



City of
Peterborough

To: **Members of the General Committee**

From: **Patricia Lester, Commissioner of Corporate and Legislative Services**

Meeting Date: **January 21, 2019**

Subject: **Report CLSCLK19-001
Implementation of a Code of Conduct and Integrity Commissioners**

Purpose

A report to seek approval for the adoption of a Code of Conduct and the appointment of two Integrity Commissioners.

Recommendations

That Council approve the recommendations outlined in Report CLSCLK19-001, dated January 21, 2019 of the Commissioner of Corporate and Legislative Services as follows:

- a) That Council adopt the Code of Conduct By-law, attached as Appendix A to Report CLSCLK19-001.
- b) That Council appoint John Ewart as Integrity Commissioner for a one-year term commencing March 1, 2019 who will be assigned the advice-giving and educational functions outlined in clauses 223.3(1)4, 5, 6 and 7 of the **Municipal Act 2001, 2001**, S.O. 2001, c. 25.
- c) That Council appoint Guy Giorno as Integrity Commissioner for a one-year term commencing March 1, 2019 who will be assigned the investigative, reporting and, as applicable, inquiry functions outlined in clauses 223.3(1)1, 2 and 3 of the **Municipal Act 2001, 2001**, S.O. 2001, c. 25.

- d) That staff report back to Council with an update later in the year on the implementation of the Code of Conduct, the Integrity Commissioners and any proposed changes.

Budget and Financial Implications

The two Integrity Commissioners will be held on retainer and compensated at an hourly rate ranging from \$275 to \$400 for their services. \$10,000 has been identified in the 2019 budget. Availability of funds is contingent on the extent to which these services are accessed.

Background

In 2017 Bill 68, Modernizing Ontario's Municipal Legislation Act, 2017 (Act) achieved royal assent. Bill 68 amended various acts, such as the **Municipal Act 2001**, the **Municipal Elections Act**, the **City of Toronto Act**, and the **Municipal Conflict of Interest Act**.

The Act contains three main themes: Accountability and Transparency, Municipal Financial Stability and Responsible and Flexible Municipal Government.

Effective March 1, 2019, Bill 68 amends the **Municipal Act 2001** to require municipalities to establish Codes of Conduct for members of Council and certain local boards and to appoint an Integrity Commissioner to provide advice to, and investigate complaints against members of Council. The focus of this report is in regard to the implementation of the Code of Conduct and Integrity Commissioners. Staff from the CAO's Office, Legal Services and Clerk's Office met with some members of Council on the implementation of a Code of Conduct and Integrity Commissioners.

Code of Conduct

The proposed Code of Conduct (Code) for members of Council, attached as Appendix A, in the form of a draft by-law, is based on the principles of respect, integrity, public confidence, transparency and accountability. The Code provides direction to members of Council on matters of discrimination and harassment, the acceptance of gifts and benefits, disclosure of confidential information, the use of city resources and the improper use of influence.

The Code provides a process, where, if in the opinion of a member of the public (or a member of Council) a member of Council has contravened a provision in the Code, to bring this matter to the attention of the Integrity Commissioner for review. Complaints shall be in writing to the Integrity Commissioner, who has the ability to dismiss a complaint if in their opinion they believe the complaint to be frivolous, vexatious or an abuse of process.

The Code, consistent with the **Municipal Act 2001**, provides a penalty system, where, if the Integrity Commissioner has determined that a member of Council has breached a provision of the Code. The penalties that Council may impose are a reprimand or loss of remuneration as a member of Council for a period up to 90 days. The Code also contemplates that the Integrity Commissioner could recommend that Council take various actions including the member's removal from a board or committee, requiring repayment or reimbursement of monies received and other actions set out in section 35 of the proposed Code.

Code of Conduct – Local Boards

Legislation directs municipalities to apply the Code to certain local boards and committees. The following are considered applicable Boards and Committees under the Code: Standing Committees of Council, which include General Committee, Finance Committee and the Emergency Governance Committee, as well as the Downtown Business Improvement Area Board and the East City Business Improvement Area Board and the Peterborough Utilities Commission.

Integrity Commissioner

On March 1, 2019, municipalities are required to have appointed one or more Integrity Commissioners who report to Council and are responsible for performing certain functions assigned by the municipality in an independent manner. The functions fall into three categories: investigations, advice and education. An Integrity Commissioner will be responsible for investigating complaints of alleged breaches of, the Code of Conduct and other procedures, rules and policies governing the ethical behavior of members of Council, including the **Municipal Conflict of Interest Act**. An Integrity Commissioner will also responsible to provide advice on the same matters. Any advice given by the Commissioner must be provided in writing. Further, an Integrity Commissioner is authorized to provide educational information to Council, its Boards and the public on the Code of Conduct and the **Municipal Conflict of Interest Act**.

An Integrity Commissioner is required to treat all matters that come to her or his knowledge in the course of her or his duties as confidential. However, if the Commissioner provides a periodic report to the municipality on their activities, the Commissioner may summarize advice they have given but may not disclose confidential information that could identify a person concerned.

The City will be required to indemnify an Integrity Commissioner or anyone acting under the Integrity Commissioner's instructions for costs reasonably incurred in connection with the defence of a legal proceeding regarding a duty or act undertaken in good faith. An Integrity Commissioner has the authority to delegate any of their powers and duties to another person, while continuing to exercise their delegated powers and duties.

An elector or person “demonstrably acting in the public interest” can also apply for an inquiry concerning an alleged contravention of the **Municipal Conflict of Interest Act** up until voting day or within six weeks after voting day in a regular election year. The Integrity Commissioner must complete the inquiry within 180 days of receiving a complete application, unless the application is considered frivolous or vexatious. The Integrity Commissioner may apply to a judge after completing their own inquiry and must publish the written reasons for applying to the courts. The City or respective Board is required to cover the costs associated with the application. If the Integrity Commissioner has not completed an inquiry into a Code of Conduct Complaint or **Municipal Conflict of Interest Act** Complaint before Nomination Day in a regular municipal election year, the inquiry shall be terminated on that day. The Integrity Commissioner shall not commence another inquiry unless, within six weeks after Voting Day, the applicant or member in question requests that the inquiry be commenced in writing. Further, no application for an inquiry shall be made between Nomination Day and Voting Day in a regular election year. There are additional restrictions on Code of Conduct Complaints between Nomination Day and Voting Day in a regular election: the Integrity Commissioner shall not report to Council or Board on an inquiry; and, Council or the Board shall not consider whether to impose penalties.

Integrity Commissioner Model

As noted, an Integrity Commissioner’s functions are divided into three categories: advice, investigations and education. An Integrity Commissioner that provides advice should not be in a position which involves investigations. Further, members of Council may avoid seeking advice or be overly cautious in conveying relevant information to the Integrity Commissioner if that Integrity Commissioner were also to investigate a complaint.

Staff believe, to avoid the conflict identified above, a two Integrity Commissioner model will best serve members of Council. One Integrity Commissioner will provide advice-giving and educational services, while the second Commissioner will provide investigative services, as required.

Securing the Services of Integrity Commissioners

Staff have secured the Treasurer’s approval to proceed with a “non-standard” procurement (ie. without a competition) for two Integrity Commissioners in accordance with Procurement By-law 18-084. Paragraph 11.3.2b of that By-law authorizes non-standard procurement of consulting services from persons who have worked for the City or for other municipalities in related fields and are interested in undertaking short-term assignments for the City on an as-required basis and where the procurement value is less than \$100,000. A non-standard procurement process will also enable the City to meet its statutory obligation to appoint Integrity Commissioners by the March 1, 2019 deadline. It is proposed that the term of each Integrity Commissioner be limited to one year commencing March 1, 2019.

The Integrity Commissioners' appointments are subject to Council approval.

It is proposed that John Ewart be appointed as the Integrity Commissioner to whom Council would assign advice-giving and educational functions. Mr. Ewart's curriculum vitae is attached as Appendix B.

It is proposed that Guy Giorno be appointed as the Integrity Commissioner to whom Council would assign investigative, reporting and, as applicable, inquiry functions. Mr. Giorno's curriculum vitae is attached as Appendix C.

Next Steps

Staff will monitor activity associated with the Code of Conduct and the Integrity Commissioners and report to Council later in the year with any suggested changes to the Code of Conduct and a longer-term procurement of Integrity Commissioner Services.

Summary

The amendments to the **Municipal Act 2001** introduced under Bill 68 included a requirement for municipalities to establish a Code of Conduct for Members of Council and certain local boards, and to appoint an Integrity Commissioner by March 1, 2019. The Integrity Commissioner's powers include the ability to investigate allegations into breaches of the Code of Conduct and the **Municipal Conflict of Interest Act** and providing advice and educational training. Retaining two Integrity Commissioners, one to provide advice to members of Council and one to conduct investigations, will eliminate concerns surrounding objectivity and conflict between the two roles.

Submitted by,

Patricia Lester
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Attachments:

Appendix A – Draft Code of Conduct By-law

Appendix B – John Ewart Curriculum Vitae

Appendix C – Guy Giorno Curriculum Vitae