

Review of the Functions of the Accountability Offices for the City of Toronto

Lorne Sossin (with Samreen Beg)

Executive Summary

The Review

In July of 2015, I was retained by the City of Toronto to undertake an independent review of the functions of the Auditor General, Integrity Commissioner, Lobbyist Registrar and Ombudsman offices (together, the “Accountability Offices”). The Review arose out of a motion of City Council in March of 2015 which directed that a review be conducted leading to recommendations on whether any of the Accountability functions should be combined or delivered in a multiple role. The motion read:

City Council direct that an external review of the four Accountability Officers' operations focusing on the legal, technical and process implications of appointing Officers in a combined or multiple role be conducted by a third party with demonstrable experience and expertise in independent oversight, accountability, and should take into account best practices in other jurisdictions, both nationally and internationally, such review to consider and make recommendations on all options including maintaining the status quo, combining functions and/or any other changes that will strengthen the functions, keeping improved service to the public uppermost.

The Review included an examination of the primary legal and institutional source material and available secondary literature on the Accountability Offices and their functions. I have spoken with the current and former holders of these Offices as well as a range of other senior officials within the City who have regular contact with the Accountability Offices. I have also consulted other experts, including people who serve in multiple accountability capacities in comparable jurisdictions.

This Review assesses the legal, technical and process implications for combined or multiple roles and recommends changes to strengthen Accountability Office functions and improve service to the public. The criteria for this analysis is to evaluate what changes, if any, would enhance the efficiency and effectiveness of the Accountability Office functions. Efficiency includes but is not limited to the aspiration that investments in Accountability Office functions give rise to the highest possible levels of service. Effectiveness includes but is not limited to the aspiration that Accountability Offices possess the independence, expertise and capacity to fulfill its statutory mandates.

Summary of Findings

The findings and recommendations below relate to the benefits and challenges of the status quo structure for the Accountability Offices and offer three possible opportunities for improvements to the functions of these Offices, which include:

- Improving services to the public through implementation of a centralized Open City Hotline;
- Identifying areas for greater coordination and collaboration in the various AO functions, which can be addressed through a four-way Memorandum of Understanding (MOU); and
- Combining certain AO functions with the objective of achieving greater effectiveness and efficiency.

1) Improving Services to the Public through a centralized Open City Hotline

Building on the current "Fraud and Waste Hotline", which operates under the purview of the Auditor General's Office, the City should explore the implementation of a general centralized "Open City Hotline" which would receive anonymous tips alleging not only fraud and waste but also wrongdoing, unfairness or unethical activity of any kind.

This centralized confidential Open City Hotline is intended to improve service to the public and is not intended to change the input or alter the protocols of any other Accountability Office, for example, complaint protocols that require a complainant to be identified before an investigation can be commenced. This hotline would efficiently capture and disseminate complaints to the appropriate Accountability Office or City official, sparing the public the frustration of being redirected if they have contacted the wrong office or have visited multiple offices to address their concerns.

2) Greater Opportunities for Coordination and Collaboration of the various AO functions

The operations of the Accountability Offices already harness significant shared service models, including co-location (of the Integrity Commissioner, Lobbyist Registrar and Ombudsman), shared support from the City Clerk and a MOU on Co-operation and Collaboration in Education and Enforcement between the Integrity Commissioner and Lobbyist Registrar established in 2014 which facilitates greater collaboration and coordination. In addition, the City Manager's Office has established formal protocols with all Accountability Offices with respect to human resources and the budget process.

The following five specific recommendations made can be addressed by a four-way MOU between the AOs. Under this new or enhanced MOU, the Accountability Officers can address issues in a way that is practical and preserves the independence of their Offices.

A MOU is suggested because staff at each Office can carry out the coordinated functions envisioned under the MOU while ensuring the independent and fair operations of all four offices. The MOU would include the following provisions:

- a) Expanding the practice of joint education and training by Accountability Officers and the development of shared material for purposes of education and training, and more broadly to enhance the profile of the City of Toronto's Accountability Framework.
- b) Enhance communications by the City and the Accountability Officers on the City of Toronto's Accountability Framework, including logos and links to all Accountability Offices on the website of each.
- c) For intake of complaints received in each respective office, develop brief descriptions of the complaints that can be shared between the Accountability Offices in order to promote opportunities for collaboration, minimize duplication and to identify whether there will be concurrent investigations.
- d) Enhance the sharing of administrative, technical and professional resources with each other, and with the City, in order to build on and expand the collaboration between the Accountability Offices in their administration.
- e) Establish an annual meeting of the Accountability Officers in order to assess the efficiency and effectiveness of the MOU, and to explore more generally opportunities for greater coordination among the Accountability Offices.

3) Combined Functions of the Lobbyist Registrar and Integrity Commissioner

The City should explore the option of appointing the same individual as Integrity Commissioner and Lobbyist Registrar. The goal of this cross-appointment option would be to enable the cross-appointed Lobbyist Registrar and Integrity Commissioner to optimize the allocation of existing roles and resources across the functions of both Offices and within the terms of the MOU. While cross-appointment would not mean fewer resources are needed, or address the resource challenges now faced by these Offices, it could strengthen the functions of both Offices and improve service to the public by enhancing the efficiency and effectiveness of the operations of each Office.

Greater coordination in the functions of the Integrity Commissioner and Lobbyist Registrar through the MOU and other successful, joint activities provide a foundation on which to

continue to build. While there are examples of combining Integrity Commissioner and Lobbyist Registrar functions in other jurisdictions, including other Ontario municipalities, I conclude the differing nature of the legal and administrative landscape between the two Offices makes a merger or consolidation unlikely to lead to the strengthening of the functions of the two Offices or improved service to the public.

With respect to the Auditor General and Ombudsman, I conclude a merger or combination of functions would not strengthen the functions of these Offices or improve service to the public.

Conclusions

Because of the independent nature of the Accountability Offices, the recommendations included in this Review for the most part relate to steps which the Offices themselves can take to strengthen accountability functions and improve service to the public (such as a MOU). The Accountability Offices each face significant resource challenges, with growth in workload outpacing growth in capacity to carry out their mandates. While the nature and sufficiency of Accountability Office budgets lies beyond the scope of this Review, I wish to underscore that the successful implementation of the recommendations in this Review will be contingent on ensuring appropriate resources are in place for this purpose.

The City of Toronto's Accountability Framework remains the leading structure of municipal government oversight in Canada, and among the leaders globally. The functions of Toronto's Accountability Offices are reasonably efficient and effective in the current context and have developed a significant degree of shared resources and coordination between them. That said, in light of the legal and administrative landscape, the literature review, a review of comparative jurisdictions, I have concluded there are opportunities to strengthen the functions of the Accountability Offices and improve service to the public through greater coordination and collaboration.

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Lorne Sossin (with Samreen Beg)¹

Introduction

In July of 2015, I was retained by the City of Toronto to undertake an independent review of the functions of the Auditor General, Integrity Commissioner, Lobbyist Registrar and Ombudsman offices (together, the “Accountability Offices”). The Review arose out of a motion of City Council in March of 2015 which directed that a review be conducted which would lead to recommendations on whether any of the Accountability Offices’ functions should be combined or delivered in a multiple role. That motion stated:

1. City Council direct that an external review of the four Accountability Officers' operations focusing on the legal, technical and process implications of appointing Officers in a combined or multiple role be conducted by a third party with demonstrable experience and expertise in independent oversight, accountability, and should take into account best practices in other jurisdictions, both nationally and internationally, such review to consider and make recommendations on all options including maintaining the status quo, combining functions and/or any other changes that will strengthen the functions, keeping improved service to the public uppermost.
2. City Council request the City Manager to work with the Accountability Officers and report to the Executive Committee in the third quarter of 2015 on the results of the external review and on an implementation strategy arising from those findings and opportunities for synergy and efficiency, while at the same time improving service to the public.

In conducting this Review, I have been greatly assisted by Samreen Beg, who has served as the Research Associate. I have drawn on my legal, institutional and academic background, my experience consulting with accountability offices in other jurisdictions, as well as my experience as an Interim Integrity Commissioner and Open Meeting Investigator for the City of Toronto. I have completed a review of the primary legal and institutional source material and available secondary literature on the Accountability Offices and their functions. I have spoken with the current and former holders of these Offices as well as other senior officials within the City who have regular contact with the Accountability Offices. I also have consulted other outside experts, including people who serve in multiple accountability capacities in peer jurisdictions. In light of the short timeline of this Review, and the potentially expansive nature of the questions

¹ Lorne Sossin, the author of the Review, is Dean of Osgoode Hall Law School, York University. Samreen Beg, Research Associate for the Review, is a lawyer formerly appointed to the Canadian Securities Transition Office. Alannah Mozes, an Osgoode Hall Law School student, provided helpful research assistance.

posed, the description and analysis that follows is far from exhaustive. That said, my hope is that it serves as a clear and helpful point of departure for Toronto's City Council – and for the Accountability Offices themselves – as the future course of Toronto's Accountability Framework is charted.

Outline of this Review

To address the key issues in the Review, I will follow a structured analysis that addresses the following questions:

- What opportunities or constraints for combined or multiple roles for Toronto's Accountability Offices emerge from the legal landscape?
- What opportunities or constraints for combined or multiple roles for Toronto's Accountability Offices emerge from the administrative landscape?
- What can be learned from the literature and expert perspectives on Accountability Offices and the experience of other jurisdictions in developing their accountability infrastructure?
- In light of the legal context, the literature and the experience with respect to Toronto's Accountability Offices, how can the functions of the Accountability Office be strengthened and service to the public improved?

This Review assesses the legal, technical and process implications for combined /multiple roles and recommends changes to strengthen Accountability Office functions and improve service to the public. A full discussion of all the possible criteria that could be employed to determine how to strengthen the Accountability Office functions or improve service to the public lies beyond the scope of this Review.² The criteria I have used for this analysis evaluates what changes, if any, would enhance the efficiency and effectiveness of the Accountability Office functions. Efficiency in this context includes but is not limited to the goal that investments in Accountability Office functions give rise to the highest possible levels of service. Effectiveness includes but is not limited to the goal that Accountability Offices possess the independence and

² For a broader discussion of the methodology for assessing independent bodies, see Lorne Sossin and Steven Hoffman, "The Elusive Search for Accountability: Evaluating Adjudicative Tribunals" (2010) 28 Windsor Yearbook of Access to Justice 343. For a discussion and application of efficiency and effectiveness in the context of independent bodies, see Carl Baar et al, *Alternative Models of Court Administration* (Canadian Judicial Council, 2006) at 70.

capacity to fulfill their statutory mandates and ensure fairness and public confidence in their operations.

While constraints of time and resources make an exhaustive analysis of these questions impossible, I have approached the review with an open mind and an engaged ear. I have attempted to respond as directly as possible to the key questions posed by City Council and to provide as clear a foundation as possible for the conclusions and recommendations contained herein.

The Accountability Offices

The City of Toronto is a distinct environment in which to advance the goals of municipal accountability. The Accountability Offices which are subject to this review operate in a City of 2.8 million people (5.5 million if the whole GTA is considered), a City Council of 45 elected representatives, including the Mayor, the City's 114 agencies, 8 City-controlled Corporations, and a government administration of some 50,000 public servants, including approximately 35,000 members of the Toronto Public Service (larger than eight other provincial public services in Canada).³

The Accountability Offices in Toronto were established at different times and through different processes, but for the shared purpose of independent, credible, fair and transparent oversight of the City's activities and governance. While each Officer reports to Council, all were created to serve the public interest.

The Auditor General's Office was established by City Council in 2002 and incorporated as a statutory office by the *City of Toronto Act, 2006* ("COTA"). The first Auditor General was appointed when the Office was created in 2002. The Ombudsman's Office, by contrast, was created by COTA in 2006, but the position was not filled until 2008. Though the Toronto Ombudsman is of relatively recent vintage, it represents one of the few statutory Ombudsman offices in Canada (the first municipal Ombudsman office in Canada was established in Montreal and is discussed in Appendix "D" on comparative experience with municipal accountability officers).

The City's first Integrity Commissioner was appointed in 2004 and this represented the first municipal integrity commissioner in Canada (there are now over 30 in Ontario alone). The Integrity Commissioner was made a statutory office by COTA in 2006. Since 2004, there have

³ See Andre Côté, "The Fault Lines at City Hall: Reflections on Toronto's Local Government," (Toronto: Institute on Municipal Finance and Government, Munk School of Global Affairs: 2013), No. 1; and Richard Stren et al., "The Governance of Toronto: Challenges of Size and Complexity," University of Toronto Cities Centre: May 2012.

been four Integrity Commissioners appointed to that office, including the author, who served as interim Integrity Commissioner from 2008-2009.

In 2003, City Council asked the Province of Ontario for special legislation permitting the City to establish a lobbyist registry within the Office of the Integrity Commissioner. The application for this special legislation was put on hold in 2004 with the creation of a joint task force to review the *City of Toronto Act, 1997*, leading to the enactment of COTA in 2006, which required the City to establish a lobbyist registry and permitted the City to appoint a Lobbyist Registrar. In 2007, City Council adopted the Lobbying By-law, establishing the first municipal lobbyist registry in Canada (which began operations in 2008). Following the resignation of the first Lobbyist Registrar, Council appointed the current Lobbyist Registrar in June 2008.

In 2009, the Accountability Offices together provided input into revisions of Chapter 3 of the Toronto *Municipal Code*, which sets out a comprehensive governance framework for all of the Accountability Officers. It entrenches that these roles are independent and governs the appointment, remuneration and responsibilities of each office, consistent with the mandates provided by COTA.

COTA and the changes to the *Municipal Code* set out the legal structures of the Accountability Offices, and reflect the view that these Offices together constitute an Accountability Framework for the City of Toronto, with shared purposes and goals.

The origins of this collective approach to accountability (in addition to the genesis of the Offices of the Integrity Commissioner and Lobbyist Registrar) can be traced to the Toronto Computer Leasing Inquiry, a judicial inquiry headed by then Justice Denise Bellamy (the “MFP Inquiry”) between 2002 and 2004. Justice Bellamy issued the Inquiry’s final report and recommendations in 2005 (the “Bellamy Report”). Although not every recommendation was followed (for example, while Justice Bellamy recommended the creation of a full-time Integrity Commissioner for the City of Toronto, the position was filled with part-time Commissioners until 2014) the view that the Accountability Offices were intended to work together to safeguard the public trust in municipal governance – and that scandals such as those examined by the Bellamy Report never be allowed to recur – continues to animate the operations of these Offices and guides the request for this Review.

Following the Bellamy Report, a Joint Ontario – City of Toronto Task Force to Review the City of Toronto Acts and other Private (Special) Legislation Report, *Building a 21st Century City* (2005) recommended that new Accountability Offices be required through provincial legislation:

A modernized City of Toronto Act requires new – or strengthened – measures to promote transparency and accountability...To ensure high standards of professionalism and ethics, Toronto requires strong oversight functions. The Task Force therefore

recommends that the new Act require (not simply allow) the City to have an empowered and independent integrity commissioner, ombudsman, auditor general, and a lobbyist registry.⁴

COTA, the resulting legislation, now serves as the point of departure for any discussion of the functions and authority of Toronto's Accountability Offices and also in some cases provides the rationale for their administrative arrangements.

In June 2015, the Province of Ontario launched a review of various municipal legislation, including COTA. One of the review's main focus is on advancing accountability and transparency. Toronto City Council has authorized the City Manager and the Mayor to negotiate specific COTA amendments with the Province of Ontario. With respect to the Accountability Offices, the City will propose amendments to COTA that will extend the jurisdiction of the Auditor General to include restricted local boards (Toronto Police Services Board, Board of Health and the Toronto Public Library) and extend the jurisdiction of the Ombudsman to include the Toronto Public Library. The amendments will also support protecting the public's interests by providing the Lobbyist Registrar with authority to impose administrative sanctions, including administrative monetary penalties, for lobbying and other offences.

The Province of Ontario has also consulted with the City's Accountability Officers on proposed amendments to COTA in its five year review.

Below, I describe the legal landscape in which the Accountability Offices operate. Following this section, I describe the administrative landscape of the Accountability Offices. The goals of this (necessarily cursory) description is to highlight both opportunities and constraints for combined or multiple roles to be undertaken by the Accountability Offices.

1. The Legal Landscape of Accountability Officers in Toronto

The legal terrain of the Accountability Offices includes Provincial statutes, City by-laws and regulations, case law and internal policy documents.

The legal terrain provides a necessary point of departure, but not a sufficient blueprint to answer the questions posed in this Review. For example, there is nothing in Part 5 of COTA, which either requires or precludes separate Accountability Offices, while the *Municipal Code*,

⁴ *Joint Ontario – City of Toronto Task Force to Review the City of Toronto Acts and Other Private (Special) Legislation*, online: Ministry of Municipal Affairs and Housing <<http://www.mah.gov.on.ca/Asset1954.aspx>> at 7.

Chapter 3, highlights the distinctions between Accountability Offices (such as differing terms of appointment), but also provides shared protections regarding independence and effectiveness of the Offices. In each description of the legal terrain, my focus is on those elements which either speak to, or would be relevant for the question of whether the Accountability Offices functions can be combined or differently structured.

1.1 Statutory Schemes

This section examines a number of different statutes and by-laws relevant to Toronto's Accountability Offices. This section is divided into three parts. The first part (1.1.1) reviews the applicable provisions of COTA which sets out the powers and responsibilities of each of the Accountability Offices. The second part (1.1.2) looks at other applicable statutes which interact with the jurisdiction of each Office. Finally, the third part (1.1.3) canvasses by-laws enacted by City Council which deal directly with the structure and functions of the Accountability Offices.

1.1.1 City of Toronto Act, 2006

COTA creates a framework of broad powers for the City of Toronto that “balances the interests of the Province and the City”.⁵ COTA acknowledges that in order for the City to provide good government it must be able to, among other things, determine what is in the public interest for the City, determine the appropriate structure for governing the City and ensure that the City is accountable to the public and that the process for making decisions is transparent.⁶

Part 5 of COTA, “Accountability and Transparency”, establishes three Accountability Officers: the Integrity Commissioner, Ombudsman, and Auditor General; and provides that City Council must establish a lobbyist registry. COTA gives each Accountability Officer distinct functions, powers and duties and contains varying levels of detail for each officer, with some functions being determined almost entirely by City Council.

COTA also contains provisions for each Accountability Officer that are similar or identical in nature, such as those referring to:

- The ability of officers to delegate powers and duties under Part 5 of COTA, while having the option to continue exercising these powers and duties;
- Officers not being required to be City employees;

⁵ *City of Toronto Act, 2006*, SO 2006, c 11, s 2.

⁶ *Ibid.*, s 2.

- Officers exercising powers and performing duties assigned by City Council under Part 5 of COTA;
- Sections regarding confidentiality and secrecy prevailing over the *Municipal Freedom of Information and Protection of Privacy Act (MFFIPA)*.

Pursuant to section 203(1) in Part 6 of COTA, “Practices and Procedures”, the Accountability Officers are not eligible to be elected or hold office as a member of City Council.

The role of each Accountability Officer under Part 5 of COTA is briefly outlined in Appendix "A" of this report.

1.1.2. Other Relevant Statutes

Beyond COTA, a number of other statutes interact with the jurisdiction and authority of one or more of the Toronto Accountability Offices. These are summarized briefly in Appendix "B".

1.1.3. By-Laws

City Council has passed by-laws relating to the structure and functions of the Accountability Offices. These by-laws must be consistent with COTA’s framework for the Accountability Offices and their functions. These by-laws are described in Appendix "C".

1.1.4. Policies and Protocols

The policies and protocols discussed in this section are legal instruments setting out clear guidelines and expectations for the governance, structure and operations of the Accountability Offices. With respect to combined or multiple roles for the functions of the Accountability Offices, since changes to the legal landscape are cumbersome and in some cases out of the control of the City, it is likely that new initiatives or arrangements will be accomplished by way of policies and protocols. The most significant example of what is possible by policy or protocol is the MOU between the Offices of the Integrity Commissioner and Lobbyist Registrar.

Memorandum of Understanding: Office of the Lobbyist Registrar and Office of the Integrity Commissioner

In May 2014, the Integrity Commissioner and Lobbyist Registrar signed a Memorandum of Understanding with respect to Co-operation and Collaboration in Education and Enforcement (“MOU”) in order to facilitate cooperation between the two offices. The objective of the MOU was to set out a framework to support cooperation between the Officers in order to collaborate on matters of advice and interpretation; and enable the Officers to conduct and/or share information relating to joint or concurrent inquiries in matters involving overlapping witnesses, documents and issues.

The MOU recognizes that there are circumstances when the Lobbyist Registrar and Integrity Commissioner have concurrent or overlapping roles in advising, interpreting or conducting inquiries. The Officers will therefore consult to identify concurrent inquiries, determine how to respond in a coordinated manner, and also consult on the development of advice and interpretation.

Information may be shared in order to: assess jurisdiction and refer matters; evaluate whether inquiries relate to the same or similar matters; conduct joint inquiries (where appropriate); provide information in an inquiry where concurrent inquiries in related matters are being conducted; and assist the Officers in carrying out their respective functions and duties. Non-case specific information can also be shared between the Officers for any purpose consistent with the objectives of the MOU, including: staff training events; developing policy, internal protocols, educational materials and interpretation bulletins; and seeking external opinions of common interest.

In signing this MOU, it is clear that both the Integrity Commissioner and Lobbyist Registrar interpreted COTA’s confidentiality provisions as including other Accountability Officers – where disclosure enables them to effectively discharge their Part 5 duties. While the COTA is less than clear on this point, it is a reasonable interpretation of the legislative intent and could be implemented through reliance on the Accountability Officers’ powers to delegate. A COTA amendment could clarify the permission to share information with other Accountability Officers for concurrent investigations as an exemption to the duty of confidentiality.

The MOU will remain in force until another MOU is signed or an Officer terminates the MOU by providing 30 days’ notice to the other Officer. The terms of the MOU can be amended by mutual agreement in writing.

Currently, all four Accountability Officers are in the process of finalizing a similar MOU that will apply collectively to their respective offices.

Other Agreements and Protocols

A number of other agreements and protocols exist both within each Accountability Office (such as complaints protocols dealing with the practices and procedures governing investigations) and between the Accountability Offices and other divisions in the City (for example, dealing with roles and responsibilities of the City Manager, the Human Resources Division and the City Clerk's Office in relation to the City's corporate Human Resources processes). It is unnecessary for the purposes of this review to set out all of these relevant policies and protocols, but it is important to understand the role these instruments can play in safeguarding the independence of the Accountability Officers, while ensuring predictable, transparent and responsive practices to strengthen the coordination of Accountability Office functions and to enhance their effectiveness.

1.1.5 Case Law

A full review of the applicable case law interpreting and applying the various statutes, by-laws and policies canvassed above is beyond the purview of this Review.⁷ As the Supreme Court has affirmed on several occasions (for example, in *R. v. Greenbaum*)⁸, Municipalities are entirely the creatures of provincial statutes and therefore can exercise only those powers which are explicitly conferred upon them by a provincial statute. In this sense, beyond the various statutes examined above (and delegated authority to City Council to enact by-laws or be guided by policies), there is no inherent power that any city official possesses (including Accountability Offices) to undertake any functions.

For the most part, the role of courts in municipal accountability arises where someone seeks to challenge the decision of a City Council. In interpreting municipal by-laws, the Supreme Court has indicated:

In approaching a problem of construing a municipal enactment a court should endeavour firstly to interpret it so that the powers sought to be exercised are in consonance with the purposes of the corporation. The provision at hand should be construed with reference to the object of the municipality: to render services to a group of persons in a locality with a view to advancing their health, welfare, safety and good government.⁹

⁷ For a detailed review of the relevant case law, see George Rust D'Eye et al, *Municipal Law: A User's Manual 2015* (Toronto: Carswell, 2015); John Mascarin, *The Digest of Municipal and Planning Law 2nd Series* (Toronto: Carswell, 2015) and Stan Makuch, *Municipal and Planning Law 2nd Ed* (Toronto: Carswell, 2004).

⁸ [1993] 1 SCR 674 at para 22. See also *R. v. Sharma*, [1993] 1 SCR 650 at 668.

⁹ *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 SCR 231 at 276. See also *In Nanaimo (City) v. Rascal Trucking Ltd.*, 2000 SCC 13.

The most noteworthy judicial consideration of municipal accountability arguably concerned the recent litigation alleging a former Toronto Mayor was in a conflict of interest as he spoke to a matter at a February 2012 City Council meeting in which he had a pecuniary interest. The litigation concerned the *Municipal Conflict of Interest Act* but included a consideration of the powers of the Integrity Commissioner under COTA as the matter on which the Mayor was alleged to have addressed was a finding of the Integrity Commissioner that he had violated the Code of Conduct in soliciting funds for his private football charitable foundation.¹⁰ The Divisional Court ultimately upheld the Mayor's argument that the Integrity Commissioner's requirement that he repay certain funds obtained through his fundraising was beyond the powers of the Integrity Commissioner to recommend and City Council to order. In the course of that decision, the Divisional Court confirmed courts should adopt a "generous interpretation" to the scope of the City's regulatory powers but that those powers cannot exceed those expressly set out in an authorizing statute.¹¹

I am aware of no case that could be relied on to suggest either certain functions could not be combined or to suggest that certain functions ought to be combined.

1.2 Conclusions on the Legal Landscape of the Accountability Offices

As the above description and descriptions in the Appendices makes clear, the legal landscape which establishes, governs and authorizes the Toronto Accountability Offices is complex and iterative. This landscape has developed over time – in some cases codifying existing practices while at other times reflecting agendas for change and reform. Statutes, by-laws and policies interact with one another.

COTA requires the City to establish three out of the four Accountability Officers (the exception being the Lobbyist Registrar). However, it does not appear that COTA prevents one person from being appointed as more than one Accountability Officer through cross-delegation or by assigning functions to more than one Office. In fact, COTA gives the Accountability Officers themselves the power to delegate their powers and duties, as each Accountability Officer "may delegate in writing to any person, other than a member of city council, any of the...powers and duties under this Part."¹² That said, ideally, COTA itself could be amended to expressly provide for each Accountability Office to collaborate and share otherwise confidential information between some or all of the other Accountability Offices.

With respect to confidentiality, although COTA requires the Accountability Officers to maintain confidentiality of all matters coming to their knowledge in the course of their duties under Part 5, this does not exclude the possibility, that information can be shared between Accountability

¹⁰ *Magder v. Ford* 2013 ONSC 263.

¹¹ *Ibid* at paras. 60-65.

¹² COTA, *supra* note 5 at ss 159(3), 168(3), 171(5) and 178(5).

Officers for the purpose of carrying out Part 5 functions and duties. This is clearly contemplated in the MOU between the Integrity Commissioner and Lobbyist Registrar, and also occurs as a matter of practice more widely between Accountability Offices in appropriate or necessary circumstances.

COTA's Accountability provisions are not meant to be exhaustive since City Council has been given clear authority to determine the scope and substance of many functions, powers and duties. As is evident from the various by-laws analyzed above, the City has been active in elaborating on the structure and roles of the Accountability Offices (including protections of their independence and autonomy) through these instruments. Chapter 3 of the *Municipal Code* and other applicable by-laws, in turn, allow significant scope for the Accountability Offices to further clarify and develop arrangements through agreements, policies and protocols to strengthen coordination and enhance effectiveness.

Notwithstanding any amendments that the Province of Ontario may make to COTA following its five-year mandatory review, which is presently underway, the current legal terrain neither would compel the combining of Accountability Offices' functions nor preclude it. These provisions, however, provide an important roadmap for certain kinds of combined or multiple functions and boundaries for how much change is possible, short of altering the existing statutory, by-law and policy frameworks. As to whether the changes which might be legally possible are in fact desirable, greater insight can be found by canvassing the administrative landscape in which the Accountability Offices operate.

2. The Administrative Landscape of Accountability Offices in Toronto

The analysis of the legal terrain outlines the powers and obligations of the Accountability Officers. The review of the administrative terrain below sheds light on what shapes the operations of the Accountability Offices – including volume of work, budget, staffing and interactions with other parts of the City – (for example, protocols regarding budget and human resources). The overview of the administrative terrain also reflects the distinct history of each office – and why functions that appear to be duplicative in the legal analysis are complementary in practice, while functions that appear to be distinct and separate have areas of potential overlap.

At the outset it is worth highlighting how much collaboration takes place among the Accountability Offices in Toronto, and between those Offices and the City. For example, the Accountability Officers shared in the development of Chapter 3 of the *Municipal Code* and the establishment of the City's accountability framework. In addition, the Accountability Offices work with the City Clerk, in developing shared services in areas like Information Technology,

procurement policies and privacy protocols. To compare, the City's Accountability Officers participate in more shared services than their counterparts either provincially or federally.

There are some with whom I have spoken during this Review who believe that it may be possible to realize efficiencies and greater effectiveness by combining some functions of the Accountability Offices. By the same token, the budget statements and requests by the Accountability Offices during the last budget cycle make clear that all of the Accountability Offices believe that more resources are needed in order to discharge their functions.

Based on the volume and complexity of these Offices and in light of their counterparts in other Canadian jurisdictions, Toronto's Accountability Offices are lean by any perspective. The purpose of this Review is not to address the arguments for more or less resources being devoted to these functions, but to assess the legal, technical and process implications of combined or multiple roles and recommend changes that will strengthen the functions of the Accountability Offices and serve the public.

The criteria for this analysis is to evaluate what changes, if any, would enhance the efficiency and effectiveness of the Accountability Office functions. Efficiency includes but is not limited to the aspiration that investments in Accountability Office functions give rise to the highest possible levels of service. Effectiveness includes but is not limited to the aspiration that Accountability Officers possess the independence, expertise and capacity to fulfill their statutory mandates. No review of this kind can be conducted in the abstract. The Accountability Officers must respond to the environment around them, including the volume and nature of complaints, the growing size, scope and complexity of the City of Toronto and its services and what has been termed as a growing "culture of accountability" at all levels of government. This culture of accountability both produced and was reflected a decade ago in the Computer Leasing Inquiry (leading to the "Bellamy Report") which set in motion the present structure of the Accountability Offices. Any description of the functions of the Accountability Offices must also be situated within the particular dynamics and evolution of these roles in the City of Toronto context.

2.1 Auditor General

The Auditor General's Office is the largest of the four Accountability Offices, with an annual budget of approximately \$4.7 million, 97% of which comprises salaries and benefits. The Auditor General's Office full staff complement consists of 29.5 staff positions including 4 in senior management, 22.5 professional staff, a supervisor for administration and 2

administrative staff positions.¹³ The Auditor General's Office conducts all of its audit work in accordance with generally accepted Government Auditing Standards, which relate to independence, objectivity, professional proficiency, scope and performance of work. The Auditor General's audits identified approximately \$236 million in additional costs savings and revenue for a five-year period. In simple terms, for every dollar invested in the Auditor General's Office, the return on investment has been approximately \$11.80. Audits also identify non-quantifiable benefits such as those identified in the audit of the City's performance in achieving Access, Equity and Human Resource goals and the audit of the Investigation of Sexual Assaults by the Toronto Police Service.

COTA provides that the "The Auditor General is responsible for assisting city council in holding itself and its administrators accountable for the quality of stewardship over public funds and for the achievement of value for money in city operations." The Auditor General must independently report to Council regarding (1) the quality of stewardship over public funds; and (2) whether Council and City Administrators are achieving value for money in city operations, including all City divisions, agencies and corporations, and the offices of the Mayor and Members of Council.

The Auditor General provides City Council with independent information and assurance regarding whether programs are achieving objectives in an economical, efficient and effective manner, and whether the City is exercising stewardship over public funds. City Council is responsible to hold City Administrators to account for the use of public funds and the delivery of programs

2.1.1. Fraud and Waste Hotline

A significant program within the Auditor General's Office that is used to help verify that there is proper stewardship over public funds is the Fraud and Waste Hotline Program. Investigating fraud and waste is linked to the Auditor General's core COTA responsibilities to report on the "quality of stewardship over public funds" and whether the City is achieving "value for money in city operations" by using its resources in an economical, efficient and effective manner.

The Hotline program was established in 2002 with City Council's approval. In addition to the functions outlined above, the Hotline has also served as an independent resource for employees or members of the public to report wrongdoing involving City resources, anonymously if preferred, without fear of retribution. In 2014, 687 complaints were received by the Auditor General's Office, which includes an estimated 1,300 total number of allegations, given that some complaints contain multiple allegations. A separate Forensic Unit was established in the Auditor General's Office in 2005, dedicated to the operation of the Hotline

¹³ Figures are drawn from Auditor General, 2014-2015 Annual Report.

Program and the investigation of complaints received. Many of the complaints received through the Hotline are referred to City Divisions to be investigated on behalf of the Auditor General. The Auditor General's Office then provides independent oversight that may include verifying the Division's approach to an investigation and whether more work needs to be undertaken to address the complaint. Other complaints, those outside of the Auditor General's jurisdiction, are referred to the City Manager or other officials for appropriate action.

The Auditor General's activity in relation to the coordination with City Divisions will also be affected by the Public Service By-Law, which is further discussed in Appendix "C". This By-Law distinguishes between allegations of "misconduct" and allegations of "wrongdoing." City Management will investigate and otherwise respond to allegations of misconduct, while the Auditor General will investigate allegations of wrongdoing, and in some cases will refer the investigation to the City Manager. In the latter circumstance, the City Manager will report the investigation results to the Auditor General.

In 2014, of the 687 complaints received through the Hotline, 211 were referred to specific divisions while 210 were closed after preliminary investigative inquiries and 161 resulted in no action. The balance of complaints were referred to other agencies, corporations or offices.

2.1.2. Value for Money Audits

The bulk of the Auditor General's operations concerns auditing performance, or what is commonly referred to as "value for money" audits. Value for money audits are also referred to as "performance audits" by Auditor Generals across Canada and around the world because these audits examine the performance of a program or organizations. Value for money audit is an industry term used by government auditors to refer to the examination of the economy, efficiency and effectiveness of programs.

In value for money audits, the Auditor General assesses all City programs, expenditures, processes, organizational results, internal controls, program controls, risks, compliance with procedures and legislation and IT security controls. The Auditor General provides assurance to City Council that the City is receiving value for money and that funds are safeguarded.

The major differences between the 'complaint-based' hotline work, and value for money audits is that the hotline investigations arise based on a complaint (1,300 allegations received annually) through the hotline. The value for money audits are undertaken based on a proactive assessment of all organizational units, systems, processes and risks across the City to identify those areas that should be audited to ensure they are operating effectively.

There is not enough money to audit everything, and neither is it cost-effective to do so. Toronto's Auditor General, like other auditors general in Canada, uses a risk-based audit

approach to identify those areas that are most important to audit. During 2014 and 2015, the Office conducted a survey of 186 audit units within the City and of those agencies and corporations that are within the Auditor General's mandate. Value for money audit topics were selected based on an analysis of the above information against the 10 risk factors listed below:

1. Complexity of Operations and Service Delivery
2. Alignment of Strategic Planning / Business Planning / Service Planning
3. Complexity of Staffing and Organizational Competence
4. Financial Exposure
5. Contractual Exposure
6. Legal Exposure (including regulatory, environmental, litigation)
7. Susceptibility to Fraud, Other Wrongdoing or Waste
8. Adequacy of Policies, Procedures, Processes, and Controls
9. Technological Exposure
10. Public and Political Reputation

It is important to note that the two objectives identified in COTA, of reviewing the quality of stewardship over public funds and assessing whether value for money in City operations has been achieved are inextricably linked. Audit standards require that the Auditor General consider fraud and waste when conducting performance audits. Value for money audits are about ensuring public assets are safeguarded and spent economically, efficiently and as intended to achieve performance goals.

In 2014, the Office issued a total of 26 reports including 11 performance audit reports, 3 continuous controls monitoring reports and 12 other reports.

The Auditor General must be independent and have a constructive relationship with the City Manager's Office. Both these goals are arguably enhanced by the governance structure of the Auditor General's Office. The Auditor General is unique among the Accountability Officers in having a City Council Committee dedicated to reviewing her reports and activities. The Audit Committee recommends the appointment of the City's external auditor and the external auditor who conducts the annual audit of the Auditor General's Office. The Audit Committee also considers the Auditor General's reports and audit plan, and conducts an annual review of the Auditor General's accomplishments.

The Auditor General prepares an annual work plan based on an evaluation of risk, which is considered by the Audit Committee. Audit reports completed by the Auditor General are forwarded to the Audit Committee along with a series of recommendations. At the same time, a management response to each of the recommendations is forwarded to the Audit Committee. Audit recommendations are considered by the Committee and, once approved, are

required to be implemented by management. The Audit Committee also receives annual follow-up.

Thus, while the other Accountability Officers submit their reports directly to City Council, the Auditor General submits its reports to City Council through the Audit Committee. This provides a valuable opportunity to thoroughly explore issues related to the reports.

2.2 Integrity Commissioner

The Integrity Commissioner for the City of Toronto has a budget of approximately \$339K, which is comprised of a salary for the full-time Integrity Commissioner and two staff.¹⁴ This office remains the largest of Ontario's municipal integrity commissioner offices, though it is the smallest of the Toronto Accountability Offices. The Integrity Commissioner is responsible for providing advice, complaint resolution and education to elected officials (the Mayor and Councillors) and appointees of local boards on the application of their respective Code of Conduct, and other by-laws, policies and legislation governing ethical behaviour.

The Integrity Commissioner also plays a role in investigating complaints (formal or informal) about the conduct of Members of Council, Members of Local Boards and Adjudicative Boards and in determining whether or not there has been a violation of the City Codes of Conduct. The Integrity Commissioner's administrative operations concern four main functions.

First, the Integrity Commissioner provides confidential advice to elected and appointed officials subject to the Codes of Conduct the Integrity Commissioner is responsible for overseeing. From 2014-2015, the Integrity Commissioner provided 197 pieces of advice. Each year, the Integrity Commissioner publishes sample advice in the annual report to raise awareness of the Code of Conduct and encourage compliance with the standards of conduct.

Second, the Integrity Commissioner engages in proactive educational activities to raise awareness of the standards of conduct, including one-on-one meetings with members of City Council and Board members. The Integrity Commissioner also participates in general orientation or training sessions for members of City Council, their staff and Local Boards.

Third, the Integrity Commissioner receives, reviews, investigates and reports on specific complaints, in accordance with the Office's Complaint Protocol. Under this Protocol, there are two main components of a formal complaint: intake and investigation. From 2014-2015, the

¹⁴ These figures are drawn from the Integrity Commissioner's 2014-2015 Annual Report and related budget documents.

Integrity Commissioner received 40 formal complaints and was aware or involved with 277 informal complaints.

Fourth and finally, the Integrity Commissioner engages in a range of policy work relating to the Codes of Conduct and their enforcement. This has included providing input on the Provincial Review of Municipal Legislation, the review and development of social media policy, and the roll out of the Toronto Public Service By-law on December 31, 2015.

The key administrative dynamic in the effectiveness of the Integrity Commissioner is the relationship of trust developed with City Councillors (and members of local Boards). An essential element to this relationship is the Integrity Commissioner's statutory obligation of secrecy under COTA and the fairness reflected in the Office's Complaints Protocol. By the same token, because the Integrity Commissioner's investigations involve public figures, the expectations of transparency are also heightened.

Upon assuming the position in September 2014, the current Integrity Commissioner set out to meet individually with each Councillor.¹⁵ While the Integrity Commissioner interacts most with those subject to the Codes of Conduct, it is worth reiterating that the Office received almost 500 inquiries from staff and members of the public.

2.3 Lobbyist Registrar

The Lobbyist Registrar received a budget of \$1.087 million in 2014-2015.¹⁶ The Lobbyist Registrar Office's staff complement is 8.3 full-time employees, including the Lobbyist Registrar, three Lobbyist Registry Advisors, Inquiries and Investigations Counsel, a Lobbyist Compliance Investigator, and two Administrative Assistants.

The mandate of the Office of the Lobbyist Registrar is to promote the transparency and integrity of City government by maintaining an online registry that is available to the public, and by regulating the conduct of lobbyists at the City. The Lobbyist Registrar's responsibilities include overseeing the lobbyist registration system, providing advice on Chapter 140, Lobbying, of the Toronto *Municipal Code*, conducting inquiries and investigations and enforcing compliance with the Chapter 140 and advising City Council on lobbying matters.

There are a handful of other lobbyist offices in Canada, including a Commissioner of Lobbying of Canada and provincial lobbyist regulators. Municipal lobbying in Quebec and Newfoundland and Labrador are regulated provincially. In Ontario, the City of Ottawa established a lobbyist

¹⁵ Office of the Integrity Commissioner Annual Report, July 2014 – July 2015, at 8-9.

¹⁶ These figures are drawn from the Lobbyist Registrar's 2014-2015 Annual Report.

registry in 2012 and appointed the City's Integrity Commissioner to administer the registry. The City of Surrey, British Columbia, adopted a Lobbyist Registration Policy in 2008. The cities of Hamilton and Brampton are in the process of establishing lobbyist registries.

As set out above, under the Toronto *Municipal Code*, Chapter 140, Lobbying (the Lobbying By-law) and COTA, the Lobbyist Registrar is responsible for a range of functions in relation to the lobbyist registry.

In 2014, the 3 most frequently registered subject matters were planning and development applications (788), technology (121) and economic development (99) out of 1,566 subject matter registrations. The Lobbyist Registrar commenced 26 inquiries and completed 15 inquiries, pursuant to Chapter 140, 9 of which involved substantiated allegations and provided 7 reports on inquiries under section 169 of COTA and Chapter 140¹⁷.

2.4 Ombudsman

The Toronto Ombudsman had an annual budget of \$1.636 million in 2014, and a staff complement of 10 in addition to the Ombudsman. The Office's 2014 Annual Report indicated that it had handled 2,230 complaints in 2014 (including 70 carried over from the previous year), representing a 22 per cent increase from 2013.¹⁸ The overwhelming majority of intake (93%) is through the phone and internet, although intake may be done in person and in the community. The Office completed 5 investigations including 3 investigations which were "systemic."

The Ombudsman works to ensure that the City treats the public fairly, and that services are provided in a fair and equitable manner for all, and in this way enhances government accountability to the public.¹⁹ The Ombudsman is responsible for addressing concerns about City services and investigating complaints about administrative unfairness related to City divisions, most City agencies, and City Corporations. The Ombudsman may investigate any decision or recommendation committed or omitted in the course of the administration of the City. City Council does not fall within the Ombudsman's purview.

The Ombudsman functions to receive and investigate complaints about decisions, recommendations, acts or omissions made in the course of administering the City, its local agencies and corporations. The minimum characteristics a public sector Ombudsman must have

¹⁷ See Annual Report of the Lobbying Registrar for the Year 2014, CC5.5, at pp. 8, 13.

¹⁸ These figures are drawn from the Toronto Ombudsman's 2014 Annual Report.

¹⁹ Linda Reif, *The Ombudsman, Good Governance and International Human Rights Systems* (The Netherlands: Martinus Nijhoff, 2004).

include independence, impartiality and fairness, credibility in the review process and confidentiality.²⁰

The Ombudsman investigates any decision or recommendation or any act committed or omitted in the course of the administration of the city. Administrative fairness is one example of an issue that the Ombudsman's office may choose to investigate. In recent years, common complaints have related to the following City divisions: Toronto Community Housing (TCH), Parks, Forestry and Recreation, Municipal Licensing and Standards (MLS), Revenue Services, Toronto Building, Toronto Transit Commission (TTC), Toronto Water, Employment & Social Services, Transportation Services and Corporate Finance.

As part of its investigation, the Ombudsman's Office may review the following, but is not limited to, what impact, if any, staff conduct may have on the provisions of services, and, how the City division has handled that staff's conduct. On a systemic level, the Ombudsman can review whether a particular behaviour pervades the unit/division and can inquire whether there are systemic failings that allow a particular behaviour to persist. The Ombudsman can offer recommendations to the Division that would ensure no disservice ensues to a particular complainant or to others in the future.

As the Ombudsman observed, in May 2014, City Council added to the jurisdiction of the Ombudsman a number of City-controlled corporations including Build Toronto, Invest Toronto and Toronto Hydro but the expanded jurisdiction was not accompanied by increased resources. The Ombudsman's request for six additional positions in the 2015 budget cycle was reduced to one additional position.

In 2014, the Ombudsman's Office participated in an external review of its impact on City public administration undertaken by a group of researchers at Ryerson University and funded in part by the International Ombudsman Institute.²¹ At the outset, the authors explain the difficulty of measuring the impact of the operations of the Ombudsman:

It is difficult to point to the money saved and efficiencies found by ombudsman work. A comprehensive review of English-language literature on the subject of evaluating ombudsman impact turned up very little. That is because the ombudsman's work focuses on something that is inherently difficult to measure: fairness in the way that government treats its citizens. This study breaks new ground by establishing how the

²⁰ See, for example, the model Ombudsman Act (1997) developed by the United States Ombudsman Association at <http://www.usombudsman.org/about/model-legislation/>.

²¹ *The Impact of Ombudsman Investigations on Public Administration: A Case Study and an Evaluation Guide* (Toronto: Office of the Toronto Ombudsman, 2015), online: City of Toronto Ombudsman <<http://ombudstoronto.ca/sites/default/files/The%20Impact%20of%20Ombudsman%20Investigation%20on%20Public%20Administration.pdf>>.

Toronto Ombudsman's office has, in the past five years, led to a more efficient and responsive city administration.²²

The researchers found through a series of structured interviews that a large majority of public servants cited positive and concrete impacts from the work of the Toronto Ombudsman and found the operation of the office as "professional and skillful."²³

While it is not easy to evaluate the impact ombudsmen have on the operations of a government or organization, an Ombudsman's work is "unique with little comparability to other institutions. Legislated ombudsmen have a unique responsibility for identifying systemic issues about fairness, equity and procedural justice in public administration at local, provincial, state and national levels."²⁴

2.5 Conclusions with respect to the Administrative Landscape of Toronto's Accountability Offices

The description of the budget, staffing and level of activity of the Accountability Offices augments the review of their legal mandates and authority. As important for the purposes of this Review of the functions of Accountability Offices are the experience of the Officers and those with whom they interact.

Significantly, the Accountability Officers themselves have been leading a process of greater coordination. For example, in 2009, all four Accountability Officers played a key role in developing the amendments to the *Municipal Code* establishing the Accountability Framework for the City of Toronto described above in the discussion of the legal landscape. Subsequently, both in informal and formal ways, the Accountability Offices have continued to deepen their collaboration. For example, three of the Offices (the Integrity Commissioner, Lobbyist Registrar and Ombudsman) are co-located at 375 University Avenue in 2011.

The MOU between the Integrity Commissioner and Lobbyist Registrar continues to represent the most significant attempt at facilitating greater operational collaboration, and I believe may serve as a template for broader collaboration across all four Accountability Offices. In her last Annual Report, the Lobbyist Registrar describes the MOU in the following terms:

I have worked with my fellow accountability officers and City staff to implement the accountability framework established in Chapter 3 of the Toronto Municipal Code. I

²² Ibid at 1.

²³ Ibid at 3.

²⁴ Ibid at 88.

have worked in consultation with my accountability colleagues on issues such as the review of COTA and Bill 8, Schedule 9.13 COTA, while requiring me to preserve the secrecy of my inquiries, enables the sharing of information by my office in furtherance of my legislated mandate. The Integrity Commissioner and I developed and entered into a Memorandum of Understanding (MOU) with respect to Co-operation and Collaboration in Education and Enforcement. Our mandates are complementary and our roles in providing advice and conducting inquiries are sometimes concurrent or overlapping. There are interests and benefits to the City that result from the co-operation of our offices in providing advice and interpretation and in the conduct of inquiries. The MOU enables us to achieve our mandates and to use our respective resources efficiently and effectively, while respecting the independence of our offices and preserving secrecy as required by COTA.²⁵

All the Accountability Officers work with the City Clerk and, where appropriate, other City offices to develop and improve shared services (for example, around information technology). Additionally, however, each Accountability Office demonstrates a significant degree of autonomy from the other, and of course from City Government itself. For example, apart from the MOU discussed above, there is no mechanism at the moment for Accountability Officers to share any details of incoming complaints or matters which may affect the investigations or activities of another or to collaborate on investigations or reports (unless mandated to do so by a particular Council decision).

The experience of the Accountability Officers discloses both a desire for greater coordination where appropriate and a strong sense of distinctive culture and approach within each Accountability Office, as is to be expected for their different mandates. Based on an assessment of the administrative landscape of the Accountability Offices I have reached the following conclusions:

- 1) There is a growing volume of work within each of the Accountability Offices (though the pace and scale of this growth varies depending on function and Office) – this is due to a number of factors, including:
 - a. Where Council augments the functions or jurisdiction of Accountability Offices, as occurred recently with the passage of the new Public Service By-Law, discussed in Appendix "C" in the section canvassing the legal landscape;

²⁵ *Annual Report of the Lobbyist Registrar for the Year 2014*, online: Office of the Lobbyist Registrar <<http://www.toronto.ca/legdocs/mmis/2015/cc/bgrd/backgroundfile-78183.pdf>> at 17.

- b. Where the profile and effectiveness of the Office attracts a higher volume of complaints or matters, as in the case of the Ombudsman or the Auditor General's "Fraud and Waste Hotline";
 - c. Where the Offices themselves have engaged in successful outreach and are increasingly viewed as credible and necessary aspects of City governance, as in the case of the Lobbyist Registrar, Ombudsman and Integrity Commissioner; and
 - d. Where the size of the City, level of activity and interaction with the Government, and profile for these Offices, all have increased as well.
- 2) Significant different levels of staffing and capacity for each Office, and the gap between the growing volume and generally static level of resources, have created friction with respect to seeking new resources from City Council;
 - 3) There is tangible pride demonstrated in Toronto's Accountability Offices toward the status of Toronto as a leader in municipal accountability – each Accountability Office plays a leading role within its peer community, and has attracted both national and international attention for success and innovation; and
 - 4) While the level of coordination and collaboration between Accountability Offices is growing, it remains for the most part informal and ad-hoc (with the exception of the 2014 MOU between the Lobbyist Registrar and Integrity Commissioner).

The analysis above sets the stage for considering how expert and academic literatures, and the experience of other jurisdictions shed light on how to strengthen Accountability Office functions and improve service to the public.

3. Analysis of the Literature & Comparative Models for the Functions of the Accountability Offices

The review of literature and comparative models examines domestic and comparative sources, as well as journalism, academic studies, commissioned reports by government, and reviews and reports by public inquiries and NGOs related to government accountability. The purpose of this review is not to compile an academic analysis but rather to respond to the questions around what can be learned from the literature and comparative models. The findings from the literature and comparative models are described in Appendix "D" to this report.

While comparative examples are instructive, it is also important to emphasize their limits. Toronto's size, the interaction between its Accountability Offices and the culture of its City Council and senior staff require models of accountability responsive to the needs of this City.

4. Strengthening Accountability Office Functions and Improving Service to the Public

Efficiency and effectiveness are closely linked criteria for evaluating the strengthening of functions of Toronto's Accountability Officers and improved service to the public. For example, consolidating functions can give rise to efficiencies (such as fewer staff) but sacrifice effectiveness (including the credibility and independence of those carrying out these functions, as well as internal focus of the Office and the strength of particular stakeholder relationships – for example, between a Lobbyist Commissioner and the lobbyist community). For this reason, I explore this aspect of the analysis by asking – would greater consolidation of the Accountability Office functions lead to greater efficiency *and* effectiveness?

This question is particularly apposite in the context of the Integrity Commissioner and Lobbyist Registrar, given the comparative analysis offered above and in Appendix "D" which features a number of other jurisdictions in which these Offices are combined. Such a combination would not lead to greater efficiencies in areas which are combined already. For example, both Offices are already sharing space and collaborating on a number of important policy areas. In addition, the Offices have shared investigative resources, including sharing investigators, and have shared external legal advice when appropriate, including through joint retainers. There are also limits on the benefits of shared resources. For example, the Lobbyist Registry function is undertaken through trained Registry advisors who provide information and advice to callers, and exercise delegated authority to review and approve registrations. Additionally, if the Lobbyist Registrar were also appointed as Integrity Commissioner – or vice versa – then additional senior staff capacity to respond to this new structure would be needed since at the moment both Accountability Officers are full-time positions with a growing volume of activities.

Combining offices may require new kinds of training and education among staff and the development of new protocols and steps within the existing procedures of each Office. Combining offices could also negatively affect staff morale internally and the credibility and reputation of the Offices externally. For an initial period at least, combining functions may give rise to questions of “who does what” and erode existing relationships between each Office and stakeholder groups. For example, a Councillor seeking advice from the Integrity Commissioner may raise the issue of the conduct of a lobbyist without expecting that information to be disclosed to the Lobbyist Registrar with an additional process. Could the same levels of trust and certainty be achieved where one Officer wears multiple hats?

Below I consider whether greater combination or coordination of functions would lead to a strengthening of the functions of the Accountability Offices. The premise for this analysis is that these functions will receive adequate resources from the City. I have not found a viable basis to conclude that a similar or greater level of efficiency and effectiveness in the functions of the Toronto Accountability Offices would be possible with fewer resources. As suggested above, in relation to the administrative landscape, none of the Accountability Offices will be able to advance their statutory mandates by doing more with less.

4.1 Would Combining Accountability Office functions strengthen these functions and/or improve service to the public?

Assuming the adequacy of resources is assured, however, there is a basis to conclude the functions of the Accountability Offices can be strengthened through additional coordination and collaboration. I discuss this conclusion below in the context of the specific functions where this potential is most apparent.

4.1.1 The Status Quo

It is important to begin with the option of maintaining the status quo. This option, to state the obvious, would not give rise to any uncertainty or transaction costs. Further, each of the Accountability Offices is individually well regarded, and together put Toronto in a clear leadership position nationally and globally. The Annual Reports of each Office outline significant accomplishments, which have been received by Council without concern. The Accountability Officers are widely viewed as leaders in their respective fields, with the office holders being asked to speak regularly at professional conferences and workshops about Toronto's commitment to accountability. Indeed, it was noted in the Lobbyist Registrar's Annual Report that she was consulted by all levels of government on Toronto's Lobbyist Registry and Code of Conduct, including representatives of Quebec's Charbonneau Commission, who sought out the expertise of Toronto's Lobbyist Registrar in developing that jurisdiction's response to corrupt lobbying practices. More broadly and perhaps most significantly, no scandal of the kind that rocked the City over the MFP Computer Leasing contracts has recurred since the establishment of the Accountability Offices.

On any measure of which I am aware, the Accountability Offices are viewed as successful and effective at discharging their statutory mandates. This assessment may lead some to question whether this Review is a "solution in search of a problem".

In my view, consideration of improvements to the status quo is justified – especially in light of the growing volume of activity within all four Offices, the increasing resource pressures to which this growth gives rise, and the fact that close to a decade has passed since the initial legislative and administrative decisions that gave rise to the current allocation of functions as between the Accountability Offices. Would this same allocation be replicated if the Offices were being established today?

As other jurisdictions develop their accountability infrastructure, it is worthwhile to consider how Toronto is viewed. For example, Toronto was the first municipality to establish an Integrity Commissioner and as noted above, over 30 other municipalities have followed suit in Ontario alone. The Cunningham Report, discussed in Appendix "D", recommended the *Municipal Act* be amended to require all Ontario municipalities follow Toronto's lead.²⁶ That said, Justice Cunningham declined to recommend that Mississauga establish a stand-alone lobbyist registry. As noted above, however, both Ottawa and Hamilton have established a lobbyist registry, and the issue is under consideration in Brampton. After specifically considering the example of Toronto's lobbyist registry, Cunningham suggested the costs of a registry could outweigh the benefits.

While retaining the status quo attracts the least risk, it also presents the least opportunity for strengthening the functions of Accountability Officers or improving service to the public. Below I describe the options as I see them for combining functions of the Offices. In each case, such restructuring provides both greater risk and more opportunities for improvement. I balance these risks and benefits in more detail in the final section outlining findings and recommendations.

4.1.2 Improving Services to the Public through a Centralized "Open City Hotline"

Building on the current "Fraud and Waste Hotline", which operates under the purview of the Auditor General's Office, the City could implement a general centralized "Open City Hotline" which would receive anonymous tips alleging not only fraud and waste but also wrongdoing, unfairness or unethical activity of any kind. The rationale for this recommendation is to enhance service to the public. If as part of the accountability framework of the City, anonymous tips are to be encouraged through a Hotline, the efficiency and effectiveness of such a Hotline would be enhanced if it was not limited to a specific and narrow jurisdiction that may be confusing for many. If a member of the public or City employee has a serious concern and they wish to use the Hotline as a means of preserving anonymity, they could do so without first

²⁶ The Honourable J. Douglas Cunningham, *Report of the Mississauga Judicial Inquiry, Updating the Ethical Infrastructure* (Mississauga: 2011) at 165 [Cunningham Report].

considering whether the wrongdoing at issue meets the specific definition of “fraud” or “waste.” By the same token, however, such a Hotline would need to be very clear about the role of and constraints on the different Accountability Officers in relation to anonymous tips.

It is important to emphasize that the proposed Hotline is intended to provide an additional recourse for people who wish to make complaints, and particularly anonymous complaints, but would not impair or otherwise detract from the intake efforts or protocols of the other Accountability Offices. For example, for the Ombudsman’s Office (which receives over 2000 complaints annually), intake is a vital step in the complaint resolution process. Ombudsman intake often requires an in-depth analysis of the complaint with the input and expertise of legal staff and management in order to identify and define the nature and substance of the issues involved in a complaint – this requires a strong grasp of the legislation, the policies at play, and City processes as well as the eventual impact upon the individual/public. At times, depending on the nature of the complaint, the intake function can last weeks and involve numerous and repeated inquiries with complainants, City officials, stakeholder groups and/or external experts. Similarly, the Auditor General's Office spends a significant amount of time and resources during the complaint intake process. Depending on the type of complaint and allegations made, the intake function can involve numerous investigative inquiries including gathering background information and documentation from City systems, management or third parties, data analysis and conducting preliminary interviews.

The function of an Open City Hotline is not akin to this intake process, but rather serves a different function. First, an Open City Hotline tip can form the basis of a referral to the Ombudsman Office for intake. Second, a pattern of Hotline tips can suggest the need for systemic investigation. Third, a Hotline tip or pattern of tips can provide valuable context for how other complaints might best be resolved, or may inform the remedial action recommended. The proposed Open City Hotline, in other words, may enhance the functions of the Ombudsman or Auditor General's Offices, but in no way replaces the intake process at each Office.

Similarly, the Integrity Commissioner’s Complaint Protocol makes clear she does not act on anonymous tips alone. So, here as well, the centralized Open City Hotline would not take the place of an intake process, but again could provide valuable context and information around areas where tips relates to the activities of a Councillor or Councillors. A similar analysis applies to the Lobbyist Registrar intake. The Open City Hotline should not be seen as duplicating or impairing any aspect of existing and successful intake procedures.

Where the matter is referred to one or more of the other Accountability Offices’ jurisdiction, the information could be shared by the Hotline Administrators, subject to appropriate protocols being developed, just as information is now shared with the appropriate City Division for

further investigation or informally referred to Accountability Offices where a matter falls within their jurisdiction. The proposed protocol in relation to a central Open City Hotline would set out the mechanisms for disclosure of information and cross-delegation of authority so that confidential information could, where and to the extent necessary, be shared. This protocol may be part of or in addition to the arrangements for sharing information about intake more broadly discussed in the section above. In this way, the Open City Hotline itself would represent an important setting in which to strengthen the ways in which the Accountability Offices collaborate and from which the “sum” of improved service to the City and the public becomes more important than the “parts” of each Accountability Offices’ jurisdiction which contributes to that outcome.

The recommendation for a centralized Open City Hotline is intended to build on the existing, informal practice of referring tips to Accountability Offices where appropriate, but with the added benefit of increased clarity for those using the Hotline, for the staff managing the Hotline, and for the Offices receiving referrals from the Hotline.

The proposal for a centralized Open City Hotline also reflects a view of the functions of the Accountability Offices rooted more in the experience of the user (i.e. the complainant). For example, if a member of the public wishes to use the Hotline because she believes City services have been unequally allocated due to the improper influence of a Councillor, and that the result is both waste of taxpayer dollars and unfairness to those entitled to the service, why should she be told she needs to call three separate offices? To the extent that the Hotline user needs to make only a single call – with the relevant City and/or Accountability Offices then made aware of the issue – and able to sort out what steps, if any, she may take in relation to the concern, the broader goals of the City’s Accountability Framework will be advanced.

4.1.3 Greater Opportunities for Coordination and Collaboration of the Various AO Functions

The following recommendations made can be addressed by a four-way MOU between the AOs. Under this new or enhanced MOU, the Accountability Officers can address issues in a way that is practical and preserves the independence of their Offices.

A MOU is suggested because staff at each Office can carry out the coordinated functions envisioned under the MOU while ensuring the independent and fair operations of all four offices.

4.1.3.1 Joint Education and Training

In order to enhance the culture of collaboration, it also makes sense to continue (and extend) the existing practice of joint/shared education and training by Accountability Officers. In this way, the cost and complexity of such training and outreach can be managed more efficiently while the participation of all Accountability Offices can enhance the effectiveness of such initiatives, and clarify both the separate mandates and shared culture of accountability underlying COTA.

These areas all represent opportunities to enhance the efficiency and effectiveness of the functions of Accountability Officers without altering the legal authority or administrative structure of the Offices. In this sense, these measures represent the “low-hanging fruit” where modest and incremental extensions of existing but informal coordination can have a positive impact.

4.1.3.2 Raising the Profile of an Accountability Framework

The Accountability Offices all have cited the importance of awareness regarding their functions and roles by City Councillors and staff, third parties (e.g. lobbyists, entities who contract with or provide services to the City, etc.) and, of course, the public. Greater coordination could improve this awareness. The existing shared web portal for the four Accountability Offices represents an important step forward.²⁷ Training of customer service representatives at the City’s “311” phone line so appropriate referrals can be made of matters to the Accountability Offices is another step forward. There are additional steps which build on this momentum. For example, Accountability Offices could include links to and short descriptions of the role of the other Accountability Offices on their website and communications. In this way, a visit to any of the Offices can serve as a single portal of entry to the City’s whole Accountability Framework. This information should include links to the City’s accountability functions which lie outside the jurisdiction of the Accountability Offices as well (for example, where a member of the public wishes to complain about a particular City staff member pursuant to the City of Toronto’s Human Rights and Anti-Harassment policy).²⁸ These mechanisms are simply offered as examples of possible steps which could be taken. The four way MOU between Accountability Offices is likely the best setting to facilitate these initiatives.

²⁷ See “Accountability Officers”, online: City of Toronto

<<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=f6a3e03bb8d1e310VgnVCM10000071d60f89RCRD>.

²⁸ City of Toronto Human Rights and Anti-Harassment Policy, online: City of Toronto
<<http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-13239.pdf>>.

4.1.3.3 Sharing Information for Concurrent Investigations

A provision in the MOU could be developed whereby brief descriptions of incoming complaints (without identifying information) can be shared between the Accountability Offices in order to promote opportunities for collaboration and mitigate vexatious complainants. This protocol would not lead to shared intake but could make the intake function of each Office more effective. For example, the Ombudsman's Office is generally intended as a recourse of "last resort". Sharing information could assist the Ombudsman in determining if other avenues of accountability have indeed been exhausted before undertaking an investigation. Similarly, complaints to the Auditor General which focus on the activities of a Councillor or lobbyist would clearly be relevant for the Integrity Commissioner and Lobbyist Registrar, respectively, to know, just as investigations of lobbyists or Councillors' conduct which disclose systemic financial mismanagement may be important information for the Auditor General functions. While the legal and administrative landscape have been designed around the function of particular offices, the purposes of COTA and the Bellamy Report make clear the broader goal of these Offices is to achieve a shared accountability framework for the City of Toronto.

4.1.4 Combining Integrity Commissioner and Lobbyist Registrar Functions

One option for restructuring the Accountability Offices would be to combine in some form the functions of the Integrity Commissioner and Lobbyist Registrar. These two offices already collaborate to a greater extent than any of the others – this collaboration includes co-location, the MOU discussed above, and a track record of effective joint initiatives such as the 2014 joint Interpretation Bulletin around municipal elections entitled, "Lobbying and Municipal Elections at the City of Toronto", joint education and outreach initiatives, as well as shared investigative resources and shared external legal resources where appropriate.

Both offices are supported by the City Clerk (which assists, for example, with human resources and budgetary support). Each office arose out of the Bellamy Report and MFP Inquiry based on related rationales to prevent influence peddling and unethical conduct by City officials in the future.

As discussed above, the comparative experience would suggest potential benefits in greater collaboration – the Province of Ontario's Integrity Commissioner has jurisdiction over both the ethical requirements of members of the Legislature and the lobbyist registry, while other municipalities which have separate integrity commissioner and lobbyist registrar offices have appointed the same individual to fulfill both functions (for example, in Ottawa since 2012 and Hamilton in 2015).

Are there any legal impediments to this kind of restructuring? Section 168 of COTA empowers Council to appoint a registrar to oversee the lobbyist registry but does not require that position to be separate from others. One clear legal hurdle would be the differing periods of appointment set out in Chapter 3 of the *Municipal Code* (Integrity Commissioners are appointed for 5 years while Lobbyist Registrars are appointed for 7 years). While the length of term differs, the nature of the appointments is similar – with an emphasis on the importance of independence, credibility and impartiality in each.

There are other important distinctions that may present operational challenges if the same person were to occupy both roles. For example, the Integrity Commissioner can only initiate investigations upon complaints while the Lobbyist Registrar is empowered to initiate investigations in appropriate circumstances. Faced with a situation involving an allegation of improper conduct by a Councillor and a lobbyist, the joint holder of the Integrity Commissioner and Lobbyist Registrar role would have to respond carefully to the situation while maintaining the integrity of each Office's statutory authority and internal protocols. Operational challenges should not be taken as barriers to coordination; rather, they suggest the care that would need to be taken if greater coordination is pursued.

Ultimately, my analysis suggests the risks of a merger of the Integrity Commissioner and Lobbyist Registrar outweigh the benefits. There is no basis to suggest that staff at either office have significant excess capacity that could be rationalized through a merger. A formal merger would also require significant revisions to existing by-laws and policies, which in turn would give rise to additional operational complexity and uncertainty – all of which have tangible costs as well as intangible risks to the effectiveness of both Offices, including with respect to the reputation and credibility of each Office.

I am not aware of any compelling rationale being provided within the City of Toronto at either the Councillor or staff level suggesting that the effectiveness of either Offices' functions would be enhanced through a formal merger, nor have external experts or observers called for a merger (though, as noted above, the Bellamy Report itself could be read as suggesting both functions should have been housed in the same Office at the outset, and there does not appear to be any legal barrier to merger apparent in COTA).

Aside from the absence of significant efficiencies, there are also policy reasons why a merger would be unlikely to enhance the effectiveness of either Office. The Integrity Commissioner is concerned with the ethical conduct of Councillors and Board members. The Lobbyist Registrar has an interest in the conduct of Councillors but her primary focus is ensuring transparency in the activities of lobbyists and performing regulatory oversight in relation to those activities. This external and transactional focus is largely absent from the Integrity Commissioner function.

While I would not recommend the option of a merger for the reasons set out above, my analysis does suggest clear, potential benefits for greater collaboration between the Integrity Commissioner and Lobbyist Registrar's Offices. This collaboration can be achieved in two ways.

First, the same individual could be cross-appointed as Integrity Commissioner and Lobbyist Registrar. This mechanism would not require any change to the structure or protocols of either Office but allow the cross-appointed individual to explore enhancements to the effectiveness of staff functions through cross-delegation. I would emphasize here that my recommendation is not that the Lobbyist Registrar's Office be subsumed in the Integrity Commissioner. Cross-appointment of a Lobbyist Registrar and Integrity Commissioner does not entail integrating their staff or combining their operations in any way. Rather, cross-appointment would allow the individual who is both Integrity Commissioner and Lobbyist Registrar to identify any areas where the efficiency and effectiveness of *each* Office might be improved through greater collaboration, shared services or joint activities, and to pursue such opportunities if and to the extent they are identified.

An example of this model was the appointment of the Chair of the Ontario Health Professions Appeal and Review Board to become the Chair of the Health Services Appeal and Review Board in 2009. The two Boards are located on the same premises and are supported by a single Health Boards Secretariat, but each has distinctive adjudicative members (as well as some cross-appointed members) and is responsible for separate legislation under distinct policy mandates.²⁹

The second way in which greater collaboration could be achieved is for different individuals to serve as Integrity Commissioner and Lobbyist Registrar, but for the MOU between the two Offices to be expanded and strengthened. Joint communication, training, and investigation could be pursued without affecting the distinctive culture and stakeholder relationships of each Office. This option is analogous to the recently developed tribunal "clusters" in the Province of Ontario.³⁰ The clusters are comprised of separate tribunals operating under separate statutory authority with separate institutional policies and protocols, but are characterized by shared corporate services, shared initiatives for training, education and professional development and harmonized practices for alternative dispute resolution, and other initiatives to enhance efficiencies and effectiveness. A key distinction is that the tribunal clusters are headed by an Executive Chair to whom the Associate Chairs (formerly the Chairs of the member tribunals)

²⁹ The author discloses that he is a designated Vice-Chair of both Health Boards.

³⁰ Presently, there are three such clusters – the Environment and Lands Tribunals of Ontario, the Social Justice Tribunals Ontario and the Safety Licensing, Appeals and Standards Tribunals Ontario. The clusters are authorized under the Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009, S.O. 2009, c. 33, Sched. 5. See J. Baxter and L. Sossin, "Ontario's Administrative Tribunals Clusters: A Glass Half-Full or Half-Empty for Administrative Justice" (2012) 12 Oxford Commonwealth Law Journal 157.

report. An Accountability cluster would be led by coordinate leads rather than a single executive lead. That said, the philosophy underlying the clusters, to find the optimal balance between collaboration and autonomous activity, would represent a step beyond the current MOU but incrementally in the same direction. In this sense, and over time, the Integrity Commissioner and Lobbyist Registrar could continue the shift in the direction of a joint accountability “cluster,” while continuing to thrive as individual and distinct Offices.

4.1.5 Combining Auditor General and Ombudsman Functions

I do not see the combination of functions between the Auditor General and Ombudsman as enhancing either efficiency or effectiveness, nor has this option been advanced by any City official or external expert consulted in this Review as desirable.

That said, as the City Council debate in March of 2015 giving rise to this Review demonstrated, there can be a public perception of overlap where broad systemic investigations are undertaken of the same agency by each office within a relatively short span of time. Consider the example of Ombudsman and Auditor General investigations and reports to Council in relation to Toronto Community Housing (TCH).

The Auditor General conducted a series of five different audits involving TCH between 2011 and 2012, on topics ranging from compliance with procurement policies to controls over employee expenses, and a range of follow up reports on whether the 80 recommendations contained in those five Reports have been implemented.³¹ The Ombudsman issued a Report in 2013 entitled “Housing at Risk” concerning the eviction of seniors for not paying rent arrears,³² and a follow up report in 2014 on the implementation of its recommendations.³³ Additionally, in 2014, the Ombudsman released a Report entitled “Unrule(y) Behaviour” on TCH’s human resources policies and practices.³⁴

³¹ See Toronto Community Housing Corporation – Results of 2015 Follow-up of Previous Audit Recommendations (April 2015): online: Toronto Community Housing <http://www.torontohousing.ca/webfm_send/11727/1?

³¹ *Housing at Risk: An Investigation of Toronto Community Housing Corporation’s Eviction of Senior’s on the Basis of Rent Arrears* (June 2013), Office of the Toronto Ombudsman, online: City of Toronto Ombudsman

<http://www.ombudstoronto.ca/sites/default/files/Final%20Report%20TCHC.pdf>

³² <http://www.ombudstoronto.ca/sites/default/files/Final%20Report%20TCHC.pdf>

³³ *Housing at Risk: An Investigation into the Toronto Community Housing Corporation’s Eviction of Seniors on the Basis of Rent Arrears* (March 2014), Office of the Toronto Ombudsman, online:

<<http://ombudstoronto.ca/sites/default/files/Office%20of%20the%20Ombudsman%20Investigative%20Report%20TCHC%20March%2025%202014.pdf>>.

³⁴ “Unrule(y) Behaviour”, Office of the Toronto Ombudsman, online:

<<http://ombudstoronto.ca/sites/default/files/TCHC%20Final%20Report.pdf>>.

While I believe there is less overlap to those investigations and report than might first meet the eye (both in terms of subject matter, goals and time-frames), there is, in my view, a basis for greater coordination in those settings, both operationally and with respect to public confidence. At a minimum, there should be a mechanism for each Office to be aware of the other's investigative activities if both are responding to a shared concern or examining the same City division, entity or function.

The question in my view is whether there are operational benefits to further explore the cross-delegation of certain staff functions, and by this mechanism, to make possible joint efforts to improve the fairness of City operations while also safeguarding public assets and ensuring a high quality of performance in those operations. This collaborative space might include sharing relevant information about ongoing investigations or sharing intake information, as suggested above, all within the appropriate confines of confidentiality obligations under COTA. Further, and as noted above, coordination does not necessarily require collaboration. For example, upon becoming aware of each other's systemic investigation of the same City agency for failing to comply with its policies, it may be that the Auditor General and Ombudsman together decide to sequence their investigations, so that one Office's Report can build on the findings and recommendations of the other. The result may be reinforcing messages about accountability, recommendations from both Offices which are complementary and enhanced public confidence.

For these reasons, I believe it will enhance the effectiveness and efficiency of both the Auditor General and the Ombudsman to join the Integrity Commissioner and Lobbyist Registrar in an expanded Accountability Officers MOU regarding coordination and collaboration.

4.1.6 Other Possible Combination of Functions

While the potential combinations of the Integrity Commissioner and Lobbyist Registrar functions appear most intuitive to consider, other combinations of functions and reporting relationships are certainly possible. For example, in British Columbia, the lobbyists registry is part of the Information and Privacy Commission's statutory duties.³⁵

As part of this Review, some combination of functions across all Accountability Offices was also considered. For example, in theory it is possible to imagine an "Investigations Secretariat" for the City which could serve all the Accountability Offices and centrally coordinate all investigation functions (incorporating and adapting to the different methodologies of each Office). This approach to shared services could be seen as analogous to the concept of a by-law

³⁵ Office of the Registrar of Lobbyists, online: <<http://www.lobbyistsregistrar.bc.ca/>>.

enforcement officer, where a single team of trained professionals might investigate allegations involving a variety of different municipal licensing, standards and policy domains (from noise to bedbugs to graffiti to complaints about regulated businesses).³⁶

The idea of an Accountability Secretariat to handle all the potential shared services, from corporate and administrative support to communications and information technology is another idea building on analogous developments in other public sector settings (such as the tribunal clusters in Ontario mentioned above). In some senses, this goal is already advanced by the shared support to all Accountability Offices provided through the City Clerk's Office.

While these kinds of initiatives do not combine Offices, any opportunities which the Accountability Officers determine could lead to greater efficiency *and* effectiveness should be explored. Further, the Officers themselves, together with the City Clerk's Office or other appropriate City Offices, are in the best position to identify and develop further shared services.

5. Findings & Recommendations

The Review has included an examination of the primary legal and institutional source material and available secondary literature on the Accountability Offices and their functions. I have spoken with the current and former holders of these Offices as well as a range of other senior officials within the City who have regular contact with the Accountability Offices. I have also consulted outside experts, including people who serve in multiple accountability capacities in comparable jurisdictions.

This Review also included an assessment of legal, technical and process implications for combined or multiple roles and recommends changes to strengthen Accountability Office functions and improve service to the public. The criteria for this analysis is to evaluate what changes, if any, would enhance the efficiency and effectiveness of the Accountability Office functions. Efficiency includes but is not limited to the aspiration that investments in Accountability Office functions give rise to the highest possible levels of service. Effectiveness includes but is not limited to the aspiration that Accountability Offices possess the independence, expertise and capacity to fulfill their statutory mandates.

³⁶ *Municipal Licensing and Standards - Bylaws and Enforcement*, online: City of Toronto <<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=2f5b19f155cb0410VgnVCM10000071d60f89RCRD>>.

5.1 Summary of Findings

The mandate of the Accountability Officers is to provide objective and independent oversight and to ensure transparency and accountability of City government. Part V of COTA provides broad powers and duties for each Accountability Officer to carry out their respective mandate and requires each officer to perform their duties in an independent manner. The City's Accountability Offices were established with clear principles of independence, balanced with direct accountability to City Council.

In this section, I highlight the benefits and challenges of the status quo structure for Accountability Offices and offer three possible opportunities for improvements to the functions of these Offices, which include:

- Improving services to the public through implementation of a centralized Open City Hotline;
- Identifying areas for greater coordination and collaboration in the various AO functions, which can be addressed through a four-way MOU; and
- Combining certain AO functions with the objective of achieving greater effectiveness and efficiency.

1) Improving Services to the Public through a centralized Open City Hotline

Building on the current "Fraud and Waste Hotline", which operates under the purview of the Auditor General's Office, the City should explore the implementation of a general centralized "Open City Hotline" which would receive anonymous tips alleging not only fraud and waste but also wrongdoing, unfairness or unethical activity of any kind.

This centralized confidential Open City Hotline is intended to improve service to the public and is not intended to change the input or alter the protocols of any other Accountability Office, for example, complaint protocols that require a complainant to be identified before an investigation can be commenced. This hotline would efficiently capture and disseminate complaints to the appropriate Accountability Office or City official, sparing the public the frustration of being redirected if they have contacted the wrong office or have visited multiple offices to address their concerns.

2) Greater Opportunities for Coordination and Collaboration of the various AO functions

The operations of the Accountability Offices already harness significant shared service models, including co-location (of the Integrity Commissioner, Lobbyist Registrar and Ombudsman), shared support from the City Clerk and a MOU on Co-operation and Collaboration in Education and Enforcement between the Integrity Commissioner and Lobbyist Registrar established in 2014 which facilitates greater collaboration and coordination. In addition, the City Manager's Office has established formal protocols with all Accountability Offices with respect to human resources and the budget process.

The following five specific recommendations made can be addressed by a four-way MOU between the AOs. Under this new or enhanced MOU, the Accountability Officers can address issues in a way that is practical and preserves the independence of their Offices.

A MOU provides that staff at each Office can carry out the coordinated functions envisioned under the MOU while ensuring the independent and fair operations of all four offices. The MOU would include the following provisions:

- a) Expanding the practice of joint education and training by Accountability Officers and the development of shared material for purposes of education and training, and more broadly to enhance the profile of the City of Toronto's Accountability Framework.
- b) Enhance communications by the City and the Accountability Officers on the City of Toronto's Accountability Framework, including logos and links to all Accountability Offices on the website of each.
- c) For intake of complaints received in each respective office, develop brief descriptions of the complaints that can be shared between the Accountability Offices in order to promote opportunities for collaboration, minimize duplication and to identify whether there will be concurrent investigations.
- d) Enhance the sharing of administrative, technical and professional resources with each other, and with the City, in order to build on and expand the collaboration between the Accountability Offices in their administration.
- e) Establish an annual meeting of the Accountability Officers in order to assess the efficiency and effectiveness of the MOU, and to explore more generally opportunities for greater coordination among the Accountability Offices.

3) Combined Functions of the Lobbyist Registrar and Integrity Commissioner

The City should explore the option of appointing the same individual as Integrity Commissioner and Lobbyist Registrar. The goal of this cross-appointment option would be to enable the cross-appointed Lobbyist Registrar and Integrity Commissioner to optimize the allocation of existing roles and resources across the functions of both Offices and within the terms of the MOU.

While cross-appointment would not mean fewer resources are needed, or address the resource challenges now faced by these Offices, it could strengthen the functions of both Offices and improve service to the public by enhancing the efficiency and effectiveness of the operations of each Office.

Greater coordination in the functions of the Integrity Commissioner and Lobbyist Registrar through the MOU and other successful, joint activities provide a foundation on which to continue to build. While there are examples of combining Integrity Commissioner and Lobbyist Registrar functions in other jurisdictions, including other Ontario municipalities, I conclude the differing nature of the legal and administrative landscape between the two Offices makes a merger or consolidation unlikely to lead to the strengthening of the functions of the two Offices or improved service to the public.

With respect to the Auditor General and Ombudsman, I conclude a merger or combination of functions would not strengthen the functions of these Offices or improve service to the public.

5.2. Conclusions

Because of the independent nature of the Accountability Offices, the recommendations included in this Review for the most part relate to steps which the Offices themselves can take to strengthen accountability functions and improve service to the public (such as a MOU). The Accountability Offices each face significant resource challenges, with growth in workload outpacing growth in capacity to carry out their mandates. While the nature and sufficiency of Accountability Office budgets lies beyond the scope of this Review, I wish to underscore that the successful implementation of the recommendations in this Review will be contingent on ensuring appropriate resources are in place for this purpose.

The City of Toronto's Accountability Framework remains the leading structure of municipal government oversight in Canada, and among the leaders globally. The functions of Toronto's Accountability Offices already are reasonably efficient and effective in the current context and have developed a significant degree of shared resources and coordination between them. That said, in light of the legal and administrative landscape, the literature review, a review of

comparative jurisdictions, I have concluded there are opportunities to strengthen Accountability Office functions and improve service to the public through greater coordination and collaboration.

Appendix "A"

The Role of Each Accountability Officer under Part 5 of COTA

The following sections outline the role of each Accountability Officer under Part 5 of COTA.

1.1.1.1. Integrity Commissioner³⁷

The City is required to appoint an Integrity Commissioner who is in turn required to report to City Council.³⁸ Under section 159, the Integrity Commissioner must independently perform functions assigned by City Council relating to:

- The application of Codes of Conduct to members of City Council and Local Boards,³⁹
- The application of City and Local Board procedures, rules and policies with respect to the ethical behaviour of City Council and Local Board members.

The Integrity Commissioner must perform the duties and may exercise additional powers if and as assigned by City Council (though Council could not remove or alter the powers as set out in COTA). City Council also could only assign duties and powers to the Integrity Commissioner in ways that are consistent with COTA. For example, COTA provides for functions to be carried out in an independent manner so it would not be open to City Council to assign powers to the Integrity Commissioner which could not be carried out independently. COTA does not require City Council to assign any additional functions, duties or powers to the Commissioner.

Section 160 outlines the powers of the Integrity Commissioner when conducting an inquiry, and applies if the Commissioner conducts an inquiry in response to:

- A request made by Council, a member of Council or a member of the public about a possible contravention of the Code of Conduct by a member of Council or a Local Board;
- A request made by a Local Board or a member of a Local Board about a possible contravention of the Code of Conduct by a member of a Local Board.

³⁷ COTA, *supra* note 5 at ss 158-164. Referred to in this analysis as "Integrity Commissioner" or "Commissioner".

³⁸ *Ibid* s 158.

³⁹ "Local board" refers to "local board (restricted definition) as outlined in the definitions section of Part 5.

This section of the Act does not authorize or require the Integrity Commissioner to conduct an inquiry when the above requests are made – it only states that the section applies *if* the Commissioner conducts an inquiry. When the Integrity Commissioner conducts an inquiry in response to a request, subsection 160(2) gives the Commissioner the option of exercising powers under sections 33 and 34 of the *Public Inquiries Act, 2009* (see below).⁴⁰ Subsection 160(3) requires the City and its local boards to give the Integrity Commissioner information (such as books, accounts financial records) the Commissioner believes is necessary for the inquiry regardless of whether the Commissioner has elected to exercise powers under the *Public Inquiries Act*.

A key aspect of COTA is that the Integrity Commissioner does not have the legal authority to impose remedies on those subject to the Codes of Conduct. If the Integrity Commissioner reports to City Council that she believes a member contravened the Code of Conduct, for example, City Council can reprimand the member or suspend the remuneration paid to the member for a period of up to 90 days. A Local Board may also impose these penalties if the Integrity Commissioner reports to the Board that a member has contravened the applicable Code of Conduct and City Council has not yet imposed a penalty.⁴¹

An essential feature of the Integrity Commissioner’s authority is that every person acting under her instructions must keep secret all matters they become aware of in the course of their Part 5 duties, except in a criminal proceeding or otherwise in accordance with Part 5 of COTA. Where the Integrity Commissioner reports to City Council or a Local Board about whether a member of City Council or a Local Board has contravened the applicable Code of Conduct, the Integrity Commissioner can disclose what she believes is necessary for the report. The confidentiality provisions prevail over MFIPPA, which otherwise provides access to information kept by the City.⁴²

While the Integrity Commissioner may interact with the criminal justice system in the course of her duties, the Integrity Commissioner and everyone acting under the Commissioner’s instructions cannot be called as a witness in a civil proceeding in connection with anything done in Part 5 of COTA.⁴³ However, if the Integrity Commissioner determines during an inquiry that there are “reasonable grounds” to believe that a contravention of the *Criminal Code* or another Act has occurred, the Commissioner must report the matter to the appropriate authorities, suspend the inquiry and report the suspension to City Council.⁴⁴

⁴⁰ Ibid s 160(2).

⁴¹ Ibid ss. 160(5) and 160(6).

⁴² Ibid s 161.

⁴³ Ibid s 163.

⁴⁴ Ibid s 164

1.1.1.2. Lobbyist Registrar⁴⁵

The Lobbyist Registrar is the only Accountability Officer that the City is not required to appoint, since section 168 authorizes rather than requires the City to appoint a Lobbyist Registrar. Where Council does appoint a Registrar, the Registrar is responsible “for performing in an independent manner”⁴⁶ the functions assigned by Council with respect to the registry and registration related matter as set out in ss. 165-166 of COTA. COTA does mandate that the Lobbyist Registrar must perform functions assigned by Council relating to a system for registering lobbyists and other matters outlined in section 166 including, but not limited to:

- Establishing and maintaining a lobbyist registry and the system of registration;
- Establishing a Code of Conduct for lobbyists;
- Prohibiting a person from lobbying a public office holder without being registered;
- Imposing conditions for registration, continued registration or a renewal of registration; and
- Refusing to register, or suspending or revoking the registration of a person.

As with the Integrity Commissioner, once appointed, the Lobbyist Registrar must perform the duties and may exercise the powers assigned by City Council as these relate to the lobbying matters outlined in section 168.

Although COTA does not require the Lobbyist Registrar to report to City Council, in my view, this intent is clear from the sections of COTA pertaining to the Lobbyist Registrar (particularly ss. 169(4), (5) and (6)) and only City Council can determine the substance and scope of the Lobbyist Registrar’s functions, duties and powers as long as it does so in a way that is consistent with COTA. Section 169 provides that the Registrar may make a report to City Council in respect of an inquiry, and when she does, the report is to be made public.⁴⁷ *Toronto Municipal Code*, Chapter 3, Accountability Officers (Accountability Officers' By-Law) requires the Lobbyist Registrar, like the other Officers, to report annually to City Council on the activities of his or her office and the discharge of his or her duties.

Like the Integrity Commissioner, COTA only makes mandatory for the Lobbyist Registrar those functions and duties that relate specifically to the matters the Lobbyist Registrar is responsible

⁴⁵ Ibid ss 168-169; also see ss 165-167 on registration and lobbying generally. Referred to as “Lobbyist Registrar” and “Registrar” during this analysis.

⁴⁶ Ibid s 168(1)

⁴⁷ Section 3-7B of the Accountability Officers By-Law requires the Lobbyist Registrar to report directly to Council on here investigations and inquiries.

for under Part 5.⁴⁸ Any functions and duties assigned by City Council that are outside of these parameters cannot be considered mandatory functions and duties under COTA. By the same token, those matters expressly provided under COTA (for example, confidentiality requirements) cannot be altered by City Council.

Section 169 outlines the powers of the Lobbyist Registrar when conducting an inquiry and applies if the Registrar conducts an inquiry in response to a request by Council, a member of Council, or a member of the public about compliance with the system of lobbyist registration or Lobbyist Code of Conduct described in section 166. Like the analogous provisions relating to the Integrity Commissioner, missing in this section is language authorizing or requiring the Lobbyist Registrar to conduct an inquiry when such requests are made.

When the Lobbyist Registrar does conduct an inquiry in response to a request, she can elect to exercise powers under sections 33 and 34 of the *Public Inquiries Act* (see below for a description). The Registrar does not have additional powers outside of the *Public Inquiries Act*, like the Integrity Commissioner does, to access information from the City or Local Board for an inquiry. The Lobbyist Registrar's duty of confidentiality and secrecy are the same as the Integrity Commissioner, except that the Lobbyist Registrar's duty only applies in the context of an inquiry. There is no duty of confidentiality and secrecy stipulated in COTA for the Lobbyist Registrar outside of an inquiry.

The Lobbyist Registrar and everyone acting under her instructions cannot be called as a witness in a civil proceeding in connection with anything done in an inquiry.⁴⁹ If the Registrar determines during an inquiry that there are "reasonable grounds" to believe that a contravention of the *Criminal Code* or another Act has occurred, the Registrar must report the matter to the appropriate authorities, suspend the inquiry and report the suspension to Council.⁵⁰ Again, these sections only relate to an inquiry and not the Lobbyist Registrar's duties or functions outside of an inquiry.

1.1.1.3. Ombudsman⁵¹

The City is required by COTA to appoint an Ombudsman who is in turn required to report to City Council. The function of the Ombudsman is outlined in more detail than are the functions of the Integrity Commissioner or Lobbyist Registrar. Section 171 states that the Ombudsman must independently investigate any decision, recommendation, act or omission affecting anyone in their personal capacity; and that is occurring in the course of administering the City, its local boards and City-controlled corporations.

⁴⁸ Ibid.s 168.

⁴⁹ Ibid s 169(6).

⁵⁰ Ibid s 169(7).

⁵¹ Ibid ss 170-176.

Although COTA states that duties and powers relating to this function may be assigned by City Council, many of these are already outlined in COTA. For example, the Ombudsman has broad investigative powers, which include holding inquiries and collecting information from anyone the Ombudsman thinks is appropriate. Section 172 also includes the following:

- The Ombudsman’s investigations must occur in private;
- There is no right for a person to be heard by the Ombudsman and it is not necessary for the Ombudsman to hold a hearing;
- The Ombudsman must give the City, a Local Board, a City-controlled Corporation or any other person the opportunity to “make representations” personally or through counsel regarding a potentially adverse report;⁵²
- The Ombudsman has additional investigative rights and duties through section 19 of the *Ombudsman Act*.

Some aspects of the Ombudsman’s legal governance appear at a glance similar to the other Accountability Offices, but upon closer inspection are different in important respects. For example, like the other Accountability Officers, the Ombudsman and all of those acting under her instructions must preserve secrecy with respect to all matters they become aware of in the course of their Part 5 duties. The Ombudsman can disclose matters that may support conclusions and recommendations in a report under this Part. The confidentiality provisions prevail over MFIPPA.⁵³ In contrast to the Auditor General, Integrity Commissioner and Lobbyist Registrar, these provisions do not contain a clause waiving the Ombudsman’s confidentiality requirements in a criminal proceeding.

The Ombudsman has the ability to exercise power despite any Act stating that a decision is final or that there is no right to appeal or challenge a decision.⁵⁴ If there is a remedy or right providing, for example, an appeal or investigation, the Ombudsman’s COTA powers and duties exist in addition to these.⁵⁵ The Ombudsman cannot conduct an investigation until any of these statutory rights have been exercised or have expired. The Ombudsman also cannot investigate the actions of a Legal Adviser to the City, a Local Board, a city-controlled corporation or anyone acting as counsel to them in a proceeding.⁵⁶

⁵² Ibid ss 172(1), 172(2).

⁵³ Ibid s 173.

⁵⁴ Ibid s 171(3).

⁵⁵ Ibid s 176.

⁵⁶ Ibid s 171(4).

Unlike the Auditor General, Integrity Commissioner or the Lobbyist Registrar, a proceeding or decision of the Ombudsman is final and cannot be challenged or reviewed in court except on questions of jurisdiction. The Ombudsman controls her own process and is able to fashion remedies to complaints and issues that she reviews and investigates. The work of the Ombudsman's office is jeopardized without this protection. Further, the Ombudsman's process is protected from judicial review and is considered privileged.

The Ombudsman and everyone acting under her instructions cannot be called as a witness in any court or proceeding in connection with anything done under Part 5 of COTA (in contrast to the Integrity Commissioner, Lobbyist Registrar and Auditor General who are only exempted from giving testimony at a civil proceeding). This consideration may play a role in any determinations under a shared MOU or otherwise for collaborative accountability activities. In investigations conducted by the Ombudsman, witnesses, including City employees, are protected in respect of the evidence they provide (*Ombudsman Act*, ss. 19(5)(6)). The protection of witnesses is vital and allows for them to cooperate, speak and share evidence freely. Witnesses are confident that their identity and what they disclose cannot be accessed or shared with anyone. The sharing of information obtained from a witness/individual can only be done for concurrent investigations, where legally permissible and appropriate.

This kind of differential legal status raises important questions as to how a combined or joint investigation involving the Ombudsman and another Accountability Officer might be treated. If such an investigation proceeded on the basis of the Ombudsman delegating specific authority to the Auditor General or her staff, then presumably the Auditor General and her staff would also be covered by this provision, whereas if the Auditor General delegated authority to the Ombudsman, or if neither delegated any authority, then only the Ombudsman would be shielded by this protection.

Anything produced or supplied during an Ombudsman investigation under Part 5 is privileged like it would be in a court proceeding.

1.1.1.4. Auditor General

The City is required to appoint an Auditor General, who is in turn required to report to City Council.⁵⁷ Like the Ombudsman, the function of the Auditor General is outlined in COTA and not assigned by City Council. The Auditor General is to independently assist City Council in holding itself and city administrators accountable for:

⁵⁷ Toronto is the only jurisdiction in Ontario required to appoint an Auditor General though other municipalities are authorized to do so if they wish. Ottawa and Sudbury have currently appointed Auditors General. Nova Scotia requires municipalities to have an Auditor General and this position is a provincial appointment (though it reports to municipal city councils). Municipalities in Quebec over 100,000 similarly are required to appoint an Auditor General. See Union of British Columbia Municipalities, *Municipal Auditor General Context Paper* (July 2011) at p. 2.

1. The “quality of stewardship over public funds” and
2. Achieving “value for money in city operations.”⁵⁸

Additional powers may be assigned by City Council to the Auditor General.⁵⁹

The Auditor General’s powers include:

- Requiring information from the City, Local Boards, city-controlled corporations and grant recipients regarding their duties, activities, organization, financial transactions and methods of business;
- Having free access to the books, accounts, financial records, electronic data processing records, reports, files and anything else relevant, which belongs to the City, Local Board, city-controlled corporation and grant recipients;
- Examining any person under oath on a matter relating to an audit or examination under Part 5;
- Additional examination rights and duties through section 33 of the *Public Inquiries Act, 2009* (for a description, see paragraph 1.3.1 below).

There are two observations to note from these outlined powers:

1. Subsection 179(3) states that the first two powers, relating to information and access, do not constitute a waiver of solicitor-client privilege, litigation privilege or settlement privilege. This clause has not been included in the sections pertaining to the other Accountability Officers.⁶⁰
2. The Auditor General must apply the *Public Inquiries Act* to an examination, in contrast to the Integrity Commissioner and Lobbyist Registrar, who can elect to apply it. In addition, section 34 of the *Public Inquiries Act* does not apply to the Auditor General (also in contrast to the Integrity Commissioner and Lobbyist Registrar). Whereas, the *Public Inquiries Act* does not apply to the Ombudsman, who in turn determines her own processes.

⁵⁸ COTA, *supra* note 5, s 178(1).

⁵⁹ *Ibid* s 178(3).

⁶⁰ *Ibid* s 179.

With respect to confidentiality, like the other Accountability Officers, the Auditor General and all of those acting under her instructions must maintain confidentiality on all matters they become aware of in the course of their Part 5 duties. The exceptions are in a criminal proceeding or in accordance with Part 5, such as through a report or proceeding. Privileged information or documents can only be disclosed with the consent of each holder of privilege. The Auditor General and those acting under his or her instructions cannot be a witness in a civil proceeding in connection with anything done in Part 5.⁶¹

The Auditor General should be distinguished from the City Auditor who is responsible for the City's financial statements. The Auditor General cannot perform any matters for which the City Auditor is responsible.⁶²

⁶¹ Ibid s 182.

⁶² Ibid ss 178(2), 139(a), 139(b).

Appendix "B"

Other Relevant Statutes

Beyond COTA, a number of other statutes interact with the jurisdiction and authority of one or more of the Toronto Accountability Offices. These are canvassed briefly below.

1.1.2. Other Relevant Statutes

1.1.2.1 Statutes Interacting with Multiple Accountability Officers

Several provisions in COTA invest Accountability Officers – specifically, the Integrity Commissioner, Lobbyist Registrar and Auditor General – with certain powers set out in the *Public Inquiries Act, 2009*, including the power to summons witnesses and compel evidence and testimony).

There are also provisions in Part 5 of COTA that interact with MFIPPA, which provides a right to access information under the control of municipal institutions and protects that privacy of individuals' personal information held by municipal institutions. The Accountability Officers are covered under subsection 2(3) of MFIPPA: where an agency, board, commission, corporation or other body is not mentioned in the definition of an institution or designated as an institution, and its officers are chosen by or under the authority of Council, the body is deemed to be a part of the municipality for the purposes of MFIPPA.

Most recently, Ontario enacted Bill 8, the *Public Sector and MPP Accountability and Transparency Act, 2014*. Bill 8 was introduced in the Ontario Legislature on July 8, 2014 and received Royal Assent on December 11, 2014. Schedule 9 of Bill 8 makes significant changes to the *Ombudsman Act*, by allowing the Ontario Ombudsman to receive complaints about municipalities, universities and school boards. Subsections 6(7) and (8) add provisions to section 14 of the *Ombudsman Act*⁶³ that may affect the Accountability Officers.

While it is too early to speculate on the impact of this legislation, the debate surrounding its enactment (discussed further below) suggests it may be necessary to consider the impact of the Ontario Ombudsman's jurisdiction in any discussion of changes to the structure or function of Toronto's Accountability Offices.

⁶³ *Ombudsman Act*, RSO 1990, c O6, ss 14(4.2), 14(4.3), 14(4.4), 14(4.5).

1.1.2.2. Statutes Interacting with One Accountability Officer

A number of other Ontario statutes interact with or are incorporated by provisions setting out the jurisdiction and authority of specific Toronto Accountability Offices.

Section 19 of the *Ombudsman Act* is incorporated into subsection 172(3) of COTA by reference. In the context of COTA, section 19 establishes procedural guidelines for investigations conducted by the Ombudsman, and gives her the authority to collect information from the City, Local Board or City controlled corporation with respect to a matter being investigated. The Ombudsman also can summon and examine under oath a complainant, official of the City, a Local Board or a City controlled corporation, or any other person who can give information relating to the matter under investigation. Witnesses in an Ombudsman's investigation are protected in respect of the evidence they provide. The Ombudsman's process is protected from judicial review and considered privileged.

Chapter 3 of the *Municipal Code, Accountability Officers* requires the Integrity Commissioner to provide general advice to Council, Local Boards and their members on their obligations under the *Municipal Conflict of Interest Act*. This Act sets out the duty a member of Council or Local Board has when the member has a pecuniary interest in a matter being considered at a Council or Local Board meeting the member is present at. The member is required to disclose the interest, not take part in any discussion or vote on the matter and not attempt to influence voting.

While not relevant to the Toronto Accountability Offices *per se*, the Ontario *Municipal Act, 2001* is worth noting. The *Municipal Act* gives municipalities in Ontario, except Toronto, powers and duties to provide good government for matters within their jurisdiction. The passage of this legislation was considered a “substantial victory for Ontario municipalities advocating for increased recognition of their independence and autonomy.”⁶⁴ The revisions made in 2006 by the *Municipal Statute Law Amendment Act* (concurrent with the enactment of COTA) resulted in a new Part V.1 — Accountability and Transparency into the *Municipal Act, 2001*. This provision authorized municipalities to establish codes of conduct to govern the ethical behaviour of members of their councils and local boards. Municipalities could also appoint their own accountability officers, including integrity commissioners, auditors general, lobbyist registrars, and municipal ombudsman.

Part 5.1 of this Act, “Accountability and Transparency”, contains provisions that are largely “mirror images” to Part 5 of COTA. The one major difference between the two Parts is that the *Municipal Act, 2001* only authorizes each municipality to establish the Accountability Officers, whereas COTA requires it. Despite this difference, the *Municipal Act* provisions provide a

⁶⁴ John Mascarin, “Municipal Oversight” *Lawyer’s Weekly* (June 12, 2015), online: [Lawyers Weekly <http://www.lawyersweekly.ca/articles/2404>](http://www.lawyersweekly.ca/articles/2404).

helpful reference point for assessing different accountability models and best practices in Ontario municipalities that have chosen to establish Accountability Offices. For example, pursuant to authority under the *Municipal Act*, Ottawa's City Council passed a By-Law in 2012 appointing the Integrity Commissioner as Lobbyist Registrar (discussed further below in the section examining comparative examples of combining accountability functions).⁶⁵ The *Municipal Act* accountability provisions may also be useful in ascertaining how courts are interpreting Accountability Officer functions, powers and duties.

⁶⁵ Ottawa Lobbyist Registry By-Law 2012-309.

Appendix "C"

City of Toronto By-laws

I reviewed by-laws passed by City Council relating to the structure and functions of the Accountability Offices. These by-laws must be consistent with COTA's framework for the Accountability Offices and their functions, and are described in detail in below.

1.1.3.1 The *Municipal Code*: Chapter 3, Accountability Officers

Chapter 3 of the *Municipal Code*, Accountability Officers, expands on each Accountability Officer's functions, duties and powers. The *Municipal Code* provisions reflect many best practice provisions entrenched in accountability officer legislation at the provincial and federal orders of government.

By virtue of the provisions of Chapter 3, each Accountability Officer is appointed for a fixed term by City Council through a two-thirds vote. The Integrity Commissioner has a five year term, while the Lobbyist Registrar, Ombudsman and Auditor General each have seven year terms. All of the Accountability Officer's terms are non-renewable. A two-thirds vote is required to extend, reappoint, remove or terminate an Accountability Officer. Accountability Officers can resign by giving 90 days' notice to the Mayor, unless this requirement is waved by both parties. The initial Accountability Officer selection process is conducted by an external recruitment firm. Appointment is then recommended to City Council by a selection panel appointed by the Mayor and chaired by him (or his designate).

Chapter 3 also affirms that Accountability Officers are accountable to City Council and must report annually on their activities and discharge of duties. Accountability Officers must also report directly to City Council on any investigations or inquiries being conducted. The Integrity Commissioner may choose to report to a Local Board regarding an investigation or inquiry related to a Local Board member. Accountability Officers must submit policy-related reports to City Council through the Executive Committee. The Auditor-General must submit all audit-related reports, including the Annual Report, through the Audit Committee to City Council. The Audit Committee provides an opportunity to discuss reports in detail. The Audit Committee makes recommendations to City Council regarding the reports. The Auditor General is also responsible for submitting an annual auditing plan to City Council. Finally, Accountability Officers, except the Auditor General, must submit budget requests to the Budget Committee for recommendation to City Council. The Auditor General must submit budget requests to the Audit Committee.

The Accountability Officers are included in the City's annual attest audit conducted by an external auditor. Accountability Offices are also subject to an annual compliance audit conducted by an external auditor. The Auditor General must undergo an external peer review once every three years to ensure compliance with government auditing standards. City Council can periodically review an Accountability Officer's mandate to assess whether the mandate needs to be adjusted because of changing circumstances. Such a review must include consultation with the current Accountability Officer to reflect the Officer's experience, advice or input.

Perhaps most importantly, Chapter 3 elaborates on core aspects of Part 5 of COTA, including the ways in which the Accountability Officers are independent of City administration and have responsibility over the conduct and accountability of their Office. They are also responsible for applying the following other chapters of the Code: Chapter 71, Financial Control; Chapter 195, Purchasing; Chapter 217, Records, Corporate (City); other City by-laws and policies related to material and financial resources; and other City by-laws and policies specified by City Council. Accountability Officers must comply with general City policies, so long as they do not interfere with their independent functions and duties. The Accountability Officers must also apply the City's employment related policies to their staff with modifications to reflect the independent nature of their offices.

Chapter 3 assigns a number of functions, powers and duties to the Accountability Officers, except the Lobbyist Registrar, whose duties are included in Chapter 140 of the Code, Lobbying (see below). Some of these include:

The Integrity Commissioner

- Providing advice to City Council, Local Boards and their members (including their staff when acting as the member's agent) on the application of their Codes of Conduct, by-laws, policies and protocols regarding a member's conduct;
- Providing general advice to City Council, Local boards and their members on their obligations under the Municipal Conflict of Interest Act;
- Conducting inquiries under COTA;
- Providing opinions on policy matters and making reports to City Council or Local Boards on issues of ethics and integrity; and

- Providing educational programs to members of City Council, Local boards and their staff on issues of ethics and integrity.

The Ombudsman

- Determining procedures related to function;
- Investigating decisions and omissions (not including City Council or Committees) where the Ombudsman believes that a person or body of persons has been adversely affected during the course of City administration and based on:
 - Public complaints;
 - A request by City Council; or
 - The Ombudsman's initiative.
- Notifying affected parties before the beginning of an investigation, allowing them to be heard and giving them the opportunity to rectify;
- Informing affected parties the results of the investigations; and
- Refusing to investigate a complaint or continue an investigation where: other remedies are available; the complainant cannot demonstrate enough personal interest in the subject matter; or more than one year has passed since the complainant learned facts related to the complaint.

The Auditor General

- Carrying out financial, compliance and performance audits of all programs, activities and functions for:
 - City departments
 - Offices of the Mayor and members of City Council
 - Local boards
 - City-controlled corporations
 - Toronto Public Services Board, Toronto Public Library Board and the Toronto Board of Health, upon request from these Boards
- Auditing Toronto Hydro Corporation upon specific direction from City Council in relation to:

- A perceived breach by Toronto Hydro of the shareholder direction;
or
 - Where the Auditor General has not been able to obtain necessary information for a specific purpose or project either through the shareholder direction reporting mechanisms, inquiries to senior management of Toronto Hydro, or a request from City Council to the Chair of Toronto Hydro.
- Submitting reports – regarding City controlled agencies and City corporations – first with the agency or corporation’s Board of Directors; and
 - Disclosing to City Council any attempts at interference with the Auditor General’s Office.

It will be imperative that any cross-delegation, Memoranda of Understanding, protocols or administrative arrangements which might be contemplated to enhance coordination and collaboration between Accountability Offices be designed to fit within Chapter 3 of the *Municipal Code*, or that appropriate amendments to Chapter 3 accompany those initiatives if and as needed. As indicated above, it would be desirable if COTA expressly authorized the sharing of information and collaboration between the Accountability Offices.

1.1.3.2 *Municipal Code*: Chapter 192, Public Service

On December 31, 2015, Chapter 3 will be amended to include Article 1.1, which will extend provisions relating to conflict of interest, political activity and disclosure of wrongdoing and reprisal protection from Chapter 192, Public Service to the Accountability Officers. Chapter 192 of the *Municipal Code*, also known as the “Public Service By-law”, sets out rights and duties relating to ethical conduct, establishes procedures for disclosing and investigating wrongdoing and protects public servants from reprisals, among other purposes. The Public Service By-law relates to the Accountability Officers in three ways:

1. Provisions relating to conflict of interest, political activity, wrongdoing and reprisals are referenced in Article 1.1 of Chapter 3, and will apply to the Accountability Officers when Article 1.1 comes into force on December 31, 2015.

2. The By-law details the Auditor General's responsibilities in relation to disclosures of wrongdoing and reprisal protections.
3. The By-law also details the interactions between the Auditor General and other Accountability Officers in the context of allegations of wrongdoing and reprisals.

The Conflict of Interest and Confidentiality provisions will apply to the Accountability Officers on December 31, 2015. Article 4 provides that the Accountability Officers must avoid putting themselves in situations where their private interests conflict with, or are perceived to conflict with, the interests of their Office. Accountability Officers and their staff cannot accept any reward, gift, advantage or benefit from anyone that influences, or could be perceived to influence, the performance of their duties; Accountability Officers must maintain policies governing the recruitment of relatives; the duty to maintain confidentiality continues after an Accountability Officer and her staff leaves the public service; and Accountability Officers should be familiar with the requirements and expectations for dealing with lobbyists as outlined in Chapter 140, Lobbying.

The incoming Article 1.1 of Chapter 3 provides that the Accountability Officers and their staff will be considered "designated employees" in the Political Activity sections of the Public Service By-law. This means that they will have the same restrictions on political activity as the City Manager and will not be able to engage in any political activity, aside from for voting and attending all-candidate meetings.

Section 192-52 of the Public Service By-law will be codified in Article 1.1 of Chapter 3 on December 31, 2015. The section states that if it is alleged that an Accountability Officer or her staff committed wrongdoing, improperly breached confidentiality or committed a reprisal, these allegations will be investigated by a third party and their findings will be reported to City Council.

Pursuant to section 3-12.4 of Article 1.1, section 192-47 of the Public Service By-law (Reprisal Prohibited) will only apply to an Accountability Officer's staff and not the Accountability Officer. The section prohibits reprisals against a staff member because he or she:

- Sought information or advice about making a disclosure of wrongdoing;
- Made a disclosure of wrongdoing in good faith;
- Acted in compliance with Article 6 (Disclosure of Wrongdoing and Reprisal Protections) or Article 7 (Reprisal Protections);

- Initiated or co-operated in an investigation related to disclosure of wrongdoing;
- Appeared as a witness, gave evidence or participated in any proceeding relating to the wrongdoing (or is required to);
- Is suspected of any of the above actions.

The Auditor General has specific responsibilities in relation to the disclosure of wrongdoing and reprisal protection. The Public Service By-law distinguishes between allegations of wrongdoing and misconduct.

The Auditor General must redirect or refer allegations that do not turn out to be allegations of wrongdoing to the appropriate Accountability Officer, assuming the allegation falls within the jurisdiction of an Accountability Officer. Additionally, some allegations will be referred to the appropriate City official where it falls outside the jurisdiction of the Accountability Officers. Subsections §192-36 B. and §192-37 B. require referral of allegations to the appropriate official. In practice this means that “misconduct” will be investigated by the appropriate City division and the City’s Human Resources unit. In many cases allegations of misconduct will arise other than through the Hotline, and misconduct allegations against City employees generally would not involve the Auditor General.

With respect to process, if a City employee becomes aware of a reprisal against another employee, they have a duty to notify the Integrity Commissioner, the Auditor General, the City Manager or the Executive Director of Human Resources. If the Executive Director of Human Resources receives this allegation, he or she must report this to either the Integrity Commissioner or Auditor General immediately.

The Auditor General is responsible to investigate allegations of reprisals against employees under the Disclosure of Wrongdoing and Reprisal Protection rules in Article VII, in consultation with the City Manager or designate.⁶⁶

The Integrity Commissioner is responsible for leading investigations of alleged reprisals involving members of City Council or a Local Board. If a City employee believes that they are the subject of a reprisal involving a member of City Council or a Local Board, the employee must immediately notify the Integrity Commissioner.

City and agency staff are obliged to be familiar with the requirements and expectations for dealing with lobbyists as outlined in Chapter 140, Lobbying: §192-21.

⁶⁶ Public Service By-law § 192-32 (6) Responsibilities of the Auditor General.

1.1.3.3. Chapter 140 of the Municipal Code

Pre-dating Chapter 3, is Chapter 140 of the *Code*, which sets out the framework governing lobbyists. Section 140-33 of this Chapter states that the Lobbyist Registrar is responsible for a number of matters including:

- Maintaining a lobbyist registration system and determining the form of returns and the manner of filing returns;
- Providing advice, opinions and interpretations on the administration, application and enforcement of Chapter 140;
- Reviewing submitted returns for acceptance;
- Verifying returns and conducting reviews to ensure compliance with Chapter 140;
- Conducting, in private, investigations or inquiries to determine whether there have been contraventions of Chapter 140;
- Suspending or revoking a registration;
- Enforcing Chapter 140; and
- Advising City Council on lobbying matters and recommending improvements and amendments to Chapter 140.

Pursuant to section 140-35(B), the Lobbyist Registrar may conduct an investigation or inquiry in response to a request made by City Council, a member of City Council or a member of the public – including the Lobbyist Registrar. The provision confers to the Lobbyist Registrar the power to conduct inquiries on her own initiative since the provision is not limited to inquiries under COTA (as is the case with the Integrity Commissioner in Chapter 3) and also explicitly states that a “member of the public” includes the Lobbyist Registrar.

A person contravening a provision of Chapter 140 is guilty of an offence. If a person is convicted under Chapter 140, they are liable to a fine of not more than \$25,000 and on each subsequent conviction to a fine of not more than \$100,000.

1.1.3.4 Codes of Conduct

Another important set of by-laws enact the Codes of Conduct governed by the Integrity Commissioner. COTA requires the City to establish Codes of Conduct for members of Council and Local Boards. It also gives the Integrity Commissioner responsibility for performing functions related to the application of the Codes of Conduct.

The three applicable Codes of Conduct the Integrity Commissioner is responsible for interpreting and applying are:

1. Code of Conduct for Members of Council;
2. Code of Conduct for Members of Local Boards (Restricted Definition); and
3. Code of Conduct for Members of Adjudicative Boards.

If a member of City Council is acting as a member of a Local Board, the member is bound by provisions of the Code of Conduct containing requirements for that Board.

The Codes of Conduct are largely similar, although there are provisions specific to City Council, a Local Board or Adjudicative Board. Common sections include:

- Gifts and benefits;
- Confidential information;
- Election campaign work;
- Improper use of influence;
- Business relations;
- Conduct regarding current and prospective employment;
- Conduct respecting staff;
- Conduct respecting lobbyists;
- Discreditable conduct; and
- Reprisals and obstruction.

Although the Integrity Commissioner has responsibility for interpreting and applying the Codes of Conduct in their entirety, the discussion below outlines the Integrity Commissioner's specific duties and powers under the Codes of Conduct. Council and Local Board members are not to receive gifts or benefits connected with the performance of their duties. This rule also applies to a member's spouse, child, parent or staff if the member has knowledge of the gift or benefit. The Codes outline a number of exceptions to these rules (for example, "a suitable memento of a function honouring the member") – but even in the case of certain exceptions, the dollar value of the gift or benefit cannot exceed \$500 once or in a calendar year from one source. In

addition, if a member receives gifts or benefits from one source that exceeds \$300, the member must file a disclosure statement with the Integrity Commissioner within 30 days of receipt of the gift or reaching the annual limit.

If the Integrity Commissioner examines the disclosure statement and finds that receipt of the gift or benefit creates a conflict between the member's private interest and public duty, the Integrity Commissioner can call on the member to justify the receipt. If the Integrity Commissioner determines that the receipt was inappropriate, she may direct the member to return the gift, reimburse the donor, forfeit the gift or remit the value of any gift or benefit already consumed to the City or Local Board (where applicable).

As indicated above in relation to COTA, the Integrity Commissioner is not empowered to order sanctions against Councillors or Local Board members. Rather, City Council (or a local board) is authorized through COTA to impose a reprimand or suspension on a member of up to 90 days remuneration if the Integrity Commissioner reports that there has been a Code of Conduct violation. If the Integrity Commissioner files such a report about a Local Board member who is also a member of City Council, Council may separately consider suspending his or her remuneration as a member of Council for up to 90 days.

The Integrity Commissioner is also authorized through the Codes of Conduct to recommend the following actions for a City Council or Local Board member:

- Removing a City Council member from membership in a Committee or Local Board; removing a Local Board member from membership in a Committee, Sub-committee or Panel of a Local Board;
- Removing a City Council member as Chair of a Committee or Local Board; removing a Local Board member as Chair of a Local Board, Committee, or Sub-committee of a Local Board;
- Repayment or reimbursement of moneys received;
- Return of property or reimbursement of its value;
- A request for an apology to City Council, the Local Board (where applicable), the complainant, or any combination.

These Codes of Conduct also overlap to some extent with the Lobbyist Code of Conduct. Except for a political contribution, lobbyists, their clients or employers are in no circumstances allowed to give a member of City Council or a Local Board any gift or benefit. A lobbyist in this context is an individual, organization or business that:

- Is lobbying or causing the lobbying of any public office holder at the City, Local Board or Board of Health;
- The member knows is intending to lobby, having submitted or intending to submit a registration to the Lobbyist Registrar for approval to communicate on a subject matter; or
- Is maintaining an active lobbyist registration with the City even though there is no current active subject matter registered with the lobbyist registry.

The Lobbyist Registrar is however mentioned in Part 13 of the Codes of Conduct (Part 15 for Adjudicative Boards) in relation to contraventions of Chapter 140, Lobbying. The Part states that a member must report any violation or attempted violation of Chapter 140 to the Lobbyist Registrar unless the member in good faith believes that the violation was inadvertent or insignificant.

This by-law sets out additional details regarding the Integrity Commissioners functions. A reprisal or threat of reprisal against anyone for providing information to the Integrity Commissioner, for instance, is prohibited. It is also a violation of the Codes of Conduct to obstruct the Integrity Commissioner in carrying out her responsibility. If the Integrity Commissioner has given written advice to a member, the Integrity Commissioner is bound by this in any subsequent consideration of the conduct of the member in the same matter. This only applies if all relevant facts known to the member were disclosed to the Integrity Commissioner.

1.1.3.5 *Municipal Code*: Chapter 27, Council Procedures

Chapter 27 of the *Municipal Code* sets out Council Procedures, establishing rules and processes for Council and Council Committee meetings. The Accountability Officers are mentioned in this Chapter in relation to adding new business to a City Council meeting agenda. Section 27-62 gives the Accountability Officers power to add new business to a City Council meeting without first submitting the matter to the relevant Council Committee, as long as the matter being added is:

- An annual report;
- A report regarding an inquiry or investigation;

- An urgent matter that cannot be considered first by the relevant Council Committee; or
- With respect to the statutory duty of the Accountability Officer.

The Auditor General is also mentioned in the context of Audit Committee responsibilities, including:

- Recommending the appointment of an external auditor to conduct the annual audit of the Auditor General's office;
- Considering the external audit of the Auditor General's office;
- Considering the Auditor General's reports and audit plan;
- Conducting an annual review of the Auditor General's accomplishments; and
- Considering performance audits and other reports of the Auditor General regarding City agencies and corporations.

Appendix "D"

Analysis of the Literature & Comparative Models for the Functions of the Accountability Offices

The review of literature and comparative models examines domestic and comparative sources, as well as journalism, academic studies, commissioned reports by government, and reviews and reports by public inquiries and NGOs related to government accountability. The purpose of this review is not to compile an academic analysis but rather to respond to the questions around what can be learned from the literature and comparative models. For example, is there a consensus as to whether a Lobbyist Registry should be integrated within the portfolio of an Integrity Commissioner or be a function of a separate Lobbyist Registrar?

Because there is not literature *per se* on the question of combining Accountability Offices, this Review will focus instead on the identification of best practices, cautionary issues and related studies of effectiveness of municipal accountability.

3.1 The Bellamy Report

Some of the most relevant literature remains the Bellamy Report and commentary of its recommendations,⁶⁷ especially Volume 2 of the Report entitled, "Good Government." Justice Bellamy devoted most of her attention to the functions of an Integrity Commissioner, which she viewed in expansive terms – including the proposition that the Integrity Commissioner would oversee the ethical behavior of staff as well as Councillors.⁶⁸

In an oft-cited recommendation, Bellamy stated that, "The City should treat lobbying as a potentially helpful practice that should be carefully controlled."⁶⁹ With this goal in mind, she recommended the creation of a lobbyist code of conduct and the establishment of a Lobbyist Registry. She believed it was vital to have a lobbyist registrar who could oversee and enforce the lobbyist code of conduct, and recommended that "to oversee the lobbyist registry, the City should have a lobbyist registrar."⁷⁰ She stated:

⁶⁷ See, for example, Shanti Fernando, "Ethics and Good Urban Governance in Toronto: the Bellamy Report and Integrity in Public Service" (2007) Canadian Public Administration 437 and Nancy Nicol L. Shea, "Municipal Accountability Reforms: A Shift in the Municipal Operational Landscape or Business as Usual?" (2008) 44 MPLR-ART 44.

⁶⁸ The Honourable Madam Justice Denise E. Bellamy, Commissioner, *Toronto Computer Leasing Inquiry, Toronto External Contracts Inquiry*, (Toronto: 2005), "Good Government" at 44.

⁶⁹ *Ibid* at 79.

⁷⁰ *Ibid*. Recommendation 122 at 94.

A successful lobbyist registry will require resources and a well-trained staff of sufficient size. The lobbyist registrar should be an individual or office staffed according to the City's needs. This position should report to the integrity commissioner.⁷¹

In the "Good Government" volume of the Report, Bellamy detailed the way in which the Lobbyist Registrar and Integrity Commission functions were envisioned to interact:

126. The lobbyist registrar should work closely with the integrity commissioner.

The integrity commissioner, to whom the lobbyist registrar would report, can play an important role in overseeing and advising on lobbying related issues. Generally, the integrity commissioner could help in the following ways:

- providing advice to councillors and staff on contact with lobbyists
- working with the lobbyist registrar on complaints about lobbying activity
- assisting the registrar with education of all public servants as necessary about lobbying issues
- advising on lobbying issues for a code of conduct or other ethics policies

It is particularly important that the lobbyist registrar and the integrity commissioner, working together, periodically assess how well the lobbying regulation regime at the City is working and suggest necessary changes, such as closing loopholes. When completed, this assessment should be reported in the lobbyist registrar's annual report.⁷²

The Bellamy Report also explained Toronto's attempts to establish robust Accountability Offices rather than the more common experience of having such frameworks imposed from above by the Province.⁷³

With respect to the comment that the lobbyist registrar report to the Integrity Commissioner, the City and COTA adopted a different model, in which the Lobbyist Registrar is required to perform her duties in an independent manner and is not required to report to the Integrity Commissioner. That said, the two Officers do in fact work closely together, assisted by the MOU that exists between their offices. Over the years the establishment of the four

⁷¹ Ibid at 94.

⁷² Ibid at 95-96.

⁷³ Christopher Alcantara, Roberto Leone, and Zachary Spicer, "Responding to Policy Change from Above: Municipal Accountability and Transparency Regimes in Ontario" (2012) *Journal of Canadian Studies*, Vol. 46, No. 1.

Accountability Offices, a collaborative culture has developed, which would be inconsistent with the Lobbyist Registrar reporting to the Integrity Commissioner.

3.2 The Cunningham Report

The challenges associated with municipal accountability along with questions regarding the province's role arose in the context of the Report of the Mississauga Judicial Inquiry, "Updating the Ethical Infrastructure" (which will be referred to as the "Cunningham Report").⁷⁴ The Cunningham Report concerned certain allegations about the Mayor of Mississauga's conduct with respect to potential conflicts of interest in a real estate development. The Cunningham Report recommended the establishment of an Integrity Commissioner for Mississauga⁷⁵ and considered the importance of a lobbyist registry and the Toronto experience (though given the timing of the Inquiry, this means assessing the Toronto lobbyist registry only for the 2009-2011 period) and reached the following conclusion:

Given the size of the City of Mississauga and the existence of other measures that can be taken to improve accountability and transparency, the city should not establish a registry at this time. My concern is that it would be a disproportionate response to the issues of accountability and transparency in the circumstances, particularly given the significant costs involved. The financial cost to the City of Toronto for its lobbyist registry has been significant, with the 2009 budget for the office being just under \$1 million. The effectiveness of the City of Toronto's lobbyist registry is still unclear.⁷⁶

Cunningham recommended that the Members Code of Conduct be amended to provide guidelines governing the interaction of councillors and lobbyists, and that the Integrity Commissioner be given responsibility for overseeing the lobbyists' code and educating councillors and lobbyists regarding its provisions.⁷⁷ Further, and consistent with the goal of greater coordination in municipal accountability, Cunningham also recommended that the *Municipal Conflict of Interest Act* be amended in order to bring its administration within the purview of municipal integrity commissioners.⁷⁸

⁷⁴ Cunningham Report, *supra* note 25.

⁷⁵ *Ibid* at 162-65.

⁷⁶ *Ibid.* at 165.

⁷⁷ *Ibid* at 182.

⁷⁸ *Ibid* at 173.

Expert Literature

Some of the literature provides added context from which to view the Accountability Officers. For example, André Côté notes in “The Fault Lines at City Hall: Reflections on Toronto’s Local Government”⁷⁹ that “The Auditor General is the most well-established position, providing both oversight of financial management and value-for-money audits of government spending...The other three officers oversee different aspects of the activities and interactions of elected officials, public servants, and external actors, borrowing from the independent oversight practices used by the federal and provincial governments.”⁸⁰ Côté also highlights that tensions relating to the role of Accountability Officers are natural given the independent (and sometimes adversarial roles they play).⁸¹

There are concrete examples of how to establish effective accountability regimes in sources such as Gregory Levine’s book *Municipal Ethics Regimes*,⁸² which discusses the practical ways local governments can establish ethics systems and means for achieving these systems – including codes of conduct and integrity commissioners; lobbying, lobbyist conduct and registration; and administrative justice and ombudsmen. Meanwhile, the report for the Office of the Toronto Ombudsman in 2015 provides a case study for how the Ombudsman has impacted public administration through her investigations.

There are a number of articles highlighting the new and evolving nature of Toronto’s (and other Ontario municipalities’) accountability framework. For example, in a 2013 profile of former Toronto Integrity Commissioner Janet Leiper in *Canadian Lawyer Magazine*, Leiper states that “We’re still in the very early stages, with virtually no jurisprudence. It’s as if the Criminal Code was just created five years ago. There’s a lot of first principles thinking, and a lot of advice and education...”⁸³ This sentiment was echoed by other municipal integrity commissioners in a *Law Times News* piece, with the author quoting Robert Swayze (Integrity Commissioner for Mississauga, among other Ontario municipalities): “it’s an evolving field, changing all the time.”⁸⁴ Authors have displayed caution however in determining the overall effectiveness of these accountability regimes. Jennifer Smout, writing on Accountability Officers appointed under the *Municipal Act, 2001* (which contains analogous provisions to COTA), concludes that

⁷⁹ (Toronto: Institute on Municipal Finance and Governance, University of Toronto, 2013), No. 1.

⁸⁰ Ibid at 4.

⁸¹ Ibid at 4-5.

⁸² Gregory J. Levine, *Municipal Ethics Regimes* (St. Thomas: Municipal World Inc., 2009).

⁸³ Michael McKiernan, *Canadian Lawyer Magazine* “Making Waves” (March 4, 2013).

⁸⁴ Michael McKiernan, *Law Times News* “Focus: Lawyers grabbing piece of integrity commissioner action” (July 8 2013).

“...it may take several years before these officers can be fairly evaluated in terms of their success in enhancing accountability and transparency.”⁸⁵

3.3 Literature from Comparator Jurisdictions

Literature from other jurisdictions provides useful analysis and commentary of other accountability frameworks, best practices and cautionary tales. In “Ethics in Local Government: Atlantic Canada Conflicts of Interest Enforcement Mechanisms – Pathways or Roadblocks to a Culture of Ethics”,⁸⁶ Basile Chiasson asserts that “...recourse to adversarial models of conflict of interest enforcement may favour deterrence, but it is not conducive to the fostering of a benevolent ethical culture...the purpose of ethics laws is to promote the reality and perception of integrity in government by preventing unethical conduct before it occurs. Ethics laws focus on prevention, not punishment.”⁸⁷

This point is also made by Mark Davies in “New York State Whiffs on Ethics Reform”,⁸⁸ who maintains that the purpose of government ethics laws lies not only in promoting the reality of integrity of government, but also the perception of integrity in government – these purposes can be achieved by preventing unethical conduct before it occurs in the first place.⁸⁹ Furthermore, “best practices mandates that the government ethics law first set forth ethical precepts (a code of ethics), and then from those precepts draw out compliance-based rules (a conflict of interest code).⁹⁰ Davies makes an important point that in ethics reform “one must never let the perfect be the enemy of the good.”⁹¹

The literature contains cautionary tales about what can occur when accountability roles are too isolated from one another and lack adequate financial resources. In a report for the Better Government Association in 2014, an organization that attempts to hold government and public officials in Illinois accountable, Andrew Schroedter assesses the function of seven Inspectors General that operate in Chicago and oversee City Hall, City Council and various City agencies. The report found that the Inspectors General in Chicago were becoming increasingly frustrated because “they don’t have the legal independence, financial firepower, political backing or are so isolated that they can’t work alongside other IG offices to develop major cases.”

⁸⁵ Jennifer A. Smout, “Municipal Appointees: Investigators and Part VI Officers – Beyond Accountability and Transparency” *Current Municipal and Planning Law Issues*, (Ontario Bar Association, Feb 16, 2010) at 21.

⁸⁶ Basile Chiasson, “Ethics in Local Government: Atlantic Canada Conflicts of Interest Enforcement Mechanisms – Pathways or Roadblocks to a Culture of Ethics” (2009) 59 U.N.B. L.J. 231.

⁸⁷ *Ibid.* at 11-12.

⁸⁸ Mark Davies, “New York State Whiffs on Ethics Reform” (2012) 5 Govt Alb L Rev. 710.

⁸⁹ *Ibid.* at 713.

⁹⁰ *Ibid.* at 714.

⁹¹ *Ibid.* at 711.

Furthermore because these offices are separated or contained within another agency or watchdog, they cannot share staff or resources with each other: “it’s every watchdog for his or herself. There’s no uniformity and little cohesion.”⁹²

A similar point is made in “Ensuring Public Trust at the Municipal Level: Inspectors General Enter the Mix” – an article that provides many discussion points on Inspectors General (see below). Patricia Salkin and Zachary Kansler⁹³ note there may be instances where two accountability bodies (they cite the Inspector General and Ethics Boards) may find themselves investigating the same matter. The authors take the view that “it is in the best interests of the public to avoid the costs associated with duplicative investigations and the potential for political gamesmanship, which may involve arguments over which agency has the “lead authority” at any given point in time. Addressing these issues when drafting the local law will reduce costs and help to ensure public trust.”⁹⁴

In the context of Inspectors General, Salkin and Kansler also consider the interesting question of how the enforcement of subpoenas might be treated in court where an Office is bringing a suit against a party within the same government. The authors reference a case in which a Chicago Inspector General sought to enforce a subpoena in court for documents in the possession of the Chicago Corporate Counsel, creating a situation where two individuals in the same entity would be parties to a proceeding. The court resolved this issue by determining that it was able to hear the matter because the action was between two separate and distinct entities within the municipal government, not two individuals in the same entity.⁹⁵

Another issue to look for in the next few months is additional commentary on corruption in municipalities as the Charbonneau Commission’s final report is set to be released in November. For now, the OECD’s 2009 document *Toward a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for Implementation*⁹⁶, provides a useful discussion of its “sound Integrity Framework” for public sector organizations, in order to foster integrity and prevent corruption.

While this literature review is certainly not exhaustive, it does indicate that where experts have considered the structure and jurisdiction of Accountability Offices, their emphasis has been on the appropriateness of accountability powers, the objective indicators of the independence of

⁹² Andrew Schroedter, “City Inspectors General: Watchdogs on a Leash”, (Better Government Association: August 20, 2014).

⁹³ Patricia Salkin and Zachary Kansler, “Ensuring Public Trust at the Municipal Level: Inspectors General Enter the Mix”, (2012) 75 Alb L Rev 95 [Salkin and Kansler].

⁹⁴ *Ibid* at 125.

⁹⁵ *Ibid* at 114.

⁹⁶ Organization for Economic Co-operation and Development, *Toward a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for Implementation* (Paris: May 2009).

Accountability Offices, the sufficiency of resources for accountability functions and the cost-effectiveness of those offices – including the desirability of coordination and combined roles. This is important to keep in mind throughout this review, and particularly when considering the case studies below.

3.4 Integrity Commissioner and Lobbyist Registry Experience from Comparator Jurisdictions

In order to analyze the question of whether the functions of the Accountability Offices can be enhanced by combining certain roles, it is important to consider other examples of offices merging, or roles being combined, in analogous contexts. Examples of one possible combination of roles – between the Lobbyist Registrar and Integrity Commissioner – are discussed below.

That said, it is also important to note that across Canada, there is no consistency federally or provincially for whether functions of the Accountability Offices should be combined. For example:

- Federally, there is Commissioner of Lobbying, who is distinct from the public sector Integrity Commissioner.
- In the following provinces, there is a Conflict of Interest Commissioner (or Ethics Commissioner, as referred to locally), who is distinct from the Lobbyist Registrar: British Columbia, Manitoba, Quebec, Nova Scotia and Newfoundland
- In the following provinces, the lobbyist registry is managed by:
 - the Integrity Commissioner for Ontario
 - the Ethics Commissioner for Alberta
 - the Conflict of Interest Commissioner for Saskatchewan

Three Ontario municipalities have instituted lobbyist registries, including Toronto. The other two – Ottawa and Hamilton – have chosen to link their registry to the Integrity Commissioner. The rationale and motivations for these developments is not clear.

The City of Ottawa's Integrity Commissioner was appointed as Lobbyist Registrar in 2012. This move represents the culmination of an accountability framework in Ottawa that began with only a part-time Closed Meetings Investigator role in 2007. Shortly after the 2010 election, the Mayor of Ottawa added Integrity Commissioner functions to this role, followed by Lobbyist Registrar functions. The Lobbyist Registrar by-law was adopted in 2012 and a Code of Conduct for Councillors took effect in 2013.

The staff assigned to the office must sign an agreement of confidentiality and are responsible for monitoring both Lobbyist Registry and Integrity Commissioner files. Separate files are kept for advice, interpretations and complaints, although an Integrity Commissioner function can lead to a Lobbyist Registrar investigation. For example, if it is discovered through the Code of Conduct gift disclosure policy that a lobbyist has offered a gift, the matter may be pursued under the Code of Conduct for Members of Council and the Lobbyist Code of Conduct. Robert Marleau, Ottawa's Integrity Commissioner, has commented on the importance of the shared functions:

For example, under the separation of mandates, I can easily envisage an Integrity Commissioner investigation that could condemn a councillor of accepting a gift from a lobbyist while the Lobbyist Registrar investigation clear the lobbyist. Any number of conflicting results are possible. But one commissioner weighing the evidence is a better path to ensure procedural fairness and consistency. Much like the Access to Information and Privacy Commissioner must often weigh transparency versus privacy elements in investigations and recommendations. The programme principles and investigations often overlap yet confidentiality is never compromised, ultimately the Commissioner may have to make a public interest decision that privacy trumps access or vice-versa.⁹⁷

In 2015, the City of Hamilton also decided to join the position of Integrity Commissioner with the Lobbyist Registry, and appointed municipal law expert George Rust D'Eye for a one year term to the combined position in May of 2015. Even combined, the position remains part time.

The Province also maintains a Lobbyist Registrar function within the Office of the Ontario Integrity Commissioner. The Office maintains an online public record of paid lobbyists. The database is searchable and outlines each lobbyist's name, company, client or employer, the lobbying activity and the targeted ministry or agency, pursuant to the Ontario *Lobbyists Registration Act, 1998*.

As part of Bill 8, the *Public Sector and MPP Accountability and Transparency Act, 2014 (Bill 8)*, the Ontario Integrity Commissioner, as Lobbyist Registrar, will have new powers to investigate complaints and issue penalties, report publicly on contraventions, and develop restrictions against lobbying. Because the protocols surrounding its operation are still being developed by the Province of Ontario, it is too early to analyze the impact of the additional powers or the combined nature of these roles within the Office of the Integrity Commissioner.

⁹⁷ Correspondence with Robert Marleau, August 5, 2015.

Not every comparator jurisdiction has pursued greater coordination and combination of Integrity Commissioner and Lobbyist Registrar roles. For example, oversight of MP ethics as well as lobbying activities used to be combined at the federal level, but were separated in 2004 when the accountability functions became independent of the federal public service. The Office of the Conflict of Interest and Ethics Commissioner was subsequently created under the *Federal Accountability Act*, omnibus legislation that came into effect in 2007. The Office of the Commissioner of Lobbying was established in July 2008 under the federal *Lobbying Act* as an independent Agent of Parliament, appointed by both houses of Parliament for a term of seven years. The purpose of the *Lobbying Act* is to ensure transparency and accountability in the lobbying of public office holders in order to increase the public's confidence in the integrity of government decision-making. There is little if any coordination between the two offices in the federal context and no template for collaboration like the MOU between the Integrity Commissioner and Lobbyist Registrar in the Toronto context.

I also found Gérard LaForest's analysis of a proposed merger between the federal Privacy and Access to Information Commissioners instructive.⁹⁸ LaForest concluded there would be few efficiencies through a merger and potential dangers from unanticipated restructuring costs, low morale and disruptive impacts on institutional culture at each office.⁹⁹

While comparative examples are instructive, it is also important to emphasize their limits. Toronto's size, the interaction between its Accountability Offices, the size and complexity of its lobbyist registration system including its lobbyists' code of conduct, and the culture of its City Council and senior staff require models of accountability responsive to the needs of this City.

3.5 The Experience of Auditors, Ombudsman and the Municipal Inspector General in Comparator Jurisdictions

Below, I consider as case studies both experiences in other jurisdictions that have combined Auditor General and Ombudsman functions and the position of the Municipal Inspector General.

3.5.1. Combined Auditor and Ombudsman Functions

There are very few examples of Auditor General and Ombudsman functions being combined. One of the examples is Portland, Oregon, which created an Office of the Ombudsman within the Auditor General's Office. Another relevant change relating to combined roles that emerges

⁹⁸ Gérard LaForest, *The Offices of the Information and Privacy Commissioners: The Merger and Related Issues* The Report of the Special Advisor to the Minister of Justice (2005).

⁹⁹ Ibid.

from Portland relates to the anonymous tip line. The City Auditor created the tip line in early 2010 after conducting an audit on fraud reporting in the City. The audit found that the City lacked a centralized place where employees and the public could anonymously report concerns about suspected fraud, waste, and abuse. Initially named the “Fraud Alert Line,” the Auditor changed the name to “OpenCity Tipline” in 2012 to more accurately capture the broad array of issues and concerns that could be reported. The Auditor designated the Ombudsman through administrative rules as the Administrator of the Tipline. Rule ADM-6.02 provides that the Ombudsman will conduct a thorough analysis of each report received and take appropriate action, including routing the report to the appropriate bureau, referring the report to law enforcement, conducting an investigation, or determining that no action is required.¹⁰⁰

3.5.2 Inspector General Roles in the United States

A more common example of an office with multiple functions in the U.S. is the municipal Inspector General (IG). Found in a number of US municipalities, the IG is a politically appointed oversight authority whose line of work “combines the duty of an auditor to conduct financial and performance audits with the authority to further investigate fraud, waste, and misuse of government assets.”¹⁰¹ In the US, the Mayor typically appoints the IG and therefore, the IGs do not have the same features of independence as an auditor general and/or ombudsman in Canadian jurisdictions. Accordingly, comparisons between the American-style IG and Canadian non-partisan ombudsmen and/or auditor generals will be of limited utility.

The Inspector General is not an ombudsman, but has the mandate that is more similar in nature to the Auditor General, is often referred to as a “watchdog” because this office is entrusted with the responsibility of ensuring integrity and accountability within governments and various agencies.¹⁰² IGs were created at the municipal level in order to restore the public’s faith in local government after embarrassing ethics and financial scandals.¹⁰³ Although other methods for monitoring the conduct of public officials – like ethics enforcement agencies had been in place in US municipalities, it became necessary to create an additional position to guard the public interest.¹⁰⁴ Municipal Offices for IGs are now quite common in the U.S., and exist in major cities

¹⁰⁰ Additionally, Human Resources Administrative Rules 11.01 and 11.03 and the Auditor’s Code of Ethics pamphlet identify the Ombudsman as a source of ethics information and advice, and as a place for City employees to report suspected ethics violations. Reported ethics violations are handled under the Ombudsman’s complaint investigation authority. See Ombudsman Annual Report for 2012. For discussion, see Linda Reif, *The Ombudsman, Good Governance and the International Human Rights System* (Leiden, Netherlands: Springer, 2004) at 32-33.

¹⁰¹ Salkin and Kansler, *supra* note 92.

¹⁰² See *Association of Inspectors General* (2015) at “About”, online: <<http://inspectorsgeneral.org/about/>> [AIG].

¹⁰³ See Philip Zisman, “Inspectors General in Mid-Sized Cities – The Yonkers, New York, Experience”, *Municipal Lawyer* 18:4 (Fall 2004) 20. See also Salkin & Kansler, *supra* note 92 at 105.

¹⁰⁴ See Salkin & Kansler, *supra* note 92 at 95.

like Baltimore, Chicago and New Orleans and counties such as Cook County, Palm Beach County and Yonkers (New York).¹⁰⁵

Although the specific circumstances leading to the initial establishment of the IG varies, contemplation of such a role often arises when there has been some form of government misconduct that has undermined the public trust.¹⁰⁶ In order to prevent and recover losses stemming from fraud, waste, and other wrongdoing, municipal IG's usually have broad powers of inquiry into all aspects of the government the IG is overseeing.¹⁰⁷ This is accomplished through audits, inspections, and reviews – all of which usually necessitate granting an IG corresponding subpoena power.¹⁰⁸ The Philadelphia IG, for example, is given authority and powers that are representative of many municipal IG's across the U.S.:

The OIG [Office of the Inspector General] has jurisdiction to conduct investigations and audits over all departments, agencies, commissions and boards under the Mayor's jurisdiction, as well as in contracts with individuals or companies receiving City funds and doing business with the City...[and] has the power to issue subpoenas, to examine all City documents, contracts, and monetary expenditures made from the City Treasury, and to require testimony of City employees.¹⁰⁹

As noted, there is variation across jurisdictions, and some municipalities place limitations on an IG's inquiring authority over certain government entities, types of engagement, or types of information.¹¹⁰ For example, the Chicago IG does not have authority over the City Council or its employees, while the Palm Beach County IG does not have unfettered access to records involving collective bargaining negotiations.¹¹¹ Aside from investigative powers, IG's may also be granted preventative powers like offering training, education, and rule and regulation review.¹¹²

Although an IG can initiate their own investigations,¹¹³ an OIG's audits and investigations are typically complaint-based, instigated after a city employee, contractor, customer, or member of

¹⁰⁵ Ibid at 102-3; See also AIG, *supra* note 101 at "Useful Links – Directory of Inspector General Agencies".

¹⁰⁶ See Salkin & Kansler, *supra* note 92 at 103.

¹⁰⁷ Ibid at 110-11.

¹⁰⁸ Ibid at 111, 113.

¹⁰⁹ *Office of the Inspector General - City of Philadelphia* at "Investigating Wrongdoing", online: <http://www.phila.gov/ig/Pages/default.aspx> [Philadelphia IG].

¹¹⁰ Salkin and Kansler, *supra* note 92 at 111.

¹¹¹ Ibid.

¹¹² Ibid at 117.

¹¹³ See Albuquerque, N.M., Code of Ordinances § 2-17-6(B) (2011), online:

<http://www.cabg.gov/inspectorgeneral/documents/Article%2017%20Inspector%20General.txt.pdf>.

the public has issued a complaint about fraud, waste, or abuse in municipal operations and programs.¹¹⁴ The advent of the Internet made reporting wrongdoing easier to do, and many OIG websites offer a variety of complaint mechanisms. For example, the Chicago OIG accepts complaints through the completion of a confidential online form, email, fax, regular mail, or toll-free hotline calls.¹¹⁵ The homepage of the Philadelphia OIG provides a hyperlink for reporting wrongdoing that directs web users to another page to fill out an online complaint form and remain anonymous if desired.¹¹⁶ Albuquerque's OIG website even lists a reporting option for the hearing impaired.¹¹⁷ Moreover, some of the websites provide definitions and examples of fraud, waste, or abuse¹¹⁸ to assist individuals with identifying the type of wrongdoing they intend to report.

Many IG websites offer a variety of complaint mechanisms. For example, the homepage of the Philadelphia IG links to an online complaint form with complainants having the option to remain anonymous.¹¹⁹ Some other websites provide definitions and examples of fraud, waste, or abuse to assist individuals with identifying the type of wrongdoing they intend to report.¹²⁰

The U.S. IG experience highlights the growing importance of direct forms of complaint-based accountability mechanisms for the public to access.

3.5.3 Inspector Generals in Canada

Canada's first municipal IG was appointed by Montreal Mayor Denis Coderre in 2014. This position played a central role in Coderre's anti-corruption campaign platform.¹²¹ The position is for a non-renewable 5 year term and has an initial budget of approximately \$5 million.¹²²

¹¹⁴ See *Baltimore City Inspector General's Office* at "Hotline", online:

<<http://archive.baltimorecity.gov/Government/AgenciesDepartments/InspectorGeneral/Hotline.aspx>> .

¹¹⁵ See *Office of the Inspector General – City of Chicago* at "Get Involved", online:

<http://chicagoinspectorgeneral.org/about-the-office/get-involved/>.

¹¹⁶ See Philadelphia IG, *supra* note 108 at "Report Wrongdoing".

¹¹⁷ See *City of Albuquerque*, "Inspector General" (2015), online: <<http://www.cabq.gov/inspectorgeneral>> .

¹¹⁸ *Ibid*; See *Office of Inspector General Palm Beach County* at "Report Waste, Fraud, or Abuse", online:

<<http://www.pbcgov.com/oig/rwfa.htm>>.

¹¹⁹ See Philadelphia IG, *supra* note 108 at "Report Wrongdoing".

¹²⁰ *Ibid*; See *Office of Inspector General Palm Beach County* at "Report Waste, Fraud, or Abuse", online:

<<http://www.pbcgov.com/oig/rwfa.htm>>.

¹²¹ See Rene Bruemmer, "Montreal begins process of creating inspector-general", *Montreal Gazette* (19 December 2013), online:

<<http://www.montrealgazette.com/business/Montreal+begins+process+creating+inspector+general/9191299/story.html>>; Linda Gyulai, "Whistleblower complaints to city's inspector general tripled last year", *Montreal Gazette* (6 May 2015), online: <<http://montrealgazette.com/news/local-news/whistleblower-complaints-to-citys-inspector-general-tripled-last-year>>.

¹²² "'Denis Galant named Montreal's first Inspector General" (February 12, 2014), CBC, online:

CBC<<http://www.cbc.ca/news/canada/montreal/denis-gallant-named-montreal-s-first-inspector-general>>

The Montreal IG also has responsibility for Montreal's "Ethics Hotline" described as:

[A] phone number and secure Web site where you can report any wrongful act in connection with the city's business management. The city is obligated to act with integrity, objectivity and transparency and is duty-bound to preserve the trust of its employees and the public towards its administration. For this reason, the ethics hotline was created for you to report any wrongdoing related to city business management.¹²³

The Ethics Hotline in Montreal receives complaints and tips relating to fraud and waste but also "real, potential and apparent conflicts of interest" and "non-compliance with rules and procedures."¹²⁴

In addition to the IG, Montreal also has an Auditor General, responsible for undertaking independent audits and promoting accountability and transparency.¹²⁵

3.5.4 Montreal's Ombudsman

Montreal also has an Ombudsman, which in addition to serving as an office of "last resort," also has jurisdiction over Montreal's Charter of Rights and Responsibilities (MCRR) (adopted in 2006), which sets out binding (but not enforceable) standards for the following areas of municipal activity:

- Economic and Social Life
- Cultural Life
- Recreation, Physical Activities and Sports
- Environment and Sustainable Development
- Safety
- Municipal Services

The MCRR provides that it may not "serve as the basis for a judicial or jurisdictional remedy nor... be cited in judicial or jurisdictional proceedings."¹²⁶ Therefore, the only available recourse to ensure compliance with the MCRR, is with the Ombudsman de Montréal. The Ombudsman's usual jurisdiction is limited to the administrative actions and/or decisions of the City, but the MCRR allows her to intervene and investigate decisions that were voted by City Council, the Executive Committee or a Borough Council: this exceptional jurisdiction, however, applies only with regard to complaints based mainly on a commitment found in the MCRR.

[1.2534526>](#). See also first Annual Report of the Montreal IG at https://www.bigmtl.ca/content/uploads/2015/04/Rapport-annuel_2014_FINAL.pdf.

¹²³ See "City Ethics Hotline", online: Ville de Montréal

http://ville.montreal.qc.ca/portal/page?_pageid=5977,90569572&_dad=portal&_schema=PORTAL.

¹²⁴ Ibid.

¹²⁵ Vérificateur général de la ville de Montréal, online: <http://www.bvgmtl.ca/en/home/>.

¹²⁶ Ibid.

3.5.5 Ontario Ombudsman and Ontario Auditor General

The scope of an ombudsman's jurisdiction in relation to the Auditor General's jurisdiction arose as an issue in the recent reform debates at the provincial level in Ontario and merits mention on this specific point. Bill 8, the *Public Sector and MPP Accountability and Transparency Act, 2014* (discussed above) among other areas of reform, proposed giving the Ontario Ombudsman new jurisdiction over certain entities subject to provincial regulation including municipalities. This would create oversight relationships between the Ontario Ombudsman and municipal ombudsman offices where they had been established, and municipal auditor general offices where they had been established.

The Bill 8 hearings foreshadow some of the issues which are raised in this Review regarding potential overlap between the Auditor General and Ombudsman functions, but more to the point, highlight the importance of accountability offices that respect each other's role and collaborate where, and if, it serves the public interest. In this sense, while the scope for additional collaboration between these offices is apparent in Toronto, the relationship between Accountability Offices in Toronto serves as a stark contrast to the provincial context.

3.5.6. Developments in Other Provinces

Other provinces have taken a different approach. In British Columbia, for example, the position of the Auditor General for Local Government (AGLG) was established in 2011 in order to deal with the uneven capacities of different sized municipalities in the Province.¹²⁷ The Office was created to assist local governments in improving their operations and gives advice and recommendations to local governments to help them deliver their services "more efficiently, effectively and economically." The AGLG conducts performance audits of the operation of local governments and has a mandate to share best practices among various municipalities.

3.5.7 Conclusions: Case Studies

As the consideration of the Portland structure, the Inspector General role and Montreal Ombudsman jurisdiction over the *Charter* demonstrate, there is some variation in the structure of Auditor General and Ombudsman functions in municipal jurisdiction. That said, these roles are distinct – and justified by separate mandates and needs across a wide spectrum of settings. There does not appear to be a template for combining functions of the Auditor General and

¹²⁷ See Office of the Auditor General for Local Government, online: <<http://www.aglg.ca/about-the-aglg/why-the-aglg.html?WT.svl=TopNav>>.

Ombudsman, though I have indicated greater coordination and collaboration can advance the goal of improved service to the public in mind.