



Date: 2026-04-01

Subject: **Review of the Apartheid Free Communities Pledge - RM 14/2026**

From: Jason Tamming, A/Commissioner of Corporate Support Services

Report number: Corporate Support Services-2026-308

Strategic Focus Area: Government & Leadership

Recommendations

1. That the report prepared by Jason Tamming, A/Commissioner of Corporate Support Services to the Council Meeting of April 8, 2026, re: **Review of the Apartheid Free Communities Pledge**, be received; and
2. That the City does not proceed with the Apartheid Free Communities Pledge due to the legal and financial risks arising from the pledge's numerous principles.

Report Summary

On March 11, 2026, City Council considered the Apartheid-Free Communities Pledge. This report highlights the legal and financial implications of the City formalizing the pledge.

Formalizing the pledge raises significant legal and financial concerns, particularly regarding the procurement of goods and services and the City's legislative-mandated participation in the Ontario Municipal Employees Retirement System (OMERS).

The City's procurements must comply with CUSMA, CETA, CFTA trade agreements, and the City's Purchasing By-law, all of which prohibit discrimination based on supplier country of origin or political affiliations. Excluding suppliers for geopolitical reasons could lead to several legal challenges.

Financial considerations include potential cost pressures from a reduced supplier pool, the City's legislated participation in the Ontario Municipal Employees Retirement System (OMERS), and reliance on financial services with limited banking options for treasury, payroll, and related functions.

Background

The Apartheid-Free Network is a coordinated advocacy movement that encourages municipalities to withdraw support from policies and practices characterized as apartheid, occupation, and settler colonialism in relation to Israel and the Palestinian

territories. The pledge commits organizations to identifying and implementing actions to end all support of Israel in context-specific ways. For cities, this can involve divestment of public funds from entities deemed to be participating in, enabling or profiting from Apartheid related to Israel/Palestine.

On March 11, 2026, City Council discussed a motion regarding the Apartheid Free Communities Pledge and requested a report back on the legal and financial implications of formalizing the City's support of the pledge.

The Apartheid-Free Communities Pledge consists of the following principles:

- Affirm our commitment to freedom, justice, and equality for the Palestinian People and all people;
- Oppose all forms of racism, bigotry, discrimination, and oppression;
- Declare ourselves an apartheid-free community and to that end; and
- Pledge to join others in working to end support to all Apartheid Regimes, settler colonialism and military occupation.

Current Situation

Staff have reviewed the legal and financial implications for the City of signing or supporting the anti-apartheid pledge, particularly regarding the City's procurement process and legislatively required participation in the *Ontario Municipal Employees Retirement System (OMERS)*, as guided by the *Ontario Municipal Employees Retirement System Act, 2006*, S.O. 2006, c. 2, which oversees the City's pensions.

The *Municipal Act, 2001* (the "Act") serves as the legislative framework governing municipalities in Ontario and establishes their authority to deliver local services and regulate community matters. As creatures of the Province, municipalities derive all their powers from provincial legislation and exercise authority only within the scope delegated to them.

The Act confers authority within defined spheres of jurisdiction, including transportation, waste management, public utilities, parks and recreation, and economic development, allowing councils to enact by-laws to address local needs. Municipal councils are empowered to pass by-laws respecting the health, safety, and well-being of residents, the protection of property, and the regulation of businesses, provided these do not conflict with provincial or federal legislation.

The Act also outlines financial authorities, including the ability to levy property taxes, impose user fees, and adopt balanced budgets, alongside requirements for accountability and transparency, such as open meetings and oversight mechanisms.

Municipal powers are subject to important legal and practical limitations. As subordinate bodies, municipalities remain under provincial oversight, and the Province may override

or restrict municipal actions at its discretion. All municipal by-laws must be consistent with applicable provincial and federal legislation, and decision-making must align with legislated spheres of jurisdiction and serve a valid municipal purpose, with actions beyond these bounds subject to potential legal challenge.

Purchasing Implications

The City's procurement must comply with the applicable trade agreements, including the:

- Comprehensive Economic and Trade Agreement (CETA)
- Canadian Free Trade Agreement (CFTA); and
- Canada–United States–Mexico Agreement (CUSMA)

These trade agreements require the City's procurement process to be based on non-discrimination practices. Additionally, the Purchasing By-law does not allow the City to impose restrictions on procurements based on the vendor's location or the place where the goods or services are produced. The City may face legal exposure if decisions are viewed as discriminatory or arbitrary.

The CETA prohibits discriminatory treatment of European Union suppliers in covered procurement above prescribed thresholds. Suppliers cannot be excluded based on political considerations unrelated to procurement requirements. Any attempt to single out suppliers on such grounds could be challenged under CETA.

The CFTA governs procurement across Canadian jurisdictions and similarly requires non-discriminatory treatment of suppliers. Municipalities are not permitted to favour local vendors or exclude suppliers from other provinces based solely on political or ethical considerations.

Similarly, CUSMA limits the ability to impose political exclusions on suppliers in large contracts. It prohibits discriminatory measures, conditions, or restrictions in covered procurement. It also requires that U.S. and Mexican suppliers be treated no less favourably than Canadian suppliers and precludes unfair treatment on grounds of country or political connections. Accordingly, restricting procurement based solely on a supplier's country of origin or perceived political affiliations may expose the City to legal challenge under CUSMA.

Limiting supplier eligibility based on perceived political affiliations or ethical concerns may also reduce the pool of qualified vendors, particularly for complex and large-scale procurements such as infrastructure, information technology, or transit contracts. Excluding suppliers solely on such grounds might not only constrain competition and reduce quality, lead to service disruptions, but also increase the risk of non-compliance with applicable trade agreements, thereby exposing the City to the following:

- Formal complaints or dispute resolution under trade agreements
- Requirement to rerun procurement processes
- Potential financial damages or reputational harm

Financial Operations Implications

The City is legislatively required to participate in the Ontario Municipal Employees Retirement System (OMERS) pursuant to provincial legislation (the *OMERS Act*, the *Pension Benefits Act*, the *Income Tax Act*). As it pertains to participation in other pension plans, the OMERS Act states that “7 (1) Despite any other Act, a municipality or a local board shall not make a contribution for the provision of a pension to any of its eligible employees unless the contribution is made under the *Canada Pension Plan* or to an OMERS pension plan.” Investment decisions of the OMERS pension fund are made independently by OMERS Administration Corporation in accordance with its fiduciary duties to plan members and beneficiaries, as directed and required by the OMERS Act.

The City does not have the authority to direct OMERS investment decisions or require divestment from specific countries, companies, or sectors. Accordingly, any Council declaration associated with the proposed pledge would not apply to OMERS investments.

Adoption of the pledge could create an expectation of divestment or investment screening that the City does not have the authority to implement or direct OMERS to implement.

In Canada, banking is under exclusive federal jurisdiction, governed by the *Bank Act*. The federal government regulates banks, foreign bank branches, and federal credit unions through the Office of the Superintendent of Financial Institutions (OSFI) for safety/soundness, and the Financial Consumer Agency of Canada (FCAC) for consumer protection. The City is limited in banking options for treasury management, payroll, or financial services.

Financial Implications

There are no direct financial implications stemming from accepting the recommendations in this report.

Conclusion

The Apartheid Free Communities Pledge raises significant legal and financial risks, particularly regarding the procurement of goods and services and the City’s legislative-mandated participation in the *Ontario Municipal Employees Retirement System* (OMERS).

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