



City of
Peterborough

To: **Members of the General Committee**

From: **John Kennedy, City Clerk**

Meeting Date: **December 2, 2019**

Subject: **Report CLSCLK19-024**
Update on the Code of Conduct and Integrity Commissioners

Purpose

A report to provide Council with an update on the Code of Conduct and the appointment of two Integrity Commissioners.

Recommendations

That Council approve the recommendations outlined in Report CLSCLK19-024, dated December 2, 2019 of the City Clerk as follows:

- a) That Council extend the appointment of John Ewart as Integrity Commissioner for a term expiring March 31, 2022, who is assigned the advice-giving and educational functions outlined in clauses 223.3(1)4, 5, 6 and 7 of the Municipal Act, S.O. 2001, c. 25.
- b) That Council extend the appointment Guy Giorno as Integrity Commissioner for a term expiring March 31, 2022, who is assigned the investigative, reporting and, as applicable, inquiry functions outlined in clauses 223.3(1)1, 2 and 3 of the Municipal Act, S.O. 2001, c. 25.
- c) That staff be directed to schedule an education session with John Ewart and Council in the first quarter of 2020 on matters involving conflict of interest and the Code of Conduct.

Budget and Financial Implications

At present, two Integrity Commissioners are held on retainer and compensated at an hourly rate ranging from \$275 to \$400 for their services. As of the date of this report \$391 has been expensed on Integrity Commissioners. \$12,000 has been identified in the 2020 budget for Integrity Commissioner services. Both Integrity Commissioners will continue at their current rates.

Background

This update is in response to Report CLSCLK19-001 Implementation of a Code of Conduct and Integrity Commissioners, adopted by Council on January 28, 2019. Recommendation d) of the report states, "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".

Effective March 1, 2019, Bill 68 amended 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.

Code of Conduct

Council, at its meeting of January 28, 2019, adopted a Code of Conduct through By-law 19-028. The Code of Conduct (Code) for members of Council 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.

Integrity Commissioner

Integrity Commissioners appointed by Council are responsible to perform their assignments in a manner independent of Council. The duties fall into three categories: investigations, advice and education. An Integrity Commissioner will be responsible for investigating complaints of alleged breaches of the Code 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 be responsible to provide advice on the same matters. Any advice given by the Integrity 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 Integrity Commissioner provides a periodic report to the municipality on their activities, the Integrity Commissioner may summarize advice they have given but may not disclose confidential information that could identify a person concerned.

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 Adopted by Council

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.

In January of 2019, Council implemented a two Integrity Commissioner model. John Ewart was retained for a one-year term from March 1, 2019 to March 1, 2020, to provide advice-giving and educational services. Guy Giorno was retained as a second Commissioner, for a one-year term from March 1, 2019 to March 1, 2020, to provide investigative services, as required.

Staff have monitored the activity associated with the Code of Conduct and the Integrity Commissioners since March of 2019, to be able to provide this update to Council and to offer any suggested changes to the Code of Conduct and the retaining of Integrity Commissioner services. At the time of the writing of this report, a total of \$391 has been spent on Integrity Commissioner services, associated with advice-giving. At present, staff are not aware of any investigations related to Code of Conduct or any circumstances that would warrant changes to the language in the Code of Conduct.

Recommend Retaining Current Integrity Commissioners

Procurement By-law 18-084 directs Council and staff on purchasing activities. Chart 2, Section Reference a) of Appendix 1 permits a “designate as approved by the Commissioner and Treasurer” to make a non-competitive purchase at or below \$25,000. The expenses related to the Integrity Commissioner activity are substantially below this threshold and as the proposed budget for Integrity Commissioners for 2020 is \$12,000. Staff recommend to continue retaining John Ewart as Integrity Commissioner for advice-giving and educational services and Guy Giorno as Integrity Commissioner for investigative services. Staff recommend a two-year term, to expire March 31, 2022 for both Integrity Commissioners.

Continued Monitoring

Staff will continue to monitor activity related to the Code of Conduct and the Integrity Commissioners and report to Council as necessary.

Summary

Bill 68 required 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. Staff do not recommend changes to the language of the Code of Conduct at this time. Staff recommend extending the term, for

an additional two years, for advice-giving Integrity Commissioner John Ewart and for Guy Giorno, Integrity Commissioner for investigative services.

Submitted by,

John Kennedy
City Clerk

Contact Name:

David Potts, City Solicitor
Phone: 705-742-7777, Ext 1603
Toll Free: 1-855-738-3755
Fax: 705-742--3947
E-Mail: dpotts@peterborough.ca

John Kennedy, City Clerk
Phone: 705-742-7771, Ext 1799
Toll Free: 1-855-738-3755
Fax: 705-742-4138
E-Mail: jkennedy@peterborough.ca