



The Corporation of the Town of Tecumseh

Corporate Services & Clerk

To: Mayor and Members of Council

From: Laura Moy, Director Corporate Services & Clerk

Date to Council: September 11, 2018

Report Number: CS-2018-33

Subject: Appointment of an Integrity Commissioner

Recommendations

It is recommended:

That Corporate Services & Clerk Report No. CS-2018-33 regarding the Appointment of an Integrity Commissioner **be received**;

And that Mr. Robert Swayze **be appointed** as the Integrity Commissioner for The Corporation of the Town of Tecumseh (Town) for the purpose of investigating complaints related to the Code of Conduct for Members of Council, Committees and Local Boards Policy No. 63 as adopted by By-law No. 2014-01 (Code of Conduct), and as otherwise may be amended;

And further that the Mayor and the Clerk **be authorized** to execute a two year renewal Retainer Agreement between the Town and Robert Swayze for the term January 1, 2018 through December 31, 2019.

Background

The *Municipal Act, 2001*, S.O. 2001, c.25 (*Municipal Act*) under Part V.1 authorizes a municipality to establish a Code of Conduct for Members of Council, its Committees and Local Boards, and 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; and/or

- 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.

This part of the *Municipal Act* was brought into force with Bill 130, and is intended to provide municipalities with enhanced accountability powers. Municipalities are granted permissive authority to establish Codes of Conduct. However, contravention of the Code of Conduct cannot constitute an offence.

As required, by the *Municipal Act* under Section 270, a Transparency and Accountability Policy No. 61 was adopted in 2007 by Council to ensure accountability to the public for their actions, and the manner in which they will ensure that the Town's actions are transparent to the public.

In 2008, Council first adopted a Code of Conduct under By-law No. 2008-47 for Members of Council, Committees and Local Boards (Members), in conjunction with Policy No. 61, and in accordance with Section 223.2(1) of the *Municipal Act*. The purpose of the Code of Conduct is to supplement the legislative parameters within which Members must operate and to:

- a. encourage a high standard of conduct;
- b. ensure that Members share a common basis for acceptable conduct;
- c. protect the public interest and enhance public confidence in Members; and
- d. set out a means of correcting unethical conduct.

In September of 2013, Council appointed John G. Maddox, of JGM Consulting, as the Town's Integrity Commissioner to provide: advice and opinions to the Members; independent complaint prevention, investigation, adjudication, and resolution for Members of Council and the public; and to provide education on adherence with the Code of Conduct and other procedures, rules and policies governing ethical behavior.

Periodic audits of municipal policies and procedures are undertaken to determine whether they exhibit a commitment to the Transparency and Accountability Policy and to proactively prepare for a potential policy breach by establishing a protocol to effectively manage any alleged breach.

A review of the Town's Code of Conduct was undertaken in 2013, in consultation with the Integrity Commissioner, to ensure that Members governed by the Code of Conduct understood and would be able to comply with standards of conduct required by law in terms of their interpersonal interactions, communications and conduct, as well as other Town Policies, such as the Violence and Harassment in the Workplace Policy No. 68, Harassment Policy No. 6, Corporate Communication Policy No. 76, and the Use of Corporate Resources for Election Purposes Policy No. 69.

As a result of the review of the Code of Conduct, along with the Town's policies previously mentioned, and the *Ontario Human Rights Code*, *Occupational Health & Safety Act*, *Municipal Elections Act*, and *Municipal Act*, a revised Code of Conduct was prepared and adopted by By-law No. 2014-01 on January 14, 2014.

A Complaint Procedure Information Package was developed to accompany the Code of Conduct when requested by a member of the public who may wish to file a formal complaint. Complaints submitted under the Code of Conduct are to be investigated by the Integrity Commissioner.

To dissuade frivolous and vexatious complaints, Council approved a Complaint Application fee of \$125. The fee is to be refunded in the event the Integrity Commissioner finds there to be a basis for the complaint.

Comments

The term of the Agreement between the Town and John G. Maddox, of JGM Consulting for Integrity Commissioner Services expired on September 31, 2015.

A number of the Essex County lower tier municipalities collectively expressed an interest in retaining the services of an Integrity Officer and jointly developed a Request for Proposal (RFP) in 2015.

As result, Robert J. Swayze was retained under an Agreement for Integrity Commissioner Services for a two-year term 2016-2017.

Mr. Swayze is a solicitor practicing in Caledon, Ontario. His practice has primarily been in municipal law. He has held senior positions, including Town and City Solicitor, with various municipalities during his career and has been appointed as the Integrity Officer for a number of municipalities.

A joint RFP was again issued in 2017 for Integrity Commissioner Services by a number of the area municipal Clerks. Two submissions were received in response to the RFP. The proposals were at a much greater cost than the Agreement with Mr. Swayze [i.e. \$1,000 / month retainer]. Since the submissions were not acceptable, we discussed extending the agreement with Swayze.

Mr. Swayze has offered to extend his services for a further two years. He does not require a retainer fee for his services as an Integrity Commissioner. Fees do include \$280 per hour for services performed and, if required, mileage is charged at \$0.52 per kilometer. Process server and large printing jobs are billable at cost. While most investigations will be performed from Mr. Swayze's office, should a trip to Essex County be necessary, additional costs for airfare, a rental car and overnight accommodation, may be incurred, however Mr. Swayze does not charge for travel time.

Mr. Swayze provides value-added services, including a review of the Code of Conduct and training on the Code of Conduct for Council Members, etc. These services are charged on the same basis as a complaint investigation.

Purchasing Policy

Section 4.8 b) of the Purchasing Policy states:

- b) Where a contract does not contain an option for renewal, the Department Director may consider an extension for no more than the term of the original contract provided that all of the criteria as outlined in 4.8 a) apply. The extension in this case is to be approved by Council.

Section 4.8 states:

- a) Where a contract contains an option for renewal, the Department Director may exercise such option provided that all of the following apply:
- i. the supplier's performance in supplying the goods, services or construction is considered to have met the requirements of the contract;
 - ii. The Department Director and the Purchasing Officer agree that the exercise of the option is in the best interest of the Town;
 - iii. funds are available in appropriate accounts within Town Council approved budget including authorized revisions to meet the proposed expenditure; and
 - iv. a valid business case has been completed.

Mr. Swayze's performance met the requirements of the prior Retainer Agreement. It is in the best interest of the Town to retain an Integrity Commissioner to investigate complaints under Code of Conduct. All municipalities will be required under the Municipal Act, 2001, effective March 1, 2019, to obtain Integrity Commissioner Services. Funds are available in the 2018 budget in the event an investigation is to be conducted.

Code of Conduct

The Code of Conduct is being reviewed as a result of changes to the Municipal Act, 2001, set out in Bill 68 Modernizing Ontario's Municipal Legislation Act, 2016 (Bill 68). Effective March 1, 2019, Codes of Conduct for members of council and local boards will no longer be discretionary.

Municipal governments must provide access to an Integrity Commissioner and ensure all of the functions of the Integrity Commissioner are being provided by an Integrity Commissioner. Flexibility is, however, given to municipalities to appoint or arrange for the functions to be provided by an Integrity Commissioner of another municipality.

The amendments in Bill 68 also expand the role of Integrity Commissioner to:

- Conduct inquiries upon complaint or on own initiative for Municipal Conflict of Interest Act (MCIA) matters and code of conduct matters;
- Provide advice in writing to members of councils and local boards respecting their obligations under the code of conduct; ethical behavior procedures, rules or policies; and the MCIA;
- Provide educational information in writing to the public, municipality and members of council and local boards about the code of conduct and MCIA.

New Integrity Commissioner powers allow any person to apply in writing to the Integrity Commissioner asking for an investigation concerning an alleged contravention of the MCIA. Any application must be within six (6) weeks that the Applicant became aware of alleged contravention. The Integrity Commissioner has 180 days to complete an inquiry and may apply to a judge under the MCIA if he /she considers appropriate for determination of a contravention. The Integrity Commissioner's cost is paid by the alleged Member, if the matter goes to a judge.

Consultations

Director Financial Services & Treasurer
Robert Swayze, Barrister & Solicitor
Association of Municipalities of Ontario

Financial Implications

The 2018 Budget contained a provision in the Clerks Department Professional Fee – Other for Integrity Commissioner fees in the event of an investigation.

Link to Strategic Priorities

Applicable	2017-18 Strategic Priorities
<input type="checkbox"/>	Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers.
<input type="checkbox"/>	Ensure that the Town of Tecumseh's current and future growth is built upon the principles of sustainability and strategic decision-making.
<input type="checkbox"/>	Integrate the principles of health and wellness into all of the Town of Tecumseh's plans and priorities.
<input checked="" type="checkbox"/>	Steward the Town's "continuous improvement" approach to municipal service delivery to residents and businesses.
<input checked="" type="checkbox"/>	Demonstrate the Town's leadership role in the community by promoting good governance and community engagement, by bringing together organizations serving the Town and the region to pursue common goals.

Communications

Not applicable ☒

Website ☐

Social Media ☐

News Release ☐

Local Newspaper ☐

This report has been reviewed by Senior Administration as indicated below and recommended for submission by the Chief Administrative Officer.

Prepared by:

Laura Moy, Dipl. M.M., CMMIII HR Professional
Director Corporate Services & Clerk

Recommended by:

Tony Haddad, MSA, CMO, CPFA
Chief Administrative Officer

**Attachment
Number**

**Attachment
Name**

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Agreement between Corporation of the Town of Tecumseh and
Robert J. Swayze, Barrister & Solicitor