	<b>Report Title</b>	Bill 68 Requirements – Integrity Commissioner/Meeting Investigator
	<b>Report No.</b>	CLK 19-06
	<b>Author</b>	Donna Wilson, Town Clerk/ Amelia Jaggard, Legislative Services Coordinator
	<b>Meeting Type</b>	Council Meeting
	<b>Council Date</b>	February 11, 2019
	<b>Attachments</b>	Excerpt from Municipal Act See Agreements under By-Law 4267 and 4268

## RECOMMENDATION

THAT Report CL 19-06, Integrity Commissioner/Meeting Investigator, be received;

AND THAT By-Laws to authorize Agreements with Gregory Stewart to fill the Integrity Commissioner and Closed Meeting Investigator roles for the Town of Tillsonburg for a five year term, be brought forward for Council consideration.

## EXECUTIVE SUMMARY

This report focuses on the legislated requirement to appoint an Integrity Commissioner in accordance with subsection 223.3 (1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 (the “Act”) to comply with changes to the Act that will come into effect on March 1, 2019 as a result of Bill 68, the *Modernizing Ontario’s Municipal Legislation Act, 2017*, (the “Bill 68 Amendments”) receiving Royal Assent on May 31, 2017.

The report also refers to Section 239.2 of the Act, which states, the municipality is authorized to appoint an investigator who has the function to investigate in an independent manner, on a complaint made to him or her by any person, whether the municipality or a local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation.

## DISCUSSION

If the municipality does not appoint their own Meeting Investigator then the Ontario Ombudsman is appointed pursuant to the *Ombudsman Act*. The Ombudsman’s office encourages resolution at the local level before launching an investigation at the provincial level. Messages from the Ombudsman’s office state that Municipality’s should have policies or processes in place in order for the public to obtain a means to file a concern with the local municipality.

The process does not preclude any member of the public who are not satisfied with the resolution of the municipality to then take the matter to the Ombudsman’s Office for review. The Ombudsman has the discretion not to investigate if they feel an investigation is not warranted.

On March 1, 2019 the municipality will be required to appoint an Integrity Commissioner in accordance with subsection 223.3(1) of the Municipal Act, 2001, S.O. 2001, C. 25 (the “Act”) to comply with changes to the Act as a result of Bill 68, the Modernizing Ontario’s Municipal Legislation Act, 2017, receiving Royal Assent. If at that time the municipality has not appointed an Integrity Commissioner, then the municipality will have to make arrangements for all of the responsibilities set out in subsection 223.3 (1) to be provided by a Integrity Commissioner of another municipality. Also, at that time, if a municipality has appointed an Integrity Commissioner under subsection (1), but has not assigned functions to the Integrity Commissioner with respect to one or more of the responsibilities set out in the subsection, the municipality will have to make arrangements for those responsibilities to be provided by a Integrity Commissioner of another municipality.

### **Role of the Integrity Commissioner**

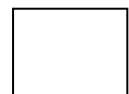
The Integrity Commissioner is an independent and impartial position that reports directly to Council and whose powers and duties are set out in the Act. The excerpt from the Act is attached to this report for Council’s reference. An Integrity Commissioner is required to be independent and impartial with investigative responsibilities prescribed by the Act relating to the ethical conduct of Council and local board members.

### **Prescribed Responsibilities regarding Ethical Conduct**

As of March 1, 2019, subsection 223.3 (1) of the Act will be repealed and the following expanded listing substituted:

#### **Integrity Commissioner**

- (1) Without limiting sections 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 any or all 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.
  4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
  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.



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6. Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.
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*. 2017, c. 10, Sched. 1, s. 19 (1).

## **Inquiries/Complaints**

Section 223.4 of the Act enables an Integrity Commissioner to conduct inquiries of alleged breaches of a municipal/board code of conduct and to report whether a contravention has occurred. The Act gives the Integrity Commissioner broad powers of investigation including: access to records of a municipality or local board, the right to compel persons to testify under oath, and the right to compel production of information from the municipality and local boards (with the exclusion of solicitor-client privileged information). After completion of the investigation, if the Integrity Commissioner reports to the municipality or to a local board, whether in his or her opinion, a member of council or the local board has contravened the applicable code of conduct, the Integrity Commissioner may disclose in the report such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.

An elector or any person acting in the public interest may apply in writing to the Integrity Commissioner for an inquiry of an alleged contravention. No application for an inquiry can take place in an election year from Nomination Day until the end of Voting Day. An inquiry can only be requested within six weeks of the alleged contravention except if the alleged contravention was within the 6 week period prior to Nomination Day and if the application for inquiry was provided within six weeks after Voting Day. The Integrity Commissioner shall complete the inquiry within 180 days after receiving the completed application.

Upon an Integrity Commissioner's finding that a member has contravened the Code of Conduct, the municipality may choose to reprimand or suspend the pay of a member for up to 90 days.

## **Applications related to the MCIA**

It is important to note that Bill 68 Amendments have also provided the Integrity Commissioner with the authority to make application to a judge under the Municipal Conflict of Interest Act (MCIA) for a determination of whether a member has contravened the MCIA. If the Integrity Commissioner chooses to make application to a judge and the Court finds a contravention occurred, then the municipality (or local board) will be required to pay for the costs of the Integrity Commissioner for the court application.

In light of the new requirements to appoint or arrange for the services of an Integrity Commissioner, staff recommend that an appointment by-law be prepared establishing the office of the Integrity Commissioner and further detailing the role, responsibilities and duties of the Integrity Commissioner, including reporting requirements.

### **Confidentiality**

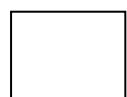
When executing the duties, the Integrity Commissioner is obliged by the Act to preserve the secrecy of matters coming into his or her knowledge. There are a few exceptions with respect to this requirement for secrecy. For example, advice given by the Integrity Commissioner could be released with the consent of the member who received the advice or where the member made the information public or for the purpose of disclosing information necessary to publish an annual report. Also, information may be released in the case of certain types of legal proceedings (i.e. criminal proceedings, public meeting for an inquiry, or an application to a judge for a contravention of the MCIA).

### **SELECTION OF AN INTEGRITY COMMISSIONER**

There is not a demonstrated need for a full time Integrity Commissioner or an Integrity Commissioner employed by the Town. In order to ensure that the Town has access to an Integrity Commissioner with flexibility and who is available on an as-needed basis, staff recommend that the Town enter into an agreement with an Integrity Commissioner for a minimum of the term of Council.

It is recommended that the successful proponent will be required to enter into a formal agreement for a term of 5 years and, along with the usual service provider language, the agreement will require the proponent to agree to avoidance of conflict of interest, which shall include avoidance of political campaigning or endorsement. The 5 year term would go beyond the current term of Council and allow the incoming Council to go through a comprehensive selection process during their first year of the term.

The following is a list of Oxford County Integrity Commissioner and Closed Meeting Investigator Appointments.



Municipality	Integrity Commissioner	Closed Meeting Investigator
Town of Tillsonburg	N/A	Ontario Ombudsman
Township of South-West Oxford	Gregory Stewart	Gregory Stewart
Township of Zorra	Gregory Stewart	Gregory Stewart
Township of East-Zorra Tavistock	Gregory Stewart	Gregory Stewart
Township of Norwich	Gregory Stewart	Gregory Stewart
Township of Blandford Blenheim	Gregory Stewart	Gregory Stewart
City of Woodstock	Gregory Stewart	Gregory Stewart
Town of Ingersoll	Gregory Stewart	Gregory Stewart
Oxford County	Gregory Stewart (appointed until December 2019)	Gregory Stewart (appointed until Dec. 2019)

Suggested options/resolutions for Council to consider at this time are as follows:

**Option 1 – Appoint an Integrity Commissioner/Meeting Investigator for a 5 year term:**

THAT Report CL 19-06, Integrity Commissioner/Meeting Investigator be received;

AND THAT By-Laws to authorize Agreements with Gregory Stewart to fill the Integrity Commissioner and Closed Meeting Investigator roles for the Town of Tillsonburg for a five year term, be brought forward for Council consideration.

**Option 2 –Appoint an Integrity Commissioner for 2019 following that to join Oxford County for an RFQ in 2020:**

THAT Report CL 19-06, Integrity Commissioner/ be received;

AND THAT a By-Law to authorize Agreements with Gregory Stewart to fill the Integrity Commissioner/Closed Meeting Investigator role for the Town of Tillsonburg for a one year term, be brought forward for Council consideration;

AND THAT the Town partner with Oxford County for an RFQ process to appoint an Integrity Commissioner/Closed Meeting Investigator for the year 2020 and beyond.

## CONSULTATION/COMMUNICATION

At the Oxford County Clerks meeting in December 2018, the appointment of an Integrity Commissioner/Closed Meeting Investigator was discussed. The majority of municipalities, including the County of Oxford had previously appointed Gregory Stewart of Donnelly & Murphy Lawyers. The consensus of the Oxford County Clerks group was that Mr. Stewart's work was well done and that his fees are more than fair. They all indicated they would recommend his services.

Staff has consulted with the County of Oxford regarding partnering on recruitment of a joint Integrity Commissioner and Meeting Investigator through the RFQ process. Five of the eight lower tier municipalities were planning on moving through the RFQ process with the County, however due to the Regional Review taking place by the Province the County decided to re-appoint Gregory Stewart until the end of the year. All of the other municipalities in Oxford County, as set out in the chart above, have now appointed Gregory Stewart, for the term of Council until 2022.

Staff has contacted Gregory F. Stewart at Donnelly & Murphy to inquire if he could include another Oxford County Municipality to his Integrity Commissioner and Closed Meeting Investigator duties. He indicated that if Council wished to secure his services that he would be able to enter into agreements with the Municipality. Mr. Stewart charges \$250.00 per hour plus applicable taxes and expenses when performing an investigation or performing any of the duties contained in the roles of Integrity Commissioner & Closed Meeting Investigator. He does not require a retainer for services and there are termination clauses in both agreements.

## FINANCIAL IMPACT/FUNDING SOURCE

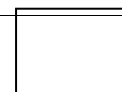
\$5,000 has been added to the 2019 budget. Funds would only be required if an investigation was required or if Council retained the services of the Integrity Commissioner for advice on a matter.

## COMMUNITY STRATEGIC PLAN (CSP) IMPACT

1. Excellence in Local Government
  - ☒ Demonstrate strong leadership in Town initiatives
  - ☐ Streamline communication and effectively collaborate within local government
  - ☒ Demonstrate accountability

### Report Approval Details

Document Title:	CLK 19-06 Integrity Commissioner.docx
Attachments:	- CL 19-06 - Appendix A.docx



Final Approval Date:	Feb 4, 2019
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This report and all of its attachments were approved and signed as outlined below:



**David Calder - Feb 4, 2019 - 11:02 AM**

