

**Report to
Rapport au:**

**Council
Conseil**

30 January 2019 / 30 janvier 2019

**Submitted on January 25, 2019
Soumis le 25 janvier 2019**

**Submitted by
Soumis par:**

M. Rick O'Connor City Clerk and Solicitor / Greffier municipal et avocat général

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Ward: RIDEAU-ROCKCLIFFE (13)

File Number: ACS2019-CCS-GEN-0009

**SUBJECT: Declaration of Vacant Office on Council - Ward 13 (Rideau-Rockcliffe)
and Related Matters**

**OBJET: Déclaration d'une charge vacante au Conseil municipal - quartier 13
(Rideau-Rockcliffe) et questions connexes**

REPORT RECOMMENDATIONS

- 1. That City Council declare the Office of Councillor, Ward 13 (Rideau-Rockcliffe), to be vacant, as mandated by the *Municipal Act, 2001*;**
- 2. That Council approve and enact the *By-law to Require a By-Election* attached as Document 1, which requires that a by-election be held to fill the vacancy in the Office of Councillor, Ward 13 (Rideau-Rockcliffe) in accordance with the *Municipal Elections Act, 1996*, as described in this report;**
- 3. That Council approve the following interim delegations of authority with respect to Ward 13 (Rideau-Rockcliffe) matters until such time that a new Councillor is sworn in and takes Office:**

a) That concurrence under the *Delegation of Authority By-law* for Ward 13 matters, and the provision of Councillor Comments on staff reports related to Ward 13, may be provided by Councillors Fleury and Cloutier; and

b) That the City Clerk and Solicitor and the Manager of Legislative Services be delegated the interim authority to approve the payment of expenses from the Ward 13 Office Budget arising from routine matters, and to address human resources matters relating to the Ward 13 Office.

RECOMMANDATIONS DU RAPPORT

1. Que le Conseil municipal déclare vacante la charge de conseiller du quartier 13 (Rideau-Rockcliffe) tel qu'il est prescrit par la Loi sur les municipalités de 2001; et

2. Que le Conseil approuve et adopte le *Règlement pour exiger une élection partielle*, annexé au titre de document 1, lequel exige qu'une élection partielle soit tenue pour combler la charge vacante de conseiller du quartier 13 (Rideau-Rockcliffe) conformément à la *Loi de 1996 sur les élections municipales*, comme décrit dans le présent rapport; et

3. Que le Conseil approuve les délégations de pouvoirs par intérim suivantes pour les questions reliées au quartier 13 (Rideau-Rockcliffe) jusqu'à l'assermentation et l'entrée en fonction d'un nouveau conseiller ou d'une nouvelle conseillère :

a) Que le consentement en vertu du *Règlement sur la délégation de pouvoirs* entourant les questions reliées au quartier 13 et la formulation des commentaires du conseiller dans les rapports du personnel reliés au quartier 13, puissent être fournis par les conseillers Fleury et Cloutier; et

b) Que soit délégué par intérim au greffier municipal et avocat général et au gestionnaire des Services législatifs le pouvoir d'approuver le paiement à même le budget du bureau du quartier 13 des dépenses ordinaires et de régler les questions de ressources humaines reliées au bureau du quartier 13.

EXECUTIVE SUMMARY

Declaration of Vacant Office on Council

On January 25, 2019, Councillor Tobi Nussbaum provided the City Clerk and Solicitor with written notice of his resignation as Councillor for Ward 13 (Rideau-Rockcliffe).

Under Section 262 of the *Municipal Act, 2001*, when a Member resigns, Council is statutorily mandated to declare the Office to be vacant at its next meeting. Accordingly, the City Clerk and Solicitor has prepared this report for Council's consideration at its January 30, 2019 meeting. Approval of Recommendation 1 satisfies Council's statutory obligations under the *Municipal Act, 2001*.

In addition to having Council fulfill its statutory duty in declaring the Ward 13 Office vacant, this report recommends that Council approve that a by-election be held to elect a new Member to represent Ward 13, as well as recommending a couple of administrative matters that will assist ward residents with the transition over the next three months.

Option A – Appointment

Section 263 (5) of the *Municipal Act, 2001* sets out the rules to fill a vacancy on Council. In short, the Act provides that Council shall, within 60 days after declaring the Office vacant, fill the vacancy by appointing a person who has consented to accept the appointment. To be eligible to hold office, a person must be:

1. 18 years of age or older,
2. a Canadian citizen,
3. a resident of the City of Ottawa, or an owner or tenant of land in the City or the spouse of such an owner or tenant, and
4. not be prohibited from holding municipal office or from voting under the *Municipal Elections Act, 1996* (MEA) or otherwise by law.

However, neither the *Municipal Act, 2001* nor the MEA provide a specific appointment procedure should Council choose to fill the vacancy by appointment. Therefore, if Council decides to fill the vacancy by appointment, staff will develop a process for Council's consideration. This would include advertisements, application forms, interviews of candidates at a separate meeting of Council, and a voting process for Members. In addition, staff anticipate that there would be some minimal costs for advertising, which could be absorbed within the operating budget of the Office of the City Clerk and Solicitor.

Finally, the last possible day for the appointment by Council is **April 1, 2019**, pursuant to the *Municipal Act, 2001*.

Option B – By-Election

Alternatively, Section 263 of the *Municipal Act, 2001* provides that, within 60 days of Council declaring an Office to be vacant, Council shall pass a by-law requiring a by-election to be held to fill that vacancy. As is the case with regular municipal elections, the Clerk is responsible for the preparation and conduct of a by-election, and has a duty to adhere to provisions of the MEA and administer the by-election in a manner consistent with the principles of the statute as determined by the courts. These principles include secrecy and confidentiality of the voting process, as well as maintaining integrity of the process throughout the by-election.

Under Section 65 of the MEA, if Council determines that a by-election is to be held, the Clerk is responsible for setting the date of Nomination Day, which cannot be less than 30 days and no more than 60 days after the passing of the by-law requiring the by-election. Thereafter, Voting Day is 45 days after Nomination Day and is, thus, dependent on the date the Clerk establishes for Nomination Day. Section 65(3) also mandates that “by-elections shall be conducted as far as possible in the same way as regular elections.” Based on these requirements, a summary of how a by-election would be conducted by the Clerk is provided below in the Discussion section of this report.

Should Council choose to fill the vacancy by by-election, the last possible day to pass the required by-law is **April 1, 2019**, pursuant to Section 263 (3) of the *Municipal Act, 2001*. However, as described in more detail below, staff are recommending that, should a by-election be approved by Council, the by-law be passed at the Council meeting of January 30, 2019, in order to immediately start the by-election process.

The total cost of a by-election for Ward 13 is estimated to be approximately \$329,500. Funding for a by-election would come from the Tax Stabilization Reserve, which is the primary fund for municipal elections. The estimated budget for a by-election includes such costs as compensation, printing ballots, renting vote tabulators, and expected overtime associated with meeting statutory deadlines. A breakdown of the expected costs is found in Document 3.

Delegation of Authority Matters

Following the resignation of the Ward 13 Councillor, there are a number of legislative and administrative matters to address with respect to delegation of authority while the Office remains vacant. In particular, the *Delegation of Authority By-law* requires the concurrence of the Ward Councillor on a variety of matters prior to any approvals being given by staff. These include, but are not limited to, Site Plan Control applications and

other planning applications under the delegated authority of the Planning, Infrastructure and Economic Development Department as set out in the Discussion section of this report. Similarly, the City's internal controls also require approval by the Ward 13 Councillor for financial and human resource matters in the Ward 13 Office.

RÉSUMÉ

Déclaration de charge vacante au conseil

Le 25 janvier 2019, le conseiller Tobi Nussbaum a remis au greffier municipal et avocat général un avis écrit de démission comme conseiller du quartier 13 (Rideau-Rockcliffe).

En vertu de l'article 262 de la *Loi de 2001 sur les municipalités*, lorsqu'un membre du Conseil démissionne, le Conseil est tenu par la loi de déclarer vacante sa charge à sa prochaine réunion. Par conséquent, le greffier municipal et avocat général a préparé le présent rapport aux fins de considération par le Conseil à sa réunion du 30 janvier 2019. L'approbation de la recommandation 1 satisfait aux obligations statutaires du Conseil conformément à la *Loi de 2001 sur les municipalités*.

En plus de remplir son obligation prévue par la loi en déclarant la charge du quartier 13 vacante, le présent rapport recommande que le Conseil approuve la tenue d'une élection partielle afin d'élire un nouveau membre pour représenter le quartier 13, en plus de recommander quelques questions d'ordre administratif qui faciliteront la transition pour les résidents du quartier au cours des trois prochains mois.

Option A – nomination

L'article 263 (5) de la Loi de 2001 sur les municipalités établit les règles pour combler une vacance à un conseil municipal. En bref, la Loi prévoit que Conseil doit, dans les 60 jours suivant la déclaration d'une charge vacante, combler la vacance en y nommant une personne qui a consenti à accepter la nomination. Pour être admissible à occuper une charge, une personne doit :

1. Avoir 18 ans ou plus,
2. Posséder la citoyenneté canadienne,
3. Résider à Ottawa ou être propriétaire ou locataire d'un bien-fonds situé sur le territoire d'Ottawa ou être le conjoint ou la conjointe d'une telle personne, et
4. Ne pas faire l'objet d'une interdiction d'occuper une charge ou de voter aux termes de la *Loi de 1996 sur les élections municipales* (LEM) ou d'une autre loi.

Cependant, ni la *Loi de 2001 sur les municipalités* ni la LEM ne prévoient de procédures précises de nomination advenant que le Conseil décide de combler la vacance par une nomination. Cela étant, si le Conseil décide de procéder par nomination pour combler la vacance, le personnel élaborera une procédure et la soumettra au Conseil aux fins de considération. Cette procédure comportera des annonces, un formulaire de demande, une entrevue avec les candidates ou les candidats à une réunion distincte du Conseil et enfin, une procédure de vote pour les membres du Conseil. Le personnel s'attend en outre à ce qu'il y ait des coûts minimes associés aux annonces, lesquels seront absorbés à même le budget de fonctionnement du Bureau du greffier municipal et de l'avocat général.

Finalement, le jour ultime pour la nomination par le Conseil est le **1^{er} avril 2019**, conformément à la *Loi de 2001 sur les municipalités*.

Option B – élection partielle

Autrement, en vertu de l'article 263 de la *Loi de 2001 sur les municipalités*, le Conseil doit, dans les 60 jours suivant la déclaration d'une charge vacante, adopter un règlement exigeant la tenue d'une élection partielle pour combler la vacance. Comme dans le cas d'une élection municipale ordinaire, le greffier de la Ville est chargé de la préparation et de la tenue d'une élection partielle et il doit respecter les dispositions de la LEM et administrer l'élection partielle de manière conforme aux principes de la loi, comme déterminé par les tribunaux. Ces principes sont le caractère secret et confidentiel du processus de vote ainsi que le maintien de l'intégrité du processus tout au long de l'élection partielle.

En vertu de l'article 65 de la LEM, si le conseil décide qu'une élection partielle doit être tenue, le greffier est chargé de fixer la date du jour de la déclaration de candidature, qui doit être au plus tôt 30 jours et au plus tard 60 jours après l'adoption du règlement municipal exigeant la tenue d'une élection partielle. Le jour du scrutin tombe alors 45 jours après le jour de la déclaration de candidature et dépend donc de la date du jour de la déclaration de candidature fixée par le greffier. L'article 65 (3) de la LEM prévoit également qu'une « élection partielle est tenue le plus possible de la même manière qu'une élection ordinaire ». En fonction de ces exigences, un sommaire de la manière dont serait tenue une élection partielle par le greffier est présenté ci-dessous, dans la section Discussion du présent rapport.

Si le Conseil décide de combler la vacance au moyen d'une élection partielle, la date ultime pour adopter le règlement municipal exigé est le **1^{er} avril 2019**, conformément à l'article 263 (3) de la *Loi de 2001 sur les municipalités*. Toutefois, comme décrit en

détail ci-dessous, advenant que le Conseil décide de procéder à une élection partielle, le personnel recommande d'adopter le règlement municipal à la réunion du Conseil du 30 janvier 2019 afin de pouvoir lancer immédiatement le processus de l'élection partielle.

Le coût total pour la tenue d'une élection partielle dans le quartier 13 devrait être d'environ 329 500 dollars. Son financement proviendra du Fonds de réserve de stabilisation des taxes, lequel est la principale source de financement des élections municipales. Le budget estimé pour une élection partielle comprend les dépenses afférentes à la rémunération du personnel, à l'impression des bulletins de vote, à la location des tabultrices de vote et aux heures supplémentaires requises pour respecter les échéanciers prescrits par la loi. La ventilation des dépenses prévues est présentée dans le document 3.

Délégation de pouvoirs

Suivant la démission du conseiller du quartier 13, un certain nombre de questions légales et administratives doivent être réglées eu égard à la délégation de pouvoirs pendant la vacance de la charge. Notamment, le *Règlement sur la délégation de pouvoirs* exige que le conseiller ou la conseillère d'un quartier accorde son consentement sur diverses questions avant toute approbation du personnel. Ces questions comprennent, sans toutefois s'y limiter, les demandes de réglementation du plan d'implantation et d'autres demandes d'aménagement en vertu des pouvoirs délégués de la Direction générale de la planification, de l'infrastructure et du développement économique, tels que présentés dans la section Discussion du présent rapport. Dans le même ordre d'idées, les mesures de contrôle internes de la Ville exigent que le conseiller du quartier 13 approuve les questions afférentes aux ressources financières et humaines du bureau du quartier 13.

BACKGROUND

Declaring the Office Vacant and Options to Fill It

On January 25, 2019, Councillor Tobi Nussbaum provided the City Clerk and Solicitor with written notice of his resignation as Councillor for Ward 13 (Rideau-Rockcliffe).

Under Section 262 of the *Municipal Act, 2001*, when a Member resigns, Council is statutorily obligated to declare the Office to be vacant at its next meeting. Accordingly, the City Clerk and Solicitor has prepared this report for Council's consideration at its

January 30, 2019, meeting. Council approval of Recommendation 1 declaring the Ward 13 Office vacant is required to meet Council's statutory obligations under the *Municipal Act, 2001*.

After the Office is declared to be vacant, Section 263 (1) of the *Municipal Act, 2001*, states that Council shall either appoint a new Member or require that a by-election be held to fill the vacancy.

Together, the *Municipal Act, 2001* and the MEA prescribe the rules and impose deadlines with respect to the options for filling a vacancy, as described below in more detail.

Option A – Appointment

Section 263 (5) of the *Municipal Act, 2001* provides that Council shall, within 60 days after declaring the Office vacant, fill the vacancy by appointing a person who has consented to accept the appointment. To be eligible to hold office, a person must be:

1. 18 years of age or older,
2. a Canadian citizen,
3. a resident of the City of Ottawa, or an owner or tenant of land in the City or the spouse of such an owner or tenant, and
4. not be prohibited from holding municipal office or from voting under the *Municipal Elections Act, 1996* (MEA) or otherwise by law.

However, neither the *Municipal Act, 2001* nor the MEA provide a specific appointment procedure should Council choose to fill the vacancy by appointment. Therefore, if Council decides to fill the vacancy by appointment, staff will develop a process for Council's consideration. This would include advertisements, application forms, interviews of candidates at a separate meeting of Council, and a voting process for Members. In addition, staff anticipate that there would be some minimal costs for advertising, which could be absorbed within the operating budget of the Office of the City Clerk and Solicitor.

Finally, the last possible day for the appointment by Council is **April 1, 2019**, pursuant to the *Municipal Act, 2001*.

Option B – By-Election

Alternatively, Section 263 of the *Municipal Act, 2001* provides that, within 60 days of Council declaring an Office to be vacant, Council shall pass a by-law requiring a by-election to be held to fill that vacancy. As is the case with a regular municipal elections, the Clerk is responsible for the preparation and conduct of a by-election, and has a duty to adhere to provisions of the MEA and administer the by-election in a manner consistent with the principles of the statute as determined by the courts. These principles include secrecy and confidentiality of the voting process, as well as maintaining integrity of the process throughout the by-election.

Under Section 65 of the MEA, if Council determines that a by-election is to be held, the Clerk is responsible for setting the date of Nomination Day, which cannot be less than 30 days and no more than 60 days after the passing of the by-law requiring the by-election. Thereafter, Voting Day is 45 days after Nomination Day and is, thus, dependent on the date the Clerk establishes for Nomination Day. Section 65(3) also mandates that “by-elections shall be conducted as far as possible in the same way as regular elections.” Based on these requirements, a summary of how a by-election would be conducted by the Clerk is provided below in the Discussion section of this report.

Should Council choose to fill the vacancy by by-election, the last possible day to pass the required by-law is **April 1, 2019**, pursuant to Section 263 (3) of the *Municipal Act, 2001*. However, as described in more detail below, staff are recommending that, should a by-election be approved by Council, the by-law be passed at the Council meeting of January 30, 2019, in order to immediately start the by-election process.

The total cost of a by-election for Ward 13 is estimated to be approximately \$329,500. If Council decides to proceed with a by-election, funding would come from the Tax Stabilization Reserve, which is the primary fund for municipal elections. The estimated budget for a by-election includes such costs as compensation, printing ballots, renting vote tabulators, and expected overtime associated with meeting statutory deadlines. A breakdown of the expected costs is found in Document 3.

Previous Vacant Offices in the City of Ottawa

Since amalgamation, three Councillors have resigned from Office, causing Council to declare their Offices to be vacant. On October 16, 2003, Councillor Madeleine Meilleur (Ward 12 – Rideau-Vanier) and Councillor Phil McNeely (Ward 19 – Cumberland) submitted their resignation following their election to the Legislative Assembly of Ontario in the 2003 Provincial Election.

Since Council declared the Offices of Councillor Meilleur and Councillor McNeely vacant within 90 days before voting day of the next regular municipal election – the 2003 Municipal Election occurred on November 10, 2003 – legislative provisions provided that Council was not required to fill these two vacancies.

The third vacancy occurred in September 2005 when Councillor Herb Kreling (Ward 1-Orléans) resigned from Council to become a Justice of the Peace. Councillor Kreling's resignation took effect on September 13, 2005. In turn, at its meeting of September 14, 2005, Council passed a number of related motions, including motions to declare the Ward 1 Office vacant and to direct the Clerk to conduct a by-election. Pursuant to this direction, the Clerk conducted a by-election on January 9, 2006, which was preceded by an advance vote day on December 17, 2005. The total cost of the 2006 By-Election in Ward 1 was approximately \$277,000 (or approximately \$388,000 in 2018 dollars).

Delegation of Authority Matters Relating to a Member's Resignation

Following the resignation of the Ward 13 Councillor, there are a number of legislative and administrative matters to address with respect to delegation of authority while the Office remains vacant. In particular, the *Delegation of Authority By-law* requires the concurrence of the Ward Councillor on a variety of matters prior to any approvals being given by staff. These include, but are not limited to, Site Plan Control applications and other planning applications under the delegated authority of the Planning, Infrastructure and Economic Development Department as set out in the Discussion section of this report. Similarly, the City's internal controls also require approval by the Ward 13 Councillor for financial and human resource matters in the Ward 13 Office.

DISCUSSION

Recommendation 1: That City Council declare the Office of Councillor, Ward 13 (Rideau-Rockcliffe), to be vacant, as mandated by the *Municipal Act, 2001*.

As noted above, on January 25, 2019, Councillor Tobi Nussbaum provided the City Clerk and Solicitor with written notice of his resignation as Councillor for Ward 13 (Rideau-Rockcliffe). Under Section 262 of the *Municipal Act, 2001*, when a Member resigns, Council is mandated to declare the Office to be vacant at its next meeting. Therefore, formal Council approval of Recommendation 1 declaring the Ward 13 Office vacant is required to meet Council's statutory obligations under the *Municipal Act, 2001*.

Recommendation 2: That Council approve and enact the *By-law to Require a By-Election* attached as Document 1, which requires that a by-election be held to fill

the vacancy in the Office of Councillor, Ward 13 (Rideau-Rockcliffe) in accordance with the *Municipal Elections Act, 1996*, as described in this report.

As noted earlier in this report, there are two options available to Council to fill the vacancy: an appointment process or a by-election.

Given that the resignation in question has occurred less than two months into the four-year term of Council, staff recommend that Council proceed with a by-election in this instance. While a by-election is more expensive and will take slightly longer to complete than appointing a new Councillor to fill the vacancy, it would provide residents with an opportunity to have direct input into selecting the person who will serve as their elected representative for most of the 2018-2022 Term of Council.

Should Council choose to fill the vacancy through a by-election, it is required to pass a by-law requiring a by-election to be held to fill the vacancy in accordance with the MEA. Pursuant to provisions of the *Municipal Act, 2001*, the last possible day for Council to pass the required by-law is **April 1, 2019**. That said, staff are recommending that the by-law be passed at Council's meeting of January 30, 2019, in order to immediately start the by-election process. This approach would also provide an opportunity for the successful candidate to take Office in time for the establishment of various priorities of the 2018-2022 Term of Council.

The total cost of a by-election in Ward 13 is estimated to be approximately \$329,500. The estimated budget includes such costs as paying poll workers, printing ballots, renting vote tabulators, and expected overtime associated with meeting rigid statutory deadlines. Funding for the by-election would come from the Tax Stabilization Reserve, which is the primary fund for municipal elections. A breakdown of the expected costs is found in Document 3.

Should Council decide to proceed with the recommended option, the City Clerk and Solicitor would conduct the by-election in accordance with the MEA. Specifically, Section 65 of the MEA sets out specific requirements for the conduct of a by-election, including requirements concerning the nomination period, the voters' list, and the by-election calendar. Subsection 65(3) also states that "by-elections shall be conducted as far as possible in the same way as regular elections." Based on these requirements, a summary of how a by-election would be conducted by the Clerk is provided below for Council's information.

By-Election Timeline

The Clerk would conduct a by-election on the shortest possible calendar permitted under the MEA. Should Council enact the by-law to trigger a by-election, the following milestones would be established:

- January 30, 2019 – Nomination Period Begins (following Council approving the by-law requiring a by-election)
- March 1, 2019 at 2 p.m. – Nomination Day (last day to submit or withdraw a nomination)
- April 5, 2019 – Advance Vote Day
- April 15, 2019 – Voting Day
- April 16, 2019 – Declaration of Results and Declaration of Office

A detailed calendar for a by-election is provided as Document 2 of this report.

Voting Subdivisions and Voting Places

Under Section 45 of the MEA, the Clerk has the statutory duty to establish the number and location of voting places for an election as he or she “considers most convenient for the electors”. Under this same provision, the Clerk is also mandated to ensure that voting places are accessible to electors with disabilities.

Despite its relatively small geographic size, Ward 13 (Rideau-Rockcliffe) is one of the largest Wards from an administrative perspective due to its high number of voting places. Forty-six voting places are expected to be used in a by-election. This includes 28 multi-residential properties that serve high concentrations of electors, and which often include high concentrations of seniors and people with disabilities. Another nine voting places are expressly required under the MEA since they are long-term care facilities or seniors homes that meet the “bed count” thresholds set out in the legislation. Candidates would be provided with a complete list of voting places after Nomination Day.

Nomination Process for Candidates

The nomination period for the by-election would open following approval of the enabling by-law, which has been listed on the Council Agenda for January 30, 2019, and is substantially in the form as described in Document 1. Accordingly, candidates could begin filing their nomination papers following Council’s January 30, 2019 meeting.

All nomination papers would be required to be filed by the candidate or by an agent acting on the candidate's behalf, in person, at the Elections Office at 1221-B Cyrville Road or by appointment at the City Clerk's Office, during regular office hours. Nominations for the by-election would close at 2 p.m. on March 1, 2019 ("Nomination Day").

Registration Process for Third Party Advertisers

On June 9, 2016, Bill 181, the *Municipal Elections Modernization Act, 2016*, received Royal Assent. On December 14, 2016, Council received an information report (ACS2016-CMR-CCB0051) that summarized the key changes introduced by Bill 181. Among Bill 181's major changes was the introduction of a framework of rules for third party advertising, which took effect for the 2018 regular election and remain in effect for a by-election.

A third party advertisement refers to an advertisement in any broadcast, print, electronic or other medium that promotes, supports or opposes a candidate in the election, (or, a "yes" or "no" answer to a question on the ballot). Ontario residents, corporations and trade unions that will incur expenses for such advertisements must register as a third party advertiser with the Clerk before they can begin advertising.

Under the MEA, the following persons and entities are eligible to file a notice of registration:

1. An individual who is normally a resident in Ontario.
2. A corporation that carries on business in Ontario.
3. A trade union that holds bargaining rights for employees in Ontario.

The MEA also states the following persons and entities are not eligible to file a notice of registration:

1. A candidate whose nomination has been filed under section 33.
2. A federal political party registered under the *Canada Elections Act* (Canada) or any federal constituency association or registered candidate at a federal election endorsed by that party.
3. A provincial political party, constituency association, registered candidate or leadership contestant registered under the *Election Finances Act*.
4. The Crown in right of Canada or Ontario, a municipality or local board.

The registration period for third party advertisers would begin following Council's meeting on January 30, 2019, and would conclude on April 12, 2019, at 4:30 p.m., in accordance with the MEA.

All notices of registration would be required to be filed by the individual or by a representative of the corporation or trade union, in person, at the Elections Office at 1221-B Cyrville Road, during regular office hours.

Voters' List for a By-Election

As with a regular election under the MEA, the Municipal Property Assessment Corporation (MPAC) is required to provide the Clerk with a preliminary list of electors, which the Clerk uses to create the voters' list. Under the legislation, the Clerk is also permitted to make revisions to this list based on information in the City's custody or control.

At the time of this report, MPAC has not finalized the amendments from the 2018 elections. As such, staff is operating on the assumption that they would receive the preliminary list of electors from MPAC in accordance with the legislation. However, in the event that there are any challenges to MPAC providing this list, staff propose to rely upon the voters' list from the 2018 regular election, as amended by the changes that were submitted by electors in October 2018.

The MEA requires the Clerk to make the voters' list available to the public for a "Revision Period." In the case of any by-election at the current time, the Revision Period would take place from March 16, 2019, to March 30, 2019. Similar to the 2018 regular election, electors would have an opportunity to add, amend or remove their name from the voters' list both online and by a paper application form. Electors may also make these changes at the voting place.

Use of Vote Tabulators

Section 42 of the MEA provides municipalities with the option of passing a by-law to authorize the use of vote counting equipment. The City of Ottawa has relied upon automated vote tabulators to count votes in all municipal elections since 1997, including the 2006 Orléans By-Election. This equipment ensures the consistent and accurate counting of votes and the timely production of unofficial election results. The City's By-law No. 2003-275, which authorizes the use of vote-counting equipment continues to be in effect for any by-election at the current time.

For any by-election, the City of Ottawa has an existing contract with Dominion Voting Systems Corporation (Dominion) for both hardware (i.e. vote tabulators) and software (i.e. vote counting software). Through the 2011-2014 Strategic Planning process, Council directed the City Clerk and Solicitor to secure the hardware and software necessary to deliver the 2014 Municipal Elections. After an open procurement process, Dominion was selected in October 2013 as the City's Vendor of Record for both the 2014 and 2018 Municipal Elections, with an option to renew for 2022. Additionally, the contract secures pricing for an unscheduled by-election. The term of the City's current contract with Dominion concludes on September 30, 2019.

With the City's existing processes and procedures being designed based on automated vote tabulation, staff is of the view that this vote counting method is the most appropriate and effective for a by-election.

Contribution Rebate Program in Effect

Section 88.11 of the MEA provides that a municipality may pass a by-law to allow for the payment of rebates to individuals who contribute to candidates for the office of mayor or councillor, and may establish conditions under which such a rebate is paid.

Council first established the City of Ottawa's Contribution Rebate Program for the 2003 regular election and has made various amendments to the program over time. The program allows for the payment of rebates to individuals residing in Ontario who contribute to participating candidates running for municipal council, including both regular elections and by-elections. Registered third parties and school board trustees are not eligible to participate in the Contribution Rebate Program. The program's current By-law, By-law No. 2018-33, remains in effect for any by-election at this time.

The original intent of the program was to effect a greater balance between corporate and individual contributions. Although corporate contributions to candidates were banned in 2016 by the *Municipal Elections Modernization Act, 2016* ("Bill 181"), the same legislation also introduced a new framework through which corporations could formally participate in municipal elections as third party advertisers and as contributors to third party advertisers. On that basis, staff previously noted that the original purpose of encouraging individuals to participate in elections remained relevant and recommended the continuation of the Program. More information about the program's history, including its original purpose and revisions to the rebate formula, is found in a 2017 staff report to Council (ACS2017-CCS-GEN-0027).

Recommendation 3: That Council approve the following interim delegations of authority with respect to Ward 13 (Rideau-Rockcliffe) matters until such time that a new Councillor is sworn in and takes Office:

- a) That concurrence under the *Delegation of Authority By-law* for Ward 13 matters, and the provision of Councillor Comments on staff reports related to Ward 13, may be provided by Councillors Fleury and Cloutier; and**
- b) That the City Clerk and Solicitor and the Manager of Legislative Services be delegated the interim authority to approve the payment of expenses from the Ward 13 Office Budget arising from routine matters, and to address human resources matters relating to the Ward 13 Office.**

With the resignation of the Ward 13 Councillor, there are a number of legislative and administrative matters to address with respect to delegation of authority while the Office remains vacant. Addressing these matters would assist ward residents with the transition over the next three months.

The *Delegation of Authority By-law* requires the concurrence of the Ward Councillor prior to various planning approvals being given under staff's delegated authority. These include, but are not limited to, Site Plan Control applications and other Delegated Authority planning applications. For this reason, and consistent with past practice, staff recommends that the concurrence routinely required by the Ward 13 Councillor be temporarily delegated to Councillors Fleury and Cloutier, who both represent neighbouring wards, until a new Councillor takes Office. This interim delegation of authority would be in addition to that provided to the Mayor under the *Delegation of Authority By-law*. Further, it is recommended that during this period, Councillors Fleury and Cloutier have the option to provide comment in the "Ward Councillor Comment" section of staff reports pertaining to Ward 13 matters.

With respect to the Ward 13 Office, there will be routine expenses that are either of an administrative nature or for expenditures that have been previously authorized for regular constituency matters (e.g. annual Ward events). To ensure that such routine invoices continue to be paid, staff recommend that Council delegate oversight of certain matters within the Ward 13 Office to the City Clerk and Solicitor and the Manager of Legislative Services until the new Councillor takes Office. This would include addressing some human resources matters (e.g. the deferral of severance pay to the Councillor's Assistants) as well as and the authority to pay routine expenses.

RURAL IMPLICATIONS

N/A

CONSULTATION

N/A

COMMENTS BY THE WARD COUNCILLOR(S)

N/A

ADVISORY COMMITTEE(S) COMMENTS

N/A

LEGAL IMPLICATIONS

There are no legal impediments to approving the recommendations in this report.

RISK MANAGEMENT IMPLICATIONS

The Elections Office works with both IT Security and an external auditor for elections to ensure that risks are properly identified and managed.

FINANCIAL IMPLICATIONS

If Council chooses to fill the vacancy by appointment, staff estimate some minimal costs for advertising, which could be absorbed within the operating budget of the Office of City Clerk and Solicitor.

The total cost of the by-election is estimated to be approximately \$329,500. Funding for the by-election would come from the Tax Stabilization Reserve, which is the primary fund for municipal elections. The details of this estimate are set out in Document 3.

ACCESSIBILITY IMPACTS

Under both the *Accessibility for Ontarians with Disabilities Act, 2005* and the *Municipal Elections Act, 1996*, the City Clerk and Solicitor is required to ensure that municipal elections are accessible to people with disabilities, including both electors and candidates.

To comply with his duties under Section 12(2) of the *Municipal Elections Act, 1996*, the City Clerk and Solicitor will prepare a separate, mandatory plan regarding the

“identification, removal and prevention of barriers that affect electors and candidates with disabilities” and will make the plan available to the public before voting day.

TECHNOLOGY IMPLICATIONS

In many respects, an election is as much a “technology” project as it is an “administrative” project. Significant sub-projects include producing the voters’ list, processing amendments to the voters’ list, generating maps of voting places and voting subdivisions, designing the ballot, programming and testing the vote tabulation system, ensuring wireless phone connectivity for poll workers, designing and supporting the public-facing web applications, supporting the Election Management System (database), and executing the result transmission, tabulation, and display of unofficial election results.

The Chief Information Officer has confirmed that an IT project lead continues to be assigned to Elections and that all necessary resources will be in place to support the by-election.

TERM OF COUNCIL PRIORITIES

N/A

SUPPORTING DOCUMENTATION

Document 1 – Draft By-law to Require a By-Election

Document 2 – Rideau-Rockcliffe By-Election Key Dates

Document 3 - Cost for Ward 13 By-election

DISPOSITION

If Council proceeds with a by-election, the City Clerk and Solicitor shall draft the required by-law and place such by-laws on the agenda of Council for enactment.

Document 1 - Draft By-law to Require a By-Election

BY-LAW NO. 2019-xxx

A by-law of the City of Ottawa requiring a by-election to be held to fill the vacancy in the office of the member of Council for Ward 13 - Rideau-Rockcliffe.

WHEREAS City Council at its meeting of January 30, 2019 accepted the resignation of Councillor Tobi Nussbaum from his seat on the Council for Ward 13 - Rideau-Rockcliffe;

AND WHEREAS pursuant to Section 262 of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, Council has declared the seat to be vacant;

AND WHEREAS pursuant to Section 263 of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, the Council may pass a by-law indicating a by-election is required to fill the vacancy in the office of a member of Council;

THEREFORE the Council of the City of Ottawa enacts as follows:

- 1. The Council of the City of Ottawa hereby requires a by-election to be held to fill the vacancy in the office of the member of Council for Ward 13 - Rideau-Rockcliffe in the City of Ottawa in accordance with the *Municipal Elections Act, 1996, S.O. 1996, c. 32, Sched.*, as amended.

ENACTED AND PASSED this 30th day of January 30, 2019.

CITY CLERK MAYOR

BY-LAW NO. 2019- xxx -o-

A by-law of the City of Ottawa requiring a by-election to be held to fill the vacancy in the office of the member of Council for Ward 13 - Rideau-Rockcliffe.

-o-

Enacted by City Council at its meeting of January 30, 2019.

-o-

Document 2 - Key Dates – Rideau-Rockcliffe By-Election

January 30, 2019 – Nomination Period Begins Following Council Approving the Enacting By-law

- Council declares the Office vacant.
- Council passes a by-law requiring a by-election.
- First day for candidates to file a nomination paper for the office of mayor, councillor or school board trustee. A candidate's campaign period begins once their nomination paper has been filed, meaning they may begin accepting contributions and spending money on their campaign.
- First day for an individual, corporation, or trade union to file a notice of registration as a third party advertiser. The campaign period for a registered third party begins once their registration paper has been filed, meaning they may begin accepting contributions and spending money on their campaign.

February 14, 2019

- First day an election sign can be placed on **private property**.

March 1, 2019 – Nomination Day

- Candidates have **until 2 pm** to file their nomination paper.
- A candidate who wishes to withdraw their nomination has **until 2 pm** to notify the Clerk by filing a written withdrawal.
- Nominations or withdrawals cannot be accepted after 2 pm.

March 16, 2019 – Voters' List Revision Period Begins, Signs can be placed on public property

Am I on the Voters' List? search tool available, allowing electors to check if they are registered to vote and see how their information is currently presented on the voters' list.

- Electors may also submit a paper application requesting that their information be updated or that their name be added or removed from the voters' list.
- The Revision Period will close on March 30, 2019.
- Electors may still submit applications to update or add their name to the voters' list at their voting place.
- First day an election sign can be placed on **public property**.

March 18, 2019 – Candidates Receive Voters’ List and Voter Notification Letters Mailed to Eligible Electors

- Copies of the voters’ list available to certified candidates upon written request.
- Voter Notification Letters mailed to eligible electors.

March 25, 2019 – Final Expense Limits Certificate

- Final expense limits certificate to be provided by this date.

April 1, 2019 – Interim List of Changes from the Revision Period Provided to Candidates

- Copies of the “Interim List of Changes” to the voters’ list received during the Revision Period are available to certified candidates upon written request.

April 5, 2019 – Advance Vote Day

- Electors can cast their ballot between 10 am and 8 pm.

April 12, 2019 – Final Day for Third Party Advertiser Registrations

- Last day for an individual, corporation, or trade union to file a notice of registration as a third party advertiser.
- Individuals, corporations, and trade unions have until **4:30 pm** to file their notice of registration.

April 15, 2019 – Voting Day

- With the exception of institutions and retirement homes that may have reduced opening hours, voting places will open at 10 a.m. and close at 8 p.m.
- Unofficial election results expected by 10:30 p.m.

April 16, 2019 – Declaration of Results and Declaration of Office

- The Clerk is expected to declare the results of the by-election official.
- The new Councillor-elect is expected to take the declaration of office, which is required to take the seat, under section 232 of the *Municipal Act, 2001*.

May 30, 2019 - Campaign Period Ends

- Campaign period ends for candidates and registered third parties, meaning they cannot accept any contributions or incur any expenses. Candidates or registered third parties that wish to extend their campaign, due to a deficit, must file a Notice of Extension of Campaign Period, Form 6 by this date.

Document 3 - Cost for Ward 13 By-election

By-Election Budget	
Category	Cost (\$)
Voting Place staffing:	\$64,000
Voting Place Standby staff:	\$4,000
Support Staff:	\$13,000
Voting Place Supplies:	\$14,000
Voting Place Tabulators:	\$43,000
Fleet Rentals:	\$1,000
Ballots (1 face):	\$4,000
Accessibility:	\$3,000
Audit:	\$20,000
Voting Place Rentals:	\$1,000
Communications:	\$10,000
Security:	\$2,500
Overtime:	\$75,000
Contribution Rebate Program:	\$20,000
Temporary Staff:	\$25,000
Voter Notification letters:	\$30,000
Total	\$329,500