

2. BILL 68, THE *MODERNIZING ONTARIO'S MUNICIPAL LEGISLATION ACT, 2017* – CHANGES TO THE *MUNICIPAL ACT, 2001*, THE *MUNICIPAL CONFLICT OF INTEREST ACT*, AND THE *MUNICIPAL ELECTIONS ACT, 1996*
- PROJET DE LOI 68, *LOI DE 2017 SUR LA MODERNISATION DE LA LÉGISLATION MUNICIPALE ONTARIENNE*; MODIFICATIONS À LA *LOI DE 2001 SUR LES MUNICIPALITÉS*, À LA *LOI SUR LES CONFLITS D'INTÉRÊTS MUNICIPAUX* ET À LA *LOI DE 1996 SUR LES ÉLECTIONS MUNICIPALES*

COMMITTEE RECOMMENDATIONS

That Council approve the following:

1. The amendments to the *Procedure By-law* as described in this report and attached in Document 2, effective January 1, 2018;
2. The Council-Staff Relations Policy as described in this report and attached in Document 3;
3. The Pregnancy and Parental Leave for Members of Council Policy as described in this report and attached in Document 4;
4. That the City Clerk and Solicitor be delegated the authority to negotiate, finalize and execute a two-year extension to the current Integrity Commissioner's contract, with renewal options set out in this report; and
5. That the City Clerk and Solicitor be delegated the authority to amend any additional policies, procedures and by-laws necessary to reflect the changes described in this report that will come into force on January 1, 2018, pursuant to Bill 68, the *Modernizing Ontario's Municipal Legislation Act, 2017*.

RECOMMANDATIONS DU COMITÉ

Que le Conseil approuve ce qui suit :

1. Les modifications au *Règlement de procédure* telles qu'elles sont décrites dans le présent rapport et jointes dans le Document 2, en vigueur le 1^{er} janvier 2018;
2. La Politique sur les relations entre le Conseil et le personnel telle qu'elle est décrite dans le présent rapport et jointe dans le Document 3;
3. La Politique sur les congés de maternité et congés parentaux pour les membres du Conseil telle qu'elle est décrite dans le présent rapport et jointe dans le Document 4;
4. Que l'on délègue au greffier municipal et avocat général le pouvoir de négocier, finaliser et signer une prolongation de deux ans de l'actuel contrat du commissaire à l'intégrité, avec des options de renouvellement énoncées dans le présent rapport; et
5. Que l'on délègue au greffier municipal et avocat général le pouvoir de modifier toutes les politiques, procédures et tous les règlements supplémentaires au besoin pour qu'ils tiennent compte des modifications décrites dans le présent rapport, lesquelles entreront en vigueur le 1^{er} janvier 2018, conformément au projet de loi 68, la *Loi de 2017 sur la modernisation de la législation municipale ontarienne*.

DOCUMENTATION/DOCUMENTATION

1. City Clerk and Solicitor's report, dated 31 October 2017 (ACS2017-CCS-GEN-0021)

Rapport du greffier municipal et avocat général, daté le 31 octobre 2017
ACS2017-CCS-GEN-0021)

Report to
Rapport au:

Finance and Economic Development Committee
Comité des finances et du développement économique
7 November 2017 / 7 novembre 2017

and Council
et au Conseil
22 November 2017 / 22 novembre 2017

Submitted on October 31, 2017
Soumis le 31 octobre 2017

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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2017-CCS-GEN-0021

SUBJECT: Bill 68, the *Modernizing Ontario's Municipal Legislation Act, 2017* –
Changes to the *Municipal Act, 2001*, the *Municipal Conflict of Interest
Act*, and the *Municipal Elections Act, 1996*

OBJET: *Projet de loi 68, Loi de 2017 sur la modernisation de la législation
municipale ontarienne; modifications à la Loi de 2001 sur les
municipalités, à la Loi sur les conflits d'intérêts municipaux et à la
Loi de 1996 sur les élections municipales*

REPORT RECOMMENDATIONS

That the Finance and Economic Development Committee recommend Council approve the following:

1. The amendments to the *Procedure By-law* as described in this report and attached in Document 2, effective January 1, 2018;
2. The Council-Staff Relations Policy as described in this report and attached in Document 3;
3. The Pregnancy and Parental Leave for Members of Council Policy as described in this report and attached in Document 4;
4. That the City Clerk and Solicitor be delegated the authority to negotiate, finalize and execute a two-year extension to the current Integrity Commissioner's contract, with renewal options set out in this report; and
5. That the City Clerk and Solicitor be delegated the authority to amend any additional policies, procedures and by-laws necessary to reflect the changes described in this report that will come into force on January 1, 2018, pursuant to Bill 68, the *Modernizing Ontario's Municipal Legislation Act, 2017*.

RECOMMANDATIONS DU RAPPORT

Que le Comité des finances et du développement économique recommande au Conseil d'approuver ce qui suit :

1. Les modifications au *Règlement de procédure* telles qu'elles sont décrites dans le présent rapport et jointes dans le Document 2, en vigueur le 1^{er} janvier 2018;
2. La Politique sur les relations entre le Conseil et le personnel telle qu'elle est décrite dans le présent rapport et jointe dans le Document 3;
3. La Politique sur les congés de maternité et congés parentaux pour les membres du Conseil telle qu'elle est décrite dans le présent rapport et jointe dans le Document 4;

4. **Que l'on délègue au greffier municipal et avocat général le pouvoir de négocier, finaliser et signer une prolongation de deux ans de l'actuel contrat du commissaire à l'intégrité, avec des options de renouvellement énoncées dans le présent rapport; et**
5. **Que l'on délègue au greffier municipal et avocat général le pouvoir de modifier toutes les politiques, procédures et tous les règlements supplémentaires au besoin pour qu'ils tiennent compte des modifications décrites dans le présent rapport, lesquelles entreront en vigueur le 1^{er} janvier 2018, conformément au projet de loi 68, la *Loi de 2017 sur la modernisation de la législation municipale ontarienne*.**

EXECUTIVE SUMMARY

The *Municipal Act, 2001*, the *Municipal Conflict of Interest Act* (the "MCIA") and the *Municipal Elections Act, 1996* (the "MEA") provide much of the foundation for governance and authority for municipalities in Ontario, including the City of Ottawa. Together, these statutes establish the framework for matters such as the powers, responsibilities and duties of municipal Councils, decision-making processes, accountability and transparency, municipal finance, municipal elections, and conflict-of-interest rules for Members of Council and members of local boards.

From time to time, the Ontario Government reviews this legislation and brings forward amendments through the Legislative Assembly of Ontario. This report provides recommendations and information regarding a number of amendments made by Bill 68, the *Modernizing Ontario's Municipal Legislation Act, 2017*, following a review of municipal legislation in 2015 and 2016. Bill 68, which received Royal Assent on May 30, 2017, made approximately 43 pages of amendments to the *Municipal Act, 2001* (and the *City of Toronto Act, 2006*), the MCIA and the MEA, as well as approximately 12 other pieces of legislation. These changes relate to the general themes of accountability and transparency, municipal finance and service delivery.

Amendments made by Bill 68 to matters within the scope of the City Clerk and Solicitor's mandate are significant. Municipalities will be required to establish codes of conduct for Members of Council and members of local boards. Bill 68 also requires municipalities to ensure that the services of the Integrity Commissioner are provided, either by hiring an Integrity Commissioner or arranging for the services of an Integrity Commissioner of another municipality. The Bill establishes a new conflict-of-interest

framework in Ontario, and expands the role of the Integrity Commissioner to include matters under the MCIA.

Other changes made by Bill 68 include: four new, discretionary reasons that may be used to close a meeting to the public; a requirement for municipalities to adopt and maintain three mandatory policies regarding “the relationship between Members of Council and the officers and employees of the municipality,” as well as “pregnancy leaves and parental leaves of Members of Council,” and “the manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality”; provisions that allow Members of Council to take pregnancy and parental leave without a motion from Council for an extended leave; and an amendment that provides municipalities with the discretion to allow members of Council or of certain local boards to participate electronically in meetings. A number of other amendments are described in this report and in Document 1, including those changes related to municipal finance and election rules.

While a small number of provisions came into force upon Royal Assent, the Province provided notice in mid-September that many of the remaining amendments will take effect on one of two dates that have been proclaimed: January 1, 2018, or March 1, 2019.

For the City Clerk and Solicitor, the largest and most complex of the amendments are those that will affect Council’s Accountability Framework. This framework, which was established during the 2010-2014 Term of Council, currently includes a Code of Conduct for Members of Council (as well as related policies) and a Lobbyist Registry. The application of the Code of Conduct is overseen by an Integrity Commissioner who also acts as the City’s Lobbyist Registrar and Meetings Investigator.

The existing Accountability Framework provides some of the measures and functions that will be made mandatory under Bill 68, such as an Integrity Commissioner who is indemnified and has an advice and education role, and a Council Code of Conduct. That said, significant additions will be required, including the establishment of a new code of conduct for members of local boards. Various elements of the new Integrity Commissioner and MCIA regimes will also need to be incorporated into the City’s procedures and processes.

The City has already made some minor changes to reflect new requirements under Bill 68. On July 12, 2017, Council approved Motion No. 54/8, which addressed the Bill 68

amendments that came into force upon Royal Assent. Specifically, this motion amended the *Procedure By-law* to provide for pregnancy and parental leave for Members of Council, as well as changes to the specific authority that Council uses to appoint its Deputy Mayors. The motion also directed staff to prepare a comprehensive report with respect to the mandatory legislative changes resulting from Bill 68.

In accordance with Motion No. 54/8, this report sets out staff's recommended approach to address the remaining statutory requirements resulting from Bill 68. At this time, staff are bringing forward a small number of recommendations for Council to consider with respect to "housekeeping" matters that will come into force on January 1, 2018, as well as simpler and preparatory measures to address some of the provisions that will come into force on March 1, 2019. These measures would require no additional costs and can be implemented with little, if any, effect on current practices.

The recommendations include amendments to the *Procedure By-law* to incorporate the new discretionary closed meeting provisions, as well as two of the new policies that Council will be required to adopt and maintain. Staff are also recommending that the current Integrity Commissioner's contract be extended in order to provide continuity and stability for Council throughout this time of change.

In addition to the specific recommendations outlined above, this report describes the approach that staff will take to develop and bring forward to Council other recommended measures to address the more significant provisions of Bill 68 that will come into force on March 1, 2019. These include the "complex" parts of the Bill that will impact the Accountability Framework, such as the mandatory code of conduct for members of local boards, as well as the expanded role of the Integrity Commissioner and the new conflict-of-interest framework. Staff will bring forward recommendations regarding these provisions as part of the 2018-2022 Governance Review, which will be tabled at the final meeting of the outgoing Council in November 2018 and considered at the first meeting of the new Council in December 2018.

Council's consideration of the housekeeping, simpler and preparatory measures at this time will provide for the City of Ottawa to meet its obligations with respect to provisions of Bill 68 that will come into force at the beginning of next year. It will also allow staff to focus their efforts on the extensive work required to develop recommendations to address the complex requirements under Bill 68 that must be in place by March 1, 2019. In addition, this measured approach ensures that Members of the next term of Council –

to whom the new oversight regime will apply as of March 2019 – will consider and approve any new proposals that will be recommended by staff, working in consultation with the Integrity Commissioner.

In preparation for this report, the City Clerk and Solicitor met with all Members of Council to discuss the changes made by the Bill and to seek input on any proposals being developed for recommendation to Council. The consultation with Members has informed the report and any recommendations that are made or approaches that are described.

A brief summary of the specific recommendations made in this report is provided below. As per Council's standard practice, the changes recommended in this report would be reviewed as part of the regular governance reviews. The summary of current recommendations is followed by an overview of the matters that staff will develop and bring forward as part of the 2018-2022 Governance Review.

Matters for Council to Consider at This Time

Procedure By-law Amendments to Incorporate Meeting-Related Provisions

In accordance with the *Municipal Act, 2001*, all meetings shall be open to the public, except in particular discretionary circumstances that are described in Subsections 239(2) and 239(3.1) of the *Act* [as well as particular mandatory circumstances addressed in Subsection 239(3) of the *Act*].

As of January 1, 2018, Bill 68 adds four new, discretionary clauses that may be used for a meeting to be closed to the public under Subsection 239(2) of the *Act*, as follows:

- Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
- A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

- A trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
- A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

As noted in this report, the last of the amendments set out above has received particular criticism from interested third parties for being too broad and prone to potential misuse and abuse.

Given Council's commitment to reducing the number of closed meetings, and an existing process under which the Office of the City Clerk and Solicitor advises the City's Meetings Investigator in advance of a closed session, staff do not anticipate that the additional discretionary reasons for closed meetings will have an effect on current practices or the frequency of closed meetings.

That said, staff will be required to amend Subsection 13(1) of the *Procedure By-law* to include the four new, discretionary closed meeting provisions that will be provided under the *Municipal Act, 2001*, effective January 1, 2018.

Two New, Mandatory Policies Regarding Council-Staff Relations and Pregnancy/Parental Leave for Members of Council

Subsection 270(1) of the *Municipal Act, 2001* requires that municipalities "adopt and maintain" policies with respect to a variety of matters. Effective March 1, 2019, Bill 68 will add three new policies to the existing list set out in the *Act*. As a result, municipalities will be required to adopt and maintain policies with respect to:

- The relationship between members of council and the officers and employees of the municipality;
- Pregnancy leaves and parental leaves of Members of Council; and
- The manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality.

While there is no requirement to adopt these policies prior to March 1, 2019, the City of Ottawa has already established protocols and practices with respect to Council-staff

relations and Members' leaves of absence. Therefore, staff is recommending Council adopt overarching policies with respect to these matters that incorporate the existing protocols and practices in a manner that will satisfy the Bill 68 provisions.¹

Delegating Authority to Extend the Contract of the City's Current Integrity Commissioner

Robert Marleau was appointed as the City of Ottawa's first Integrity Commissioner on August 29, 2012. His initial one-year appointment was subsequently renewed for a five-year term that expires on August 31, 2018.

Mr. Marleau has played a key role in the evolution of Council's Accountability Framework. In particular, Mr. Marleau developed the Code of Conduct for Members of Council, as well as the Gifts Registry and the Community, Fundraising and Special Events Policy. He also managed the rollout of the City's Lobbyist Registry and established the procedures and practices of the Integrity Commissioner's Office.

Extending Mr. Marleau's term of office for an additional two years would provide Council with consistency in the development of the new, mandatory elements of the Accountability Framework as a result of Bill 68 and access to a well-established Integrity Commissioner through this period of change. This report recommends that Council delegate the authority to the City Clerk and Solicitor to negotiate, finalize and execute a two-year extension to Mr. Marleau's contract, with optional one-year extensions at the end of that period.

Other Noteworthy Provisions of Bill 68 Will Come into Force on January 1, 2018

This report provides information about other provisions of Bill 68 that will come into force on January 1, 2018, and do not require immediate or preparatory changes to City procedures or policies.

First, Bill 68 changes the definition of a "meeting" within the *Municipal Act, 2001*, to clarify that a quorum of members must be present, and members must "discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee."

¹ It should be noted that Council previously addressed the matter of a Tree Canopy and Natural Vegetation Policy at its meeting of June 28, 2017, as set out in the report titled, "[Urban Forest Management Plan](#)," and no further action is required.

Bill 68 also includes a requirement for a municipality or local board to pass a resolution stating how it intends to address a Meetings Investigator's report that indicates the Meetings Investigator's opinion, and the reasons for it, that a meeting or part of a meeting appeared to have been closed to the public contrary to the open meeting rules set out under Section 239 of the *Municipal Act, 2001*, or the municipality's procedure by-law. While it has been a number of years since the last Meetings Investigator report found any contraventions of open meeting rules at the City of Ottawa, Council has previously addressed Meetings Investigator reports by resolution, which is in keeping with the provisions set out in Bill 68.

In addition to the specific recommendations that staff are bringing forward for Council consideration at this time, this report outlines the approaches that staff will take to bring forward other measures for consideration in advance of the effective date of March 1, 2019. A brief overview of these approaches, as well as potential issues, challenges and questions that staff anticipate may be encountered, is provided below.

Matters That Will Be Brought Forward as Part of the 2018-2022 Governance Review

As described throughout this report, a sizeable amount of work will be required to implement the mandatory provisions of Bill 68 that come into force on March 1, 2019. Several new and complex provisions will inevitably have resource and financial impacts on the City of Ottawa and Council's Accountability Framework, though the extent of these impacts is difficult to forecast.

In addition, the intent of some provisions of the Bill is unclear and the new legislation does not address all technical, procedural and implementation details related to some of the complex amendments. Staff are monitoring sources such as the Ministry of Municipal Affairs for any clarification to these amendments. Any questions or concerns that remain outstanding at the time of the 2018-2022 Governance Review will be brought to Council's attention at that time.

A high-level description of new requirements under Bill 68, and the work that staff will undertake over the next year, is provided below.

Establishing a Code of Conduct for Members of Local Boards

By March 1, 2019, Council must establish a code of conduct for members of the City of Ottawa's local boards, including Business Improvement Areas ("BIAs"). This code of conduct will be administered by the Integrity Commissioner.

It is expected that the requirement to establish and implement a code of conduct for local boards will have resource implications for the City. The creation of the code of conduct and the training involved will have an initial impact on the workload of the Integrity Commissioner's Office. Under Bill 68, the Integrity Commissioner is not only mandated the oversight and application of the code of conduct, but also mandated to provide advice and education with respect to the code of conduct for local boards. Approximately 237 local board members from 22 local boards will potentially be seeking advice from the Integrity Commissioner on code-of-conduct-related matters. It is difficult to predict the ongoing volume of work that will be required of the Integrity Commissioner following the implementation of a code of conduct for local boards. It is anticipated, in a similar manner to the implementation of the Code of Conduct for Members of Council, that the volume of day-to-day work will stabilize following the initial development, implementation and training associated with a code of conduct for local boards.

Developing the mandatory code of conduct for members of local boards requires an ongoing review to determine which "local boards" will be covered by the code – this report provides a preliminary review – as well as additional research and consultation with Members of Council, members of local boards and other stakeholders. New procedures and protocols will be needed to incorporate the Integrity Commissioner's new roles and responsibilities, and training and education will be required.

The Integrity Commissioner intends to consult directly with all Members of Council as well as with members of the applicable local boards and relevant stakeholders regarding the development of a code of conduct. A proposed code of conduct will be brought forward for Council consideration as part of the 2018-2022 Governance Review. This approach will allow for Council to meet its statutory obligation to have a code of conduct in place for members of local boards, in a manner that aligns with recruitment for local board members prior to March 1, 2019.

A New, Mandatory Conflict-of-Interest Regime

Bill 68 establishes a new regime for conflict-of-interest matters. Amendments to both the *Municipal Act, 2001* and the MCI A will give municipal Integrity Commissioners the responsibility to provide advice and education with respect to the MCI A, and establish a new complaint and investigative process for conflict-of-interest applications.

These changes under Bill 68 will likely have a financial and resource impact, and may affect the length of time that conflict-of-interest matters take to be resolved, as described in the Discussion section of this report. A number of matters will need to be considered in developing procedures and protocols relating to this new role for the Integrity Commissioner.

Under Bill 68, the mandatory responsibilities of the Integrity Commissioner will be expanded to include providing pecuniary (financial) conflict-of-interest advice to both members of Council and local boards under the MCI A. Currently, members are required to seek independent legal advice when concerned about a potential conflict of interest. As of March 1, 2019, members will be able to request conflict-of-interest advice directly from the Integrity Commissioner.

Furthermore, beginning March 1, 2019, individuals who believe a member of Council or of a local board has broken the conflict-of-interest rules set out in the MCI A may submit an application to the Integrity Commissioner. After an investigation has been completed, and where he or she deems it appropriate, the Integrity Commissioner may apply to a judge for a determination of whether the rules were contravened.² Council will be responsible for covering the costs of an Integrity Commissioner application to a judge when the application pertains to an alleged contravention of a member as a Member of Council, which has the potential to have significant financial and resource impacts.

In addition, the MCI A, as amended by Bill 68, will include two new requirements regarding declarations of interest. First, when a member of Council or of a local board has a pecuniary interest in a matter, the member must file a written statement of the interest and its general nature with the Clerk of the municipality or the secretary of the local board. This written statement must be filed at the meeting or as soon as possible following the meeting at which the relevant matter is considered. Staff will bring forward an amendment to the *Procedure By-law* as part of the 2018-2022 Governance Review

² Individuals will continue to have the option of applying directly to a judge for a determination of whether conflict-of-interest rules were contravened.

to formalize the City's current process, which sufficiently addresses the Bill 68 requirement.

Second, Bill 68 requires a municipality or local board to establish and maintain a registry of members' declarations of interest. This will require a modest change to the current practice at the City of Ottawa, and staff will bring forward a recommendation as part of the 2018-2022 Governance Review in order to have a registry in place by March 1, 2019.

Other New Conflict-of-Interest Obligations and Amendments to the MCIA

A number of other new changes to the conflict-of-interest framework will come into force on March 1, 2019. These changes will have minor or no direct impact on Council's Accountability Framework, but will have an effect on pecuniary matters generally. Briefly, they include the following:

- Provisions that provide for procedural fairness by permitting a Member of Council who is the subject of a Code of Conduct investigation report to participate in discussions regarding the report and any recommended sanctions;
- A new section that will specifically prohibit members of Council and local boards from attempting to influence any decision or recommendation of a person or body with delegated powers or duties where the member has a direct or indirect pecuniary interest;
- A new, wider range of penalties that may be imposed by a judge for a contravention of MCIA provisions; and
- A new preamble added to the MCIA that will provide a set of principles.

Technical and Procedural Changes to Integrity Commissioner Processes

Bill 68 also includes several specific and technical changes affecting the Integrity Commissioner's processes that will come into force on March 1, 2019. The Integrity Commissioner will report on adjustments to his processes as part of his 2018 Annual Report and the 2018-2022 Governance Review.

2018 Municipal Elections – Implementing Changes Made by Bill 68 and Bill 181

In addition to planning for and implementing changes required by Bill 68, the Office of the City Clerk and Solicitor is preparing for the 2018 Municipal Elections.

These preparations involve incorporating changes made by Bill 68 as well as a large number of new provisions that will be in force for the 2018 Municipal Elections pursuant to Bill 181, the *Municipal Elections Modernization Act, 2016*. Bill 181 received Royal Assent on June 9, 2016, and its amendments and their potential or known impacts are described in the staff report titled, "[Bill 181, the *Municipal Elections Modernization Act, 2016* – Changes to the *Municipal Elections Act, 1996*.](#)"

Bill 68 made a few additional changes to those set out in Bill 181, as follows:

- The contribution limit to a single candidate or third-party advertiser is raised to \$1,200;
- There is a new self-funding formula and limit for municipal Council candidates; and
- Bill 68 changes the start date of the term of office to November 15 in the year of a regular election, effective the year 2022.

As noted in this report, staff is incorporating the changes made by Bill 68 by reviewing and updating candidate information packages and information sessions, as well as relevant training materials, programs, forms and web content, as appropriate.

BACKGROUND

Ontario's Evolving Municipal Governance Framework – Amendments to Key Pieces of Legislation

The *Municipal Act, 2001*, the *City of Toronto Act, 2006*, the *Municipal Conflict of Interest Act* (the "MCIA") and the *Municipal Elections Act, 1996* (the "MEA") provide much of the foundation for governance and authority for the 444 municipalities in Ontario, including the City of Ottawa. Collectively, these pieces of legislation establish the framework for matters such as the powers, responsibilities and duties of municipal Councils, decision-making processes, accountability and transparency, municipal finance, and the democratic process by which Members of Council are elected to office.

The *Municipal Act, 2001* sets out general and specific powers that provide for municipal governance and service delivery. These include “natural person” powers through which a municipality “has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority” under the *Municipal Act, 2001* or any other Act.³ The *Act* includes broad powers for Councils to pass by-laws related to a range of matters concerning the municipality and its local boards, including governance structure, accountability and transparency, and financial management.⁴ The *Act* also includes provisions regarding the roles and responsibilities of Councils and statutory officers of the municipality, processes and procedures for meetings of Council, specific policies that municipalities must adopt and maintain, and various financial and administrative matters. Similarly, the *City of Toronto Act, 2006* provides the City of Toronto with its own set of statutory powers which largely mirror those in the *Municipal Act, 2001*.

The MCI Act provides rules relating to conflict of interest for Members of Council and members of local boards. Generally, these rules are meant to ensure that these members do not participate in decision-making, or otherwise influence decisions, at meetings of Council, Standing Committees and local boards when a matter in which the member has a pecuniary (financial) interest is being considered.

The MEA governs all municipal elections in Ontario. This legislation provides rules for the administration of elections and addresses matters such as voter and candidate eligibility, methods of voting, campaign and campaign finance rules, questions on the ballot and legislative dates in the election cycle, including the length of the campaign period and Voting Day. The MEA also sets out the roles and responsibilities of Council and Clerk, school boards, electors and candidates, and includes provisions with respect to compliance, enforcement and penalties.

From time to time, the Ontario Government reviews and may bring forward amendments for all four pieces of legislation. Given the important roles of these statutes, any changes to the legislation can have significant effects on municipal policies, procedures, finances, resources and ability to provide services.

To provide some context for the recent legislative review and related amendments that are the subject of this report, it may be useful to understand how these foundational pieces of legislation were established and how they have evolved over time. Many of

³ As set out in Section 9 of the *Municipal Act, 2001*.

⁴ As set out in Section 10 of the *Municipal Act, 2001*.

the recent changes to the *Municipal Act, 2001* (and the *City of Toronto Act, 2006*), MClA and MEA build upon previous legislative reviews as well as recommendations and observations from judicial inquiries and court decisions. The following brief overview also demonstrates how a number of protocols, procedures and other measures in place at the City of Ottawa have been shaped by discretionary and mandatory provisions within the legislation that is affected by the recent changes.

The Municipal Act, 2001

The *Municipal Act, 2001* came into force on January 1, 2003, after the first comprehensive review and revision of legislation firstly, and more commonly, known as the *Baldwin Act* of 1849. The *Municipal Act, 2001* (and the *City of Toronto Act, 2006*) are reviewed every five years “to ensure they are responsive to changing circumstances and new challenges,”⁵ according to the Province. Prior to the review that led to the amendments discussed in this report, the most recent set of comprehensive changes to the *Municipal Act, 2001* resulted from Bill 130, the *Municipal Statute Law Amendment Act, 2006*, which received Royal Assent on December 20, 2006.

Bill 130 was an omnibus bill that included almost 200 pages of revisions to the *Municipal Act, 2001*, most of which came into effect on January 1, 2007. The Bill provided municipalities with greater powers and autonomy, which was balanced with increased accountability and transparency measures.

Specifically, Bill 130 gave municipalities the authority to adopt codes of conduct for Members of Council and members of local boards, as well as to appoint an Integrity Commissioner, a Lobbyist Registrar (and to establish a Lobbyist Registry), and a Municipal Ombudsman.⁶ This authority was discretionary for all municipalities except the City of Toronto, which was required under separate legislation to have an Integrity Commissioner, Lobbyist Registrar and Lobbyist Registry, and Municipal Ombudsman, as well as codes of conduct for Members of Council and members of local boards.

In addition, Bill 130 provided an enhanced mandate and scope of authority for municipal Auditors General. Municipalities were also authorized to appoint an investigator to investigate complaints relating to compliance with open meeting requirements.

⁵ Government of Ontario, “[Ontario Ensuring Municipal Legislation Continues to Serve Communities](#),” retrieved on July 13, 2017.

⁶ More information relating to Bill 130 is provided in the staff report titled, “[Bill 130 – Municipal Statute Law Amendment Act](#)”.

Furthermore, the Bill set out a list of policies that each municipality is required to adopt and maintain, including policies addressing “the delegation of its powers and duties,” and “the manner in which the municipality will try to ensure that it is accountable to the public for its actions, and ... that its actions are transparent to the public.”⁷

Many of the accountability and integrity tools contained in Bill 130 (and the mandatory provisions for the City of Toronto) were directly related to events that led up to, and the recommendations made by, two City of Toronto judicial inquiries. These judicial inquiries, which are commonly known collectively as the “Bellamy Inquiry,” or the “MFP Inquiry,” resulted from concerns about apparent cost overruns in Toronto’s Information and Technology procurement process.⁸ The Bellamy Inquiry, which was led by Madame Justice Denise Bellamy, made 241 recommendations in September 2005, mostly relating to the broad themes of ethics, governance, lobbying, and procurement (as well as three additional recommendations related to public inquiries)⁹.

At the City of Ottawa, where increasing accountability and transparency had been a priority since amalgamation, changes to the *Municipal Act, 2001* influenced the evolution of the governance structure and practices up to the beginning of the 2010-2014 Term of Council. By 2010, Council had implemented a number of governance changes as a result of Bill 130, including: confirming the statutory powers of the Auditor General as outlined in the amended *Municipal Act, 2001*; creating the position of Meetings Investigator to address complaints related to closed meetings; increasing delegation to the Ward Councillor and staff for specific matters; and adopting an Accountability and Transparency Policy and a Delegation of Powers Policy.

Then, through the [2010-2014 Council Governance Review](#), Council endorsed the Mayor’s initiative for the development of an Accountability Framework for Members of Council. This Accountability Framework includes a Code of Conduct for Members of Council (as well as related policies) and a Lobbyist Registry. The application of the Code of Conduct is overseen by an Integrity Commissioner who also acts as the City’s Lobbyist Registrar and Meetings Investigator. The Integrity Commissioner is indemnified and also provides advice and education for Members of Council, staff and the public.

⁷ As set out in Section 270 of the *Municipal Act, 2001*.

⁸ This matter was commonly known as the MFP Computer Leasing scandal.

⁹ More information relating to the Bellamy Inquiry is provided in the staff report titled, “[Code of Conduct for Members of Council and Gifts Registry](#)”.

The City's development of the Accountability Framework considered the recommendations set out in the Bellamy Inquiry, as well as recommendations and expert testimony from another judicial inquiry in Mississauga that is described in more detail below. The Accountability Framework is reviewed and updated regularly as part of governance reviews that occur twice per term of Council, and as necessary following any relevant legislative changes and court decisions or legal interpretations that may arise.

The Municipal Conflict of Interest Act

The *Municipal Conflict of Interest Act* first received Royal Assent on December 15, 1972. In response to a number of issues that arose over the next decade, a revised piece of legislation – the *Municipal Conflict of Interest Act, 1983* – came into force on March 1, 1983.

In broad and general terms, the MCIA currently requires any member of a Council or a local board to undertake a number of actions when present at a meeting where the matter relating to his or her pecuniary interest is considered. While not defined in the MCIA, the courts have long held a “pecuniary interest” to be one “concerning or consisting of money.’ ... [A]n interest that has a monetary or financial value.”¹⁰ Actions a member must take include disclosing the interest and its general nature before the matter is considered; not taking part in the discussions or voting on any question in respect of the matter; not attempting to influence in any way (before, during or after) the vote; and leaving the meeting if it is closed to the public. The MCIA also provides for an application to be made to a judge for a determination of whether or not conflict-of-interest provisions have been contravened, and penalties for a contravention include the potential loss of a Member's seat.

At the City of Ottawa, the current practice with respect to declarations made in accordance with the MCIA is for a written declaration of interest to be prepared in advance and signed by the Member who is declaring the interest. At the Committee or Council meeting where the matter is being considered, the Member reads the statement aloud for the record and the Clerk records the declaration of interest in the meeting minutes. The Member does not participate in discussions or voting at the meeting. Furthermore, as a “best practice,” the Member leaves his or her seat even if the item is considered in an open session.

¹⁰ *Mondoux v. Tuchenhagen* (2010), 79 M.P.L.R. (4th) 1 (Ont. S.C.J.).

Unlike the *Municipal Act, 2001* and the *City of Toronto Act, 2006*, the MCIA has been amended infrequently and not according to any set schedule. The amendments in 1983 were the most recent substantial changes to the legislation. That being said, there have been a number of recommendations made for amendments to the legislation, many of which resulted from a judicial inquiry requested by Mississauga City Council in November 2009.

This inquiry, known as the Mississauga Judicial Inquiry, investigated issues in connection with an Enersource Hydro Mississauga shareholders' agreement to which the City of Mississauga was a party (Phase I of the inquiry), as well as the acquisition by the City of approximately 8.5 acres of land in the city centre (Phase II of the inquiry). Part of the inquiry involved specific issues that were raised with respect to the Mayor's involvement in dealings on behalf of the private business interests of her son.

The Mississauga Judicial Inquiry, led by Mr. Justice J. Douglas Cunningham, issued its final report in October 2011. For Phase II, Justice Cunningham made 23 recommendations related to matters including the MCIA, the City of Mississauga's code of conduct, and the office of the Integrity Commissioner.¹¹ Justice Cunningham also made a number of observations about other measures that might prevent similar circumstances in the future.

In addition to the findings of the Mississauga Judicial Inquiry, other observations with respect to the MCIA emerged by way of the court's decisions in *Magder v. Ford*. This was a case that involved former Toronto Councillor (and later Mayor) Rob Ford's participation in a Council meeting that followed an Integrity Commissioner's ruling that he had breached several provisions of the City's Code of Conduct. *Magder v. Ford* reinforced concerns in Ontario with respect to the relationship of a municipal code of conduct and the MCIA, particularly as this relationship relates to procedural fairness and a Member's ability to address Council on code-of-conduct matters, including proposed penalties.¹²

The Municipal Elections Act, 1996

¹¹ More information relating to the Mississauga Judicial Inquiry is provided in the staff report titled, "[Code of Conduct for Members of Council and Gifts Registry](#)".

¹² More information relating to *Magder v. Ford* is provided in the staff report titled, "[Code of Conduct for Members of Council and Gifts Registry](#)".

The MEA came into effect for the 1997 municipal elections as part of a series of reforms to legislation governing municipalities. It is reviewed after every municipal election, “to determine if it meets the needs of Ontario communities,” according to the Province.¹³

The most recent review of the MEA occurred during the current term of Council and resulted in a large number of changes that will be in force for the 2018 Municipal Elections, pursuant to Bill 181, the *Municipal Elections Modernization Act, 2016*. Bill 181 received Royal Assent on June 9, 2016.

Bill 181 made approximately 65 pages of amendments to the MEA (which itself was approximately 76 pages). The changes affect most parts of the legislation, including campaign finance, third-party advertising, accessibility and enforcement, ranked ballots and the election calendar, as described in the staff report titled, “[Bill 181, the Municipal Elections Modernization Act, 2016 – Changes to the Municipal Elections Act, 1996](#),” which was considered by Council on December 14, 2016.

Currently, staff are planning and preparing to ensure that the City of Ottawa’s election process in 2018 adheres to the new legislative requirements and principles resulting from Bill 181 (as well as the more recent amendments described in this report), and to improve the service available to electors.

Bill 68 – New Mandatory Changes Will Come Into Force in 2018 and 2019

On June 5, 2015, the Government of Ontario announced that it was reviewing the *Municipal Act, 2001* and the *City of Toronto Act, 2006*, as well as the *Municipal Conflict of Interest Act*. The Government stated that the review would focus on the general themes of accountability and transparency, financial sustainability, and responsive and flexible service delivery.

The Ministry of Municipal Affairs conducted public consultation between June and October 2015. Formal submissions were received from the Association of Municipalities of Ontario (“AMO”) and the Association of Municipal Managers, Clerks and Treasurers of Ontario (“AMCTO”), as well as individual municipalities and other stakeholders.

¹³ Government of Ontario, “[Municipal Elections Act Review: Public Consultation Discussion Guide](#),” Page 1, retrieved on July 13, 2017.

On November 16, 2016, Bill 68, the *Modernizing Ontario's Municipal Legislation Act, 2017*, was tabled in the Legislative Assembly of Ontario. Thunder Bay-Atikokan MPP Bill Mauro, who is the Minister of Municipal Affairs, said during First Reading of Bill 68 that, "Our proposed package of reforms would, if passed, help local governments be more flexible, open and responsive to the needs of their constituents."

After Second Reading, Bill 68 was considered by the Standing Committee on Social Policy in April and May of 2017. The Standing Committee made some amendments to the Bill – passing a series of motions brought forward by Government Members, while voting down motions from Members of other parties. Most notably, by way of a Government motion, the Standing Committee removed a provision proposed in the original version of Bill 68 that would have provided for Integrity Commissioners to investigate code of conduct and MCIA matters on their own initiative, without receiving a complaint.¹⁴

On May 30, 2017, Bill 68 passed Third Reading and received Royal Assent. The final Bill provides approximately 43 pages of amendments to the *Municipal Act, 2001* (and the *City of Toronto Act, 2006*), the MCIA and MEA, as well as approximately 12 other pieces of legislation.

Within the scope of the City Clerk and Solicitor's mandate, the most significant amendments will affect Council's Accountability Framework. Bill 68 makes changes relating to accountability and transparency that build upon previous amendments under Bill 130, and are consistent with some of the recommendations and issues that arose in the Toronto Judicial Inquiries and the Mississauga Judicial Inquiry, as well as court cases such as *Magder v. Ford*.

Bill 68 makes it mandatory for municipalities to establish codes of conduct for Members of Council and members of local boards. It expands the role of the Integrity

¹⁴ This provision had been strongly opposed by organizations representing Ontario municipalities. AMCTO stated that allowing Integrity Commissioners to initiate investigations on their own initiative could jeopardize their education and advice role, and "could place individual integrity commissioners in an awkward position where they are at the same time looking for evidence of wrongdoing to form the basis of new investigations, while also providing advice to members of Council who may disclose a potential incident of wrongdoing..." Addressing the Government motion that removed the "own-initiative" provision, Northumberland-Quinte West MPP Lou Rinaldi, who is the Parliamentary Assistant to the Minister of Municipal Affairs, told the Standing Committee on April 24, 2017, that, "This change could provide cost savings for municipalities as investigations would only be initiated after a complaint is received as proposed by Bill 68, rather than on the integrity commissioners' own initiative."

Commissioner, whose functions are also made mandatory, to include matters under the MCIA. Bill 68 also establishes a new conflict-of-interest framework in Ontario.

Other changes in the Bill relate to closed meeting provisions, mandatory policies that municipalities must adopt and maintain, pregnancy and parental leave for Members of Council, municipal finance, and election rules. Some of the amendments under Bill 68 came into force immediately upon receiving Royal Assent, while others will take effect at later dates named by proclamation of the Lieutenant Governor.

After Bill 68 received Royal Assent, the City Clerk and Solicitor issued a memorandum to Members of Council to provide an overview of changes that fall within the purview of the Office of the City Clerk and Solicitor, as well as information about changes relating to municipal finance. This memorandum, dated July 7, 2017, is attached as Document 1. It includes additional information about provisions of Bill 68 that are not the subject of this report – particularly those that are discretionary changes or which have already been addressed by Council – as there is no new information to provide to Council at this time.¹⁵

On July 12, 2017, Council approved Motion No. 54/8, which incorporated staff's recommended approach to a small number of provisions within Bill 68 that were in force upon Royal Assent. Specifically, Council approved amendments to the *Procedure By-law* that provide for pregnancy and parental leave for Members of Council, as well as changes to the specific authority that Council uses to appoint its Deputy Mayors. The motion also directed staff to prepare a comprehensive report with respect to the mandatory legislative changes resulting from Bill 68.

On or about September 15, 2017, the Province provided notice on its website for the dates that most provisions of Bill 68 will come into force. As outlined below, a few minor “housekeeping” amendments will come into force on January 1, 2018 – these changes are largely the focus of the recommendations made in this report. Other, more significant amendments, including those that relate to Council's Accountability Framework, will come into force on March 1, 2019, during the 2018-2022 Term of Council.

¹⁵ It should be noted that the Prudent Investor Standard provision of Bill 68 that is referenced in the “Amendments to Finance Provisions of the *Municipal Act, 2001*” section of the memorandum did not receive a coming-into-force date as part of the recent proclamation of effective dates for Bill 68.

Specifically, on January 1, 2018, the following amendments under Bill 68 will come into force:

1. Four new discretionary reasons that may be used to close all or part of a meeting to the public;
2. A requirement for a municipality to pass a resolution stating how it intends to address a report from the Meetings Investigator, if the report finds that a meeting or part of a meeting has been closed to the public contrary to open meeting rules;
3. An amended definition of “meeting” within the *Municipal Act, 2001*; and
4. An amendment that provides municipalities with the discretion to allow a Member of Council, or certain local boards, or of a Committee of either of them, to participate electronically in a meeting that is open to the public and has a quorum of members physically present.

On March 1, 2019, a number of “complex” amendments will come into force, including as follows:

1. A requirement for municipalities to establish codes of conduct for Members of Council as well as for members of local boards, including Business Improvement Areas (“BIAs”);
2. A requirement that municipalities appoint an Integrity Commissioner or provide for the services of an Integrity Commissioner of another municipality, and for the Integrity Commissioner to be indemnified by the municipality;
3. An expanded and mandatory role for Integrity Commissioners that includes application of the required codes of conduct and the MCIA, as well as responding to requests from Members of Council and members of local boards for advice respecting their obligations under their respective code of conduct and the MCIA, and providing educational information to Members of Council, members of local boards, the municipality and the public regarding the codes of conduct and the MCIA;
4. A new conflict-of-interest framework that includes the requirement for municipalities and local boards to establish a public registry of declarations of pecuniary interest made by members. The new framework also includes a

number of other obligations and changes that are described in the Discussion section of this report; and

5. A requirement for municipalities to adopt and maintain three additional policies, specifically regarding “the relationship between Members of Council and the officers and employees of the municipality,” as well as “pregnancy leaves and parental leaves of Members of Council,” and “the manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality.”

This report provides recommendations for Council to consider at this time, as well as information about the “complex” changes made by Bill 68 and the work that staff will undertake to address these mandatory amendments by March 1, 2019.

In preparation for this report, the City Clerk and Solicitor met with all Members of Council to discuss the changes made by the Bill and to seek input on any proposals being developed for recommendation to Council. The consultation with Members has informed the report and any recommendations that are made or approaches that are described.

Staff Recommends Council Consider Mandatory “Housekeeping” Amendments Now – “Complex” Amendments Will Be Addressed in the 2018-2022 Governance Review

In order to meet the pending requirements of Bill 68, staff recommends Council consider and approve a small number of mandatory housekeeping measures at this time to comply with provisions that will come into force on January 1, 2018, as well as some simpler and preparatory measures to address provisions that take effect on March 1, 2019.

The housekeeping changes recommended in this report would require no additional costs and can be implemented with little, if any, effect on current practices. They include proposed changes to the *Procedure By-law* to incorporate the mandatory meeting-related provisions of Bill 68, as well as new, overarching policies that would satisfy the need for the City to adopt and maintain policies regarding Council-staff relations and

Member pregnancy and parental leaves.¹⁶ As per Council's standard practice, the changes recommended in this report would be reviewed as part of the regular governance reviews.

In addition, to ensure consistency in the development of measures needed to address complex provisions of Bill 68 that are related to the Accountability Framework, and to give Council continued access to a well-established Integrity Commissioner at this time of change, it is recommended that Council delegate the authority to the City Clerk and Solicitor to negotiate, finalize and execute a two-year contract extension (with optional one-year extensions at the end of that period) with the City's current Integrity Commissioner, Robert Marleau. Mr. Marleau's current contract expires on August 31, 2018.

Council's consideration of housekeeping, simpler and preparatory measures at this time will provide for the City to meet its obligations with respect to provisions of Bill 68 that will come into force on January 1, 2018. It will also allow staff to focus their efforts on the extensive work required to develop recommendations to address the complex provisions within Bill 68 that will be required as of March 1, 2019, specifically relating to the mandatory new code of conduct for members of local boards, and procedures and protocols with respect to the Integrity Commissioner's expanded role and the new conflict-of-interest framework. Staff will bring forward recommendations regarding these provisions as part of the 2018-2022 Governance Review, which will be tabled at the final meeting of the outgoing Council in November 2018 and considered at the first meeting of the new Council in December 2018.

This measured approach also ensures that Members of the next term of Council – to whom the new oversight regime will apply as of March 2019 – will consider and approve any new proposals that will be recommended by staff, working in consultation with the Integrity Commissioner. One of the arguments made in favour of having the complex provisions of Bill 68 come into force during the next term of Council, rather than sooner, was that it would be “in fairness to sitting Members of Council, to ensure that those who will be governed by and held accountable to the new legislation, are given an

¹⁶ It should be noted that on June 28, 2017, Council approved the Urban Forest Management Plan as the policy required by Bill 68 with respect to the protection and enhancement of the tree canopy and natural vegetation, as set out in the report titled, [“Urban Forest Management Plan.”](#)

opportunity to be fully informed on their obligations, especially with respect to the MClA provisions...”¹⁷

Staff will ensure that any new mandatory requirements described in this report are incorporated into training and orientation materials for the 2018-2022 Term of Council. Discretionary provisions of Bill 68 that would require Council approval, such as the option to provide for electronic participation at meetings, will also be reviewed and reported back to Council as required, as part of future governance review processes.

Implementing “Complex” Amendments by March 1, 2019, While Also Preparing for the 2018 Municipal Elections and Council Transition

For some additional context for the approach set out in this report and the efforts required to develop recommendations regarding the complex mandatory changes under Bill 68, it may be useful to understand some of the potential issues, challenges and questions that have been raised with respect to these provisions during and after the provincial legislative process.

A high-level description is set out below that provides examples of some of the issues that staff expect to encounter in developing recommendations to bring forward to Council.

The Scope of the Changes is Significant

A number of interested parties have noted the sizeable amount of work that will be required for municipalities to meet the new requirements. Submissions to the Standing Committee on Social Policy from stakeholders such as AMCTO recommended that amendments relating to codes of conduct and the role of Integrity Commissioners should not come into effect until the 2018-2022 Term of Council.

“We believe that this bill needs a lengthy transition period before it enters into force. The reason is simple: the amount of work that this bill requires municipalities to do is significant. ... All communities, but especially smaller communities will need enough time to develop new policies, hire Integrity Commissioners, and develop new codes of

¹⁷ This statement was made by Suzanne Craig, an Integrity Commissioner for several Ontario municipalities, in a submission to the Standing Committee on Social Policy. See Suzanne Craig, “Submission to the Standing Committee on Social Policy: Subject – Bill 68, *Modernizing Ontario’s Municipal Legislation Act, 2017*”, Page 7.

conduct,” stated AMCTO in its submission.¹⁸ AMCTO indicated that more than 20 per cent of 313 municipalities that responded to a March 2017 survey regarding Bill 68 did not have a code of conduct for Members of Council, and more than half did not have a code of conduct for members of local boards.

AMO also advocated for “a longer rather than shorter time period before the IC [Integrity Commissioner] regime is enacted as a mandatory accountability process.” AMO noted that the closed meeting investigator system “took a year to put in place,” and that the Integrity Commissioner regime in Bill 68 “is more complex, involving hiring of an IC, establishing a budget, administrative system and a Code of Conduct, as well as education for both councils and all of the local boards.”¹⁹

Municipal Integrity Commissioners made similar comments. Valerie Jepson, the City of Toronto’s Integrity Commissioner, recommended to the Standing Committee that the parts of Bill 68 related to member conduct should not come into force before the beginning of the next term of Council. The changes in Bill 68 “are significant and will require time for municipalities to prepare. The implementation of Bill 68 will fundamentally alter the oversight regime for current council and board members across Ontario,” stated Ms. Jepson’s submission to the Standing Committee.²⁰

Although the March 1, 2019, effective date for complex amendments of Bill 68 is favourable for the work that is required in order for the City of Ottawa to meet the new requirements, a number of significant matters will need to be considered as staff work over the next year to develop recommendations to bring forward to Council. While Council has already established an Accountability Framework – which gives staff the benefit of previous research and lessons learned – developing recommendations that will address the mandatory measures is a large undertaking.

For example, developing the mandatory code of conduct for members of local boards requires an ongoing review to determine which “local boards” will be covered by the code, as well as additional research and consultation with Members of Council, members of local boards and other stakeholders [such as the Ottawa Council of Business Improvement Areas (“OCOBIA”)]. There will be new procedures and protocols

¹⁸ Association of Municipal Managers, Clerks and Treasurers of Ontario, “[AMCTO Submission on Bill 68, Modernizing Ontario’s Municipal Legislation Act](#),” Pages 13 and 14, retrieved on August 30, 2017.

¹⁹ See Association of Municipalities of Ontario, “[Several Important Amendments to Bill 68 Achieved](#),” May 9, 2017.

²⁰ Valerie Jepson, “Submissions to the Standing Committee on Social Policy – Bill 68, *Modernizing Ontario’s Municipal Legislation Act, 2017*,” Page 14.

needed to address the Integrity Commissioner's new roles and responsibilities. A new conflict-of-interest complaint and investigative process must be established. Training and education will be required for Members of Council and members of local boards.

"Complex" Amendments Have Unknown Costs and Other Potential Impacts

There are several new provisions in Bill 68 that will inevitably have resource and financial impacts on the City of Ottawa and Council's Accountability Framework, though the extent of these impacts is difficult to forecast. These provisions are related to the expanded scope of the Integrity Commissioner's mandatory role and responsibilities, including the new conflict-of-interest complaint and investigative process that will be required.

A preliminary review suggests that the responsibilities of the Integrity Commissioner will be expanded to include approximately 22 of the City of Ottawa's local boards (including 19 BIAs). As discussed elsewhere in this report, while the financial and resource impacts are unknown at this time, staff anticipates that the volume of work in relation to local boards will stabilize after an initial period of development, implementation, training and education, similar to the implementation of the Code of Conduct for Members of Council.

Potential costs of the new roles and responsibilities for the Integrity Commissioner relating to conflict-of-interest matters are also unknown. However, of particular note is a forthcoming requirement for Council to cover the costs of an application to Court by the Integrity Commissioner, if the Integrity Commissioner investigates a matter and deems it appropriate to apply to a judge for a determination of whether conflict-of-interest rules have been contravened. This has the potential to have significant financial implications, depending on the number and nature of any such cases that may occur.

In addition to potential financial costs and resource requirements, the new oversight regime for local boards may affect matters such as recruitment for local board members, who are volunteers. In its submission to the Standing Committee, AMO recommended that the Integrity Commissioner's application to local boards be deleted, or at least not proclaimed, until it was tested on elected officials. AMO stated that the new Integrity Commissioner regime, "is multi-faceted and untested. ... We need to

evaluate its workability before it is sprung on the thousands of community members who volunteer on local boards.”²¹

Similar concerns were raised by Chris Wray, the Chief Administrative Officer/Clerk-Treasurer of the Municipality of Wawa, who made the following comments to the Standing Committee on April 10, 2017:

“We’re sure that you are aware that there are thousands of local boards across the province, including business improvement areas, that have memberships of citizens who give their time and expertise as volunteers for the betterment of their community. We are also sure that none of you would like to see these community volunteers leave their board positions or not volunteer because their reputation is far more important than the obvious potential for abuse by the newly proposed integrity commissioner complaint system.”

A motion was brought forward at the Standing Committee to limit the role of the Integrity Commissioner to members of local boards that receive compensation, and to phase in the regime with respect to those members, but this motion did not pass. After Bill 68 was ordered for Third Reading, AMO stated that it “remains very concerned about how the integrity regime may affect the many citizens and business people who volunteer to local boards.”²²

Once Council has approved recommendations in the 2018-2022 Governance Review report, staff will conduct a robust recruitment process for local board members for the 2018-2022 Term of Council, and ensure that potential board members are made aware of all new obligations that will be in place.

Some “Complex” Amendments May Require Additional Clarification or Legal Interpretation

The intent of some provisions of Bill 68 is unclear and the new legislation does not address all technical, procedural and implementation details related to some of the complex amendments. This means staff will have to review case law and other potential precedents when developing any recommendations or practices related to those provisions.

²¹ Association of Municipalities of Ontario, “[AMO’s Submission to Standing Committee on Social Policy on Bill 68, Modernizing Municipal Legislation Act](#),” Page 3.

²² See Association of Municipalities of Ontario, “[Several Important Amendments to Bill 68 Achieved](#).” May 9, 2017.

The Discussion section of this report refers to some of the questions and concerns that remain outstanding at this time. It is possible that some of these matters may be addressed prior to the relevant provisions coming into force, or that municipalities will reach a consensus regarding how the issues can be handled. However, it is also possible that some provisions – and any measures municipalities adopt in response to them – may be subject to future legal interpretation and court proceedings after the new regime takes effect. Staff are confident that any changes or updates that happen after the 2018-2022 Governance Review can be addressed by Council and incorporated through interim measures and future governance reviews.

Staff will continue to monitor communications and any potential regulations that may be released by the Ministry of Municipal Affairs, as well as any information from other municipalities or organizations such as AMO and AMCTO, in case they clarify any outstanding matters prior to the effective date of the provisions. Staff will also monitor any relevant court decisions and/or legal interpretations that may arise. Any questions or concerns that remain outstanding at the time of the 2018-2022 Governance Review will be brought to Council's attention at that time.

City of Ottawa Elections – Implementing Changes Made by Bill 68 and Bill 181

In addition to the work required to plan for and implement changes required by Bill 68, the Office of the City Clerk and Solicitor – like all other municipal Clerks across Ontario – is preparing for the 2018 Municipal Elections.

This is a resource- and time-intensive process, particularly in larger municipalities such as the City of Ottawa, which had more than 630,000 eligible voters in 2014. For the 2018 Municipal Elections, staff must incorporate a large number of significant amendments to the MEA that will be in force under changes made by both Bill 68 and Bill 181.

Additional information about the Bill 181 amendments is provided in the report titled, [“Bill 181, the *Municipal Elections Modernization Act, 2016 – Changes to the Municipal Elections Act, 1996*.”](#) The changes to the MEA under Bill 68, and measures being undertaken by staff as a result, include as follows:

1. Bill 68 changes the start date of the term of office to November 15 in the year of a regular election, effective the year 2022

There is no change to the start date for the 2018-2022 Term of Council, being December 1, 2018. However, in 2018, staff will make changes to various contracts related to Member's Offices in relation to the November 15, 2022, start date for the 2022-2026 Term of Council. Staff have advised the Ministry that this date provides a significant challenge with respect to Council transition and orientation. As well, there will be a Ward Boundary Review in the next term, further complicating the transition for the 2022-2026 Term of Council.

2. Contribution limit to a single candidate or third party advertiser is raised to \$1,200

The previous limit was \$750. The new limit is consistent with contribution limits in the provincial elections. Staff will review candidate information packages and information sessions, as well as the Elections database functionality, the Contribution Rebate Program, and various forms and web content.

3. New self-funding formula and limit for municipal Council candidates

This is based on the number of electors eligible to vote for the Office; the specific formula is as follows: \$7,500 + 20 cents per elector for Head of Council and \$5,000 + 20 cents per elector for other Offices, with a cap of \$25,000. In Ottawa, candidates for the Office of Mayor will be capped at the \$25,000 limit and campaigns for Ward Councillor will be affected to varying degrees.

Staff will update the candidate information packages and information sessions, the Elections database functionality, the Election Compliance Audit Committee members' training materials, and various forms and web content.

DISCUSSION

Bill 68, the *Modernizing Ontario's Municipal Legislation Act, 2017*, amends approximately 16 pieces of legislation, including the *Municipal Act, 2001*, the *Municipal Conflict of Interest Act* (the "MCIA") and the *Municipal Elections Act, 1996* (the "MEA"), which are the main focus of this report.

Bill 68 revises parts of the legislation relating to accountability and transparency, financial sustainability, and service delivery. Staff considers some of the changes made by the Bill to be "housekeeping" amendments that require relatively minor changes to

policies and procedures. Other provisions of Bill 68, such as requirements for municipalities to establish codes of conduct for Members of Council and members of local boards, an expanded role for Integrity Commissioners and a new conflict-of-interest framework, are considered to be “complex” amendments. Many of the housekeeping amendments will come into force on January 1, 2018, while the complex amendments will come into force on March 1, 2019.

With respect to matters within the scope of the City Clerk and Solicitor’s mandate, Bill 68 furthers accountability and transparency measures introduced in the *Municipal Act, 2001* approximately one decade ago through Bill 130, the *Municipal Statute Law Amendment Act, 2006*. In this respect, many of the complex changes made by Bill 68 are significant. Measures that were discretionary under Bill 130, such as codes of conduct and the Integrity Commissioner function, are made mandatory under Bill 68. The Bill also includes the first major changes to the MCI since 1983.

The City of Ottawa is a leader among Ontario municipalities in the area of accountability and transparency. Although a number of the significant requirements under Bill 68 are already in place within Council’s Accountability Framework – including an Integrity Commissioner who is indemnified and has an advice and education role, and a Code of Conduct for Members of Council – there is a large amount of work required to implement other mandatory complex provisions that will come into effect in March 2019.

Council will be required to establish a code of conduct for members of local boards. Protocols and procedures for the Integrity Commissioner will need to be revised and established. The new conflict-of-interest framework, including a complaint and investigative process, will need to be incorporated into procedures and protocols. Training and education materials must also be developed.

At this time, staff are bringing forward a small number of recommendations for Council to consider with respect to the housekeeping matters that will come into force on January 1, 2018, as well as simpler and preparatory measures to address some of the provisions that will come into force on March 1, 2019. Recommendations to address the complex amendments under Bill 68 will be brought forward to Council in the 2018-2022 Governance Review.

Recommendations in this report regarding housekeeping matters can be implemented at no additional cost and with little, if any, effect on current practices. They include proposed changes to the *Procedure By-law* that will incorporate meeting-related

provisions of Bill 68 that come into force on January 1, 2018. In addition, there are new, overarching policies that will address the requirement under Bill 68 for the City to adopt and maintain policies regarding Council-staff relations and Member pregnancy and parental leave, as of March 1, 2019. A recommendation is also made that would provide for the City Clerk and Solicitor to negotiate, finalize and execute a two-year contract extension with the City's current Integrity Commissioner (with optional one-year extensions at the end of that period).

Further to these recommendations, this report provides information regarding staff's approach to developing recommendations to address the complex amendments of Bill 68, which will be considered by the next term of Council in the 2018-2022 Governance Review. While there are outstanding questions and concerns with respect to some provisions at this time, staff will monitor these matters for any clarification or developments that may be forthcoming over the next year, prior to bringing recommendations and information to Council in the Governance Review. Staff are confident that any updates or clarification/legal interpretations that may arise after the 2018-2022 Governance Review can be addressed through interim recommendations to Council and future governance reviews.

In preparation for this report, the City Clerk and Solicitor met with all Members of Council to discuss the changes made by Bill 68 and seek input on any changes required. This consultation has informed this report and the proposed actions or approaches that are described and/or recommended to Committee and Council.

The subsections below include discussion with respect to the recommendations that staff are bringing forward for Council consideration at this time, as well as information regarding approaches that staff will take to develop further recommendations for the 2018-2022 Governance Review, as follows:

- **PART I: "Housekeeping" Amendments – Requiring Action in This Report**
 - A. *Procedure By-law* amendments to incorporate meeting-related provisions
 - B. Two new, mandatory policies regarding Council-staff relations and pregnancy/parental leave for Members of Council
 - C. Accountability Framework – Extending the contract of the City's current Integrity Commissioner

- **PART II: “Complex” Amendments – Requiring Future Action in the 2018-2022 Governance Review**

Accountability Framework (Coming into force on March 1, 2019)

- A. Mandatory code of conduct for members of local boards (including Business Improvement Areas)
- B. New, mandatory municipal conflict-of-interest regime
- C. Other new conflict-of-interest obligations and amendments to the MCI
- D. Technical and procedural changes to Integrity Commissioner processes

The changes under Bill 68 are pending at a time when municipal Clerks across the province are planning and preparing for the 2018 Municipal Elections. This time- and resource-intensive process involves the implementation of a number of new mandatory measures as a result of the changes made by Bill 181, the *Municipal Elections Modernization Act, 2016* (as well as the more recent amendments under Bill 68).

PART I: “Housekeeping” Amendments – Requiring Action in This Report

A. Procedure By-law Amendments to Incorporate Meeting-Related Provisions

New definition of a “meeting”

Currently, Subsection 238(1) of the *Municipal Act, 2001* defines a meeting as, “any regular, special or other meeting of a council, of a local board or of a committee of either of them.”

In his submission to the Standing Committee on Social Policy, Ontario Ombudsman Paul Dubé described the definition of a meeting as “uninstructive and circular. It essentially defines a meeting as a meeting. This has created uncertainty amongst municipal officials about whether the open meeting requirements apply to various gatherings.” Mr. Dubé further noted that his Office, which is the default Meetings Investigator for municipalities that do not appoint their own Meetings Investigator, has seen examples in which a quorum of Council members attend a meeting called by a third party and inadvertently violate open meeting rules. In other cases, informal gatherings, sometimes over meals, have violated open meeting rules.

Effective January 1, 2018, Subsection 238(1) is amended by defining a “meeting” as: “any regular, special or other meeting of a council, of a local board or of a committee of them, where,

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

Four discretionary reasons for closed meetings

In accordance with the *Municipal Act, 2001*, all meetings shall be open to the public, except in particular circumstances set out under Subsection 239(2) of the *Act*, which provides that a “meeting or part of a meeting may be closed to the public if the subject matter being consider is,

- (a) the security of the property of the municipality or local board;
- (b) personal matters about an identifiable individual, including municipal or local board employees;
- (c) a proposed or pending acquisition or disposition of land by the municipality of local board;
- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another *Act*.²³

In recent years, Council has used these discretionary closed meeting exemptions sparingly. On November 28, 2007, City Council approved the appointment of the City’s

²³ Particular mandatory circumstances in which a meeting shall be closed to the public are also addressed in Subsection 239(3) of the *Municipal Act, 2001*. Additional discretionary circumstances are also set out in Subsection 239(3.1) of the *Act*.

first Meetings Investigator. The Meetings Investigator is responsible for investigating whether a meeting of City Council, a local board or a committee of either was improperly closed to the public. This role has since been delegated to the Integrity Commissioner.

The 2016 Annual Report of the Integrity Commissioner noted the City's efforts to reduce the number of closed meetings, stating that, "Members of Council and City Staff continue to be committed to holding open meetings and to disclosing as much information publicly as possible."

In his role as Meetings Investigator, the Integrity Commissioner found that nine of 11 closed meetings between November 1, 2015, and September 30, 2016, related "to the traditional exemptions for 'labour relations and/or employee negotiations' as they involved the hiring of the new City Manager and various collective bargaining updates." The remaining two closed meetings concerned audits prepared by the Auditor General involving the 'security of the property' of the City (specifically, an IT breach and an allegation of fraud and waste). The report further stated that "both public reports included a fulsome legal opinion as to why part of those meetings should be considered in the absence of the public."

The Integrity Commissioner's Annual Report also highlighted a practice whereby the Office of the City Clerk and Solicitor advises the Office of the Integrity Commissioner in advance of the public notice of any Committee, Commission or Council meeting where it is expected that confidential matters will be considered. This advance notice provides the Integrity Commissioner "with the opportunity to review the appropriateness of the planned closed session before the Clerk's Office issues public notice as part of the meeting agenda," the report notes. The Integrity Commissioner had no recommendations related to open and closed meetings at the time of the report, which was considered by Council on November 9, 2016.

Effective January 1, 2018, Bill 68 amends Subsection 239(2) by adding four new clauses that may be used for a meeting to be closed to the public, as follows:

- (h) Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
- (i) A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if

disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

- (j) A trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
- (k) A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

The decision to go *in camera* to consider such matters remains Council's discretion. City Council's *Procedure By-law* sets out closed meeting provisions for Council and its Committees, including the statutory requirement that closing a meeting or part of a meeting to members of the public must be done by way of a resolution.

At the Standing Committee meeting of April 25, 2017, Northumberland-Quinte West MPP Lou Rinaldi, who is the Parliamentary Assistant to the Minister of Municipal Affairs, indicated that the new provisions set out under Bill 68 are designed to parallel existing exemptions within the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA") and that checks and balances exist to ensure that improperly closed meetings are addressed, including an appeal and investigation mechanism. Despite this rationale, concerns were still raised about some of these provisions.

In his submission to the Standing Committee on Social Policy, titled, "Comments of the Information and Privacy Commissioner of Ontario on the Proposed Open Meeting Amendments in Bill 68," the Information and Privacy Commissioner of Ontario, Brian Beamish, stated that "there is no demonstrable need for the expansion of the exceptions to the open meeting requirement in the *Municipal Act*," and "the proposed amendments will negatively impact the public's right of access to records under *MFIPPA*."

Similarly, in his submission to the Standing Committee, Mr. Dubé, the Ontario Ombudsman, stated that "expanding the circumstances when municipalities may meet behind closed doors requires caution. The remedial nature of the open meeting rules should be respected and exceptions drafted as narrowly as possible."

Mr. Dubé further noted that he was particularly concerned with the proposed new exception (k), relating to negotiations, as “the language of this clause is extremely broad and might permit discussion about numerous items, which currently must take place in public view, to occur behind closed doors.”

AMCTO also raised concerns about exception (k) in its submission to the Standing Committee, which stated that the exception “is simply too broad. It is worded so loosely that it is prone to misuse and abuse.” The AMCTO submission further noted that, “Over the past ten years municipalities have adapted to the open meeting regime in Ontario, and now conduct the vast majority of their business in public. If the government moves forward with exemption “K” it risks losing that momentum.”²⁴

Section 239.1 of the *Municipal Act, 2001* allows for a person to request that an investigation be undertaken into whether a municipality or local board complied with the *Act* or its procedure by-law with regards to a meeting or part of a meeting that was closed to the public. The Meetings Investigator decides whether an investigation is warranted and, if so, conducts an investigation and submits his or her findings and recommendations to an open meeting of City Council or the local board.

Given Council’s commitment to reducing the number of closed meetings, and the existing process with respect to the Office of the City Clerk and Solicitor advising the Meetings Investigator in advance of a closed session, staff do not anticipate the additional discretionary reasons for closed meetings to have an effect on the current practice or the frequency of closed meetings. Staff will, however, be required to amend Subsection 13(1) of the *Procedure By-law* to include the four new, discretionary closed meeting provisions, as set out in Document 2.

A municipality or local board must pass a resolution stating how it intends to address a Meetings Investigator report that determines open meeting rules were contravened

Bill 68 requires that a municipality or local board pass a resolution stating how it intends to address a Meetings Investigator’s report that indicates the Meetings Investigator’s opinion, and the reasons for it, that a meeting or part of a meeting appeared to have been closed to the public contrary to the open meeting rules set out under Section 239 of the *Municipal Act, 2001* or the municipality’s procedure by-law.

²⁴ Association of Municipal Managers, Clerks and Treasurers of Ontario, “[AMCTO Submission on Bill 68, Modernizing Ontario’s Municipal Legislation Act](#),” Page 13, retrieved on August 30, 2017.

While it has been a number of years since the last Meetings Investigator report found any contraventions of open meeting rules at the City of Ottawa, Council has previously addressed Meetings Investigator reports by resolution, in keeping with the provisions now required by Bill 68.

By way of example, on May 12, 2010, Council considered the Meetings Investigator's report titled, "[Report to the Council of the City of Ottawa Regarding *In Camera* Corporate Services and Economic Development Committee Meeting of August 31, 2009 and Council Meeting of September 9, 2009: The Authorization of a Payment to a Senior Officer.](#)" The report's main recommendation was that Council receive the attached report and consider the recommendations included therein. One of the Meetings Investigator's recommendations for Council's consideration was as follows:

"That Subsection 13(6) of the *Procedure By-law* be amended to provide that every in camera report indicate under the Disposition section either the date that the report will be made public or, if the report is not to be made public, the opinion of the City Clerk and Solicitor that there are legal impediments to the release of the report."

In considering the Meetings Investigator's report, Council approved the following motion (emphasis added):

"WHEREAS the Meetings Investigator has submitted a report to Council including a recommendation to enhance the City's progressive policies related to open meetings; and

WHEREAS staff agree that this recommendation would provide more transparency and accountability by providing the public with more information regarding closed meetings and in camera reports;

THEREFORE BE IT RESOLVED that the *Procedure By-law* be amended so that the Disposition of every in camera report indicates either the date that the report will be made public or a legal opinion indicating why the report cannot be made public and that this be listed in both the Disposition Report and the Minutes of Standing Committees and Council; and

BE IT FURTHER RESOLVED that these changes be adopted as a practice immediately and be formally incorporated into the *Procedure By-law* as part of the upcoming Governance Review Report."

The recommended change was formally incorporated into the *Procedure By-law* on December 8, 2010, as part of Council's approval of the 2010-2014 Council Governance Review.

In addition to Council's practice of passing a resolution addressing a Meetings Investigator's recommendations, City staff provide comment in a Meetings Investigator's report, similar to the Management Response in an Auditor General's report. During consideration of the [2006-2010 Mid-term Governance Review Report](#) on June 8, 2009, City Council approved Part V, Recommendation 8, as follows (emphasis added):

"That the current Meetings Investigator's contract be extended until formal consideration of the 2010-2014 Governance Review and that future reports to Council from the Meetings Investigator include a staff comment."

This practice allows for staff to provide feedback on the Meetings Investigator's findings, and to recommend to Council changes to the *Procedure By-law* resulting from the Meetings Investigator's report.

Similar to the other meeting-related provisions in Bill 68, the requirement relating to the Meetings Investigator comes into force on January 1, 2018. However, as demonstrated above, Council has in the past addressed Meetings Investigator's recommendations by way of a motion. Staff believe that the City's past practices will satisfy the new requirement set out under Bill 68.

B. Two New, Mandatory Policies Regarding Council-Staff Relations and Pregnancy/Parental Leave for Members of Council

Subsection 270(1) of the *Municipal Act, 2001* requires that municipalities "adopt and maintain" policies with respect to the following matters:

1. Its sale and other disposition of land;
2. Its hiring of employees;
3. Its procurement of goods and services;
4. The circumstances in which the municipality shall provide notice to the public and, if notice is to be provided, the form, manner and times notice shall be given;

5. The manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public; and
6. The delegation of its powers and duties.

Effective March 1, 2019, municipalities will be required to adopt and maintain three additional policies, as follows:

- The relationship between Members of Council and the officers and employees of the corporation [a new Subsection 270(1)(2.1) of the *Act*];
- The manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality [a new Subsection 270(1)(7) of the *Act*]; and
- Pregnancy leaves and parental leaves of Members of Council [a new Subsection 270(1)(8) of the *Act*].

While there is no requirement to adopt these policies prior to March 1, 2019, the City has established protocols and practices with respect to Council-staff relations and Members' leaves of absence that may be used to address these matters now. Therefore, staff are recommending that Council adopt a Council-Staff Relations Policy and a Pregnancy and Parental Leave for Members of Council Policy as described below and as set out in Documents 3 and 4. Council previously addressed the matter of a Tree Canopy and Natural Vegetation Policy at its meeting of June 28, 2017, as set out in the report titled, "[Urban Forest Management Plan](#)," and no further action is required.

Council-Staff Relations Policy

Section 270 of the *Municipal Act, 2001*, as amended by Bill 68, will require Councils to adopt and maintain a policy with respect to the relationship between Members of Council and the officers and employees of the corporation.

Currently, the City of Ottawa has in place a framework of codes of conduct and policies that foster a culture of respect, accountability and transparency. The values set out under the Code of Conduct for Members of Council, the Employee Code of Conduct, the *Procedure By-law*, as well as the Violence in the Workplace Policy and the Harassment in the Workplace Policy, include the principles that govern conduct

respecting Members of Council and staff, impartiality, and behaviour during meetings of Council and its Committees.

The proposed Council-Staff Relations Policy is modeled after the approach used in establishing the Delegation of Powers Policy. The Delegation of Powers Policy consolidates the delegation of powers set out under the *Delegation of Authority By-law*, the *Purchasing By-law* and the Standing Committee Terms of Reference. In order to satisfy the statutory requirement for the City of Ottawa to establish a policy addressing “the delegation of its powers and duties,” City Council approved the Delegation of Powers Policy on November 13, 2007. The Policy includes the overarching principles from the existing by-laws and terms of reference that capture the City’s approach to the delegation of powers and the parameters of delegation.

As described below, existing codes of conduct, policies and procedures on workplace violence and harassment, and the *Procedure By-law* similarly provide an established protocol for Council-staff relations.

Code of Conduct for Members of Council

As part of the 2010-2014 Governance Review, City Council endorsed an Accountability Framework that included a Code of Conduct for Members of Council. The Code of Conduct establishes the ethical behaviour expected of Members of Ottawa City Council and the citizen members of the Transit Commission. Council also approved a Code of Conduct for Citizen Members of the Built Heritage Sub-Committee as part of the 2014-2018 Governance Review.

Section VII of the Code of Conduct for Members of Council, titled, “Conduct Respecting Staff”, states as follows:

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

Members of Council are expected to:

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

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

Municipal staff is expected to:

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

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

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

Members of Council should not:

- Maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff;
- Compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities; or
- Use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering in staff's duties.”

Employee Code of Conduct

While there is no statutory requirement set out under the *Municipal Act, 2001* with respect to codes of conduct for municipal employees, the City of Ottawa has developed an Employee Code of Conduct. The Employee Code of Conduct is founded on the notion of ensuring integrity in public service through the recognition and promotion of the fundamental principles of transparency, impartiality, respect and accountability.

The Impartiality section of the Employee Code of Conduct states as follows:

“Ottawa City Council is the elected voice of the citizens of the City of Ottawa. Its members have been elected to set the policy direction of the municipality. The public has an interest in ensuring that City of Ottawa employees are committed to carrying out the will and decisions of City Council, and that public servants are, and are perceived to be, impartial in carrying out their duties. Given the public interest in an impartial public service, employees must exercise restraint in any criticism of City of Ottawa policy and consider how their public comments may affect the public perception of the City.

We Do

- We recognize that City Council is the elected voice of the citizens of the City of Ottawa and we respect the decisions of City Council; and
- We distinguish between our personal comments or opinions and our jobs with the City.

We Do Not

- Make comments that disparage or harm the reputation of the City, Council or our co-workers;
- Claim to speak on behalf of the City unless we have been authorized to do so; and
- Make personal comments using City letterhead, our City e-mail address or anything else that implies a connection between our personal comments or opinions and the City.”

Bill 168, the Occupational Health and Safety Amendment Act

On December 9, 2009, the Ontario Legislature passed Bill 168, the *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009*. The legislation brought significant changes to Ontario’s occupational health and safety scheme and was prompted by recognition of the need for more fulsome protection of employees. Bill 168 required municipalities to adopt policies to address violence and harassment in the workplace, and required the development of programs that include:

- measures and procedures for workers to report incidents of workplace violence and harassment;
- information on how the employer will investigate and deal with such reports; and
- measures for providing workers with information and instruction that is appropriate for the worker on the contents of the policies and programs.

Although the City of Ottawa had policies on Violence in the Workplace and Workplace Harassment in place since 2003, the enactment of Bill 168 provided an opportunity to review those existing policies and to implement a comprehensive program to raise awareness of the importance of preventing workplace violence and harassment.

Similarly, on March 8, 2016, Bill 132, the *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), 2016* received Royal Assent. Bill 132 amended the definition of “workplace harassment” in Subsection 1(1) of the *Occupational Health and Safety Act* by adding “(b) workplace sexual harassment.” Subsection 1(1) of the *Act* was further amended by adding the following:

“‘workplace sexual harassment’ means,

- (a) engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
- (b) making sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.”

Staff have added “workplace sexual harassment” to the definitions set out under the City’s Harassment in the Workplace Policy.

In addition to the policies, the City established Harassment and Violence in the Workplace Procedures to assist in creating a work environment governed by respect and regard for the rights and dignity of all, where employees can work free from harassment. These Procedures support the Harassment and Violence in the Workplace Policies in fostering a respectful workplace through the prevention and prompt resolution of workplace harassment and violence.

Procedure By-law

While the Codes of Conduct and the various policies in place at the City address day-to-day matters, the *Procedure By-law* establishes expectations specifically within Council and Standing Committee meetings. Specifically, Subsection 42(1)(a), which is under a section of the by-law titled, “Conduct of Members in Council,” states as follows:

“(1) No Member shall:

(a) speak disrespectfully of the Reigning Sovereign, or of any Member of the Royal Family, or of the Governor General or the Lieutenant-Governor of any province, or of a fellow Member of Council or staff.”

In light of the existing codes of conduct, policies and by-laws in place, staff believe there is an established protocol for Council-staff relations, which sets out the expectations, values and escalation provisions, where required. In addition, these elements are reviewed on a routine basis to ensure “best practice” is reflected. The proposed Council-Staff Relations Policy, as set out in Document 3, draws out the relevant elements of the existing framework and satisfies the requirement under Bill 68 for Council to adopt a policy regarding “the relationship between Members of Council and the officers and employees of the municipality.”

The Council-Staff Relations Policy will be reviewed as part of the regular governance review process.

Pregnancy and Parental Leave for Members of Council Policy

Prior to Bill 68, if a Member of Council was pregnant, gave birth to a child or adopted a child, the Member was required to seek and receive a resolution of Council for an extended leave of absence, as would be required for an extended absence for any reason.

This extended leave would have been sought under Subsection 259(1)(c) of the *Municipal Act, 2001*, which provides that the Office of a Member of Council becomes vacant if the Member is absent from the meetings of Council for three successive months without being authorized to do so by a resolution of Council.

On June 17, 2013, Kitchener City Council approved the following motion from Councillor Kelly Galloway-Sealock with respect to clarifying the language set out in the *Municipal Act, 2001* as it relates to maternal and parental leave.

“WHEREAS the *Municipal Act, 2001* sets out the authorities and governs the actions of members of municipal councils; and

WHEREAS the *Municipal Act, 2001* is the legislative responsibility of the Government of the Province of Ontario; and

WHEREAS the language contained in the *Municipal Act, 2001* is very broad when dealing with absence or vacancies; and

WHEREAS section 259(1) (Vacant Seat) of the *Municipal Act, 2001* states: “The office of a member of council of a municipality becomes vacant if the member, (c) is absent from meetings of council for three successive months without being authorized to do so by a resolution of council;” and

WHEREAS the *Municipal Act, 2001* does not contain any specific language with regards to maternity or parental leave for members of council;

THEREFORE BE IT RESOLVED that the Government of Ontario be requested to add a provision to the *Municipal Act, 2001* to provide a clearer understanding of the legislative parameters for members of council with respect to maternity and parental leave;

BE IT FURTHER RESOLVED that correspondence be circulated to the Premier of Ontario, the Minister of Municipal Affairs and Housing and all local Members of Provincial Parliament (MPPs), to request that a provision be added to the *Municipal Act, 2001* to clarify maternity and parental leave for members of council; and

BE IT FINALLY RESOLVED that correspondence on this matter be circulated to all local area municipalities, the Association of Municipalities of Ontario (AMO) and the Federation of Canadian Municipalities (FCM) to encourage them to make similar requests to the Government of Ontario in support of clarifying the language of the *Municipal Act, 2001* regarding maternity and parental leave.”

In 2016, Kitchener Centre MPP Daiene Vernile introduced a private member's bill, Bill 46, the *Municipal Statute Law Amendment Act (Councillor Pregnancy and Parental Leave), 2016*, which sought to add an amendment to Subsection 259(1)(c), as follows:

“Clause (1) (c) does not apply to vacate the office of a member of council of a municipality who is absent for 20 consecutive weeks or less if the absence is a result of the member's pregnancy, the birth of the member's child or the adoption of a child by the member.”

During Second Reading of Bill 68, Minister Mauro noted that the private member's bill would be incorporated into the amendments proposed by Bill 68, further adding, “I think everyone in this House would agree that we need to find ways to encourage more women to participate in local government. Currently, women comprise 26 per cent of Councillors across Canada and 16 per cent of all Mayors ... the Bill we are proposing today would ensure office of members of council would not become vacant because of an absence related to pregnancy or parental leave for 20 consecutive weeks or less. Accommodating parents at the local level sends a strong message that municipal politics can be family-friendly.”

Bill 68 provides an exemption to the above-noted provision, meaning that no Council motion is required to grant leave for a Member for 20 consecutive weeks or less if the absence is a result of the Member's pregnancy, the birth of the Member's child or the adoption of a child by the Member.

At its meeting of July 12, 2017, City Council approved a new process and related amendments to the *Procedure By-law* that would both recognize a Member's ability to take pregnancy and parental leave without a Council motion while providing for delegated authority that would allow legislative and administrative matters to be addressed in a manner that is consistent with the Member's wishes while they are on leave.

Specifically, Subsection 83(13) of the *Procedure By-law* was amended by adding the following provisions:

“b) Notwithstanding Subsection 83(13)(a), an office is not vacated by a Member of Council who is absent for 20 consecutive weeks or less if the absence is as a result of the Member's pregnancy, the birth of the Member's child or the adoption of a child by the Member in accordance with Subsection 259(1.1) of the

Municipal Act, 2001. The Member shall provide the City Clerk and Solicitor with written notice of an absence of 20 consecutive weeks or less as a result of the Member's pregnancy, the birth of the Member's child or the adoption of a child by the Member, and, when such notice is provided, the following process shall be followed and the resulting information brought forward for Council consideration by way of motion at the Council meeting immediately following the City Clerk and Solicitor's receipt of the written notice:

- i. In the written notice, a Ward Councillor shall indicate the Member(s) of Council whom he/she wishes to provide concurrence under the *Delegation of Authority By-law* for matters in the Ward Councillor's Ward during the Ward Councillor's absence; and
- ii. In the written notice, the Ward Councillor shall indicate the Member(s) of Council whom he/she recommends Council appoint as a Member of any Committee(s) on which the Ward Councillor sits, on an interim basis for the duration of the Ward Councillor's leave; and
- iii. The motion to Council shall recommend that Council delegate to the City Clerk and Solicitor the interim authority to approve the payment of costs from a Member of Council's Constituency Services Budget only arising from routine bills and, in consultation with the Member's office staff and the Member(s) of Council to whom concurrence has been delegated in accordance with Subsection 83(13)(b)(i), for annual, seasonal events where a past practice for such costs being paid can be established, if there are sufficient funds within the budget to do so."

Corresponding to the *Procedure By-law* amendment, Bill 68 also introduced a new provision requiring municipalities to adopt and maintain a policy with respect to pregnancy and parental leaves of Members of Council, effective March 1, 2019.

Unlike municipal employees who are entitled to maternity/pregnancy and/or parental leave for the birth or adoption of a child in accordance with the *Employment Standards Act, 2000* and the employee's applicable collective agreement or terms and conditions of employment, Members of Council are not City employees, do not follow collective agreements and are not eligible for employment insurance.

Staff recommends that a Pregnancy and Parental Leave for Members of Council Policy be adopted, as set out in Document 4. The recommended policy reflects the existing, Council-approved process for addressing a Member's ability to take pregnancy, parental and adoption leave without a Council motion, while providing for delegated authority that would allow legislative and administrative matters to be addressed in a manner that is consistent with the Member's wishes while they are on leave.

Despite Subsection 83(13)(b)(i) of the *Procedure By-law*, which provides that a Member assigns his or her delegated authority for matters within his or her ward to another Member of Council while on leave, the proposed Pregnancy and Parental Leave for Members of Council Policy would allow a Member of Council to exercise his or her delegated authority in matters within the ward while on a leave of absence.

This approach recognizes a Member's ability to take pregnancy, parental and adoption leave, while providing for delegated authority that would allow legislative and administrative matters to be addressed in a manner consistent with the Member's wishes, while also ensuring the Member can fulfill his or her statutory role.

The Pregnancy and Parental Leave for Members of Council Policy will be reviewed as part of the regular governance review process.

Tree Canopy and Natural Vegetation Policy

Bill 68 introduced a requirement for municipalities to adopt and maintain a policy related to "the manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality." Similar to the other new policies that municipal councils are required to adopt and maintain, this policy must be in place by March 1, 2019.

On June 28, 2017, City Council considered the report titled, "[Urban Forest Management Plan](#)." The 2014-2018 Term of Council included the development of an Urban Forest Management Plan ("UFMP") for the City of Ottawa as Strategic Initiative #24 under "ES1 – Support an environmentally sustainable Ottawa", within its Term of Council Strategic Priorities.

Specifically, Council approved Recommendation 4 of the UFMP report, as follows:

“Confirm approval of the Urban Forest Management Plan as adoption of a City policy in accordance with subsection 270 (1) 7 of the *Municipal Act*, 2001, when Subsection 32 of Bill 68 is proclaimed in force, as outlined in this report.”

The UFMP provides a structured approach to protecting and enhancing the environmental, social, and economical services provided by the urban forest and ensures that it is healthy and robust into the future. The plan intends to protect and manage existing trees more effectively, achieve greater success in tree establishment, increase the urban tree canopy, and engage the community in support of urban forest sustainability.

As Council has already approved that the UFMP constitutes its tree canopy and natural vegetation policy as required under Bill 68, no further action is required.

C. Accountability Framework – Extending the Contract of the City’s Current Integrity Commissioner

The appointment of an Integrity Commissioner is currently optional for municipalities under the accountability and transparency regime previously established by Bill 130. As of March 1, 2019, every municipality will be required to ensure that an Integrity Commissioner’s responsibilities and functions are provided for, either by appointing its own Integrity Commissioner or by making arrangements for the Integrity Commissioner’s responsibilities to be provided by an Integrity Commissioner appointed by another municipality. In addition, among changes made to Bill 68 by the Standing Committee on Social Policy, provisions requiring the indemnification of Integrity Commissioners were added.

Robert Marleau was appointed as the City of Ottawa’s first Integrity Commissioner on August 29, 2012, for a one-year appointment that was subsequently renewed for a five-year term that expires on August 31, 2018. The City’s Integrity Commissioner is covered by the City’s indemnification and insurance policy.

Over the course of the past five years, Mr. Marleau has been instrumental in the evolution of Council’s Accountability Framework. Specifically, Mr. Marleau managed the rollout of the City’s Lobbyist Registry, developed the Code of Conduct for Members of Council, the Gifts Registry and the Community, Fundraising and Special Events Policy and established the procedures and practices of the Integrity Commissioner’s Office.

As the end of the current term of office approaches, the City Clerk and Solicitor has initiated conversations with Mr. Marleau with respect to his interest in continuing in the Integrity Commissioner role. Mr. Marleau has indicated that, at this point in time, he is open to committing to a two-year extension.

Extending the current Integrity Commissioner's term of office for an additional two years would provide Council with consistency in the development of the new, mandatory elements of the Accountability Framework as a result of Bill 68 and access to a well-established Integrity Commissioner through this period of change.

Staff recommend that Council delegate the authority to the City Clerk and Solicitor to negotiate, finalize and execute a two-year extension to the current Integrity Commissioner's contract, with optional one-year extensions at the end of that period.

PART II: "Complex" Amendments – Requiring Future Action in the 2018-2022 Governance Review

A. Mandatory Code of Conduct for Members of Local Boards (Including Business Improvement Areas)

As of March 1, 2019, amendments in Bill 68 will make it mandatory for Ontario municipalities to establish codes of conduct for both Members of Council and members of certain local boards. As noted above, municipalities must also appoint an Integrity Commissioner who is responsible for the oversight and application of codes of conduct as well as for providing advice and education with respect to the codes.

The City of Ottawa is well positioned for these new provisions. As part of the Accountability Framework established during the 2010-2014 Term of Council, Ottawa City Council appointed an Integrity Commissioner, established the Code of Conduct for Members of Council and tasked the Integrity Commissioner with providing advice and education related to the Code, which are additional roles beyond the legislated oversight and administration function of an Integrity Commissioner.

By March 1, 2019, Council will need to establish a code of conduct for the City's local boards which will be administered by the Integrity Commissioner. Though Bill 68 does not include specifics as to the content of a code of conduct, the Province has reserved the right to pass a regulation prescribing subject matters that a municipality must include in a code. At the time of this report, no regulation has been issued by the Minister.

First, it is necessary to determine which bodies are within the scope of the requirement for a code of conduct for “local boards”. The *Municipal Act, 2001* provides within Section 223.1 a general, overarching definition of a local board as well as further provisions which expressly include or exclude specific boards, for the purposes of the code-of-conduct requirements. For example, the *Act* provides that municipal service boards and boards of management of a Business Improvement Area (“BIA”) are to be local boards “of the municipality for all purposes.” Alternatively, school boards and conservation authorities are not considered to be local boards under any part of the *Act*.

Entities and local boards that are explicitly not considered local boards for the purposes of a code of conduct for local boards pursuant to Section 223.1 are as follows:

- (a) a board of directors of a children’s aid society;
- (b) a board of health;
- (c) a board or committee of management of a long-term care home;
- (d) a police services board;
- (e) a library board;
- (f) a municipal corporation; or
- (g) other local boards as may be prescribed.

There is no rationale provided for excluding these specific boards in the *Act*. Some of the excluded bodies are governed by a code of conduct, either legislated by regulation or established proactively by the board. Specifically, Ontario Regulation 421/97 under the *Police Services Act* prescribes a code of conduct for members of the Police Services Board. The City’s Board of Health and Public Library Board have both independently established codes of conduct for their board members.

The status of other City of Ottawa bodies as local boards is reviewed regularly at each governance review and has previously relied on the following four-part test at common law:

1. A direct link with the municipality must be found (either by way of legislation or authority from the municipality);

2. The entity must be carrying on the affairs of the municipality (as set out in the definition of the *Municipal Act, 2001*);
3. There must be a connection to or control by the municipality; and
4. There must be an element of autonomy.

On August 28, 2017, a Divisional Court ruling found that the City of Hamilton's Election Compliance Audit Committee and Property Standards Committee were not local boards under the *Municipal Act, 2001*, specifically because the purpose of these entities, as defined in their respective enabling legislation and as established by Hamilton, is inconsistent with the City's authority to dissolve a local board and assume its functions. In both instances with the Hamilton committees, the Court determined that the Council could not dissolve those committees and take over the responsibilities of those entities. Accordingly, in certain circumstances, an additional indicator that an entity has "local board" status may be as follows:

5. Whether the municipality has the ability to dissolve the entity and assume its functions.

Based on the five indicators above that assist in determining whether an entity is a "local board", staff have reviewed the City's agencies, boards, committees and commissions. A complete list of the entities that are expected to fall under the scope of a code of conduct for local boards at this point in time is attached as Document 5. Given that new entities are created by Council or by legislation from time to time, and in the event further judicial rulings or regulations continue to refine the definition of a "local board", the status of these entities as a "local board" will continue to be reviewed as part of Council's regular governance reviews and will be determined on a case-by-case basis.

It should be noted that a code of conduct for local boards will apply to local board members but not board staff (i.e. will apply to board members of a BIA but not to the Executive Director of the BIA). Nevertheless, there are no legislative barriers precluding a local board from establishing a code of conduct for staff of the board as part of the board's policies and procedures.

It is expected that the requirement to establish and implement a code of conduct for local boards will have resource implications for the City of Ottawa. The creation of the code of conduct and the training involved will have an initial impact on the workload of

the Integrity Commissioner's Office. Under Bill 68, the Integrity Commissioner is not only mandated the oversight and application of the code of conduct, but also mandated to provide advice and education with respect to the code of conduct for local boards. Approximately 237 local board members will potentially be seeking advice from the Integrity Commissioner on code-of-conduct-related matters. It is difficult to predict the ongoing volume of work that will be required of the Integrity Commissioner following the implementation of a code of conduct for local boards. It is anticipated, in a similar manner to the implementation of the Council Code of Conduct, the volume of day-to-day work will stabilize following the initial development, implementation and training associated with a code of conduct for local boards.

Proposed approach for the development of a code of conduct for local boards

A code of conduct for members of local boards will need to complement and be consistent with other elements of Council's Accountability Framework.

There are two possible approaches to meet the requirement of a code of conduct for local boards: 1) Council could amend its current Code of Conduct for Members of Council to include members of its local boards; or 2) Council could create a stand-alone code of conduct, or codes of conduct, specific to members of its local boards.

An informal survey of Ontario municipalities with codes of conduct for members of local boards reveals a significant number of municipalities, albeit smaller municipalities, have incorporated local boards into the application of the code of conduct established for Members of Council. Conversely, the City of Toronto and the City of Mississauga have developed stand-alone codes of conduct for members of local boards. More specifically, both municipalities have established one code of conduct for local boards generally and a second for the municipality's adjudicative boards (e.g. a committee of adjustment). This approach has been an effort to recognize the unique standards of conduct and decision-making authority exercised by adjudicative tribunals. Staff and the Integrity Commissioner believe this approach is more appropriate for the City's local boards.

Council has statutory responsibility for the development, adoption and implementation of a code of conduct for local boards and all Members sit on at least one board. Over the course of the next year, the Integrity Commissioner intends to consult directly with all 24 Members of Council as well as with members of the applicable local boards and

relevant stakeholders [e.g. the Ottawa Council of Business Improvement Areas (“OCOBA”)] on the development of the code of conduct.

The Integrity Commissioner will bring forward the proposed code of conduct for members of local boards for Council consideration as part of the 2018-2022 Governance Review. Once approved, Council will have met its statutory obligation to have a code in place for local boards, by way of an approach that aligns with recruitment for local board members prior to March 1, 2019.

B. New, Mandatory Municipal Conflict-of-Interest Regime

Bill 68 establishes a new regime for matters related to the MCIA. Amendments to both the *Municipal Act, 2001* and the MCIA give municipal Integrity Commissioners the responsibility to provide advice and education with respect to the MCIA and establish a new complaint and investigative process for conflict-of-interest applications. The provisions associated with the new regime come into effect on March 1, 2019.

Integrity Commissioner – New advice and education role

Bill 68 expands the mandatory responsibilities of the Integrity Commissioner to include providing pecuniary conflict-of-interest advice to both members of Council and local boards under the MCIA. Currently, members are required to seek independent legal advice when concerned about a potential conflict of interest. Beginning March 1, 2019, members may request conflict-of-interest advice directly from the Integrity Commissioner.

In addition to obligating the Integrity Commissioner to provide advice with respect to conflict-of-interest matters, Bill 68 expressly permits a judge to consider whether the Member requested, obtained and acted in accordance with advice from the Integrity Commissioner when considering penalties for a contravention of the MCIA.²⁵

The new advisory function, and the significance of such advice as a mitigating factor in the determination of penalties applied by a judge, have raised unanswered questions about whether an Integrity Commissioner’s conflict-of-interest advice is deemed to be “legal advice”. Without a determination on this question, staff and the Integrity Commissioner intend to recommend, as part of the 2018-2022 Governance Review

²⁵ A judge may also consider whether the Member “took reasonable measures to prevent the contravention,” or “committed the contravention through inadvertence or by reason of an error in judgment made in good faith.”

report, that the Integrity Commissioner engage an external lawyer(s), on retainer, who would be accessible to the Integrity Commissioner for the provision of conflict-of-interest advice. It is expected that the cost of external legal services for MCIA advice would be absorbed within the Integrity Commissioner's budget.

Integrity Commissioner – New role, requirements and processes relating to MCIA applications for alleged conflict-of-interest contraventions

As of March 1, 2019, individuals who believe a Member of Council or a member of a local board has broken the conflict-of-interest rules set out in the MCIA may submit an application to the Integrity Commissioner. It should be noted that individuals will continue to have the option of applying directly to a judge for a determination.

The Integrity Commissioner will be responsible for reviewing applications he or she receives and conducting conflict-of-interest investigations as necessary. In cases where a contravention is deemed to have occurred, an Integrity Commissioner may make an application to the court for a determination and penalties as appropriate. This is new territory for both municipalities and municipal Integrity Commissioners with no practical experience or "best practices" to draw upon.

As described below, a number of matters will need to be considered in developing procedures and protocols relating to this new role for the Integrity Commissioner. These changes under Bill 68 will likely have a financial and resource impact, and may affect the length of time that conflict-of-interest matters take to be resolved.

Currently, the MCIA only provides that an 'elector' may apply to a judge for a determination of an alleged conflict of interest. As part of the new MCIA regime, both the *Municipal Act, 2001* and the MCIA redefine and expand who may submit a conflict-of-interest application to include not only an elector (as well as an Integrity Commissioner, following an investigation at the local level), but also any person "demonstrably acting in the public interest". Without practical experience or judicial interpretation to rely upon, the Integrity Commissioner will need to develop a test for determining whether an individual is demonstrably acting in the public interest.

Another part of the new regime includes an 'election blackout period' established for conflict-of-interest applications to an Integrity Commissioner. The 'election blackout period' runs from Nomination Day to Voting Day in a regular election year. During this period, no application can be made to an Integrity Commissioner, no applications can

be made to Court by an Integrity Commissioner and any ongoing inquiry must be terminated. However, a complainant will have the option to escalate a terminated application to a judge within six weeks of receiving notice of the termination. There is no ‘election blackout period’ for conflict-of-interest applications made directly to a judge by an elector or “person demonstrably acting in the public interest.”

Where an inquiry has been terminated as a result of the ‘election blackout period’, the Integrity Commissioner cannot commence another inquiry regarding the matter unless, within six weeks after Voting Day, the person who made the application, or the Member or former member whose conduct is concerned, applies in writing to the Integrity Commissioner for the inquiry to be carried out. If resumed, the inquiry is considered to be a new inquiry with the full 180-day timeframe within which an inquiry must be completed. As a result, and given that complainants will still have the option to ‘appeal’ an Integrity Commissioner’s decision, there is potential for a conflict-of-interest matter to carry on for a significant length of time.

After an investigation has been completed, and where he or she deems it appropriate, the Integrity Commissioner may apply to a judge for a determination on the alleged contravention. Council will be responsible for covering the costs of an Integrity Commissioner application to a judge only when the application pertains to an alleged contravention of a member as a Member of Council. Local boards are explicitly mandated to pay for the costs associated with the Integrity Commissioner applying to a judge when a member is alleged to have contravened the MCIA as a member of the local board.

The resource and financial impact of this new process on municipalities has the potential to be significant, particularly where an Integrity Commissioner has investigated and makes an application to Court. During consideration of Bill 68 by the Standing Committee on Social Policy, several delegations raised concerns related to the new process. Recognizing the intent of the proposed legislation to ‘remedy the current imbalance between the complainant and the member’ regarding alleged MCIA contraventions, Nigel Bellchamber and Fred Dean, principles with the firm Amberley Gavel Ltd., spoke directly to the financial impact of the new provisions:

“What’s proposed in Bill 68 is the transfer of the cost of investigation and prosecution to the municipal taxpayer at no financial risk to the complainant. The pendulum would swing completely. The complainant will have little or no ‘skin in

the game'. We believe there will be a significant increase in the number of complaints to Integrity Commissioner and to the courts; all funded by the local taxpayer.”

This new regime will need to be tested before the full impacts can be understood.

New requirement for a Conflict of Interest Registry

The MCIA as amended by Bill 68 introduces two new requirements regarding declarations of interest. First, when a Member of Council or member of a local board has a pecuniary interest in a matter, at the meeting or as soon as possible following the meeting at which the relevant matter is considered, the member must file a written statement of the interest and its general nature with the Clerk of the municipality or the secretary of the local board. Second, the municipality or local board must establish and maintain a registry of members' declarations of interest.

With respect to written statements of interest, staff believe that the City of Ottawa's current, unofficial practice sufficiently addresses the Bill 68 requirement. Currently, where possible, staff work with the Member to prepare a written declaration of interest in advance of a meeting. The Member signs the declaration and reads the statement aloud for the record at the Committee or Council meeting where the matter is being considered. The Clerk subsequently prepares the minutes to reflect the written declaration as submitted. Staff will bring forward an amendment to the *Procedure By-law* as part of the 2018-2022 Governance Review to formalize this process.

Bill 68 also requires that the municipality establish and maintain a public registry that shall include two items for each declaration of interest: a copy of each written statement that a Member files with the Clerk, and a copy of each declaration of interest that the Clerk records in the minutes. The requirement to establish a registry of declarations of interest will bring modest change to the current practice at the City of Ottawa and will not result in any additional cost to the City. Staff will bring forward a recommendation as part of the 2018-2022 Governance Review to have a registry in place by March 1, 2019.

C. Other New Conflict-of-Interest Obligations and Amendments to the MCIA

Bill 68 includes various updates to the MCIA that have minor or no direct impact on Council's Accountability Framework, but will have an effect on pecuniary conflict-of-interest matters generally.

Procedural fairness: A Member of Council who is the subject of a Code of Conduct investigation report will be permitted to participate in discussions regarding the report and any recommended sanctions

Currently, the MCI A requires that a Member of Council or a member of a local board, who is the subject of a Code of Conduct investigation report, must disclose an interest at the meeting where the relevant matter is being considered, and avoid taking part in discussion, voting on the matter or attempting to influence the vote. A member must also leave a closed meeting where the matter is being considered. Specifically, Subsection 5(1) of the MCI A states as follows:

“5 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

(a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;

(b) shall not take part in the discussion of, or vote on any question in respect of the matter; and

(c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.”

In light of recommendations made through the Mississauga Judicial Inquiry and decisions rendered in the case of *Magder v. Ford*, it has been understood that Section 5(1) of the MCI A precludes a Member of Council from participating in the consideration of and voting on code of conduct reports where a financial penalty has been recommended.

As a result of changes in Bill 68 that come into force on March 1, 2019, a Member of Council or of a local board, who is the subject of an Integrity Commissioner investigation/report, may participate in discussions, including making submissions to Council, and may attempt to influence voting on any question with respect to the investigation report and any recommended sanctions. It will continue to be the case, however, that the Member may not vote on any question relating to the matter. This will apply to both open and closed meetings during which the matter is under consideration.

In keeping with the opinions and decisions stated above, it was staff's position prior to Bill 68 that the Integrity Commissioner does not have the ability to provide a Member of Council with a general right of reply to Council on code of conduct reports recommending a financial penalty (i.e. suspension of remuneration). In order to provide Members of Council with a right of reply to the fullest extent possible under the existing statutory limitations, the Complaint Protocol for the Code of Conduct for Members of Council currently provides that, where a report recommends sanctions of a pecuniary nature, the Integrity Commissioner will invite the Member to submit a written response to the report for the Commissioner's information only.

Any proposed changes to the process resulting from the Bill 68 amendments that eliminate the existing statutory limitations will be brought forward by the Integrity Commissioner for Council consideration and approval as part of the 2018-2022 Governance Review.

New prohibition on influencing those with delegated powers and duties

A new section of the MCIA (Section 5.2) will specifically prohibit members of Council and local boards from attempting to influence any decision or recommendation of a person or body with delegated powers or duties where the member has a direct or indirect pecuniary interest. In effect, Members of Council and members of local boards must refrain from using the status of their office to influence matters in which they have a financial interest beyond a meeting of Council or the local board. This prohibition does not apply where an Integrity Commissioner has been delegated the authority to suspend the remuneration paid to a member.

This new section is similar to Section V (Improper Use of Influence) of the Code of Conduct for Members of Council, which prohibits Members from using their position to influence the decisions of another to the private advantage of the Member or of individuals close to the Member.

New, wider range of penalties may be imposed by a judge for MCIA violation

A new, wider range of potential penalties will be available where a judge determines that a Member has contravened the conflict-of-interest rules of the MCIA. First, a Member does not automatically lose his or her seat if a judge determines that conflict of

interest provisions have been contravened. Instead, the judge may apply any or all of the following penalties:

1. Reprimand the member or former member.
2. Suspend the remuneration paid to the member for a period of up to 90 days.
3. Declare the member's seat vacant.
4. Disqualify the member or former member from being a member during a period of not more than seven years after the date of the order.
5. If the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, if the party's identity is not readily ascertainable, to the municipality or local board, as the case may be.

A judge may now consider whether the Member,

- a) took reasonable measures to prevent the contravention;
- b) disclosed the pecuniary interest and all relevant facts known to him or her to an Integrity Commissioner in a request for advice from the Commissioner under the *Municipal Act, 2001* and acted in accordance with the advice, if any, provided to the member by the Commissioner; or
- c) committed the contravention through inadvertence or by reason of an error in judgment made in good faith.

A judge may also consider whether the Member sought, obtained and followed advice from the municipal Integrity Commissioner on the matter.

New MCIA preamble provides a set of principles

A new Section 1.1 of the MCIA will provide a new set of overarching principles, as follows:

“The Province of Ontario endorses the following principles in relation to the duties of members of councils and of local boards under this Act:

1. The importance of integrity, independence and accountability in local government decision-making.
2. The importance of certainty in reconciling the public duties and pecuniary interests of members.
3. Members are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny.
4. There is a benefit to municipalities and local boards when members have a broad range of knowledge and continue to be active in their own communities, whether in business, in the practice of a profession, in community associations, and otherwise.”

D. Technical and Procedural Changes to Integrity Commissioner Processes

Bill 68 includes several specific and technical changes to the Integrity Commissioner’s processes, including a requirement for all requests for advice and advice provided to be in writing, conditions surrounding the release of advice (to anyone other than the Member who requested the advice) and a new ‘election blackout period’ for code of conduct investigations.

These changes take effect on March 1, 2019. The Integrity Commissioner will report on adjustments to his processes as part of his 2018 Annual Report and the 2018-2022 Governance Review.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

CONSULTATION

As part of the preparation for the report, the City Clerk and Solicitor consulted with elected representatives and staff.

COMMENTS BY THE WARD COUNCILLOR(S)

This is a city-wide report.

LEGAL IMPLICATIONS

The legal implications of Bill 68, the *Modernizing Ontario's Municipal Legislation Act, 2017*, have been described throughout this report.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this information report.

ACCESSIBILITY IMPACTS

Impacts on persons with disabilities were considered and assessed during the development of this report.

TERM OF COUNCIL PRIORITIES

This report supports the Term of Council Priority related to Governance, Planning and Decision-Making.

SUPPORTING DOCUMENTATION *(Held on file with the City Clerk)*

Document 1 – Memorandum from the City Clerk and Solicitor, dated July 7, 2017

Document 2 – Draft *Procedure By-law* amendments

Document 3 – Draft Council-Staff Relations Policy

Document 4 – Draft Pregnancy and Parental Leave for Members of Council Policy

Document 5 – Preliminary list of local boards to which a code of conduct for members of local boards may apply

DISPOSITION

Upon approval of the report by City Council, staff in the applicable Departments, in particular the Office of the City Clerk and Solicitor, will implement changes to all related processes, procedures, by-laws and Terms of Reference which are required to carry out the report as approved, or will bring forward the necessary amendments as part of the governance review process, as described in this report.

