particular adherence to the 15 business day deadline. All late registrations will be followed up for compliance evaluation and a report will be provided to Council in the next annual report.

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.

The following is a breakdown of the period of October 1, 2014 to September 30, 2015.

Table 2 - Annual Financial Breakdown by Quarter

	Q4 2014	Q1 2015	Q2 2015	Q3 2015	TOTAL
Retainer	-	-	-	\$25,440	\$25,440
Salary*	\$19,538	\$15,468	\$10,211	\$12,720	\$57,937
Ancillary Costs (parking, cell phone, business travel)	\$1,016	\$639	\$729	\$455	\$2,839
Hours logged	96 hrs	76 hrs	62.5 hrs	62.5 hrs	297 hrs

*includes tax less eligible municipal rebates

As noted in my first annual report, it was anticipated the first year of my mandate would require significant time allotted to my advisory and educational roles, and that my hours would decrease in the second year of my term as Integrity Commissioner for the City of Ottawa. As a result of the part-time status of my position and the ongoing support of the Clerk's Office Staff, my average workload has decreased to a monthly average of 25 hours.