



A People Place, A Change of Pace
SHELBURNE
ONTARIO, CANADA

Meeting Date:	Monday, July 12, 2021
To:	Members of Council
From:	Jennifer Willoughby, Clerk
Report:	LS 2021-10
Subject:	Extension of Integrity Commissioner's Agreement

Recommendation

THAT report LS 2021-10 from the Clerk dated July 12, 2021, regarding renewal of the Integrity Commissioner agreement, be received;

AND THAT the agreement with Guy Giorno of Fasken Martineau Dumoulin as the Integrity Commissioner for the Town of Shelburne be extended for a further two years from July 1, 2021 to July 1, 2023.

Background and Analysis

As a result of Bill 8, the Public Sector and MPP Accountability and Transparency Act, 2014 and Bill 68 - Modernizing Ontario Municipal Legislation Act, 2017. Both pieces of legislation required all municipalities to have a Code of Conduct and required municipalities to appoint an Integrity Commissioner. The legislation under Bill 68 also expanded the list of responsibilities of the Commissioner. The duties are outlined in the *Municipal Act, 2001*:

Integrity Commissioner

(1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and

who is responsible for performing in an independent manner the functions assigned by the municipality with respect to 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.
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*, 2017, c. 10, Sched. 1, s. 19 (1).

Mr. Guy Giorno has provided Integrity Commissioner services to the Town of Shelburne since 2016.

At its meeting held June 24, 2019, Council reviewed report LS 2019-10 to provide for an extension of the contract with Mr. Giorno.

Mr. Giorno's contract expired July 1, 2021, however a letter received from Mr. Giorno, attached as Appendix 1, notes he will continue to provide services until a successor has been appointed.

The County of Dufferin issued a request for proposal (RFP) of Integrity Commissioner Services and have since appointed ADR Chambers Inc. Included in their contract is an option for the lower tiers in Dufferin County to obtain Integrity Commissioner services from ADR Chambers Inc.

Staff have not had a chance to review the contract from ADR Chambers nor compare financial and budgetary implications.

The *Municipal Act* allows Council full authority to decide on the appointment of its own Integrity Commissioner.

Staff are recommending at this time, to further extend the contract with Mr. Giorno for an additional 2 years to July 1, 2023

A copy of the current agreement with Mr. Giorno is attached as Appendix 2.

Financial Impact

Attached as Appendix 3 is a current memorandum indicating fees charged to date for services rendered.

There is a \$90 annual retainer for Integrity Commissioner services as well a charge of \$100 per hour in the event his services are required.

Consultation and Communications

N/A

Council Strategic Priorities

Council's Strategic Priorities have three Goals - Sustainable, Engaged and Livable. There are a total of 12 targets with the three Goals.

This report aligns with the sustainable goals within the targets:

Target T2 – municipal services review and evaluation

Target T6 – promote more open communication

Supporting Documentation

Appendix 1 – Letter dated April 26, 2021 – Fasken, Martineau, Dumoulin

Appendix 2 – Integrity Commissioner agreement

Appendix 3 – Letter dated April 26, 2021 – Annual Reports – Fasken, Martineau, Dumoulin

Respectfully Submitted and Prepared By:

Jennifer Willoughby

Reviewed By:

Denyse Morrissey, CAO

FASKEN

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: 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.

FASKEN

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

AGREEMENT

THIS AGREEMENT effective the 12th day of September, 2016.

BETWEEN:

THE CORPORATION OF THE TOWN OF SHELBURNE

Of the First Part

Hereinafter called the "Municipality"

-and-

FASKEN MARTINEAU DUMOULIN LLP,

Of the Second Part

Hereinafter called the "Consultant"

WHEREAS Section 223.2 of the *Municipal Act, 2001*, as amended (the "Act"), authorizes the municipality to establish a code of conduct for members of the council of the municipality and of local boards of the municipality;

AND WHEREAS Section 223.3 of the Act authorizes the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to,

- a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;
- b) 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 or of either of them; or
- c) both of clauses (a) and (b);

AND WHEREAS, after conducting a competitive Request for Proposal process, the Municipality is satisfied that the Consultant has the skills and ability to meet the foregoing criteria and deems it desirable to appoint Guy Giorno ("Giorno"), a partner in the Consultant, as the Integrity Commissioner to provide the services of "Integrity Commissioner for the Town of Shelburne", in accordance with Section 223.3 of the *Municipal Act*, , and to investigate requests received by the Municipality pursuant to the Act respecting an alleged contravention of the Municipality's Code of Conduct for Members of Council;

NOW THEREFORE the Consultant and Town agree as follows:

1. The Municipality shall:

- (a) Pay to the Consultant the rates for services provided in accordance with the RFP and RFP response.

If the Municipality fails to make payments to the Consultant as they become due under the terms of this contract, or in an award by arbitration or court, interest of 1 per cent (1%) above the prime rate per annum as of the date of payment became due on such unpaid amounts shall also become due and payable until payment. Such interest shall be calculated and added to any unpaid amounts monthly.

Prime rate, for the purposes of this Agreement, means the lowest rate of interest quoted by The Royal Bank of Canada from time to time to the most credit-worthy borrowers for prime business loans.

- b) Instruct the Consultant fully in writing as to the Municipality's total requirements in connection with the Projects included in this Agreement, including the Municipality's budget and time constraints.

Provide new annual requirements subject to budget approval in successive years of the contract.

- c) Give prompt consideration to all specifications, proposals, and other documents relating to the Project prepared by the Consultant, and whenever prompt action is necessary, inform the Consultant of his/her decisions in such reasonable time so as not to delay the services of the Consultant, or to prevent him forwarding instructions to the Consultant or to Sub-Consultants in accordance with the contract schedule.
- d) Arrange and make provision for the Consultant's entry and ready access to the Project site, as necessary to enable the performance of the services required.
- e) Designate in writing an individual to act as his/her representative, such person to have complete and exclusive authority to transmit instructions to and receive information from the Consultant.
- f) Give prompt written notice to the Consultant whenever the Municipality or his/her representative become aware of any defects or deficiencies in the work or in the services provided. For the purposes of this agreement "defects and deficiencies" shall be defined as "any failure of the Consultant to meet and/or deliver any agreed upon deliverable/service and/or meet an applicable deadline as set out in this Agreement.
- g) Instruct the Consultant fully in writing of any additional work required outside the scope of this Agreement.
- h) Indemnify and save harmless the Consultant from any claims, demands or actions brought against the Consultant in relation to the provision of services by employees, officers or Council members of the Municipality who are not acting under instructions from the Consultant.

2. The Consultant shall:

- a) Provide all services as stated on the RFP. response attached as Schedule "A" hereto. The parties acknowledge that Council has appointed Giorno as Integrity Commissioner and that, unless Council by resolution approves, Consultant has no right to replace him.
- b) Giorno's work schedule for processing complaints under the Code of Conduct is appended as Schedule 'B.' The Consultant agrees to provide a work schedule for any other assigned project and to complete all work in accordance with the schedule.
- c) Provide all necessary labour, materials, equipment and sub-consultants necessary to complete the work.
- d) Keep the Municipality informed of the status of the project and of any occurrences which adversely affect the Municipality's interests.
- e) Not perform any additional work outside of the scope of this contract without obtaining the written agreement of the Municipality. No additional work shall be authorized without a full written quotation being supplied for any additional task or function.

- f) Consultant designates Giorno to act as its representative, such person to have complete and exclusive authority to transmit instructions to and/or receive information.
- g) Consultant will indemnify, defend and hold the Municipality, its officers, employees and agents, harmless from and against any liability, expense or damage, including reasonable attorneys' fees, in each case solely for bodily injury, death or damage to real or tangible personal property to the extent directly and proximately caused by the negligence or wilful misconduct of Consultant while engaged in the performance of services under this engagement; provided, however, that if there also is fault on the part of Municipality or any entity or individual indemnified hereunder or any entity or individual acting on Municipality's behalf, the foregoing indemnification shall be on a comparative fault basis. The foregoing obligations are conditioned on Municipality providing Consultant with prompt notice of any claim for which indemnification shall be sought and cooperating in all reasonable respects with Consultant in connection with any such claim. Consultant shall be entitled to control the handling of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing.
- h) The Consultant will comply with all applicable requirements of the *Workplace Safety and Insurance Act*. It certifies that all employees, officers, agents and sub-contractors who must be covered are covered under the Act. The Municipality understands that Offices of Lawyers and Notaries (employer classification 7761-000, WSIB Employer Classification Manual, I-956-41) are not covered by the Act.
- (i) When engaged in work within any facility of the Municipality's, the Consultant and its employees shall abide by the rules and regulations of the Town of Shelburne. The Consultant's employees may be required to attend an orientation meeting, highlighting the health and safety requirements of the Town. In the event that the Consultant and/or its employees shows disregard for these requirements, a notice of non-compliance may be issued. The Consultant will be responsible for reacting immediately to the deficiency and correcting any potential health and safety risks.
- (j) The Consultant shall during the length of the agreement carry liability insurance in the minimum amount of \$2,000,000 per incident. In addition, the Municipality will be added as an additional insured party to the policy, relevant to the work involved in this agreement. A current certificate of insurance shall be supplied and the Municipality shall be immediately informed by the Consultant, if any of the relevant details change.
- (k) The Consultant shall carry Professional liability or Errors and Omissions insurance in the minimum amount required within the RFP documents.
- (l) The Municipality acknowledges that a Certificate of Insurance (naming Municipality as an additional insured party) and a Summary of Professional Liability Insurance Coverage, satisfying the requirements of this section, have been supplied. Consultant shall immediately inform the Municipality if any of the relevant details change.

3. The Parties agree:
- (a) That the yearly contract fee, exclusive of the hourly rate of \$100.00 plus HST, and exclusive of Expenses as set out in the RFP response, shall not exceed \$220.00 plus HST
 - (b) Authority for general co-ordination of the project shall reside with the Municipality to the extent provided for in this Agreement. This Agreement does not create any master and servant or partnership relationship between the Municipality and the Consultant. At no time will the Consultant or anyone acting for the Consultant; be considered employees of the Municipality.
 - (c) The Consultant shall co-ordinate the activities of any Sub-Consultants, under direction from the Municipality.
 - (d) If the Consultant is shown to be in default in the performance of any of his/her material obligations set forth in this Agreement, then the Municipality may, by written notice to the Consultant, require such default to be corrected. If within 15 days after receipt of such notice such default shall not have been corrected or reasonable steps to correct such default shall not have been taken, the Municipality may, without limiting any other right or remedy he may have, immediately terminate this Agreement and make settlement for the cost of the services rendered and disbursements incurred by the Consultant pursuant to this Agreement and remaining unpaid as of the effective date of such termination.
 - (e) If the Municipality is unwilling or unable to proceed with the project, the Municipality may suspend or terminate this Agreement by giving 30 days prior written notice to the Consultant. Upon receipt of such written notice, the Consultant shall perform no further services other than those reasonably necessary to suspend or close out the project. In such event the Consultant shall be paid by the Municipality for all services performed and for all disbursements incurred pursuant to this Agreement and remaining unpaid as of the effective date of such suspension or termination.
 - (f) If the Municipality terminates the contract for any of the previously stated reasons, it shall be entitled to take possession of copies of any research materials and the deliverables that have been prepared to the point of termination.

4. Legal Services, Confidentiality and Conflicts of Interest

- (a) The parties confirm that the services covered by this agreement will be provided by Consultant through Giorno in his capacity as a lawyer.
- (b) The Consultant and Giorno will, inside the law firm, create a "confidentiality wall" so that only those professionals within the firm working the Municipality's Integrity Commissioner files have access to such information related to the Municipality.
- (c) The Municipality confirms, agrees and consents that the appointment of Giorno and this agreement with the Consultant do not prohibit the Consultant from accepting from another client a mandate that is adverse to the interests of the Municipality, provided that all of the following conditions are satisfied: Giorno does not act in the other mandate; no one else providing services under this agreement acts in the other mandate; the other mandate is unrelated to Integrity Commissioner services; and the Consultant possesses no confidential information obtained in the course of providing services under this agreement that is relevant to the other mandate.

- (d) Paragraph (c), above, constitutes the informed consent referred to in the third paragraph of section 1.1 (Conflicts of Interest) on the second page of the response to the RFP.

5. License and Ownership.

- a) Consultant Technology. Consultant and its contracted affiliates and subcontractors have created, acquired or otherwise have rights in, and may, in connection with the performance of services hereunder, employ, provide, modify, create, acquire or otherwise obtain rights in, various intellectual, industrial and other property, including, without limitation, concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates, the generalized features of the structure, sequence and organization of software, user interfaces and screen designs, general purpose consulting and software tools, utilities and routines, and logic, coherence and methods of operation of systems (collectively, the “Consultant Technology”).
 - b) Ownership of Deliverables. For purposes of this engagement, “Deliverables” shall mean all work product first created by Consultant for delivery to Municipality in connection with the services provided hereunder, but shall not include any third-party software or related documentation licensed directly to the Municipality from a third party, or any modifications or enhancements thereto or derivatives thereof. Subject to Municipality’s full and final payment to Consultant hereunder, Consultant shall (i) transfer, assign and convey to Municipality all right, title and interest in and to the Deliverables (except for any Consultant Technology contained therein), and (ii) grant to Municipality a non-exclusive, royalty-free, worldwide, perpetual, non-transferable licence to use, for Municipality’s internal business purposes, any Consultant Technology contained in the Deliverables. For greater certainty, the parties agree that Giorno’s final (not draft) reports to Council are the only Deliverables contemplated by this Agreement.
 - c) Ownership of Consultant Property. To the extent that Consultant uses any Consultant Technology or any other intellectual, industrial or other property in connection with the performance of its services, Consultant shall retain all right, title and interest in and to such property, and, except for the license expressly granted in Section 4(b), Municipality shall acquire no right, title or interest in or to such property.
6. (a) If the Municipality is shown to be in default in the performance of any of its material obligations set forth in this Agreement, then the Consultant may, by written notice to the Municipality, require such default to be corrected. If within 7 days after receipt of such notice such default shall not have been corrected, the Consultant may terminate this Agreement. In such an event the Consultant shall be paid by the Municipality for all services performed and for all disbursements incurred pursuant to this Agreement and remaining unpaid as of the effective date of such termination.
- (b) If the Consultant’s services are suspended by the Municipality at any time for more than 30 days through no fault of the Consultant, then the Consultant shall have the right at any time until such suspension is lifted by the Municipality, to terminate this Agreement upon giving 7 days written notice thereof to the Municipality. In such event the Consultant shall be paid by the Municipality for all services performed and for all disbursements incurred pursuant to this Agreement and remaining

unpaid as of the effective date of such suspension.

7. (a) The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a substitution for any duties, obligations, rights and remedies otherwise available by law.
- (b) No action or failure to act by the Municipality or Consultant shall constitute a waiver of any right or duty afforded either of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
8. (a) All matters in dispute arising out of or in connection with this Agreement or in respect of any defined legal relationship associated with it or derived from it may, with the concurrence of both the Municipality and the Consultant, be submitted to arbitration to a single arbitrator appointed jointly by them.

The place of the arbitration shall be the Town of Shelburne Municipal Office and the language of the arbitration shall be English.
- (b) No one shall be nominated to act as arbitrator who is in any way financially interested in the conduct of the project or in the business affairs of either the Municipality or the Consultant.
- (c) In the event that the parties cannot agree as to the single arbitrator to be appointed, then such arbitrator shall be appointed by the applicable Courts.
- (d) The laws of the Province of Ontario shall govern this Agreement and any arbitration or litigation in respect thereof.
- (e) The award of the arbitrator shall be final and binding upon the parties.
- (f) For greater certainty, a challenge to, or disagreement concerning, a report of an investigation into a Code of Conduct complaint, a recommendation contained in such report or the investigation process, shall not be considered a “matter in dispute” covered by this section.
9. Neither party may assign this Agreement in any manner without the prior consent in writing of the other.
10. This agreement shall continue until the full completion of the work outlined in schedule “A”.
11. All notices required by this Agreement to be given by either party shall be deemed to be properly given and received within two (2) business days if made in writing to the other party by registered mail, or e-mail, addressed to the regular business address of such other party as stated within this Agreement.

The Corporation of the Town of Shelburne	Fasken Martineau DuMoulin LLP
203 Main Street East	333 Bay Street
Shelburne, Ontario	Toronto, Ontario
L9V 3K7	M5H 2T6
E-mail: jtelfer@shelburne.ca	E-mail: ggiorno@fasken.com

12. The Consultant shall at all times be responsible for keeping confidential, any files, data and other forms of information belonging to the Municipality that is encountered while fulfilling work within this Agreement. The Consultant shall take all necessary measures to guard any such information to ensure that it is kept secure at all times. The foregoing obligations shall not apply to information which (i) shall have otherwise become publicly available other than as a result of disclosure by the Consultant in breach hereof, (ii) was disclosed to the Consultant on a non-confidential basis from a source other than the Municipality, which is not prohibited from disclosing such information as a result of an obligation in favor of the Municipality, (iii) is developed by the Consultant independently of, or was known by the Consultant prior to, any disclosure of such information made by the Municipality, or (iv) is disclosed with the written consent of the Municipality.

A receiving party also may disclose confidential information to the extent required by an order of a court of competent jurisdiction, administrative agency or governmental body, or by any law, rule or regulation, or by subpoena, summons or other administrative or legal process, or by applicable regulatory or professional standards, or in connection with any judicial or other proceeding involving the Consultant and the Municipality relating to the Consultant's services for the Municipality or this Agreement.

Should it be necessary to remove information, or systems which contain information, from County premises, the Consultant will take additional precautions during transportation and at the Consultant's or Sub-Consultant's premises to make certain that the information is not accessed by or transmitted to a third party, either directly or indirectly. The Consultant, employees of the Consultant and any involved Sub-Consultant shall not view information contained on any system that is not absolutely necessary in order to complete the task assigned. Further they shall not copy, share or transmit any of the Municipality's information, without seeking the written consent of the Municipality. All individuals shall be required to sign a confidentiality statement (Schedule "E") acknowledging their understanding and promise to keep such information safe and confidential.

This clause shall not limit the right of the Municipality or other party to seek remedy via any municipal, provincial or federal legislation guarding against the release of private or sensitive information.

13. This Agreement constitutes the sole and entire agreement between the Municipality and the Consultant relating to the project, and supersedes all prior agreements between them, whether written or oral, respecting the subject matter hereof, and no other terms, conditions or warranties, whether expressed or implied, shall form a part thereof. This Agreement may be amended only by written instrument signed by both the Municipality and the Consultant.
14. Attach and initial any additional terms, which shall form a part of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

THE CORPORATION OF THE TOWN OF SHELBURNE

Ken Bennington, Mayor

John Telfer, CAO/Clerk

FASKEN MARTINEAU DUMOULIN LLP

I have authority to bind the Partnership

Print name _____

Title _____

Witness

Print name _____

SCHEDULE 'A'

RFP Submission – Fasken Martineau DuMoulin LLP

SCHEDULE 'B'

Work Schedule for Processing Complaints under Code of Conduct

Note that the Integrity Commissioner has discretion to extend any of these time limits.

<u>Step</u>	<u>Maximum Time (total business days elapsed from Making of Complaint)</u>
Commissioner receives Complaint	one business day (+1)
Commissioner initially classifies complaint	within three business days after receipt (+4)
Commissioner decides whether to proceed to investigation stage	within three business days after receipt (+4)
Commissioner gives notice to Member and to Complainant	within three business days after receipt (+4)
Member has seven business days to respond	seven business days (+11)
Commissioner shares Member's reply with Complainant	within three business days (+14)
Complainant has seven business days to reply]	seven business days (+20)
Commissioner determines whether interviews and further investigation and/or settlement attempts are required	within week of receiving reply (+25)
Interviews and further investigation and/or settlement	three weeks (+40)
Commissioner drafts proposed findings and proposed recommendations	within week (+45)
Commissioner delivers proposed findings and proposed recommendations to Member	same day (+45)
Member has seven business days to respond	seven business days (+52)
Commissioner delivers general findings (without recommendations) to Member and Complainant, and delivers report and recommendations to Council (via Clerk)	five business days (+57)

FASKEN

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).

FASKEN

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.

FASKEN

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);

FASKEN

- (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