

Staff Report 2019-0276

Meeting Date: December 3, 2019
Subject: Integrity Commissioner Appointment
Submitted By: Chad Curtis, Specialist, Legislative Services

RECOMMENDATION

That John E. Fleming be appointed as the Integrity Commissioner for the Town of Caledon from January 1, 2020 to December 31, 2023 for a fee of \$40,000 for a 4-year agreement, and

That a by-law to establish the Office of the Integrity Commissioner be enacted.

REPORT HIGHLIGHTS

- In 2018, Council approved extending the contract with John E. Fleming as the Town's Integrity Commissioner (IC) for a period of one year expiring on December 31, 2019.
- At the October 29, 2019 Code of Conduct Committee meeting, members discussed the current Integrity Commissioner and their satisfaction of the services provided.
- Staff recommend appointing John E. Fleming as the Integrity Commissioner for a period of four years expiring on December 31, 2023.
- The Integrity Commissioner now provides services for both Members of Councils and Designated Boards.

DISCUSSION

The purpose of this report is to recommend the appointment of John E. Fleming as the Integrity Commissioner until December 31, 2023.

Role of Integrity Commissioner

Prior to Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017*, the Integrity Commissioner served an independent advisor to Council on a wide range of issues. With Bill 68 the Integrity Commissioner is now required to provide advice to local boards, referred to as "designated boards" in the proposed Code of Conduct for Member of Council and Designated Boards. The Integrity Commissioner provides Members of Council and Designated Boards with education and advice to assist in maintaining a high standard of accountable and ethical behaviour. The Integrity Commissioner conducts complaint investigations under the Code of Conduct for Members of Council and Designated Boards. Members of Council and Designated Boards are able to make inquiries and obtain advice from the Integrity Commissioner on various issues including the Code of Conduct and receive advice concerning the *Municipal Conflict of Interest Act* to assist them in their role.

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It is not prescribed in either the *Municipal Act*, or the *Municipal Conflict of Interest Act* that the Integrity Commissioner must be a lawyer.

Background

In 2010, Town Council established the Office of the Integrity Commissioner pursuant to the to the *Municipal Act, 2001* and passage of By-law 2010-129, as amended by By-law 2015-090.

In 2017, Bill 68, *Modernizing Ontario's Municipal Legislation Act* amended the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act (MCIA)* to require an Integrity Commissioner and expanded the Code of Conduct to include designated boards amongst other prescribed provisions. In addition, the role of the Integrity Commissioner was expanded to conduct inquiries of alleged breaches of the *MCIA*. In 2018, Council extended the contract of John E. Fleming until December 31, 2019.

Services

In accordance with the existing contract agreement, the proposed agreement attached as Schedule A to Staff Report 2019-0276, the Integrity Commissioner is responsible for providing the following services:

- To provide advice and training to Members of Council and Designated Boards regarding their obligations under the Code of Conduct for Council and Designated Boards and the law in Ontario.
- To conduct inquiries and investigations into alleged contraventions of the Code of Conduct for Members of Council and Designated Boards in accordance with the procedures set out in the Code of Conduct for Members of Council and Designated Boards.
- Make decisions, including the imposition of penalties, in alleged contraventions of the Code of Conduct for Members of Council and Designated Boards.
- To provide advice and conduct inquiries on matters related to the *MCIA*.
- Prepare and deliver an annual report to Council containing a summary of the activities of the office of the Integrity Commissioner during the calendar year; and
- Perform various other services at the request of Council and Designated Boards such as provide written materials for reference, web site distribution, provide oral presentations on ethical obligations and responsibilities, etc.

Annual Reports

In accordance with the existing contract agreement, the proposed agreement attached as Schedule A to Staff Report 2019-0276 includes the provision that Council receives an annual report summarizing the Integrity Commissioner's activities and work over the past year. This report typically includes summaries of meetings held by the Municipal Integrity

Commissioners of Ontario (MICO) and provides updates on activities in other municipalities and best practices for Council members.

Rationale

Mr. Fleming has served as the Town's Integrity Commissioner since 2010. He brings a wealth of experience and knowledge to the Town. Staff believe his experience working in the provincial and municipal sector brings a unique skill set to the position. In addition, Mr. Fleming is well respected among his peers and belongs to MICO participating in its meetings to stay apprised of current issues and trends in Council, ethics/integrity and general practice activities. He possesses a thorough understanding of the Town of Caledon's Code of Conduct for Members of Council and Designated Boards as he has been instrumental in drafting the document. Mr. Fleming is experienced in the duties and expectations of an Integrity Commissioner and has a competitive costing structure.

Mr. Fleming has played a vital role on the Code of Conduct Committee, providing regular feedback on the Code changes and undertaking research in his field designed to provide greater clarity and guidance in the Code. He provided updates to the Committee regarding experiences in the field.

At the October 29, 2019 Code of Conduct Committee meeting, members discussed the current Integrity Commissioner and their satisfaction of the services he provides. At the meeting the Committee expressed support to re-appoint Mr. Fleming as the Town's Integrity Commissioner until 2023. Similarly, Staff have developed a good working relationship with Mr. Fleming during his tenure in the position.

The proposed agreement contains:

- The services the Integrity Commissioner will provide to the Town, Council and Designated Boards
- Details regarding the annual retainer and hourly wage
- Provisions for independent legal advice in respect to his obligations as Integrity Commissioner
- Indemnification to the Integrity Commissioner as required by legislation
- Liability insurance provided by the Town

If Council is supportive of the appointment of Mr. Fleming, a by-law to establish the Office of the Integrity Commissioner and appoint Mr. Fleming will be brought forward to Council's consideration.

If Council is not supportive of the appointment of Mr. Fleming, Staff request that a six-month contract extension be approved to facilitate a selection process suitable to Council (e.g. Expression of Interest, Request for Proposal, or Quotation) to acquire an Integrity

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Commissioner. If this option is selected by Council, Staff will pursue Council's direction to procure an Integrity Commissioner for the period of July 1, 2020 to December 31, 2023.

Procurement Process

Non-standard procurements up to \$50,000 in value are awarded by the Department General Manager and Manager, Purchasing & Risk Management and are reported to Council via memorandum twice annually. All non-standard procurements over \$50,000 require Council approval prior to making an award in accordance with the Town's Purchasing Bylaw No. 2019-24.

FINANCIAL IMPLICATIONS

The costs associated with the Town's Integrity Commissioner services are included in the Corporate Services Legislative Services Contracted Services operating budget. An annual retainer, as per the existing contract, is set at \$10,000 with the option to provide supplemental work as required by the CAO or Clerk, funded by Legislative Services Contracted Services operating budget.

COUNCIL WORK PLAN

The matter contained in this report is not relevant to the Council Work Plan.

ATTACHMENTS

Schedule A: Proposed Agreement with John E. Fleming Occasional Consulting Inc.