



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: August 13, 2019
Report Number: CS-2019-12
Subject: Closed Meeting Investigation Services

Recommendations

It is recommended:

That Report CS-2019-12 regarding Closed Meeting Investigation Services **be received**;

And that notice of termination **be given** to LAS before October 1, 2019, in accordance with the provision in paragraph 16 of the Agreement between The Corporation of the Town of Tecumseh and LAS to discontinue closed meeting investigation services effective January 1, 2020;

And further that closed meeting complaints **be investigated** by the Provincial Ombudsman, commencing January 1, 2020;

And furthermore that the funds in the Closed Meeting Reserve of \$17,500, **be reallocated** to the Integrity Commissioner Reserve.

Background

Section 239.2 of *The Municipal Act 2001, S.O. 2001, c.25*, (Act) as amended, allows a person to request an investigation as to whether the Municipality has complied with the requirements governing closed meetings.

An investigation into whether a Municipality or Local Board has complied with Section 239 of the Act, authorizing when meetings may be closed to the public, or Section 238(2) requiring a Municipality to pass a Procedural By-law, is to be conducted by:

- a) An investigator appointed by the Municipality; or
- b) The Ombudsman appointed under the Ombudsman Act, if the Municipality has not appointed an investigator.

Council has the discretion to appoint an investigator to deal with any investigation requests. If Council does not make such an appointment, a complaint will be investigated by the Provincial Ombudsman (Section 239.1 of the Act).

Comments

Three (3) options have been offered, in the past, to meet the Closed Meeting Investigator requirements of the Act:

1. Appoint Local Authority Services (LAS) as a Closed Meetings Investigator; a solution being offered by the Association of Municipalities of Ontario (AMO); or
2. Appoint a Closed Meeting Investigator under an independent contract; or
3. Do not appoint a Closed Meeting Investigator and rely upon the Provincial Ombudsman to investigate any complaints.

From 2008 to 2015, JGM Consulting (JGM) was appointed, under an independent contract, to provide closed meeting investigation services with an annual retainer of \$1,000.

The Town next appointed LAS as its Closed Meeting Investigator for meetings conducted in 2016, and in subsequent years to date, at an annual retainer of \$330.

The Agreement with LAS automatically renews in accordance with paragraph 16, which states:

... this Agreement shall automatically renew from year to year unless and until terminated by either Party upon ninety (90) days prior written notice on the same terms and conditions contained herein except that the retainer fee and investigation fee may be adjusted by LAS, in its sole discretion, acting reasonably.

Council once again has the option to:

1. Allow the Agreement with LAS to automatically renew to provide closed meeting investigation services;
2. Retain the services of an alternate Closed Meeting Investigator; or
3. Make no appointment allowing for the Ombudsman to investigate any closed meeting complaints after December 31, 2019.

Option 1 – Retain LAS Services

The Association of Municipalities of Ontario's (AMO) subsidiary company, LAS, supports municipalities and the broader public sector by delivering programs and services that leverage economies-of-scale and co-operative procurement efforts.

The LAS program is designed to offer an Investigator service that ensures:

- Municipal expertise
- Consistent quality
- Impartial, credible, confidential, and independent investigation processes
- Continuing education.

LAS offers this service because it is complementary to its existing program of providing services where value can be enhanced through group procurement, and because it helps municipal members demonstrate that they are mature, accountable orders of government, capable of managing their own affairs.

To deliver this program, LAS has contracted a third party, Amberley Gavel Ltd., to provide all investigation services. Amberley Gavel maintains a roster of experienced and trained individuals located across Ontario to provide required investigative services at the most reasonable cost.

Option 2 – Retain Alternate Services

The Town could seek to retain closed meeting investigation services through a Request for Proposal, pursuant to the Purchasing Policy No. 17.

Option 3 – Make No Appointment

In the event Council does not appoint a Closed Meeting Investigator, the Provincial Ombudsman will investigate requests regarding the conduct of meetings held after January 1, 2020.

The Ombudsman is an impartial Officer of the Ontario Legislative Assembly who is independent of government and political parties. The Ombudsman's office promotes fairness, accountability and transparency in the public sector by resolving and investigating public complaints and systemic issues within the Ombudsman's jurisdiction. The Ombudsman is appointed by an all-party committee of the Legislative Assembly for a five-year renewable term and his/her powers and authorities are set out in the Ombudsman Act.

The current Ombudsman is [Mr. Paul Dubé](#), who began his term on April 1, 2016.

The Ombudsman resolves and investigates more than 20,000 public complaints every year about Ontario government organizations and municipalities, universities and school boards, as well as French language services and child protection services. The Ombudsman recommends solutions to individual and systemic administrative problems.¹

Most cases are informally resolved and formal investigations are rare. Statistics for all complaints are reported in [Annual Reports](#), along with selected summaries of resolved cases. The Ombudsman does report publicly on formal investigations, often in special reports as well as in the Annual Report.

Summary

The provisions of the Act in respect of an investigation into whether a Municipality or Local Board has complied with Section 239 of the Act, authorizing when meetings may be closed to the public, or Section 238(2) requiring a Municipality to pass a Procedural By-law, have resulted in a number of investigations being undertaken throughout the Province.

Options 1 and 2 have a greater financial implication than Option 3.

The annual retainer fee of LAS is less than the annual retainer fee previously paid to JGM.

Renewal of the Agreement with LAS for meeting investigation services commits the Town to at least a further one-year term, ending December 31, 2020. Consideration of a renewal beyond December 31, 2020, could be considered before October 1, 2020.

The only cost incurred, to date, in relation to meeting investigation services is the annual retainer fee. LAS indicates that because of the education and information materials provided to LAS Program members, many will never encounter a closed meeting investigation; however, the average length of investigations completed in 2015-16 by LAS has been 10-12 hours.²

Consultations

Financial Services
LAS
Ministry of Municipal Affairs & Housing

¹ <https://www.ombudsman.on.ca/what-we-do/frequently-asked-questions>

² <https://www.las.on.ca/WhatWeDo/ClosedMeetingInvestigator.aspx>

Financial Implications

Option 1 – Retain LAS Services

LAS indicates the average meeting investigation takes 10-12 hours. At an hourly fee of \$250, an average investigation could cost \$2,500 to \$3,000. Any daily out-of-pocket expenses, or other daily costs (i.e: travel, mileage), would be additional costs.

The annual retainer is \$330.

An allocation of \$2,500 was included in the 2020 budget. The Town has not incurred costs for meeting investigation purposes. Unspent funds in any particular year are set aside in a reserve to offset a year(s) where investigation costs may be incurred and could exceed the annual budget allocation. At the November 8, 2011, Regular Meeting of Council, Resolution RCM-389/11 approved reallocating unused funds for Meeting Investigations to a reserve to a maximum of \$10,000.

The current reserve funds for meeting investigation services is at \$17,500.

Option 2 – Retain Alternate Services

The cost of retaining services through a Request for Proposal are unknown. The cost of retaining JGM was at an annual retainer of \$1,000. The hourly investigation fee was \$100, in addition to any daily out-of-pocket expenses or other daily costs (i.e: travel, mileage) incurred to conduct an investigation.

Option 3 – Make No Appointment

The Ombudsman services are currently cost-free to municipalities. Anyone can complain to the Ombudsman at no cost to complainants nor the organization that is the subject of a complaint.

The annual budget expense of \$2,500 would be saved.

By not appointing a closed meeting investigator commencing January 1, 2020, the funds in the closed meeting reserve fund could be transferred to the reserve fund for Integrity Commissioner Services (ICS). The reserve for ICS is currently at \$12,700. The cost of an investigation could well exceed the reserve dependent on the nature of the complaint.

Link to Strategic Priorities

Applicable	2019-22 Strategic Priorities
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- Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers.
- Ensure that Tecumseh's current and future growth is built upon the principles of sustainability and strategic decision-making.
- Integrate the principles of health and wellness into all of Tecumseh's plans and priorities.
- Steward the Town's "continuous improvement" approach to municipal service delivery to residents and businesses.
- 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:

Margaret Misek-Evans, MCIP, RPP
Chief Administrative Officer

Attachment Number	Attachment Name
None	None