

To: Warden and Members of County Council

From: Director of Corporate Services

Integrity Commissioner and Closed Meeting Investigator Appointments

RECOMMENDATIONS

- 1. That By-law No. 6498-2023, being a by-law to appoint Robert J. Swayze as Integrity Commissioner and Closed Meeting Investigator for the 2023 to 2026 term of council, be presented to Council for enactment;**
- 2. And further, that the 2023 draft budget be amended to include a provision of up to \$5,000 to cover annual retainer fees and expenses related to the aforementioned appointments;**
- 3. And further, that the Interim Chief Administrative Officer and Director of Corporate Services be authorized to execute agreements related thereto.**

REPORT HIGHLIGHTS

- Primary role of the Integrity Commissioner is to educate Members of Council on the requirement of the Code of Conduct for Members of Council
- Ontario Municipalities are required to appoint an investigator to consider complaints about closed meetings, which could be the Ombudsman or another investigator
- Robert Swayze is a founding member of the Municipal Integrity Commissioners of Ontario and has represented the association regarding Provincial legislative changes and with the Ontario Ombudsman with respect to their municipal mandate

Implementation Points

Upon approval of the recommendations in this report a service agreement will be signed, as required, to establish terms and conditions of services to be provided by the Integrity Commissioner and Closed Meeting Investigator.

As soon as time permits, a meeting will be arranged with Members of Council and the Integrity Commission to commence with a review and update of the Council Code of Conduct.

Financial Impact







In 2022, staff was informed that the current Integrity Officer/Closed Meeting Investigator would be retiring from this service area within his law practice. On that basis, we conducted an informal search for a replacement of these appointments. Considering the last agreement for these appointments was signed in 2017, this year’s proposals indicate that the \$500 provision in the 2023 draft budget is not sufficient to cover an annual retainer and per diems, now expected for this service. It is for that reason, staff are seeking an additional \$5,000 be added to the draft 2023 budget to ensure there are sufficient funds for the training and advice for all Members of County Council during this term.

Communications

The public will be notified of these appointments through social media feeds and through the County’s [Accountability and Transparency](#) webpage which will be updated accordingly. County Council members will also be provided the Integrity Commissioner and the Closed Meeting Investigator’s contact information.

The Clerk has informed the Area Municipal Clerks as there has been interest expressed in this process as many of the Area Municipalities also had an agreement with the same retiring Integrity Commissioner and Closed Meeting Investigator.

Strategic Plan (2020-2022)

					
WORKS WELL TOGETHER	WELL CONNECTED	SHAPES THE FUTURE	INFORMS & ENGAGES	PERFORMS & DELIVERS	POSITIVE IMPACT
			4.i.		

DISCUSSION

Background

In 2006, the *Municipal Act, 2001* (Act) was amended to include a new section titled “Accountability and Transparency”. The provisions in this Part authorize a municipal council to establish codes of conduct for members of both council and local boards. Municipal councils also have the power to pass by-laws respecting accountability and transparency of the municipality and its operations, which could result in council requirements affecting the ethical behaviour of members.

Furthermore, this section of the Act empowers each municipality to appoint an integrity commissioner who reports to council and is responsible for performing, in an independent

manner, the functions assigned by the municipality with respect to the application of their code of conduct and of any procedures, rules and policies of the municipality governing the ethical behaviour of members of council and local boards.

In carrying out their duties, the integrity commissioner may delegate in writing to any person, other than a member of council, any of their powers or duties.

The most important functions of the integrity commissioner are to educate members of council with respect to the application and interpretation of the code and *Municipal Conflict of Interest*, and to be available to respond to requests for assistance from individual members.

Section 223.3 of the *Municipal Act, 2001* authorizes municipalities to appoint an Integrity Commissioner who reports to council and who is responsible for performing, in an independent manner, the functions assigned by the municipality with respect to any or all of the following:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards.
2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards.
3. The application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to members of council and of local boards. (refers to member's presence during a closed meeting)
4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
6. Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.
7. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of council and members of local boards and about the *Municipal Conflict of Interest Act*.

The Act states that if a municipality has not appointed an Integrity Commissioner, the municipality shall make arrangements for those responsibilities to be provided by a Commissioner of another municipality.

Similar to Integrity Commissioners, municipalities are required to appoint an investigator to consider complaints about closed meetings, which could be the Ombudsman or another investigator. In the event that a municipality has not appointed a Closed Meeting Investigator, the Ombudsman will by default deal with complaints that arise.

As an alternative, the Local Authority Services (LAS), branch of the Association of Municipalities of Ontario, offers professional independent services to examine closed meeting complaints. The benefits from this program as cited on their website, refers to:

- Extensive municipal experience to examine closed meeting complaints as an alternative to the Ombudsman;
- Independent, credible, and impartial rulings;
- The service provider, Aird Berlis LLP, maintains a roster of experienced lawyers familiar with the *Municipal Act, 2001* to provide investigative services when you need them.

Earlier this year, Aird Berlis LLP responded to an RFP issued by the County seeking legal services in various areas of law that the County may require and Aird Berlis, a Toronto based law firm, was one of the successful proponents assigned to the County's roster for a three-year term.

Comments

In response to the retirement of the County's current Integrity Commissioner and Closed Meeting Investigator, an informal search was conducted which relied on research and connections made with other municipalities who have recently concluded a search and others having long-standing agreements with Integrity Commissioners and Closed Meeting Investigators.

After careful consideration, staff are of the opinion that Robert Swayze will provide the level of service, including appropriate response times, to the satisfaction of the Clerk and Members of Council during this term.

In addition, staff recommend that Robert Swayze also be appointed Closed Meeting Investigator due to his experience and expertise, as well as allows Aird Berlis to remain on the County's legal roster without a conflict of interest.

In terms of Robert Swayze's experience, he has specialized in municipal law for the entirety of his career both as an employee of two municipalities (Markham and Vaughan) and in private practice. This experience gained Mr. Swayze expertise in interpreting all aspects of municipal law.

As Integrity Commissioner since 2008, he has served more than 60 municipalities. He has advised councils and councillors extensively and interpreted Ontario municipal codes of conduct and all municipal statutes including, the *Municipal Act, 2001*, the *Municipal Conflict of Interest Act* and the *Public Enquiries Act*. Mr. Swayze's curriculum vita includes being a founding member of the Municipal Integrity Commissioners of Ontario; serving over 60 municipalities in his tenure as Integrity Commissioner conducting at least 150 investigations and writing more than 100 reports to councils; in addition to, investigation experience as City Solicitor for Markham and Vaughan.

Mr. Swayze has expressed that he has the time and interest in serving the Council as Integrity Commissioner and Closed Meeting Investigator. He also emphasized the importance of Council education and access to advice. As a first step, he proposes to meet with Council early in the new year to review and address any questions and/or concerns Councillors have in regards to

their Code of Conduct. In response, the Clerk will facilitate finding an appropriate time for this session to take place.

Conclusions

This report recommends the appointments of an Integrity Commissioner and Closed Meeting Investigator that will instill confidence in Members of County Council and Boards to confidently maintain ethical decision-making based on sound advice of independent experienced professionals.

Appointment of the Integrity Commissioner early in each term of Council, allows all new and returning Council Members to meet with the Integrity Commissioner to discuss their obligations outlined in the Code of Conduct and the *Municipal Conflict of Interest Act, R.S.O. 1990*.

SIGNATURES

Report Author:

Original signed by

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Departmental Approval:

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