

For Information Only

Integrity Commissioner Report

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Recommendation

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Background

As part of the City of Greater Sudbury's commitment to transparency and accountability, Mayor Marianne Matichuk brought forward a motion to establish an Office of the Integrity Commissioner for the City of Greater Sudbury which was carried by Council on July 9th, 2013. This motion directed staff to bring forward a report to Council which included: 1) suggested mandate for an Integrity Commissioner based on models from other Ontario cities; 2) the financial implications of establishing such an office on a part-time or retainer basis; and 3) an implementation plan for such an office.

Several municipalities across Ontario have an Integrity Commissioner established or are in the processes of reviewing their needs to do so. The City of Ottawa presented a thorough and informative report to their Council on June 29th, 2012, parts of which were used for the development of this report with their permission. Several other municipalities have also turned to this well researched report for information.

Legislated Role of Integrity Commissioner

Section 223.3(1) of the revised *Municipal Act, 2001* provides the municipality with the legislative authority to appoint an Integrity Commissioner and outlines the basic powers and responsibilities of that office. It enables Council to authorize the Integrity Commissioner to oversee any or all of the policy matters surrounding the enforcement of Codes of Conduct for elected officials and/or members of local boards. It outlines the Integrity Commissioner's powers of inquiry, sanction and delegation as well as confidentiality and reporting requirements as follows:

- Under the Act, an Integrity Commissioner is legislated to:
 - Report direct to Council on matters related to the Code of Conduct for Council and/or local boards;
 - Undertake investigations into complaints against members of Council and/or local boards alleging contraventions of the application of the code of conduct; and
 - Make all reports public while maintaining confidentially regarding personal identity information.

Other Duties

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Under the Act, municipalities have the discretion to include other duties to suit their particular needs. Many other municipalities have chosen to do so. These can include:

- Provide advice to Members of Council on ethical behaviour;
- Provide education to Members of Council on the application of a Code of Conduct for Members of Council;
- Assist in the development of the policies and processes for the Integrity Commissioner's Office including input into the development of a thorough Code of Conduct for Council;
- Provide reports to Council on a regular basis on findings from any investigations, a summary of complaints received and advice provided, and any recommendations for changes to the approved processes; and
- Act as the City's Meetings Investigator and the City's Lobbyist Registrar in accordance with the duties set out in the reports establishing those offices.

Providing Advice and Education

Having an educational and advisory component built into the mandate of the Integrity Commissioner is common amongst other municipalities reviewed for this report. This component will assist in helping Members of Council and the public understand how the City's accountability policies are applied in day-to-day situations. This would ensure that the Integrity Commissioner is made readily available to Members of Council to provide advice in a timely matter. While not mandatory, it is also common to bind the Integrity Commissioner and elected officials to the advice provided by the Integrity Commissioner so that if the advice provided is followed, the Integrity Commissioner would stand behind the advice should a complaint be lodged. The Integrity Commissioner's individualized advisory responsibilities should then be limited to those to whom the Code applies. In most municipalities where the Integrity Commissioner is mandated with this advisory role, they are required to provide summaries of their advice which is posted on a regular basis on the municipality's website to provide an understanding to the public of how the rules are being applied. It is important to note that under the legislation, an Integrity Commissioner cannot provide Members of Council with specific legal advice or other advice related to the *Municipal Conflict of Interest Act*.

Development of Policies and Procedures

The Integrity Commissioner can also be empowered to develop the office's policies and procedures, and that these policies and procedures be reviewed and renewed on a regular basis. This would include the establishments of processes for receiving, reviewing, and investigating complaints. While requests for an investigation can be made by Council as a whole, an individual member of Council, or a member of the public, they are generally received and processed by the Clerks department. Many municipalities have anecdotally reported that this level of support results in significant workload for the clerks department and therefore requires resources beyond the costs outlined in the above chart. These costs are not directly recorded as costs of establishing the Integrity Commissioner office however do have an impact on municipalities. The Integrity Commissioner should work with staff to ensure that processes reflect the current processes already established and are as efficient as possible.

This role may also include the development of a comprehensive Accountability Bylaw which would outline the roles and responsibilities of the various accountability partners, such as the Auditor General, Meetings Investigator, Lobbyist Registrar and Integrity Commissioner, to ensure a collaborative and thorough approach to transparency across City functions. This Bylaw could provide the Integrity Commissioner with the authority to develop the protocols and policies that allows for the implementation of the education and advisory components into their position, as well as providing input into the development of a thorough Code of Conduct. Again staff input would ensure that the processes developed in this Bylaw reflect current practice and can be effectively implemented.

Role as Meetings Investigator and Lobbyist Registrar

In some jurisdictions the Integrity Commissioner is also made responsible for fulfilling the additional roles of Lobbyist Registrar and Meetings Investigator. Similar to the provincial Integrity Commissioner who also acts as Lobbyist Registrar and oversees a number of other pieces of legislation related to ethical behaviour, the Integrity Commissioner would be delegated the duties of these additional integrity officers.

Contraventions of the Code of Conduct

The *Municipal Act, 2001* authorizes a Municipal Council to impose a penalty, where an Integrity Commissioner reports to the Council that, in his or her opinion, the Member has contravened the Code of Conduct. Penalties are limited to a reprimand or a suspension of the remuneration paid to the Member, in respect to his or her services, as a Member of Council, for a period of up to 90 days. Some municipalities have incorporated provisions into their Codes of Conduct for other types of actions, including suspending or cancelling a Member's expense allocation, requiring a Member to issue an apology, return a gift, or refund the value of a gift or benefit received however these cannot be enforced under the Act.

Greater Sudbury's Code of Conduct

Appendix B of Greater Sudbury's Procedural Bylaw 20122-235 outlines a Code of Ethics for Members of Council. While this provides a basic framework for ethical behavior for Council, it lacks the depth and detail that other Municipalities have incorporated into a full Code of Conduct. A thorough Code of Conduct should be designed to be a framework around which an ethical culture is built. It is impossible for a Code of Conduct to cover or take into account the complexities of every given situation; however there are many examples from other municipalities of thorough Codes of Conduct which have benefitted from the input of an Integrity Commissioner in their development. Once a Code of Conduct has been developed, most municipalities have made them publically available via the City's website.

Appointment of the Integrity Commissioner

Across Ontario, various Municipalities have opted to appoint an Integrity Commissioner. Overwhelmingly, this appointment is done on a retainer contract basis with an agreed upon hourly rate for investigations and educational sessions. Appendix A provides a chart of the various Municipalities with Integrity Commissioners along with their method for remuneration where the information was publically available. It is important that the office of the Integrity Commissioner be separate from City administration, however in many cases the office is supported by staff from the Clerk's department. Several municipalities have expressed concerns over the significant workload associated with investigations and the high costs of completing this work that are not captured the remuneration costs for the Integrity Commissioner's direct services.

Remuneration

Remuneration for Integrity Commissioners varies throughout the Province. Some municipalities have opted to create a more permanent office and hire the Integrity Commissioner on a part time basis. Salaries in the two municipalities who have chosen to do this, Toronto and Vaughan, exceeded \$100,000 in 2012. Other municipalities, such as Sault Ste. Marie, have retained the services of an Integrity Commissioner for a singular investigation. In these cases, the Integrity Commissioner is not used for any additional duties on an ongoing basis and no retainer fee exists.

As mentioned above, most municipalities appoint an Integrity Commissioner by annual retainer. The annual retainer varies significantly depending on the size of the municipality and ranges anywhere from approximately \$1000 per

year to \$10,000 per year. The hourly wage also varies; from approximately \$150 per hour to approximately \$400 per hour. In most cases, expenses for travel and incidentals are also covered on a per diem agreement. For budgeting purposes, some municipalities have set a maximum yearly amount that can be spent on the service of the Integrity Commissioner. The annual retainer and hourly wage should be high enough to retain a highly qualified individual but can be based on comparable communities. The table below is a condensed version of Appendix A, specifically highlighting the remuneration strategies and financial costs of comparable municipalities (where information was available) both in population size and others from Northern Ontario.

Municipality	Population	Integrity Commissioner	Term of Office	Cost
City of Barrie	128 430	Suzanne Craig	Held on Retainer	Retainer: \$1000/year Hourly Rate: \$125 + expenses
City of Guelph	114 943	Robert Swayze	Held on Retainer	Retainer: \$5000/year Hourly Rate:\$235
City of Kingston	117 207	Approved by Council Jan. 2014 not yet hired	TO BE Held on retainer	TO BE determined as part of the RFP process
City of Kitchener	204 668	Greg Lavine	Held on Retainer	Retainer: \$2000/year Hourly Rate: \$150
City of Markham	261 573	Donal Cameron (ADR Chambers)	Held on Retainer	Retainer: \$20,000/year Hourly Rate: \$509
Town of Richmond Hill	162 704	David Tsubouchi	Held on Retainer	Retainer: \$25,000/year Hourly Rate: unknown Max \$40K annual budget
City of Sault St. Marie	74 948	Ben Pascuzzi	No ongoing contract	Used for one investigation
City of St. Catharine's	131 989	Suzanne Craig	Held on Contract	No annual retainer Hourly Rate: \$150
City of Waterloo	97 475	Greg Lavine	Held on Retainer	Retainer: \$2000/year Hourly Rate:\$150 +expenses
City of Windsor	216 473	Bruce Elman	Held on Retainer	Retainer: \$12000/year Hourly Rate: \$300/hour

Term of Office and Hiring Process

Municipalities also tend to set a defined term for the Integrity Commissioner’s office. This ensures the security of tenure as well as flexibility for the Integrity Commissioner to determine an appropriate working relationship with Council. Several municipalities have chosen to appoint their Integrity Commissioner on a one year term with an optional renewal for a five-year term.

Several municipalities have delegated the hiring of the Integrity Commissioner to the City Clerk and City Solicitor under the guidance of specific hiring criteria, while others have developed hiring committees comprised of 1 or 2 members of City Council along with members of City staff. In some cases, a more formal RFP process was used to acquire the services with evaluations following the more formal purchasing protocols.

Conclusion

Several municipalities across Ontario have an Integrity Commissioner established or are in the processes of reviewing their needs to do so. The Integrity Commissioner as described under the Municipal Act can act as an independent party to enforce a Council Code of Conduct. The Integrity Commissioner model has been implemented in numerous jurisdictions and has been used to settle a wide range of concerns. A complete implementation plan requires Council direction regarding the duties of an integrity commissioner as described above, the formation of a selection process for the services, and the type of remuneration as well as set a budget and term for the office.