

The Corporation of the City of Pembroke

By-Law Number 2018-53

A By-law to appoint an Integrity Commissioner and Closed Meeting Investigator

Whereas the Municipality is authorized pursuant to Subsection 223.3 of the *Municipal Act, 2001* (the *Act*), as amended, to appoint an integrity commissioner (the "Integrity Commissioner") who has the function to investigate in an independent and confidential manner, a complaint made to him or her by any person, as to whether a member of council or a member of a local board has complied with the Code of Conduct or other ethics-related policies, rules or procedures, and to report on the investigation;

Whereas the Municipality is authorized, pursuant to Subsection 239.2 of the *Act* to appoint an investigator who has the function to investigate in an independent and confidential manner, a complaint made to him or her by any person as to whether council has complied with the *Act* with respect to a closed meeting, and to report on the investigation;

Whereas the Municipality intends that the Integrity Commissioner shall exercise all powers available at law once such powers are available, this contract shall empower the Integrity Commissioner to act in accordance with the amendments to the *Act* under the terms of this contract after March 1, 2019 without further amendment to this contract;

Whereas the Consultant has represented, and the Municipality is satisfied, that the Consultant has the skills and abilities necessary to perform the role of the Integrity Commissioner and Closed Meeting Investigator;

Whereas the Municipality wishes to retain the Consultant as an independent Integrity Commissioner and Closed Meeting Investigator for the Municipality;

Now Therefore the Municipal Council of the Corporation of the City of Pembroke enacts as follows:

1. That Tony Fleming is hereby appointed Integrity Commissioner and Closed Meeting Investigator for the City of Pembroke effective January 1, 2019 for a three-year term.
2. That the Mayor and CAO/Clerk are authorized to enter into the Professional Services Agreement, attached as Schedule A and forming part of this by-law.
3. This by-law shall come into force and take effect upon the date of the final passing thereof.

Passed and Enacted

This 20th Day of November 2018

Michael LeMay
Mayor

Terry Lapierre
Chief Administrative Officer/Clerk

Integrity Commissioner/Closed Meeting Investigator Services

This Agreement dated this 20th day of November 2018.

Between:

The Corporation of the City of Pembroke (hereinafter referred to as the "City")

and

Cunningham Swan Carty Little & Bonham L.L.P. (hereinafter referred to as "the Consultant")

Whereas the City is authorized, pursuant to Subsection 223.3 of the Municipal Act, 2001 (the Act), as amended, to appoint an integrity commissioner (the integrity Commissioner") who has the function to investigate in an independent and confidential manner, a complaint made of him or her by any person, as to whether a member of council or a member of a local board has complied with the Code of Conduct or other ethics-related policies, rules or procedures, and to report on the investigation.

And Whereas the City is authorized, pursuant to Subsection 239.2 of the Act to appoint an investigator who has the function to investigate in an independent and confidential manner, a complaint made to him or her by any person as to whether council has complied with the Act with respect to a closed meeting, and to report on the investigation;

And Whereas the Act has been amended to include additional powers of Integrity Commissioners, effective March 1, 2019;

And Whereas the City intends that the Integrity Commissioner shall exercise all powers available at law once such powers are available, this contract shall empower the Integrity /Commissioner to act in accordance with the amendments to the Act under the terms of this contract after March 1, 2019 without further amendment to this contract;

And Whereas the Consultant has represented, and the City is satisfied that the Consultant has the skills and abilities necessary to perform the role of the Integrity Commissioner and Closed Meeting Investigator;

And Whereas the City wishes to retain the Consultant as an independent Integrity Commissioner and Closed Meeting Investigator for the City;

Now therefore in consideration of the covenants, terms and conditions contained herein, the City and the Consultant agree as follows:

Powers and Duties

1. The City hereby retains and appoints the Consultant as an Integrity Commissioner for the City and the Consultant accepts such appointment and agrees to carry out the responsibility of the Integrity Commissioner, as more specifically described in the Statement of Duties and Responsibilities, attached as Schedule "A" to this Agreement, during the term of this Agreement.
2. The Integrity Commissioner shall have all of the powers set out in Section 223.1 to 223.8 of the Act, as amended from time to time.
3. The City hereby retains and appoints the Consultant as a Closed Meeting Investigator for the City and the Consultant accepts such appointment and agrees to carry out the responsibility of the Closed Meeting Investigator, a more specifically described in the Statement of Duties and Responsibilities, attached as Schedule "A" to this Agreement, during the term of this Agreement.

4. The closed Meeting Investigator shall have all of the powers set out in Section 239.2 of the *Act*, as amended from time to time.
5. The Consultant shall draft a Code of Conduct for Council/Local Boards and Committees, a Council/Staff Relations Policy and conduct training for New Council and Staff in December of 2018.

Term of Agreement

6. The Consultant's appointment pursuant to this Agreement is effective on January 1, 2019 and will continue for a period of three (3) years, unless terminated earlier in accordance with this clause. Notwithstanding the above, the Parties agree that the Consultant shall undertake the drafting of the Code of Conduct for Council/Local Boards and Committees, a Council/Staff Relations Policy and conduct training for New Council and Staff in December of 2018. This Agreement may only be terminated in accordance with the following:
 - a. The City may be released from the Agreement at any time, with 30 days written notice.
 - b. The Consultant shall provide thirty (30) days written notice to the City of his intention to resign as the City's Integrity Commissioner and his resignation shall only be effective at the expiry of the notice period.

Records

7. All records are the property of the City and the records should be submitted to the Clerk associated with the municipal record upon termination of the contract.

Renewal

8. The Consultant's appointment pursuant to this Agreement may be renewed for a further three (3) years on the same terms and on the mutual agreement of the Parties.

Compensation

9. The Consultant will not require an annual retainer and will provide services on an as needed basis.
10. The City agrees to pay to the Consultant an hourly fee of two Hundred and Ninety-Five Dollars (\$295.00) per hour, plus applicable taxes, during such time that the Consultant is actively carrying out his duties pursuant to this Agreement. The Consultant shall provide the City with a monthly invoice detailing the hours worked and expenses incurred for the period in question and the City agrees to pay such invoices within thirty (30) days of the receipt thereof.
11. The City agrees to reimburse the Consultant for all reasonable expenses and disbursements, including mileage, incurred by the Consultant which are necessary to enable the Consultant to perform his duties pursuant to this Agreement. All such expenses must be supported by appropriate receipts.
12. The Consultant shall draft a Code of Conduct for Council/Local Boards and Committees, a Council/Staff Relations Policy and conduct training for New Council and Staff in December of 2018 for an agreed-upon fee of four thousand dollars (\$4,000), plus travel disbursements as necessary. If this work is cost-shared with other municipalities, those arrangements will be agreed-upon by the parties in advance of commencing the work.

Consultant Status

13. In performing his duties and responsibilities as Integrity Commissioner/Closed Meeting Investigator pursuant to this Agreement, it is recognized that the Consultant is independent of the City's administration and shall report directly to Council.
14. The Consultant acknowledges that he is an independent contractor and shall not be deemed an employee of the City, for any purpose. The Consultant further acknowledges that, as an independent contractor, he will not be entitled to any employment-related benefit, including such benefits that are applicable to employees of the City.
15. In light of the Consultant's status as an independent contractor, the City shall have not responsibility whatsoever with regard to any income taxes or any other emittances which may be payable by the Consultant on the fees paid under this Agreement. The City assumes no obligation or liability as between the Parties to deduct or remit any statutory or government remittances.

Confidential Information

16. The Consultant acknowledges that the City is an institution for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*. Accordingly, the Consultant undertakes not to disclose information subject to the *MFIPPA* except as may be necessary in the proper discharge of his duties and responsibilities pursuant to the terms of this Agreement and in accordance with the *MFIPPA*.
17. This Article shall survive the termination of this Agreement.

Delegation

18. In the event that more than one complaint is made at any time requiring more than one investigation and the Consultant determines it to be necessary to delegate some or all of his powers and duties, then he may do so in writing to any person other than a Member of Council, provided that the person to whom such a delegation is made possesses the requisite skills and abilities and agrees in writing to be governed by the same duties of confidentiality as the Consultant and to abide by the terms and conditions of this Agreement. The Consultant shall not assign or sublet the whole or any part of this Agreement without the prior written consent of the City.

Insurance

19. The Consultant shall, at its expense, obtain and keep in force during the term of this Agreement. Comprehensive General Liability Insurance satisfactory to the City, including the following:
 - a. Insurance shall be issued on an occurrence basis for an amount of not less than \$2,000,000 per occurrence/\$2,000,000 aggregate for any negligent acts or omissions by the vendor relating to its obligations under this Agreement. Such insurance shall include, but is not limited to bodily injury and property damage including loss of use; personal & advertising injury; contractual liability; premises, property & operations; non-owned automobile; broad form property damage; owners & contractors protective; occurrence property damage; product & completed operations; employees as Additional Insured(s); contingent employers liability; tenants legal liability; cross liability and severability of interest clause. Such insurance shall not contain a failure to preform exclusion.

- b. The Consultant shall also, at its expense, obtain and keep in force during the term of this Agreement errors and omissions insurance satisfactory to the Municipalities in an amount of at least \$5,000,000.
- c. The Consultant is required to submit insurance documents listing all coverages and amounts as indicated, in a form satisfactory to the Municipalities, upon the signing of the Agreement.

WSIB

- 20. The Contractor is required to submit the Workplace Safety and Insurance Board (WSIB) Clearance Certificate, in a form satisfactory to the City, upon the signing of the Agreement.

Indemnity

- 21. The City hereby agrees to indemnify and save harmless the Consultant and his delegates from and against any and all liabilities, losses, expenses, costs (including legal costs), demands, damages, suits, judgments, penalties, expenses and liabilities of any kind or nature whatsoever arising out of the carrying out by the Consultant and his delegates in good faith of their duties and responsibilities under this Agreement including, but not limited to, any alleged breach of this Agreement, any procedural defect or other breach of the relevant statutory provisions.
- 22. The consultant shall indemnify and hold the City harmless from and against any alleged breach of this Agreement, any procedural defect or other breach of the relevant statutory provisions or against any liability, loss, claims, demands, costs (including legal costs), damages, suits, judgments, penalties, and expenses, including reasonable legal fees, occasioned wholly or in part by any bad faith by the consultant, their agents, officers, employees or other persons for whom the consultant is legally responsible.

General Provisions

- 23. This Agreement shall be governed by and construed exclusively in accordance with the laws of the province of Ontario.
- 24. If any provision of this Agreement is declared to be void or unenforceable, such provision shall be deemed to be separate from the remainder of this Agreement to the extent of the particular circumstances giving rise to such declaration, and such provision as it applies to other persons and circumstances and the remaining terms and conditions of this Agreement shall remain in full force and effect.
- 25. This Agreement, along with the attached Schedule(s), constitutes the entire agreement between the Parties and supersedes all previous negotiations, understandings and agreement, whether verbal or written with respect to any matters referred to in this Agreement.
- 26. This Agreement shall ensure to the benefit of, and be binding on, the Parties and their successors and assigns.

The Parties have executed this Agreement this 20th day of November, 2018

The City

The Corporation of the City of Pembroke

Terry Lapierre
Chief Administrative Officer/Clerk

Michael LeMay
Mayor

“We have the authority to bind the corporation”

Consultant

Cunningham, Swan, Carty, Little & Bonham LLP

“I have the authority to bind the Corporation”

Schedule "A"

Statement of Duties and Responsibilities

The duties of the Integrity Commissioner/Closed Meeting Investigator shall be:

Education and Advice

1. To provide advice, education, and training on the Council Code of Conduct to Members of Council and those to whom the Code applies, either collectively or individually;
2. To provide advice, education, and training on the Code of Conduct for Local Boards (if applicable) to the Members of the Local Board and those to whom the Code applies, either collectively or individually;
3. To provide advice and opinions to Members of Council and those to whom the Code applies, either collectively or individually, with respect to the *Municipal Conflict of Interest Act*, the Code of Conduct and other procedures, rules and policies of the City governing ethical behaviour.
4. To provide advice and opinions to the Chair, Members of Local Boards and those to whom the Code applies, either collectively or individually, with respect to the *Municipal Conflict of Interest Act*, the Code of Conduct and other procedures, rules and policies of the City governing ethical behaviour.
5. To provide educational information to the City and the public about the City's codes of conduct for members or council and members of local boards (if applicable), and about the *Municipal Conflict of Interest Act*.
6. To develop policies and procedures for the Office of the Integrity Commissioner, and to review these on an annual basis.
7. To review the Code of Conduct for Members of Council and the Code of Conduct for Members of Local Boards (if applicable) and any related policies and procedures, as required, and to make recommendations for any needed changes in respect thereof;
8. To assist with the creation of a Council-Staff Relations Policy.
9. To undertake training for Council and Local Boards, as applicable, on the Code.

Investigations

10. In accordance with the Code of Conduct for Members of Council and the Code of Conduct for Members of Local Boards (if applicable), other applicable ethics-related policies, rules or procedures, the requirements for Closed Meeting Investigations and the policies and procedures for conducting investigations, to engage in dispute resolution activities as deemed appropriate in advance of or as part of any investigation.
11. In conducting any investigations under this Agreement, to have regard to the importance of:
 - a. the investigator's independence and impartiality;
 - b. confidentiality with respect to the investigator's activities; and
 - c. the credibility of the investigator's investigative process;
12. To conduct investigations from time to time upon receipt of a request for investigation (a "Request") in respect of complaints and alleged breaches of the Code of Conduct for Members of Council and the Code of Conduct for Members of Local Boards (if applicable), Closed Meeting complaints or other

applicable ethics-related policies, rules or procedures and the provide recommendations based on the outcome of the investigation;

13. To proceed without undue delay and with due diligence to investigate a Request and to report to Council within a reasonable period of time;
14. To conduct each investigation in private and to not disclose the identity of the complainant to any person/body unless written authorization to do so is obtained from the complainant;
15. To hear or obtain information from such persons as the Integrity Commissioner/Closed Meeting Investigator thinks fit and to make such inquiries as he/she thinks fit;
16. To provide an opportunity to the City or any person that may be adversely affected by a proposed report of the Integrity Commissioner/Closed Meeting Investigator, the opportunity to make representations respecting such report or recommendation;
17. To preserve confidentiality and secrecy with respect to all matters that come to his or her knowledge in the course of performing duties hereunder, save and except disclosure of such matters as in the Consultant's opinion ought to be disclosed in order to establish grounds for his/her conclusions and recommendations:
18. After making an investigation into an alleged breach of the Council Code of Conduct or the Closed Meeting requirements, the Integrity Commissioner/Closed Meeting Investigator shall render his/her opinion as to whether or not a member of Council has contravened the Council Code of Conduct or whether Council has breached the Closed Meeting requirements of the Act and make recommendations as necessary;
19. After making an investigation into an alleged breach of the Code of Conduct or the Closed Meeting requirements for Local Boards (if applicable), the Integrity Commissioner/Closed Meeting Investigator shall render his/her opinion as to whether or not a member of the Local Board has contravened the Council Code of Conduct or whether the Local Board has breached the Closed Meeting requirements of the Act and make recommendations as necessary;
20. After making an investigation into an alleged breach of *the Municipal Conflict of Interest Act*, the Integrity Commissioner shall render an opinion as to whether or not a Member of Council or a Member of a Local Board has contravened the Act, and if so whether any sanction or further action is recommended;