

Report CCR-CW-15-17

To: Warden Barfoot and Members of Grey County Council
From: Kim Wingrove and Heather Morrison
Meeting Date: November 23, 2017
Subject: **Appointment of Integrity Commissioner**
Status: Recommendation adopted by Committee as presented per Resolution CW252-17; Endorsed by County Council December 14, 2017 per Resolution CC06-18;

Recommendation

1. That Report CCR-CW-15-17 be received and that Principles Integrity be appointed as Grey County's Integrity Commissioner effective January 1, 2018 for a five (5) year term; and
2. That a by-law be brought forward for Council's consideration outlining the terms of engagement for the Integrity Commissioner.

Background

At the July 27, 2017 Committee of the Whole meeting, staff was authorized to proceed with the recruitment of an Integrity Commissioner for Grey County through Report CCR-CW-09-17.

Bill 68, being the Modernizing Ontario's Municipal Legislation Act, 2017 requires all municipalities in Ontario to have an Integrity Commissioner by March 1, 2019. In Report CCR-CW-09-17 it was noted that while the timeframe was not known when the report was presented, it would be prudent for Grey County to proceed at this time rather than waiting for the proclamation date as there is a small pool of Integrity Commissioners and all 444 municipalities will be required to have one.

Council also supported having local municipalities in Grey County participate in the recruitment process and able to appoint the firm selected as Grey's Integrity Commissioner to meet their own requirements under the Act and provide some consistency across the County.

Responsibilities of the Integrity Commissioner

The role of the Integrity Commissioner is outlined in Section 223.3 of the Municipal Act, 2001:

223.3(1) Without limiting section 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:

- 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.

For Grey County's purposes the Integrity Commissioner would have the following responsibilities:

1. Application of the Code of Conduct and any procedures, rules and policies governing the ethical behaviour of members
2. Application of the Conflict of Interest Act (MCIA)
3. Requests from members of council for advice regarding the Code of Conduct
4. Requests from member of council for advice regarding MCIA
5. Requests from members of council regarding obligations under a procedure, rule or policy of the municipality governing ethical behaviour of members of council
6. Provision of educational information to members, the municipality and the public about the Code of Conduct and the MCIA.

Grey County adopted a Code of Conduct for Council in 2016 that was developed through a working group of the local Clerks. It would be prudent to have the Integrity Commissioner review the Code of Conduct and provide recommendations for enhancements.

Recruitment Process and Firm Qualifications

Utilizing best practice documentation from a variety of sources, staff prepared a recruitment document and sought proposals from a short list of qualified and interested parties. Staff from seven of the nine Grey County member municipalities participated in the process (Town of the Blue Mountains appointed two integrity commissioners earlier). A review of the proposals was undertaken by the group and an interview of the preferred firm was completed.

Based on a review of the proposal, staff knowledge of the respective firms and an interview process the firm of Principles Integrity was chosen.

Jeff Abrams and Janice Atwood-Petkovski bring a wealth of knowledge both from a legal perspective as well as municipal staff review with Mr. Abrams serving as a municipal Clerk for the City of Vaughan and Ms. Atwood-Petkovski working as the City Solicitor for the City of Vaughan and Hamilton. Both are solicitors by trade and each bring 30 + years of municipal experience from both a local and upper tier level along with provincial experience. Having both recently retired from their respective municipal careers, they have joined together to create Principle Integrity to provide integrity commissioner services for municipalities in Ontario. Principle Integrity is currently the integrity commissioner for the City of Mississauga.

Their proposal provides for education and training for Council members, staff and the public on the code of conduct and complaint process while instilling the values of accountability and transparency through the provision of an ethical framework with which to work from.

Financial/Staffing/Legal/Information Technology Considerations

The annual retainer for the recommended firm is \$1000. Pricing has been provided for the review of the Code of Conduct and any training days Grey County might request. There will be ongoing budget needs for the costs of investigations, reports and information provided to members which will be charged at \$230 per hour.

It will be difficult to forecast annual costs given the unknown of how often the services of the Integrity Commissioners will be used. \$25,000 has been included in the 2018 budget for consideration. It is recommended that a reserve be set up for this purpose that could help offset higher than expected costs in any particular year.

The County is also required to provide indemnification for the Integrity Commissioner for the duties provided to the County.

There are no information technology costs related to this report.

Link to Strategic Goals/Priorities

This supports Goal 3 of delivering excellence in governance and service. It also supports open and transparent government and ensures the policies and mechanisms are in place to support a health work environment for both council and staff.

Attachments and Background Information

Draft Integrity Commissioner By-law

Respectfully submitted by,

Kim Wingrove, CAO

Heather Morrison, Deputy Clerk/Records Manager

Corporation of the County of Grey By-Law XXXX-17

A By-Law to Establish the Office of Integrity Commissioner and Process for Hearing Complaints Regarding Elected Officials of the County of Grey

WHEREAS section 223.3 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorizes a municipality to appoint an Integrity Commissioner who performs functions with respect to the application of the Code of Conduct for members of Council and other procedures, rules or policies governing their ethical behaviour;

AND WHEREAS sections 223.4 to 223.8 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provide that an Integrity Commissioner appointed under section 223.3 has certain powers, duties and protections, including: the powers of a commission under Parts I and II of the *Public Inquiries Act*, S.O. 2009; the duty to preserve secrecy with respect to all matters that come to their knowledge in the course of performing their functions; and the protection of not being a competent or compellable witness in a civil proceeding;

AND WHEREAS sections 8, 9 and 11 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorize a

municipality to pass by-laws necessary or desirable for municipal purposes, and in particular subsection 11(2) 2. authorizes by-laws respecting the accountability and transparency of the municipality and its operations;

AND WHEREAS sections 23.1 and 23.2 of the *Municipal Act, 2001, S.O. 2001, c. 25*, authorize a municipality to delegate its powers and duties, including legislative and quasi-judicial powers under the *Municipal Act, 2001, S.O. 2001, c. 25*, to an individual who is an officer, employee or agent of the County;

AND WHEREAS Grey County Council supported the recommendation in Report CCR-CW-09-17 Integrity Commissioner for Grey County through resolution CW161-17;

NOW THEREFORE BE IT RESOLVED THAT the Council of the Corporation of the County of Grey enacts as follows:

1.0 Short Title

- 1.1 This By-Law may be referred to as the "Integrity Commissioner By-Law".

2.0 Definitions

- 2.1 "Censure" means an official expression of disapproval or condemnation;
- 2.2 "Clerk" means the Clerk of the Corporation of the County of Grey;
- 2.3 "Code of Conduct" means County of Grey By-Law No. 4943-16 or its successor ("Councillor Code of Conduct") as approved by Council, and as it existed on the date of the event or events giving rise to a Complaint;
- 2.4 "County" means the Corporation of the County of Grey or the geographic area of the County of Grey, as the context requires;
- 2.5 "Complaint" means a request by a Legal Person that the Integrity Commissioner conduct an inquiry into an event or series of events alleged to contravene the Code of Conduct or any other procedures, rules or policies governing the ethical behaviour of members of Council. Except as provided otherwise, a Complaint must include both a sworn/affirmed affidavit and the payment of the refundable fee;
- 2.6 "Complainant" means a person who makes a Complaint;
- 2.7 "Council" means the elected officials who are sworn in as the County's municipal council;
- 2.8 "Employee" means a person employed by the County, including those employed on personal service contracts and volunteers, but does not include members of Council;
- 2.9 "Integrity Commissioner" shall mean the person appointed by Council to provide independent and consistent complaint investigation and resolution respecting the application of the Code of Conduct, being By-Law No. 4943-16 ("County Code of Conduct By-Law");

- 2.10 “Legal Person” means an individual, company or other entity which has legal rights and is subject to obligations.
- 2.11 “Member” means any Member of Council, and includes the Warden;
- 2.12 “Municipal Act” means the Municipal Act, 2001, S.O. 2001, c. 25, as amended;
- 2.13 “MFIPPA” means the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, as amended; and
- 2.14 “*Public Inquiries Act*”, means the *Public Inquiries Act*, R.S.O. 2009, as amended.

3.0 Appointment of Integrity Commissioner

- 3.1 Council shall appoint an Integrity Commissioner to investigate alleged breaches of the Code of Conduct and to perform the duties outlined in s. 5.0 below. Appointments shall be for a period of five (5) years. The candidate search, screening and hiring process shall be overseen by a panel consisting of the County Chief Administrative Officer and County Clerk as well as CAO/Clerks from member municipalities wishing to participate.
- 3.2 The Integrity Commissioner may be:
 - a) retained by Council on a term contract constituting “fee for service”; or a “retainer plus fee for service” basis;
 - b) cross-appointed by Council together with one or more other municipal councils as the Integrity Commissioner for all of the municipalities.
- 3.3 The Integrity Commissioner shall complete any inquiry substantially completed during his or her term notwithstanding the expiry of the term and this By-law shall continue to apply with all necessary modifications. Any inquiries in the beginning stages shall be transferred to the incoming Integrity Commissioner.
- 3.4 If the Integrity Commissioner is unable to complete an inquiry in accordance with subsection 3.3, the Integrity Commissioner next appointed shall complete the inquiry.
- 3.5 The Integrity Commissioner may be removed before the expiry of his or her term of office, only for cause. Council shall first receive legal advice from external legal counsel to determine if cause exists. Removal shall be approved by a two-thirds vote of Council.
- 3.6 The Integrity Commissioner will be covered under By-law 4300-06, the County’s Indemnification By-law.

4.0 Role of Integrity Commissioner

- 4.1 The role of the Integrity Commissioner is to help ensure that Members follow the Code of Conduct and other procedures, rules or policies governing their ethical behaviour. The Integrity Commissioner may also provide advice and

rulings on ethical challenges, issues and dilemmas, as detailed by section 5.1, if requested by Council or a Member.

5.0 Duties of Integrity Commissioner

5.1 The Integrity Commissioner shall:

- a) At least once per term of Council:
 - i) speak to Members about the role of the Integrity Commissioner and ethical obligations and responsibilities of Members under the Code of Conduct and any other procedures, rules or policies governing their ethical behaviour.
 - ii) prepare written materials to Members about the role of the Integrity Commissioner and ethical obligations and responsibilities of Members under the Code of Conduct and any other procedures, rules or policies governing their ethical behaviour.
- b) When asked, provide advice to individual Members regarding their ethical obligations and responsibilities under their Code of Conduct and any other procedures, rules or policies governing their ethical behaviour. This advice can include opinions on the appropriate course of action where Members seek guidance based on specific factual circumstances.
- c) When asked, provide advice and recommendations to Council regarding amendments to the Code of Conduct and any other procedures, rules or policies governing Council's ethical behaviour.
- d) Prepare and deliver an annual report to Council containing a summary of activities during the previous calendar year.

5.2 If the Integrity Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code of Canada*, the Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension of the inquiry to Council.

5.3 If the Integrity Commissioner, when conducting an inquiry, determines that the complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, the Complainant shall be referred to the County Solicitor or the County's Freedom of Information Coordinator to have the matter reviewed under said Act.

6.0 Making a Complaint

6.1 Any Legal Person may act as a Complainant.

6.2 Complaints can be made by completing the form in Schedule A to this By-Law, and submitting it directly to the Integrity Commissioner, Chief Administrative

Officer or County Clerk.

6.3 Complaints filed with the Chief Administrative Officer or County Clerk will be forwarded to the Integrity Commissioner without delay and without added comment.

6.4 A Complaint shall not be made available to the public except by court order. Advice provided by the Integrity Commissioner may be released if written consent from the Member is given or if the Integrity Commissioner decides it is necessary as outlined in Section 223.4.1 of the *Municipal Act, 2001, S.O. 2001*.

7.0 Limitation Period

7.1 The Integrity Commissioner shall only proceed with an inquiry about a Complaint filed less than 180 days after the date when the event or the last event of a series of events which are the subject matter of the Complaint occurred, except when:

- a) the delay was incurred in good faith;
- b) it is in the public interest to proceed with an inquiry; and
- c) no substantial prejudice will result to any person because of the delay.

8.0 Conduct of Inquiry

8.1 The Integrity Commissioner will decide if the complaint should be referred to other authorities (example: police).

8.2 The Integrity Commission may refuse to investigate if he or she determines that:

- a) The complaint is outside of the jurisdiction of the Integrity Commissioner;
- b) The complaint is frivolous or vexatious in nature;
- c) The complainant fails to demonstrate that the complaint is meaningful; or
- d) The complainant fails to provide requested additional information or clarification.

8.3 Where, pursuant to section 8.2, the Integrity Commissioner decides not to proceed with an inquiry, he or she shall prepare and file a report under section 9.1, which applies with necessary modifications, setting out that decision.

8.4 Where the Integrity Commissioner has determined that it is appropriate to investigate, the Integrity Commissioner shall conduct an inquiry promptly and thoroughly. The Member who is the subject of the Complaint is given an opportunity to know the nature of the Complaint against him or her and to provide input about the Complaint to the Integrity Commissioner. Notice of the investigation shall be given to the member outlining the complaint and including an initial opportunity to respond before the investigation commences formally.

- 8.5 Information given to the Member about the nature of the Complaint will be used by the Member only to make representations about the Complaint to the Integrity Commissioner.
- 8.6 In conducting an inquiry into a Complaint regarding a Member, the Integrity Commissioner may exercise any power given under this By-law or under Part V.1 of the *Municipal Act, 2001* including the power to compel witnesses to testify and to compel the production of documents under the *Public Inquiries Act, 2009*.
- 8.7 Where the Complainant provides additional information under section 8.3, the Integrity Commissioner shall consider all of the information provided and shall reassess whether there is sufficient information to set out an apparent contravention of the Code of Conduct or other procedures, rules or policies governing a Member's ethical behaviour.
- 8.8 Once an inquiry is stayed, if new information becomes available and contravenes the Code of Conduct or other procedures, rules or policies governing the Member's ethical behavior, the Integrity Commissioner shall reopen the inquiry.

9.0 Responsibilities During Investigations

- 9.1 Where the Integrity Commissioner has received a Complaint regarding a Member, the Integrity Commissioner shall prepare and file with the County Clerk a report to Council regarding their inquiry into the Complaint on the earliest date after making a decision and no later than 60 days after receiving the Complaint.
- 9.2 The report filed under section 9.1 shall include:
- a) the nature of the Complaint;
 - b) if the Complaint was filed after the expiry of the time limit of 180 days under section 7.1, the Integrity Commissioner's findings regarding 7.1a), b) and c);
 - c) the evidence gathered from the Complaint and from the inquiry;
 - d) the Integrity Commissioner's findings of fact regarding the Complaint made in accordance with the civil standard of the balance of probabilities;
 - e) the Integrity Commissioner's opinion, based on the findings of fact, that the Member contravened or did not contravene the Code of Conduct or other procedures, rules or policies governing a Member's ethical behaviour;
 - f) where the Integrity Commissioner decides that the Member has contravened the Code of Conduct or other procedures, rules or policies governing the member's ethical behaviour, the penalty under section 10.1, if any, to be imposed, including a copy of a letter of reprimand, if imposed, or a copy of the notice of suspension of remuneration, if imposed.

- 9.3 Where, in the opinion of the Integrity Commissioner, it is not possible to prepare and file a report to Council within the time set out in section 9.1, the Integrity Commissioner shall advise Council of this together with:
- a) the reasons for their inability to prepare and file the report; and
 - b) the date on or before which the report will be prepared and filed.
- 9.4 The Integrity Commissioner shall complete a preliminary report on the investigation and provide such to the Member to rebut or question prior to preparation of the final report outlined in Section 9.5 and 9.6.
- 9.5 The Integrity Commissioner may make interim report(s) to Council where necessary and as required to address any issues of interference, obstruction, delay, or retaliation encountered during the investigation.
- 9.6 The Integrity Commissioner shall provide a copy of their report filed under section 9.1 to the Complainant, to the Member who is the subject of the Complaint and to all other Members at the same time as filing the report with the County Clerk.
- 9.7 Where the Integrity Commissioner's delegate under section 13.1 decides that a Member has contravened the Code of Conduct or other procedures, rules or policies governing the Member's ethical behaviour, but that the Member was acting in accordance with the Integrity Commissioner's advice given under section 5.1 and had, before receiving this advice, disclosed to the Integrity Commissioner all the relevant facts that were known to the Member, the delegate shall so state in the report under section 9.1 and no penalty shall be imposed.
- 9.8 The County Treasurer shall ensure the remuneration of the Member is suspended in accordance with the notice of the Integrity Commissioner under section 9.2(f).
- 9.9 Where the Integrity Commissioner has filed a report in respect of an inquiry with the County Clerk under Section 9.1, the Clerk shall place the report on the next available Council Agenda as an information item.

10.0 Penalties

- 10.1 The penalties for a Member who contravenes the Code of Conduct or other procedures, rules or policies governing the Member's ethical behaviour shall be imposed by Council and authorized under subsection 233.4(5) of the *Municipal Act, 2001*, namely:
- a) a reprimand;
 - b) suspension of remuneration paid to the Member in respect of the Member's services for a period of up to 90 days.
- 10.2 Council shall exercise the power to impose the penalties.

- 10.3 A penalty imposed by Council takes effect immediately upon the filing of the Integrity Commissioner's report on the inquiry.

11.0 Confidentiality

- 11.1 The Integrity Commissioner and any person acting under his or her authority shall preserve the confidentiality of all documents, material or other information, whether belonging to the County or not, that come into his or her possession or knowledge during the course of duties or the investigation as required by section 223.5 of the *Municipal Act, 2001*.
- 11.2 Section 223.5(3) of the *Municipal Act, 2001*, says that the confidentiality of this complaints process prevails over the *Municipal Freedom of Information and Protections of Privacy Act*.
- 11.3 The Integrity Commissioner is entitled to have access to such information belonging to or used by the County, including legal advice that has been given to Council or County Employees, as the Integrity Commissioner deems necessary to conduct an inquiry.
- 11.4 A disclosure to the Integrity Commissioner of legal advice:
- a) shall be deemed not to constitute a waiver of solicitor-client privilege;
 - b) shall be used only for the purpose of conducting an inquiry and not for any other purpose; and
 - c) the contents or substance of such legal advice shall not be disclosed in any public report prepared by the Integrity Commissioner or any person acting under the instructions of the Commissioner, including his or her delegate under section 13.1.
- 11.5 The Integrity Commissioner and every person acting under the instructions of the Integrity Commissioner, including his or her delegate under section 13.1:
- a) shall preserve the secrecy of all confidential documents, material or information, whether belonging to the County or not, that come into their possession or to their knowledge in the course of their duties; and
 - b) without limiting the obligation to preserve secrecy under section 11.4(a), shall ensure that by his or her actions and, in particular, any reports prepared comply at all times with the *Municipal Freedom of Information and Protection of Privacy Act* and with the Council Procedural By-law 4876-14, regarding personal and/or privileged information.

12.0 Complaint and Reporting Exclusion Period

- 12.1 Despite any other provision of this by-law, no Complaint may be referred to the Integrity Commissioner within 150 calendar days immediately prior to the date of a regular election held pursuant to the *Municipal Elections Act, 1996*, S.O. 1996, Chapter 32, as amended.

- 12.2 If the Integrity Commissioner receives a Complaint as described within section 12.1, the Integrity Commissioner shall not start investigating the complaint until the day after the next municipal election.
- 12.3 The Integrity Commissioner shall not make any reports to Council regarding an inquiry in the 150 calendar days prior to a regular municipal election.

13.0 Integrity Commissioner Conflict

- 13.1 The Integrity Commissioner shall, in writing, delegate his or her duties to conduct an inquiry, including the exercise of powers under the *Public Inquiries Act 2009*, the duty to report on an inquiry and the power to impose either of the penalties under section 10.1, where the Integrity Commissioner has an actual or apparent conflict of interest.
- 13.2 In making a delegation under section 13.1, the Integrity Commissioner shall first satisfy himself or herself that the person to whom the duties are to be delegated is fully capable of carrying out these duties.

14.0 General Provisions

- 14.1 Schedule A, the Complaint Form forms and becomes part of this By-law.

THIS BY-LAW read a first, second and third time and finally passed this _____ day of _____, 2017.

Alan Barfoot, Warden

Heather Morrison, Deputy Clerk

Schedule A

Complaint Form