

To: David Creery, Chief Administrative Officer

From: Sunayana Katikapalli, Manager, Legislative Services/ Deputy City Clerk

Re: Integrity Commissioner and Closed Meeting Investigator Appointment

AIM

To seek Council's direction on the termination of the City's current Integrity Commissioner and Closed Meeting Investigator and the appointment of a new Integrity Commissioner and Closed Meeting Investigator.

BACKGROUND

Effective March 1, 2019, section 223.2 and 223.3 of the *Municipal Act, 2001* (the "Act") required municipalities to have a Council Code of Conduct and appoint an Integrity Commissioner. Similarly, section 239.2 of the Act authorizes a municipality to appoint a Closed Meeting Investigator to investigate complaints made as to whether the municipality or local board has complied with the Act with respect to a meeting that was closed to the public. If the municipality does not appoint a Closed Meeting Investigator, the Ontario Ombudsman is automatically appointed to investigate closed meeting complaints. Although the services can be provided by the Ombudsman, having an appointed Closed Meeting Investigator provides staff and Council with a resource to discuss closed meeting questions and concerns or request advice regarding the eligibility of potential closed meeting matters.

At the February 2nd, 2023, Regular Council Meeting, Woodstock City Council passed the following motion:

That Woodstock City Council authorize the Mayor and Clerk to sign an agreement to appoint Robert Swayze as Woodstock's Integrity Commissioner and Closed Meeting Investigator for a four-year term.

Woodstock City Council appointed its current Integrity Commissioner and Closed Session Investigator, Robert Swayze for the term of March 1, 2023, to February 28, 2027. Staff felt confident recommending Mr. Swayze as Woodstock's Integrity Commissioner and Closed Meeting Investigator because he was the same Integrity Commissioner used by the County of Oxford. This provides consistency for Councillors who are also members of County Council as well as members of the public who are submitting a complaint.

COMMENTS

The Act requires municipalities to provide the public with access to an Integrity Commissioner by either appointing their own or making arrangements with an Integrity Commissioner from another municipality. The Integrity Commissioner reports directly to Council and is responsible for performing the functions assigned by the municipality in an independent manner. The functions can include any of the following:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards.

2. 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.
3. The application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to members of council and of local boards, which includes direct or indirect pecuniary interests.
4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member (these requests must be made in writing).
5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members (these requests must be made in writing).
6. Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act* (these requests must be made in writing).
7. The provision of educational information to members of council, members of local boards, the municipality, and the public about the municipality's codes of conduct for members of council and members of local boards and about the *Municipal Conflict of Interest Act*.

The County of Oxford recently undertook a search for a new Integrity Commissioner and Closed Meeting Investigator. The County has appointed Aird and Berlis LLP, lead by lawyer John Mascarin, to fill the role. As such, many lower-tier municipalities in Oxford are now doing the same.

Aird and Berlis is a prominent Canadian law firm with a well-established local, national and international reputation. Five of the firm's lawyers have been named Municipal Law "Lawyer of the Year" for Toronto by *The Best Lawyers in Canada*, including John Mascarin, the lead lawyer.

Aird and Berlis is the Integrity Commissioner for some 70 public sector entities in Ontario, as well as appointed Closed Meeting Investigator for dozens more and also a municipal Ombudsman for a smaller number of municipalities. They have also been appointed the Closed Meeting Investigator for Local Advisory Services (LAS), a business services provider for Ontario municipalities and the public sector, which includes another 120+ municipalities.

They have drafted, reviewed and updated codes of conduct, complaint protocols, council-staff relations policies and many other municipal policies for local governments. They are also proficient and expert educators, having provided training sessions for many municipalities on the municipal accountability framework and the *Municipal Conflict of Interest Act*, as well as on open/closed meetings.

Their team's knowledge of municipal law demonstrates that they comprehend, appreciate and discern the complexities of the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act*.

Staff recommend that a contract with Aird and Berlis be for the remainder of the existing term that has been established with Mr. Swayze - i.e., February 28, 2027. The current contract

requires 30 days for notice of termination which would be given to Mr. Swayze following Council's approval.

The actuals for the budget line for Council's Integrity Commissioner and Closed Meeting Investigator are variable each year as it is dependent on the number of complaints/inquiries. The budget impact for 2025 is estimated to be an increase of \$15,000. Staff recognize that the quoted fees are higher but would like to note that this is because there are seven practicing lawyers included in the contract with Aird and Berlis (note that Mr. Swazey is currently a retired municipal lawyer who is no longer practicing).

RECOMMENDATION

That Woodstock City Council terminate the Integrity Commissioner & Closed Meeting Investigation Agreement between the Corporation of the City of Woodstock and Robert J. Swayze;

And further that City Council authorize the Mayor and Clerk to sign an agreement to appoint Aird & Berlis LLP as Woodstock's Integrity Commissioner and Closed Meeting Investigator for a term ending February 28, 2027.

Authored by: Sunayana Katikapalli, Manager, Legislative Services/ Deputy City Clerk

Approved by: Amy Humphries, Deputy Chief Administrative Officer/City Clerk

Approved by: David Creery, Chief Administrative Officer