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Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Patent and Trade-mark Agents

333 Bay Street, Suite 2400
P.O. Box 20
Toronto, Ontario M5H 2T6
Canada

T +1 416 366 8381
+1 800 268 8424
F +1 416 364 7813
fasken.com

MEMORANDUM

To: Council
Town of Shelburne

From: Guy Giorno
Integrity Commissioner

Date: April 26, 2021

Re: Annual Reports (2019-2020, 2020-2021)

The responsibilities of the Integrity Commissioner include conducting inquiries into whether a Council Member or local board member has contravened the Code of Conduct, conducting inquiries into whether a Council Member or local board member has contravened the *Municipal Conflict of Interest Act*, and responding to requests from Council Members and local board members seeking advice about their obligations under the Code of Conduct and the MCIA.

Fiscal Overview

Shelburne's costs of Integrity Commissioner services have been as follows:

2019: \$260 + tax
2020: \$100 + tax
2021 to date: \$0

(These figures do not include the \$90 annual retainer.)

The financial impact of Integrity Commissioner services falls entirely on the municipal tax base. Integrity Commissioners and codes of conduct have been mandated by the Province without any corresponding provincial funding.

A few Ontario municipalities pay Integrity Commissioners salaries or annual retainers, but most municipalities, including Shelburne, primarily compensate Integrity Commissioners by the hour for services rendered. Municipalities are unable, however, to determine the extent of the demand for Integrity Commissioners' time. Under the legislation, any member of the public may request an inquiry into an alleged code of conduct contravention,¹ and any elector "or a person demonstrably acting in the public interest" may request an inquiry into whether the *Municipal Conflict of Interest Act* was contravened.² The Act provides that Integrity Commissioners

¹ *Municipal Act*, subsection 223.4(1).

² *Municipal Act*, subsection 223.4.1(2).

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perform their functions an independent manner,³ so municipalities cannot intervene in the conduct of inquiries.

Here, as in most Ontario municipalities, any individual can seek to initiate an Integrity Commissioner inquiry for which the municipality becomes liable to pay.⁴

I believe that this legislative regime places on Integrity Commissioners an implied obligation to act reasonably in generating costs to municipalities through the provision of services, in particular through the conduct of inquiries. Integrity Commissioners must act in a manner that is responsive and fair to the individuals who are parties to their inquiries, while at the same time following a process that is efficient, cost-sensitive, and prudent, taking into account the circumstances of each case.

Code of Conduct Inquiries

Whether to conduct an inquiry into an allegation under the Code of Conduct lies in the Integrity Commissioner's discretion. The Integrity Commissioner does not make the final decision on a Code of Conduct inquiry. Instead, the Integrity Commissioner reports findings and recommendations to Council, and it is Council that makes any decision.

Status

The table below summarizes Code of Conduct inquiries. The strict confidentiality provisions of the *Municipal Act* prevent the identification of parties unless and until a matter is reported to Council.

File No. and Case Name	Status	Outcome
CC-2020-01 Parties confidential because no report ⁵	Closed	Abandoned

Municipal Conflict of Interest Act Inquiries

The legislation treats inquiries into allegations of MCIA breaches somewhat differently than inquiries under a Code of Conduct. Town Council is not the decision maker in an MCIA matter. Instead, it is the Integrity Commissioner, at the conclusion of an MCIA inquiry, who decides whether or not to apply to a Superior Court judge for a declaration that the Member has contravened the MCIA. The Integrity Commissioner must publish written reasons for the

³ *Municipal Act*, subsection 223.3(1).

⁴ Some municipalities have attempted to address the uncertainty by asking Integrity Commissioners to agree to "upset limits" in their contracts. The problem with this approach is that individual complainants, not municipalities, determine the demand for Integrity Commissioner inquiries. Integrity Commissioners are Accountability Officers who exercise statutory functions under Part V.1 of the *Municipal Act*, and their statutory obligations do not disappear once an upset limit is reached. Their position is not the same as, for example, that of a contractor that has agreed to regrade a section of municipal highway of known dimensions.

⁵ When an inquiry is terminated without a report to Council, the confidentiality provisions of the *Municipal Act* prevent the Integrity Commissioner from disclosing the parties' names.

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decision. I do this providing the reasons to the Canada Legal Information Institute (CanLII), for posting in its online database.

The *Municipal Act* requires the Integrity Commissioner to complete the inquiry within 180 days after receiving the completed application. An Integrity Commissioner's MCIA decisions are not subject to Council approval. They are provided to Town Council for information.

During the period covered by these reports, there were no applications alleging contraventions of the MCIA.

Requests for Advice

The role of the Integrity Commissioner also includes providing advice to Council Members and local board members about the following:

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*.

The *Municipal Act* requires that a Council Member's or local board member's request for advice from the Integrity Commissioner shall be made in writing, and that the advice shall be in writing.

A Council Member or local board member is free to disclose, or to choose not to disclose, the advice received. The Integrity Commissioner, on the other hand, is subject to the strict confidentiality requirements of section 223.5 of the Act.

- (1) The Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.

...

- (2.1) Advice provided by the Commissioner to a member under paragraph 4, 5 or 6 of subsection 223.3 (1) may be released with the member's written consent.
- (2.2) If a member releases only part of the advice provided to the member by the Commissioner under paragraph 4, 5 or 6 of subsection 223.3 (1), the Commissioner may release part or all of the advice without obtaining the member's consent.
- (2.3) The Commissioner may disclose such information as in the Commissioner's opinion is necessary,
 - (a) for the purposes of a public meeting under subsection 223.4.1 (8);

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- (b) in an application to a judge referred to in subsection 223.4.1 (15);
or
 - (c) in the written reasons given by the Commissioner under subsection 223.4.1 (17).
- (3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

For accountability and tracking purposes, each request for advice is assigned a file number, and the Clerk is informed the name of the Member associated with each file number. The topic and content of the request for advice are disclosed to nobody.

The following is the status of requests for advice received in 2019 through 2021:

Request No.	Status	Outcome
RFA-2019-01	Advice provided	Confidential advice to Member

Respectfully submitted,



Guy Giorno
Integrity Commissioner

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MEMORANDUM

To: Council
Town of Shelburne

From: Guy Giorno
Integrity Commissioner

Date: April 26, 2021

Re: Special Report: End of Term as County Integrity Commissioner

On September 12, 2016, I was appointed Integrity Commissioner for the Town of Shelburne by By-Law #46-2016. According to the By-Law, my term continues “to July 1, 2019 or until his successor is appointed.” On June 24, 2019, Council adopted a resolution extending my term to July 1, 2021.

In addition to serving as the Town’s Integrity Commissioner, I have also served as Integrity Commissioner for the County of Dufferin since 2016. My term as Dufferin County Integrity Commissioner also expires July 1, 2021.

Earlier this year the County issued an RFP for Integrity Commissioner services after July 1. I informed the County that I would not respond to that RFP, so the process continued without my participation.

My reasons for not participating in the RFP were as follows:

1. The Integrity Commissioner is appointed as an accountability officer of the municipality under the *Municipal Act*. In my opinion, the appointment of an accountability officer should not be decided on a commercial basis via Request for Proposals. Appointments of individuals to fill statutory offices should proceed according to an application and/or recruitment process.
2. Integrity Commissioners interpret provincial legislation and municipal by-laws. Integrity Commissioners also have the authority to recommend the imposition of penalties on council members, including a 90-suspension of pay. In my opinion, the power to wield this significant legal authority should not be decided by RFP.
3. The Province is currently consulting on reform of the Code of Conduct / Integrity Commissioner regime. Some stakeholders are advocating for a power to remove councillors from office – which essentially means overturning the results of a democratic election. While I do not believe that under any circumstance Integrity Commissioners should possess the power to unseat duly elected municipal councillors, I certainly do not believe this power should be awarded by RFP.

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4. Various municipalities have started to abandon RFPs for Integrity Commissioners in favour of an application/recruitment process better suited to appointments of individuals to hold statutory office. Examples include Ottawa and Richmond Hill.

The new Integrity Commissioner of the County will be ADR Chambers Inc. This corporation, ADR Chambers Inc., will charge an hourly rate three times higher than the rate Shelburne has paid for my services (\$300 versus \$100). ADR Chambers Inc. will also charge an annual retainer of \$2000 (compared to \$90 presently for Shelburne).

The *Municipal Act* gives Town Council full authority to decide on the appointment of its own Integrity Commissioner. I fully understand that Council may wish to consolidate with the incoming County Integrity Commissioner. On the other hand, Town Council may opt to maintain its own independent Integrity Commissioner. In either case, please rest assured that I will continue to discharge the terms of my appointment under By-Law #46-2016 until a successor is chosen.

Respectfully submitted,



Guy Giorno
Integrity Commissioner