

**6. RECRUITMENT, APPOINTMENT AND CONTRACT ADMINISTRATION FOR STATUTORY OFFICERS WHO REPORT DIRECTLY TO CITY COUNCIL  
RECRUTEMENT, NOMINATION ET ADMINISTRATION DES CONTRATS DES TITULAIRES D'UNE CHARGE CRÉÉE PAR UNE LOI RELEVANT DIRECTEMENT DU CONSEIL MUNICIPAL**

**COMMITTEE RECOMMENDATIONS**

That City Council approve that the following measures be implemented to address recommendations from the Ontario Ombudsman, as described in this report:

- 1. Approve the Statutory Officer Recruitment, Appointment and Contract Administration Policy and Procedures, attached as Documents 1 and 2; and**
- 2. Direct staff to include proposals to address the Ombudsman's recommendations with respect to a policy governing the process for Auditor General and City Manager performance assessments, as part of the 2018-2022 Mid-term Governance Review consultations.**

**RECOMMANDATIONS DU COMITÉ**

Que le Conseil municipal approuve la mise en œuvre des mesures suivantes, en réponse aux recommandations de l'Ombudsman de l'Ontario énoncées dans le présent rapport :

- 1. Approuve la politique et procédure de recrutement, de nomination et d'administration des contrats des titulaires d'une charge créée par une loi (documents 1 et 2); et**
- 2. Demande au personnel de soumettre des propositions dans le cadre des consultations sur l'Examen de mi-mandat de la structure de gestion publique 2018-2022, afin d'appliquer les recommandations de l'Ombudsman concernant l'adoption d'une politique régissant le processus d'évaluation du rendement du vérificateur général et du directeur municipal.**

DOCUMENTATION/DOCUMENTATION

1. City Clerk's report, dated 26 February 2020 (ACS2020-OCC-GEN-0010).

Rapport du Greffier municipal, daté le 26 février 2020  
(ACS2020-OCC-GEN-0010).

**Report to  
Rapport au:**

**Finance and Economic Development Committee  
Comité des finances et du développement économique  
9 March 2020 / 9 mars 2020**

**and Council  
et au Conseil  
25 March 2020 / 25 mars 2020**

**Submitted on February 26, 2020  
Soumis le 26 février 2020**

**Submitted by  
Soumis par:  
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**Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE      File Number: ACS2020-OCC-GEN-0010**

**SUBJECT: Recruitment, Appointment and Contract Administration for Statutory  
Officers who report directly to City Council**

**OBJET: Recrutement, nomination et administration des contrats des  
titulaires d'une charge créée par une loi relevant directement du  
Conseil municipal**

## **REPORT RECOMMENDATIONS**

**That the Finance and Economic Development Committee recommend that City Council approve that the following measures be implemented to address recommendations from the Ontario Ombudsman, as described in this report:**

- 1. Approve the Statutory Officer Recruitment, Appointment and Contract Administration Policy and Procedures, attached as Documents 1 and 2; and**
- 2. Direct staff to include proposals to address the Ombudsman's recommendations with respect to a policy governing the process for Auditor General and City Manager performance assessments, as part of the 2018-2022 Mid-term Governance Review consultations.**

## **RECOMMANDATIONS DU RAPPORT**

**Que le Comité des finances et du développement économique recommande au Conseil municipal d'approuver la mise en œuvre des mesures suivantes, en réponse aux recommandations de l'Ombudsman de l'Ontario énoncées dans le présent rapport :**

- 1. Approuver la politique et procédure de recrutement, de nomination et d'administration des contrats des titulaires d'une charge créée par une loi (documents 1 et 2);**
- 2. Demander au personnel de soumettre des propositions dans le cadre des consultations sur l'Examen de mi-mandat de la structure de gestion publique 2018-2022, afin d'appliquer les recommandations de l'Ombudsman concernant l'adoption d'une politique régissant le processus d'évaluation du rendement du vérificateur général et du directeur municipal.**

## **EXECUTIVE SUMMARY**

Under the *Municipal Act, 2001* (the Act), municipalities have authority to appoint various statutory officers to carry out certain functions described within the legislation. At the City of Ottawa, three such statutory officers report directly to City Council: The Auditor General, City Manager and Integrity Commissioner. While the Act sets out the roles and

responsibilities of these positions, it does not include any specific requirements with respect to processes related to their recruitment, hiring, contract administration and performance assessments.

Currently, there is no single policy in place to address such processes for these statutory officers at the City of Ottawa. That said, Council has over the past decade used consistent informal procedures and/or principles to recruit, appoint and extend the contracts of individuals in these positions.

The purpose of this staff report is to recommend that Council approve measures to formalize the City's past practices with respect to recruitment, hiring and contract administration for the statutory officers who report directly to Council. The proposed new Statutory Officer Recruitment, Appointment and Contract Administration Policy and Procedures would provide for a consistent approach as well as improved accountability and transparency. The policy and procedures would also provide an opportunity to incorporate best practices and other recommendations identified by the Ontario Ombudsman, whose mandate includes investigating decisions made by municipalities and making recommendations based on the findings.

In November 2019, the Ombudsman issued a 71-page report<sup>1</sup> following an investigation that found serious problems in the hiring and contract administration processes used to appoint and retain a Chief Administrative Officer (CAO) in Niagara Region in 2016.

Among the findings in the Ombudsman's report were:

- That staff in the Regional Chair's Office shared confidential information with the successful candidate, including interview questions, suggested responses for a written exercise and biographical information about other candidates;
- That the Regional Chair unilaterally extended the CAO's contract without Council's knowledge or consent. The Ombudsman did not make any findings regarding the contract's validity or whether the Chair had the legal authority to solely approve the contract, as matters relating to the contract extension were before the courts at the time of the report. However, the Ombudsman found the regional municipality's actions regarding the contract extension to be "unreasonable" and stated that "to avoid confusion in the future, the region

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<sup>1</sup> Ombudsman of Ontario. "[Inside Job: Investigation into matters relating to the Regional Municipality of Niagara's hiring of its Chief Administrative Officer, and its administration of his contract](#)" (November 2019).

should clarify the role of council with respect to the negotiation and approval of a CAO contract”; and

- That a lack of clarity regarding how and when the CAO’s performance was reviewed, and who should conduct the review, had resulted in an inconsistent approach in Niagara Region.

The Ombudsman made 16 recommendations relating to various matters, including processes related to CAO hiring and performance assessment. Among the recommendations were for Niagara Region to adopt policies related to the CAO hiring process and performance appraisal process.

While the Ombudsman’s investigation focused on the CAO position, staff are of the view that the recommendations and best practices cited in the Ombudsman’s report could apply to all similarly situated statutory officers at the City of Ottawa who report directly to Council.

The proposed new Statutory Officer Recruitment, Appointment and Contract Administration Policy and Procedures would incorporate Council’s past practices with respect to recruitment, appointment and contract administration. They would also include provisions that address the Ombudsman’s recommendations with respect to matters such as confidentiality and fairness in the hiring process. In addition, the policy and procedures would incorporate the City’s existing principles with respect to matters such as objectivity, impartiality, equity and diversity in the staffing and recruitment process. Should Council approve the recommendations in this report, associated by-laws and by-law amendments for the Auditor General, City Manager and Integrity Commissioner will be brought forward as part of the 2018-2022 Mid-term Governance Review.

As the terms of the current contracts for the Auditor General (continuing until December 31, 2020), the City Manager (continuing until April 30, 2021) and the Integrity Commissioner (continuing until August 31, 2020) are set to expire during the current term of Council, staff recommend that the Ombudsman’s recent investigation and the resulting recommendations in this report be used to inform any forthcoming processes with respect to recruitment, hiring and/or contract extension.

In addition to the new policy and procedures recommended in this report, it is proposed that staff be directed to include proposals to address the Ombudsman’s

recommendations with respect to performance assessments as part of the 2018-2022 Mid-term Governance Review consultations. This approach would provide an opportunity for Council to incorporate recent suggestions from the Ombudsman and establish a consistent approach that sets out Council's desired direction for performance reviews in detail, with express direction to staff regarding implementation.

## **SOMMAIRE**

En vertu de la *Loi de 2001 sur les municipalités* (la Loi), les municipalités ont le pouvoir de nommer divers titulaires d'une charge créée par une loi pour remplir certaines fonctions décrites dans la Loi. À la Ville d'Ottawa, trois de ces titulaires relèvent directement du Conseil municipal : le vérificateur général, le directeur municipal et le commissaire à l'intégrité. Bien que la Loi énonce les rôles et les responsabilités de ces postes, elle n'établit pas d'exigences particulières concernant les processus liés à leur recrutement, leur embauche, l'administration des contrats et leurs évaluations du rendement.

À l'heure actuelle, aucune politique n'est en place pour traiter ces processus pour ces titulaires d'une charge créée par une loi à la Ville d'Ottawa. Cela étant dit, au cours de la dernière décennie, le Conseil a utilisé des procédures ou des principes informels uniformes pour recruter et nommer des personnes à ces postes et pour prolonger leurs contrats.

Le présent rapport du personnel vise à recommander au Conseil d'approuver des mesures pour officialiser les pratiques passées de la Ville en matière de recrutement, d'embauche et d'administration des contrats pour les titulaires d'une charge créée par une loi qui relèvent directement du Conseil. La nouvelle politique et procédure de recrutement, de nomination et d'administration des contrats des titulaires d'une charge créée par une loi prévoit une approche uniforme ainsi qu'une responsabilisation et une transparence améliorées. La politique et procédure permettrait également d'intégrer les pratiques exemplaires et les autres recommandations identifiées par l'Ombudsman de l'Ontario, dont le mandat comprend les enquêtes sur les décisions prises par les municipalités et la formulation de recommandations fondées sur les résultats.

En novembre 2019, l'Ombudsman a publié un rapport de 71 pages<sup>2</sup> à la suite d'une enquête qui révélait de graves problèmes dans les processus d'embauche et d'administration des contrats utilisés pour nommer et maintenir en poste un directeur général dans la région de Niagara en 2016. Voici certaines des conclusions du rapport de l'Ombudsman :

- Le personnel du bureau du président régional avait partagé des renseignements confidentiels avec le candidat qui est devenu le DG, notamment des questions pour les entrevues, des suggestions de réponses à un exercice écrit et des données biographiques sur les autres candidats.
- Le président régional avait unilatéralement prolongé le contrat du DG sans en avoir informé le Conseil et obtenu son consentement. L'Ombudsman n'a formulé aucune conclusion quant à la validité du contrat ou à savoir si le président avait l'autorité juridique d'approuver à lui seul le contrat, puisque les questions relatives à la prolongation du contrat étaient devant les tribunaux au moment de la rédaction du rapport. Toutefois, l'Ombudsman a conclu que les mesures prises par la municipalité régionale pour prolonger le contrat étaient « déraisonnables » et a déclaré que « pour éviter la confusion à l'avenir, la Région devrait préciser le rôle du conseil en ce qui concerne la négociation et l'approbation d'un contrat de DG ».
- Le manque de clarté quant à la manière et au moment de l'évaluation du rendement du DG et quant à la personne qui aurait dû mener cette évaluation avait entraîné une approche incohérente dans la région de Niagara.

L'Ombudsman a formulé 16 recommandations portant sur divers points, notamment les processus liés à l'embauche et à l'évaluation du rendement du DG. Il recommandait entre autres à la région de Niagara d'adopter des politiques relatives aux processus d'embauche et d'évaluation du rendement du DG.

Bien que l'enquête de l'Ombudsman ait porté sur le poste de DG, le personnel est d'avis que les recommandations et les pratiques exemplaires citées dans le rapport de l'Ombudsman pourraient s'appliquer à tous les titulaires d'une charge créée par une loi de la Ville d'Ottawa relevant directement du Conseil.

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<sup>2</sup> Ombudsman de l'Ontario. « [Un coup monté de l'intérieur : Enquête sur des questions relatives à l'embauche du directeur général et à l'administration de son contrat par la Municipalité régionale de Niagara](#) » (novembre 2019).



La nouvelle politique et procédure de recrutement, de nomination et d'administration des contrats des titulaires d'une charge créée par une loi incorporerait les pratiques passées du Conseil en matière de recrutement, de nomination et d'administration des contrats. Elle comprendrait également des dispositions traitant des recommandations de l'Ombudsman concernant des questions comme la confidentialité et l'équité dans le processus d'embauche. De plus, la politique et procédure incorporerait les principes existants de la Ville en ce qui a trait à des questions comme l'objectivité, l'impartialité, l'équité et la diversité dans le processus de dotation et de recrutement. Si le Conseil approuve les recommandations du présent rapport, les règlements et modifications de règlements connexes en ce qui concerne le vérificateur général, le directeur municipal et le commissaire à l'intégrité seront présentées dans le cadre de l'Examen de mi-mandat de la structure de gestion publique 2018-2022.

Étant donné que les modalités des contrats actuels pour le vérificateur général (échéance le 31 décembre 2020), le directeur municipal (échéance le 30 avril 2021) et le commissaire à l'intégrité (échéance le 31 août 2020) expireront pendant le mandat du Conseil actuel, le personnel recommande que la récente enquête de l'Ombudsman et les recommandations qui en découlent dans le présent rapport soient utilisées pour orienter les processus à venir en ce qui concerne le recrutement, l'embauche ou la prolongation de contrats.

En plus de la nouvelle politique et procédure recommandée dans le présent rapport, on propose que le personnel soit chargé d'inclure des propositions visant à traiter les recommandations de l'Ombudsman en ce qui a trait aux évaluations du rendement dans le cadre des consultations de l'Examen de mi-mandat de la structure de gestion publique 2018-2022. Cette approche permettrait au Conseil d'intégrer les récentes suggestions de l'Ombudsman et d'établir une approche uniforme qui définit en détail l'orientation souhaitée par le Conseil pour les évaluations du rendement, avec une directive expresse au personnel en ce qui concerne la mise en œuvre.

## **BACKGROUND**

Under the *Municipal Act, 2001* (the Act), municipalities have authority to appoint various statutory officers to carry out certain functions described within the legislation. At the City of Ottawa, three such statutory officers report directly to Council, as follows:

- The **Auditor General** (established further to Council’s approval in September 2003) – The Auditor General “reports to council and is responsible for assisting the council in holding itself and its administrators accountable for the quality of stewardship over public funds and for achievement of value for money in municipal operations,” pursuant to Subsection 223.19(1) of the Act. This subsection authorizes a municipality to appoint the Auditor General. Subsection 223.19(1.1) of the Act provides that the Auditor General “shall perform his or her responsibilities ... in an independent manner.”
- The **City Manager** (in place since amalgamation) – The City Manager is known under the Act as the “Chief Administrative Officer”. Section 229 of the Act provides that a municipality may appoint a CAO who shall be responsible for “exercising general control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality,” and “performing such other duties as are assigned by the municipality.”
- The **Integrity Commissioner** (established by Council in July 2012) – The Integrity Commissioner is appointed under Subsection 223.3(1) of the Act. The subsection authorizes a municipality to appoint an Integrity Commissioner “who reports to Council and who is responsible for performing in an independent manner the functions assigned by the municipality” with respect to various matters. These matters include the “application of the code of conduct for Members of Council and the code of conduct for members of local boards”; the “application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of Members of Council and of local boards”; and overseeing and providing advice to Members of Council and members of local boards regarding certain sections of the *Municipal Conflict of Interest Act*.

Each municipality is required to provide the Integrity Commissioner function by appointing their own Integrity Commissioner or making arrangements for another municipality’s Integrity Commissioner to be available.

The City of Ottawa’s Integrity Commissioner also plays the role of two other statutory officers under the Act:

- The Meetings Investigator (first established by Council as a standalone position in November 2007), who reviews requests for investigation regarding whether a meeting of Council, a local board or a committee of either was properly closed to the public, pursuant to Section 239.2 of the Act. The Meetings Investigator has the function under the Act “to investigate in an independent manner”; and
- The Lobbyist Registrar (established by Council in 2012), who oversees and enforces the Lobbyist Registry as well as the Lobbyist Code of Conduct, in accordance with Section 223.11 of the Act. The Act provides that the Lobbyist Registrar “is responsible for performing in an independent manner the functions assigned by the municipality” with respect to the Lobbyist Registry.

Apart from providing that the Auditor General, City Manager and Integrity Commissioner are appointed by the municipality through its Council, the legislation does not include specific requirements with respect to the recruitment, hiring, contract administration and performance assessment processes for these positions.

At the City of Ottawa, there is no single policy in place to address statutory officer recruitment, appointment and contract administration. That said, similar processes and/or principles have been used over the past decade to recruit, appoint and extend the contracts of statutory officers. In general, and as described in more detail below, each process was approved by way of Council resolution passed in an open public meeting, and followed comparable practices based on the requirements of the specific statutory role. Any resulting appointment was also approved through Council resolution, or finalized and reported to Council and the public under delegated authority in accordance with Council’s direction. In addition, Council approved through the 2014-2018 Governance Review a process for performance appraisals of the Auditor General and City Manager.

The purpose of this staff report is to recommend that City Council approve a new policy and procedures to formalize the City’s past practices with respect to recruitment, hiring and contract administration for the Auditor General, City Manager and Integrity Commissioner. The recommended policy and procedures would provide for a consistent approach and improved accountability and transparency. If Council approves the recommendations in this report, staff will follow up with associated by-laws and by-law

amendments to further formalize these requirements and clarify the relationship between the statutory officers and Council, as part of the 2018-2022 Mid-term Governance Review.<sup>3</sup>

The proposed measures identified in this staff report would also provide an opportunity to incorporate a number of other best practices and recommendations identified by the Ontario Ombudsman, whose mandate has included municipal oversight since January 2016. As described in more detail below, the Ombudsman made a number of relevant recommendations in a report issued in November 2019 following an investigation that found serious problems in the hiring and contract administration processes used to appoint and retain a Chief Administrative Officer (CAO) in Niagara Region in 2016. While the Ombudsman's investigation focused on the CAO position, staff are of the view that the recommendations and best practices cited in the Ombudsman's report could apply to all similarly situated statutory officers at the City of Ottawa who report directly to City Council.

This staff report also addresses the matter of performance assessments for the Auditor General and City Manager by recommending that staff be directed to include proposals to address the Ombudsman's recommendations in this regard as part of the 2018-2022 Mid-term Governance Review consultations.

As the terms of the current contracts for the Auditor General (continuing until December 31, 2020), the City Manager (continuing until April 30, 2021) and the Integrity Commissioner (continuing until August 31, 2020) are set to expire during the current term of Council, staff recommend that the recommendations made in this report, as well as the observations included in the Ombudsman's recent report, be used to inform any forthcoming processes with respect to recruitment, hiring and/or contract extension. As noted below, Council has already delegated authority to the City Clerk to negotiate, finalize and execute optional one-year extensions for the Integrity Commissioner at the end of the Integrity Commissioner's current contract period.

Additional information is provided below regarding the Ombudsman's report and its specific recommendations, as well as the City's existing past, largely informal, practices for statutory officer recruitment, appointment and contract administration.

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<sup>3</sup> As noted in this report, the Ontario Ombudsman has recommended that the Regional Municipality of Niagara should adopt a by-law "setting the parameters of the relationship between council and the CAO, including the role of council with respect to amending the CAO's contract and salary."

## An “Inside Job”: The Ontario Ombudsman’s Investigation and Recommendations after a CAO Hiring in Niagara Region

*“The Regional Municipality of Niagara’s 2016 CAO hiring process **was an inside job, tainted by the improper disclosure of confidential information to a candidate – a candidate who was ultimately successful and became the region’s most senior administrator.** ... I found that the regional municipality’s actions with respect to the CAO hiring process were **unreasonable, unjust and wrong** ...*

*I am hopeful that by implementing my recommendations, the regional municipality will regain some of the public trust that was lost during this CAO hiring process, and that in future its **practices and policies will result in greater accountability, transparency, integrity and fairness in local governance.**”<sup>4</sup>*

- Paul Dubé, Ontario Ombudsman

Since January 2016, the Ontario Ombudsman’s mandate has included investigating decisions made by municipalities and making recommendations based on the findings.

On November 29, 2019, the Ontario Ombudsman released a 71-page report titled, [“Inside Job: Investigation into matters relating to the Regional Municipality of Niagara’s hiring of its Chief Administrative Officer, and its administration of his contract.”](#) The investigation related to Niagara Region’s hiring of a new Chief Administrative Officer (CAO) in October 2016, following a six-month recruitment process.

In April 2018, a local newspaper reported that the successful CAO candidate had improperly received confidential information relating to the hiring process during the job competition. Following an investigation by a municipal ombudsman and a review by external governance auditors, Niagara Region Council asked the Ombudsman to investigate. The Ombudsman had received 113 complaints from citizens about matters relating to the hiring of the CAO around the time that he notified Niagara Region of his intent to investigate (the Ombudsman’s Office ended up receiving a total of 171 complaints). The Ombudsman’s investigation focused in part on the CAO hiring process

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<sup>4</sup> Ibid., Paras. 12, 13, 15.

and the administration of the CAO's contract, including any amendment and extension to the contract.<sup>5</sup>

Among its findings, the investigation determined:

- That staff in the Regional Chair's Office shared confidential information with the successful candidate, including interview questions, suggested responses for a written exercise and biographical information about other candidates;
- That the Regional Chair extended the CAO's contract in 2017 without involving Council. The Ombudsman found the regional municipality's actions regarding the contract extension to be "unreasonable" and stated that "to avoid confusion in the future, the region should clarify the role of council with respect to the negotiation and approval of a CAO contract"; and
- That a lack of clarity regarding how and when the CAO's performance was reviewed, and who should conduct the review, had resulted in an inconsistent approach.

The report made 16 recommendations "addressed at ensuring the integrity and confidentiality of the regional municipality's process for hiring chief administrative officers, encouraging ethical conduct by regional staff, establishing a transparent process for CAO performance management, [and] extending and amending CAO contracts..." the Ombudsman wrote.

The Ombudsman's findings and recommendations are described in more detail in the Discussion section of this report. Among the recommendations relevant to this staff report are as follows:

- Recommendation No. 3 – The Regional Municipality of Niagara should require all officials and staff with access to confidential hiring process information to sign a specific confidentiality agreement at the outset of the process.

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<sup>5</sup> The Ombudsman's investigation also addressed the regional municipality's response to the concerns raised about the matter, including the investigation conducted on behalf of the Region by the municipal ombudsman and the review external governance auditors. The Ombudsman found that these reviews were "unreasonable," but these matters and associated recommendations are not the subject of this staff report.

- Recommendation No. 4 – The Regional Municipality of Niagara should ensure that the terms of reference it establishes for a recruitment committee can provide for a complete list of the staff and officials permitted to access confidential information.
- Recommendation No.6 – The Regional Municipality of Niagara should adopt a policy clarifying that employees should not engage in any behaviour that provides an unfair advantage to a candidate during a hiring process, including assisting candidates by providing inside information such as interview questions and suggested answers.
- Recommendation No. 9 – The Regional Municipality of Niagara should adopt a policy setting out the process for hiring a Chief Administrative Officer, including the appropriate roles of staff and their accountability to council or a committee of council charged with the hiring.
- Recommendation No. 11 – The Regional Municipality of Niagara should adopt a by-law setting the parameters of the relationship between council and the CAO, including the role of council with respect to amending the CAO’s contract and salary.
- Recommendation No. 13 – The Regional Municipality of Niagara should adopt a policy governing the process for CAO performance appraisals.

At a special meeting of Niagara Region Council on December 5, 2019, Council unanimously approved various matters relating to the Ombudsman’s report. This included confirming Council’s agreement with the recommendations and directing staff to implement various measures in response to the report. Council also directed external legal counsel to report back with “all other potential avenues of legal recourse” arising from the Ombudsman’s findings.<sup>6</sup>

In addition, Council approved immediately forwarding the Ombudsman’s report to the Niagara Regional Police Service, “with a request that a complete and thorough

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<sup>6</sup> On February 20, 2020, the St. Catharines Standard published a report under the headline of, “[Niagara Region sues Caslin and advisers for \\$850,000.](#)” According to the report, the Regional Municipality of Niagara has filed a statement of claim against the former Regional Chair and his two aides in relation to the CAO hiring matter.

investigation be conducted into the allegations contained in that report even if those investigative leads go beyond the contents of the Ombudsman's report."<sup>7</sup>

In January and February of 2020, Niagara Region Council also considered and approved various policy and procedure changes meant to address many of the Ombudsman's recommendations. This includes a by-law regarding Chief Administrative Officer Roles and Responsibilities, and a Chief Administrative Officer Recruitment, Selection, Offer of Employment and Performance Management Policy.

### **Past Practices for Hiring Statutory Officers and Addressing Contract Matters at the City of Ottawa**

Since amalgamation, Ottawa City Council has rarely recruited and appointed statutory officers that report directly to Council. Two Auditors General have been hired since Council established the position in 2003. Two City Managers were hired in the years following amalgamation. One Integrity Commissioner was hired after the position was established in 2012.

Most recently, Council used similar recruitment and appointment processes for the Auditor General in 2013 and the City Manager in 2015-2016. In both instances, Council adopted a motion setting out the process to be used. The motion included the establishment and composition of a Hiring Panel, the engagement of an external search firm and a requirement for the Hiring Panel to report back with a recommended candidate for Council's approval. When the Hiring Panel reported back, Council considered the Panel's recommendation(s) and approved a motion to appoint the recommended candidate. The City's past practice has also been for Council to approve any extensions to the incumbent's contract by way of report and/or motion.

Council also used consistent recruitment and appointment processes for the former standalone Meetings Investigator and the Integrity Commissioner. As described in more detail below, these processes were different than those used for the Auditor General and City Manager because of the nature of the positions' independent and arm's-length roles – and, in particular, the Integrity Commissioner's oversight of the Code of Conduct

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<sup>7</sup> On December 12, 2019, the Regional Municipality of Niagara Police Services Board considered a letter from Niagara Region's Regional Clerk that provided the Chief of Police with notice of the Regional Council resolution. The Police Services Board approved a resolution that stated, "That the Board endorses the Chief of Police request to the Ontario Provincial Police to conduct a full investigation into the allegations contained in the Ontario Ombudsman Report titled 'Inside Job.'"



for Members of Council and other Council-related matters. As such, Council delegated authority to the City Clerk and Solicitor to conduct the hiring process for the Integrity Commissioner in accordance with Council-approved criteria. Council has also delegated authority to the City Clerk for Integrity Commissioner contract extensions, subject to Council-approved term lengths. The City Clerk also has the delegated authority to approve the Integrity Commissioner's expenses.

Some additional details are provided below regarding the most recent recruitment, appointment and contract administration processes for each statutory officer.

### Auditor General

The Auditor General's By-law [By-law No. 2013-375, as amended by By-law No. 2015-11], provides that Council, "shall by by-law appoint a person to the position of Auditor General for a non-renewable term to be determined by Council, and shall specify the terms and conditions of such appointment."

On May 8, 2013, Council considered a motion that directed a search be undertaken for the City's second Auditor General. The new Auditor General would replace Mr. Alain Lalonde, who was the City's first Auditor General after being appointed in July 2004.<sup>8</sup> Council approved the motion, which provided that Council:

1. Thank Mr. Lalonde for the valuable auditing work that he has undertaken for the City of Ottawa over his tenure;
2. Provide Mr. Lalonde with written notice in compliance with the *Employment Standards Act, 2000* and regulations;
3. Approve the Mayor (Chair), the Chair and Vice-Chair of the Audit Sub-Committee, and the two Deputy Mayors to be the Hiring Panel to interview candidates for the position of City Auditor General;
4. Approve the engagement of an external search firm to assist the Hiring Panel in undertaking an executive search for a new Auditor General to an upset limit of \$50,000;

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<sup>8</sup> The Auditor General's By-law provides for a seven-year, non-renewable term. With respect to Mr. Lalonde's appointment, Council on November 28, 2007, considered the report titled, "[Office of the Auditor General – Bill 130 – Revised Mandate](#)." Among the recommendations approved by Council was to grant a two-year extension to the current term of the Auditor General at that time (to December 31, 2013).

5. Direct the City Clerk and Solicitor's Office to provide the required administrative support to the Hiring Panel; and
6. Direct the Hiring Panel to report back to City Council by Q4 of 2013 with a recommended candidate for Council's approval as the new Auditor General.

On October 23, 2013, Council considered a confidential report from the Chair of the Auditor General Hiring Panel, titled, "Results of the Recruitment Process for the New Auditor General." Council approved the report recommendation, which directed staff "to prepare a motion for open session that City Council approve the recommendation of the Auditor General Hiring Panel to appoint Ken Hughes as the City of Ottawa's Auditor General, effective December 15, 2013, as outlined in this report."<sup>9</sup>

Council then approved a motion that set out the work of the Hiring Panel, including the Panel's engagement of a search firm and conducting of interviews (and the related dates). The motion appointed Mr. Hughes as Auditor General, effective December 15, 2013. Through the motion, Council also authorized the City Clerk and Solicitor to finalize an employment agreement in accordance with the terms and conditions in the confidential report and authorized the Mayor and the Deputy City Clerk to execute the agreement.

Subsection 3(2) of the Auditor General's By-law provides that the current Auditor General's fixed term of seven years continues until December 31, 2020.

### City Manager

Council approved the appointment of Mr. Kent Kirkpatrick as City Manager in March 2004. Mr. Kirkpatrick replaced the City of Ottawa's first City Manager, who was hired into the position by the Ottawa Transition Board prior to amalgamation.

Council extended Mr. Kirkpatrick's employment on several occasions. The general Council-approved process for those contract extensions was to delegate authority for negotiating, finalizing and executing the contract extension and any required changes to the contract. Typically, Council delegated this authority to the Mayor and Deputy Mayors. On the most recent renewal in 2014-2015, the Vice-Chair of the Finance and

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<sup>9</sup> The Council meeting minutes note that pursuant to the *Procedure By-law*, the report was to be addressed *In Camera*. However, Council determined it was unnecessary to resolve in closed session as Members did not have any questions on the confidential report. Therefore, Council considered matters contained in the report, in open session and then proceeded to approve the referenced motion.

Economic Development Committee was also part of the Council-approved working group.

On September 23, 2015, Council considered a motion moved by the Mayor that stated Mr. Kirkpatrick had advised that he was unable to accept a one-year extension to his contract for health reasons. As such, the motion, as approved by Council, set out a recruitment and hiring process which provided that Council:

1. Thank Mr. Kirkpatrick for the valuable leadership and work that he has undertaken for the City of Ottawa over his more than 25-year municipal career and, in particular, his 11-year tenure as City Manager;
2. Provide Mr. Kirkpatrick with notice from the City, as set out in his employment contract, of its intention not to renew that contract for another year, based upon the letter received from Mr. Kirkpatrick, dated September 22<sup>nd</sup>, 2015 (with copy attached);
3. Approve that the Mayor (Chair) and all Members of the Finance and Economic Development Committee be constituted as the Hiring Panel to interview candidates for the position of City Manager and that the Mayor also seek input from all other Members of Council on their expectations of the desired qualifications for same;
4. Approve the immediate engagement of an external search firm from the City's Standing Offer List to assist the Hiring Panel in undertaking an executive search for a new City Manager to an upset limit of \$50,000;
5. Direct the City Clerk and Solicitor's Office to provide the required administrative support to the Hiring Panel; and
6. Direct the Hiring Panel to report back to City Council at the earliest available opportunity with a recommended candidate for Council's approval as the new City Manager.

On February 8, 2016, Council approved a motion appointing Mr. Steve Kanellakos to be the new City Manager. Council also delegated to the Mayor, in consultation with the City Clerk and Solicitor, the authority to finalize and execute the employment contract in that instance based on the following specified parameters relating to term, salary and benefits and severance:

1. A five-year term;
2. An annual salary of \$319,000 with no increments, excluding any cost of living adjustments to the Management and Professional/Exempt Group;
3. Benefits pursuant to those received by the Management and Professional/Exempt Group; and
4. No severance unless dismissed by the City “without cause” within the five-year term.

The five-year term for the current City Manager continues to April 30, 2021.

### Integrity Commissioner

Prior to establishing the Integrity Commissioner position, Ottawa City Council on November 28, 2007, approved the appointment of a standalone Meetings Investigator. At that time, Council delegated the hiring authority to the City Solicitor in accordance with criteria established in the staff report titled, “[Closed Meetings and Meetings Investigator](#).” The report noted that this approach to hiring was “to further enhance the independent, arms-length relationship of the Meetings Investigator.”

On July 11, 2012, Council considered the staff report titled, “[Integrity Commissioner](#),” and approved the roles, responsibilities and selection process for the position of Integrity Commissioner for the City of Ottawa, including that the Integrity Commissioner also be the City’s Meetings Investigator and the Lobbyist Registrar. The staff report noted that in considering the appointment of an Integrity Commissioner, staff suggested the same principles applied to the appointment of a Meetings Investigator would also apply to the appointment of an Integrity Commissioner. These principles are as follows:

- The Integrity Commissioner’s independence and impartiality;
- Confidentiality with respect to the Integrity Commissioner’s activities; and
- The credibility of the Integrity Commissioner’s investigation process.

In considering the appointment of an Integrity Commissioner, staff recommended that the successful candidate possess:

- Previous municipal, governance, procedural and/or ethics experience (e.g. former Clerk, CAO, municipal lawyer, similar experience in another level of government);
- Knowledge of municipal government and the accountability and transparency provisions of the *Municipal Act, 2001*;
- Understanding of Council operations and policies;
- Ability to provide services on a part-time, flexible and as-needed basis, without competing employment demands;
- Credibility with City Council, staff, public and media;
- The ability to receive complaints and conduct investigations in both official languages; and
- No specific connection or interest with the City (specifically a financial or business relationship).

Similar to the process established to hire the City's Meetings Investigator in 2007, the report suggested that Council delegate the hiring of the Integrity Commissioner to the City Clerk and Solicitor in accordance with the above-noted criteria. This approach "enhances the independent, arms-length relationship of the Integrity Commissioner who will be responsible for the application of a Code of Conduct for Members of Council," the report stated.

The staff report further recommended that the initial term of the Integrity Commissioner be set at one year, to ensure that the Integrity Commissioner worked well with Council, with an optional renewal for a five-year term. That approach was also in line with the practice used for the initial term and subsequent contract extension for the former standalone Meetings Investigator, the report noted.

In accordance with the Council-approved criteria, the City Clerk and Solicitor conducted advertising for the position and received applications. Interviews were conducted by the City Clerk, the Deputy City Clerk and the Auditor General. Based on the interviews, a preferred candidate was selected and the contract was signed.

Mr. Robert Marleau was appointed as the City of Ottawa's first Integrity Commissioner on August 29, 2012. Mr. Marleau's initial one-year appointment was subsequently renewed for a five-year term, as set out in a memorandum to Council from the City Clerk and Solicitor on August 30, 2013.

On November 22, 2017, Council approved a recommendation in the staff report titled, "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*," for the City Clerk and Solicitor to be delegated the authority 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.

The two-year extension for the current Integrity Commissioner continues until August 31, 2020.

### **Existing City Policies and Procedures that may relate to the Hiring Process**

Although the City of Ottawa does not have any policies that expressly address hiring processes for statutory officers, various other general policies and procedures include provisions that would be relevant to the conduct and activities of individuals participating in recruitment and appointment. In particular, statutory and policy provisions would apply to the protection of confidential information, as well as to the general integrity of City staff and Members of Council involved in the hiring process.

As employees of an "institution" under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), all City staff must adhere to MFIPPA provisions relating to information under the City's control and custody. The City of Ottawa's [Employee Code of Conduct](#) includes a statement noting that, "We handle sensitive and confidential information with care and disclose only in accordance with [MFIPPA]."

Furthermore, each Management and Professional Exempt (MPE) employment offer letter includes boilerplate language that provides that the employee:

- shall not use or disclose any personal and/or confidential information available through their employment with the City, except as required to fulfill their duties and responsibilities;

- shall take reasonable precautions to safeguard any such information and to comply with the City's policies regarding the use of personal and/or confidential information; and
- that these obligations continue even after the end of the individual's employment with the City.

Members of Council are also subject to privacy-related provisions under MFIPPA. Section 5 of the Council-approved [Code of Conduct for Members of Council](#) further includes a section on confidentiality that states as follows:

1. By way of their office, Members of Council acquire confidential information from a variety of different sources including confidential personal information related to constituents who have contacted their office. Confidential information includes information in the possession of, or received in confidence by the City, that the City is either prohibited from disclosing, or is required to refuse to disclose under [MFIPPA]. Members of Council shall not use information that is obtained in his or her capacity as a member and that is not available to the general public to further or seek to further the member's private interest or improperly to further or seek to further another person's private interest.
2. In accordance with the rules under MFIPPA and the *Procedure By-law*, Members of Council shall not:
  - a. Where a matter has been discussed *in camera*, and where the matter remains confidential, disclose the content of the matter or the substance of the deliberations of the *in camera* meeting (Subsection 42(1)(d) of the *Procedure By-law*); and
  - b. Disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so.

The Code of Conduct for Members of Council and the Employee Code of Conduct also contain general ethics-related provisions that would apply to matters such as providing an unfair advantage to a candidate in a job competition. As noted in the Discussion

section of this report, the above-noted policies and procedures are incorporated into the policy and procedures recommended by staff.

Staff also note that the City's Recruitment and Staffing Policy establishes guiding principles for the City's recruitment and staffing practices. This policy applies to all Managers and Human Resources staff involved in the recruitment, selection and hiring of personnel. The policy states that the City "is committed to recruiting and maintaining a highly competent, qualified and diverse workforce through fair, transparent and equitable staffing practices."

In addition, the City has an Employment of Family Members Policy that is intended to "prevent a conflict of interest, or the appearance of such a conflict, that may arise through the hiring or employment of family members or close personal friends," as well as to "prevent the exercise of any improper influence based on familial or close personal relationships, or the appearance of such influence, in the City's employment practices." This policy applies to all City employees and elected officials, and includes the following policy statement:

"All employment-related matters, including hiring, promotions, performance appraisals and discipline shall be undertaken in an objective and impartial manner and in accordance with the Employee Code of Conduct, the Code of Conduct for Members of Council, principles of the *Accessibility for Ontarians with Disabilities Act* (AODA) and the City's Accessibility Policy."

### **Council-approved Processes for Auditor General and City Manager Performance Assessments**

The [2014-2018 Council Governance Review](#) considered by Council on December 3, 2014, noted that "there has not been a consistent approach to dealing with performance review-related matters associated with the positions of City Manager and Auditor General such as performance reviews, and salary adjustments that are within the Council-approved pay scale."

At the time of the 2014-2018 Governance Review report, the above-noted matters were within the purview of the Finance and Economic Development Committee and the former Audit Sub-Committee. The Governance Review report noted that, "In practice, it ... has proven very difficult to conduct regular performance reviews by a Committee or



Sub-Committee of Council. As a result, there have not been regular performance reviews conducted for these positions.”

The report further noted there were complexities involved in convening meetings of sub-committees of Council, and that the Mayor, as the Head of Council and Chief Executive Officer under the *Municipal Act, 2001*, “has responsibilities under Section 225 (c.1) of the *Municipal Act, 2001* with respect to providing recommendations to Council with respect to Council’s role to ensure accountability for the operations of the municipality, including the activities of senior management...”

The staff report recommended that, “the Mayor be given delegated authority to conduct performance reviews, authorize salary adjustments within the Council-approved pay scale and approve vacation and sick leave requests for the City Manager and Auditor General, as described in this report.” The report outlined a proposed process and parameters as follows:

“This would allow the Mayor to conduct performance reviews, make minor adjustments to the job descriptions, approve salary adjustments that are within the Council-approved pay scale and approve vacation and sick leave requests. Council would continue to have sole authority over hiring and dismissal. As well, any changes to the job descriptions and salary that go beyond previously approved Council guidelines would continue to require Council approval. In executing this delegation of authority, it is expected that the Mayor will consult with the Director of Human Resources, the City Clerk and Solicitor and/or Council colleagues as appropriate. As was done during the 2010-2014 Term of Council, the Mayor may also ask the Deputy Mayors for input and to participate in these matters.

Pursuant to the Delegation of Powers Policy, every delegation of a power or duty of Council shall be accompanied by a corresponding accountability and transparency mechanism. Accordingly, the Mayor will report annually to Council on any actions taken pursuant to the above-referenced delegation of authority.”

During Council’s consideration of the matter, two amending motions were approved that changed the original staff recommendation. One of the motions [Motion No. 1/11] referred to the Board of Health having “introduced a new process to review the performance of the Medical Officer of Health such that the Chair of the Board conducts

the review based on a weighted, written evaluation survey completed by all Members of the Board.” The recommendations approved by Council, as amended, were that:

- a) the Mayor and Deputy Mayors be given delegated authority to conduct performance review meetings for the City Manager based on written weighted evaluation forms filled out by each Member of Council and report the results of the meetings to Council in the manner deemed most appropriate by the Mayor, in consultation with the City Clerk and Solicitor; and
- b) the Mayor and the Chair and Vice-Chair of the Audit Committee be given delegated authority to conduct performance review meetings for the Auditor General based on written weighted evaluation forms filled out by each Member of Council and report the results of the meetings to Council in the manner deemed most appropriate by the Mayor, in consultation with the City Clerk and Solicitor; and
- c) the Mayor be delegated the authority to approve vacation leave, sick leave, expense reports and similar matters for both the City Manager and the Auditor General.

With respect to the Integrity Commissioner, given the position’s independent and arm’s-length relationship with Council and oversight of the Code of Conduct for Members of Council, as well as the fact that the Integrity Commissioner is not a full-time City employee, there is no similar Council-driven performance review process. It is noted, however, that the initial term of the Integrity Commissioner’s appointment has provided for a one-year term, “to ensure that the Integrity Commissioner works well with Council,” before a contract extension is considered under delegated authority.

In the memo to Council advising of the exercise of delegated authority to reappoint the current Integrity Commissioner after his initial year-long term, the City Clerk and Solicitor noted that he and the Deputy City Clerk received regular feedback on the Integrity Commissioner’s performance from Members of Council and stakeholder groups who met with the Integrity Commissioner in his role as Lobbyist Registrar. The feedback was “universally positive and, given the importance of the Integrity Commissioner to have the trust and respect of Council and stakeholders and the value in continuity with respect to the implementation of Council’s Accountability Framework,” the contract was renewed, the memo stated.

## DISCUSSION

As noted in the Background section of this report, Council has used consistent albeit informal approaches for recruitment, hiring and contract administration for the Auditor General, City Manager and Integrity Commissioner.

After reviewing the Ontario Ombudsman's "Inside Job" report and recommendations, staff recommend Council formalize many of its past practices with respect to statutory officer recruitment, appoint and contract administration. The recommendations in this report would provide for a consistent approach and improved accountability and transparency, largely by codifying the City's existing practices. The recommendations also provide an opportunity for Council to incorporate recommendations and best practices as recommended by the Ombudsman.

Should Council approve the new policy and procedures recommended in this report, staff will bring forward associated by-laws and by-law amendments for the Auditor General, City Manager and Integrity Commissioner as part of the 2018-2022 Mid-term Governance Review. Such by-laws and amendments would be consistent with the Ombudsman's recommendation that Niagara Region adopt a by-law "setting the parameters of the relationship between Council and the CAO, including the role of Council with respect to amending the CAO's contract and salary."

With respect to performance assessments for the Auditor General and City Manager, staff also propose that further consultation be undertaken through the 2018-2022 Mid-term Governance Review to address the Ombudsman's recommendations with respect to a policy governing the process for such appraisals.

Additional information regarding the recommendations in this report is below.

### **Recommendation 1 – That Committee and Council approve the Statutory Officer Recruitment, Appointment and Contract Administration Policy and Procedures, attached as Documents 1 and 2**

Although the City of Ottawa's most recent recruitment and appointment processes have been similar for the City Manager/Auditor General and the Integrity Commissioner/Meetings Investigator, there is no policy that formally captures all of Council's practices in this regard. The City's Recruitment and Staffing Policy only

applies to hires made by City staff, rather than the recruitment and appointment of statutory officers that are hired by and report directly to Council.

The Ombudsman found that a similar situation had existed in Niagara Region. The Region hired municipal staff under a specific policy and related guidelines that provided the roles of staff in the hiring process and specified that hiring should be free from favouritism and discrimination, but that policy did not apply to hiring the CAO.

In the process used for the 2016 CAO recruitment and appointment, Niagara Region Council created a CAO recruitment committee, composed of five Members of Council, including the Regional Chair, and approved its Terms of Reference. The Ombudsman noted that the Terms of Reference for the recruitment committee stated that committee members should actively participate in a transparent, competitive, and comprehensive recruitment process, while protecting confidential information considered by the committee. The Terms of Reference also set out the staff who would support the committee and the search firm in an advisory capacity.

While the Ombudsman noted that the recruiting committee's Terms of Reference "provided some guidance for the committee and supporting staff," he suggested that a standalone policy "could provide a consistent process over time." Such a policy could address the role of staff in the process, the Ombudsman wrote. "It could also clarify the role of council, including which information should be shared with council and which aspects of the process require council approval," the report stated.

The Ombudsman's official recommendation was that the Region should "adopt a policy setting out the process for hiring a Chief Administrative Officer, including the appropriate roles of staff and their accountability to council or a committee of council charged with the hiring."

The proposed Statutory Officer Recruitment, Appointment and Contract Administration Policy and Procedures, attached as Documents 1 and 2, capture the most recent Council-approved recruitment, appointment and contract-related processes for the Auditor General, City Manager and Integrity Commissioner. The policy and procedures also set out the roles of staff and hiring/interview panels, and their accountability to Council. Furthermore, the proposed policy and procedures include other recommendations made by the Ombudsman in the "Inside Job" report, particularly regarding matters such as confidentiality and fairness.

If approved, the recommended policy and procedures would apply to Members of Council, the Hiring Panel, Interview Panel (in the case of Integrity Commissioner recruitment and appointment), the external search firm and any City staff participating in recruitment and appointment processes related to statutory officer positions that report directly to Council.

The draft policy and procedures include the following:

A policy statement reflecting existing hiring policies in place at the City

The proposed policy statement would include language similar to the policy statements within the City's existing Recruitment and Staffing Policy, and the Employment of Family Members Policy. The statement would provide that the City is committed to fair, transparent and equitable practices for recruiting, appointing and administering the contracts of statutory officer positions that report directly to City Council, and that all employment-related matters, including hiring and contract administration, shall be undertaken in an objective and impartial manner and in accordance with the Code of Conduct for Members of Council, the Employee Code of Conduct, the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), as well as principles of the *Accessibility for Ontarians with Disabilities Act* (AODA), the City's Accessibility Policy and the City's Equity and Diversity Policy.

The proposed Statutory Officer Recruitment, Appointment and Contract Administration Policy would also recognize that the City of Ottawa is committed to providing quality services by establishing a qualified workforce that reflects the diverse population it serves, and that the City encourages applications from all qualified individuals. These provisions also appear in the Recruitment and Staffing Policy.

An express prohibition on any behaviour that provides an unfair advantage to a candidate

While the City has in place general policies and procedures that would guide behaviour during the recruitment and appointment of statutory officers – such as the Code of Conduct for Members of Council and the Employee Code of Conduct – there is no provision or policy that would expressly apply to the matter of providing an unfair advantage to a candidate during the statutory officer recruitment and appointment process.

As noted in the Background section of this report, the Ombudsman determined that the successful CAO candidate in Niagara Region had an “unfair and improper” advantage because he received information such as interview questions and suggested answers. The Ombudsman’s report stated that the successful CAO candidate “was provided with substantive content to be used in his application materials by insiders who had access to information not available to the general public or to other candidates.” The report stated that the information provided to the successful candidate by staff in the Regional Chair’s Office “went far beyond an informational interview.”<sup>10</sup>

The Ombudsman recommended that Niagara Region should adopt a policy “clarifying that employees should not engage in any behaviour that provides an unfair advantage to a candidate during a hiring process, including assisting candidates by providing inside information such as interview questions and suggested answers.”

The proposed Statutory Officer Recruitment, Appointment and Contract Administration Policy would state that there shall be no acts of favouritism, bias, undue influence or discrimination in the statutory officer recruitment process. The policy would also provide that individuals participating in the recruitment and appointment process shall not attempt to influence the hiring of any applicant in a manner that is inconsistent with the policy.

In addition, the policy would state that participants shall not engage in any behaviour that provides an unfair advantage to a candidate during the statutory officer recruitment process. This includes assisting any candidate by providing inside information including, but not limited to interview questions and suggested answers, presentation materials, information about other candidates, and/or any information gathered in meetings, conversations, email or any other form of communication or discussion.

#### Mandatory requirement for participants to sign confidentiality agreements and a list of City staff and officials permitted to access confidential information

The proposed policy and procedures include a requirement for participants in the recruitment and appointment process to sign a specific, mandatory confidentiality agreement related to the hiring of the statutory officer. The confidentiality agreement

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<sup>10</sup> The Ombudsman’s report notes at Paragraph 157 that, “It is a common practice for job candidates to reach out to employees at their prospective workplace. These are often called informational interviews, and generally give a candidate the chance to ask questions about the culture of an organization or what a job there would entail.”

would need to be signed at the beginning of the process, before the participant received any confidential information.

In Niagara Region, the external hiring firm retained for the CAO's recruitment advised the Ombudsman that they did not believe the Region's staff needed to sign a specific confidentiality agreement because staff were required to maintain confidentiality as an employment condition, the Ombudsman wrote. However, the hiring firm "told us that since this incident, they now believe everyone participating in the hiring process should be required to sign a confidentiality agreement," the Ombudsman wrote. The report further stated that, "As a best practice, all officials and employees with access to confidential hiring process information should sign a confidentiality agreement before receiving any confidential information." The agreement should be signed "at the outset of the process," the Ombudsman recommended.

The Ombudsman also recommended that Niagara Region should ensure that the Terms of Reference for a recruitment committee "provide for a complete list of the staff and officials permitted to access confidential information."

The policy and procedures proposed by staff in this report set out the membership of the Hiring Panels and provide a list of City staff that could have access to confidential information during the hiring process.

The proposed policy would expressly provide that City staff and Members of Council involved in the recruitment process must hold in strict confidence all confidential information concerning matters dealt with by Council, the Hiring Panel and/or the Interview Panel. It would further state that City staff must abide by confidentiality provisions of MFIPPA, the Employee Code of Conduct and applicable contract provisions relating to confidential and/or personal information. The policy would also note that Members of Council are subject to MFIPPA, as well as provisions of the Code of Conduct for Members of Council relating to confidentiality.

#### Hiring and contract administration processes as previously approved by Council

The proposed policy and procedures provide for the approaches adopted by Council for the most recent hiring and contract administration processes. As such, they set out the roles of Hiring/Interview Panels and staff, and their accountability to Council.

Generally, for the Auditor General and City Manager hiring process, the proposed procedures would include that Council shall consider a motion that provides for as follows:

- Providing the incumbent with any required notice, as set out under the employment contract and/or the *Employment Standards Act, 2000* and regulations;
- Approving the composition and Terms of Reference of the Hiring Panel to interview candidates for the position;
- The engagement of an external search firm from the City's Standing Offer list may be considered to assist the Hiring Panel in undertaking an executive search, identifying an upset limit;
- Directing the Office of the City Clerk to provide the required administrative support to the Hiring Panel; and
- Directing the Hiring Panel to report back to Council with a recommended candidate for Council's approval.

As noted above, the procedures would provide for Council to consider establishment of the Hiring Panels (as well as a sample of their draft Terms of Reference), based on past practices approved by Council. The Hiring Panel considered for the Auditor General would be the Mayor (Chair), the Chair and Vice-Chair of the Audit Committee and the Deputy Mayors. The Hiring Panel considered for the City Manager would be the Mayor (Chair) and all Members of the Finance and Economic Development Committee. The motion to be considered by Council would also set out that the Mayor seek input from all other Members of Council on their expectations of the desired qualifications for the relevant position.

The procedures would further require that Council consider the recommendation(s) of the Hiring Panel and that any appointment approved by Council shall be made by a public resolution, specifying the terms and conditions and delegating authority to finalize and execute the employment contract based on the specified parameters. The resolution would also be required to provide "reporting out" requirements with respect to the exercise of the above-noted delegated authority.

The process for Auditor General/City Manager contract administration is included in the procedures, which state that Council shall, by public resolution, approve any amendments to the terms and conditions of the Auditor General's/City Manager's



appointment, including but not limited to contract, job description and salary matters that go beyond terms and conditions previously approved by Council. The resolution would be required to specify any relevant amendments and delegated authority with respect to same, as well as “reporting out” requirements with respect to any exercise of delegated authority.

With respect to the Integrity Commissioner, based on past practice and in recognition of the position as an independent, arm’s-length officer responsible for the application of the Code of Conduct for Members of Council as well as matters under the *Municipal Conflict of Interest Act*, staff recommend that the City Clerk continue to have delegated authority to appoint the Integrity Commissioner in accordance with the criteria and principles approved by Council. The proposed procedures would provide that under the City Clerk’s delegated authority, candidate interviews would be conducted by the Clerk, the Auditor General and the Deputy Clerk.

The City Clerk would be required to report back to Council on the exercise of the delegated authority in making the appointment. This would need to be accomplished immediately following contract execution by way of a memorandum setting out information regarding the new Integrity Commissioner and the recruitment and appointment process that was used. The initial term of the Integrity Commissioner would be set at one year, with an optional renewal for a five-year term.

The City Clerk would also have delegated authority to negotiate, finalize and execute extensions to the Integrity Commissioner’s contract and any subsequent renewals, subject to Council-approved term lengths and any Council-approved changes to terms and conditions, including the remuneration schedule. The Clerk would also be required to report to Council on the exercise of this delegated authority by way of memorandum immediately following the execution of any agreement.

These processes reflect the practices used to appoint the Integrity Commissioner in 2012 (and to renew his contract) as well as the former standalone Meetings Investigator further to Council’s approval in 2007. The City Clerk would continue to have the delegated authority to approve the Integrity Commissioner’s expenses.

**Recommendation 2: That Committee and Council direct staff to include proposals to address the Ombudsman’s recommendations with respect to a policy governing the process for Auditor General and City Manager performance**

**assessments, as part of the 2018-2022 Mid-term Governance Review  
consultations**

As noted in the Background section of this report, Council approved amended recommendations with respect to performance assessments of the Auditor General and City Manager in its consideration of the 2014-2018 Council Governance Review on December 3, 2014. Specifically, Council approved that:

- The Mayor and Deputy Mayors be given delegated authority to conduct performance review meetings for the City Manager based on written weighted evaluation forms filled out by each Member of Council and report the results of the meetings to Council in the manner deemed most appropriate by the Mayor, in consultation with the City Clerk and Solicitor; and
- The Mayor and the Chair and Vice-Chair of the Audit Committee be given delegated authority to conduct performance review meetings for the Auditor General based on written weighted evaluation forms filled out by each Member of Council and report the results of the meetings to Council in the manner deemed most appropriate by the Mayor, in consultation with the City Clerk and Solicitor.

The final recommendations approved by Council did not set out the precise manner in which performance reviews were to be conducted – including who would undertake the necessary research and support functions to fulfill the revised approach to performance assessments, such as contacting the Board of Health and obtaining, reviewing and/or revising the Board’s performance appraisal methodology for the Medical Officer of Health into one for the City Manager and the Auditor General.

As part of the consideration of that same report, Council also approved a recommendation (Recommendation 8 of Part V) that the City Clerk and Solicitor “be delegated the authority to implement changes to all related processes, procedures, policies and by-laws as required to implement Council’s decisions further to the approval of this report.” As such, the City Clerk and Solicitor had the authority to implement the necessary processes to develop a performance review framework for Council to follow that would include the approved approach and provide for results to be disclosed accordingly to Council.

Unfortunately, this recommendation was not followed through in the City Clerk and Solicitor’s Office (for a number of reasons, including workload, a change in City

Manager and an internal reorganization in the Clerk's Office), and no such framework was established.

Therefore, performance reviews of the Auditor General and City Manager were not carried out in a manner consistent with the direction given by City Council during consideration of the 2014-2018 Governance Review report.

In the "Inside Job" report, the Ombudsman found that there was an "inconsistent approach" to CAO performance reviews in Niagara Region that was marked by the lack of a by-law, policy or procedure "that clearly sets out how and when the CAO's performance should be reviewed, and who should do it." The Ombudsman recommended that in order to promote consistency and clarity, Niagara Region should adopt a policy specifying the process for CAO performance appraisals, and that "such a policy should provide guidelines on how to conduct an appraisal, and clarify who should be involved."

Given the Ombudsman's recommendation that a policy with respect to performance assessments should include guidelines on how to conduct a performance assessment, staff recommend that this matter be included in the 2018-2022 Mid-term Governance Review consultation process. This approach would provide an opportunity for Council to incorporate recent suggestions from the Ombudsman and establish a consistent approach that provides Council's desired direction for performance reviews in more detail than was set out in the amended recommendations approved in December 2014, with express direction to staff regarding implementation.

The proposed consultation as part of the Mid-term Governance Review would include consideration of the framework of Council's decisions from December 2014, as well as best practices noted by the Ombudsman. Specifically, the Ombudsman stated in his report that, "the Canadian Association of Municipal Administrators has developed a toolkit that includes templates and best practices for evaluating CAO performance and providing feedback," and that, "the region may also want to seek out similar policies at other municipalities using the municipal Google search created by the Association of Municipal Managers, Clerks, and Treasurers."

In addition, staff note that the Ontario Municipal Administrators' Association and Ontario Municipal Human Resources Association issued a document in October 2019 titled, "Chief Administrative Officer Employment Guidelines," which includes a section on CAO

performance appraisal that would be reviewed as part of Mid-term Governance Review preparations.

### **RURAL IMPLICATIONS**

There are no rural implications associated with this report.

### **CONSULTATION**

As part of the preparation for this report, the City Clerk consulted with Human Resources and Legal Services staff.

### **COMMENTS BY THE WARD COUNCILLOR(S)**

This is a city-wide report.

### **LEGAL IMPLICATIONS**

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

### **RISK MANAGEMENT IMPLICATIONS**

There are no risk implications associated with this report.

### **FINANCIAL IMPLICATIONS**

There are no financial implications associated with this report.

### **ACCESSIBILITY IMPACTS**

As noted in this report, the proposed Statutory Officer Recruitment, Appointment and Contract Administration Policy would provide that all employment-related matters, including hiring and contract administration, shall be undertaken in an objective and impartial manner and in accordance with principles of the *Accessibility for Ontarians with Disabilities Act* and the City's Accessibility Policy.

### **TERM OF COUNCIL PRIORITIES**

This report supports one of Council's Term of Council Priorities (2019-2022), being No. 7 – "Thriving Workforce: Promote Service Excellence by supporting a workforce that is healthy, diverse, adaptive and engaged."

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

Document 1 – Draft Statutory Officer Recruitment, Appointment and Contract Administration Policy

Document 2 – Draft Statutory Officer Recruitment, Appointment and Contract Administration Procedures

**DISPOSITION**

If Council approves the recommendations in this report, the Office of the City Clerk will implement same in the fashion described in this report. If Council approves Recommendation 2, the City Clerk will include proposals to address the Ombudsman's recommendations with respect to a policy governing the process for Auditor General and City Manager performance assessments, as part of the 2018-2022 Mid-term Governance Review consultations.