

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING ON AUGUST 26, 2014
FROM:	CATHY SAUNDERS, CITY CLERK AND JENNIFER A. SMOUT, SOLICITOR II
SUBJECT	INTEGRITY COMMISSIONER

RECOMMENDATION

That, on the recommendation of the City Clerk, with the concurrence of the Solicitor II, the following actions be taken with respect to the appointment of an Integrity Commissioner for The Corporation of the City of London:

- a) the attached "The Corporation of the City of London Integrity Commissioner Terms of Reference "(Appendix "A") BE ADOPTED;
- b) the attached "The Corporation of the City of London Code of Conduct for Members of Council Complaint Protocol" (Appendix "B") BE ADOPTED;
- c) the attached "Request for Proposal for Appointment of an Integrity Commissioner" (Appendix "C") BE APPROVED; and,
- d) the City Clerk BE DIRECTED to make the necessary arrangements to have the "Request for Proposal for Appointment of an Integrity Commissioner" issued prior to the end of the current term of Council; it being noted that the incoming Council will appoint the Integrity Commissioner.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
--

Item #24 – Board of Control – December 9, 2009
Item #21 – Finance and Administration Committee – November 10, 2010
Item #12 - Finance and Administration Committee – November 14, 2011
Item #9 – Finance and Administration Committee – January 19, 2011
Item #9 – Finance and Administrative Services Committee – November 26, 2012
Item # 5 - Corporate Services Committee – April 23, 2013

BACKGROUND

At its meeting held on April 30, 2013, Municipal Council adopted, by by-law, an amended Council Policy 5(30) – Code of Conduct for Members of Municipal Council (the "Code"). A copy of the Code is attached as Appendix "D" to this report. This Code contemplates the appointment of an Integrity Commissioner pursuant to section 223.3 of the *Municipal Act, 2001*.

In conjunction with the adoption of the amended Code, the Municipal Council directed that the following actions be taken:

- a) the City Clerk, in consultation with the City Solicitor, BE DIRECTED to prepare and report back to Municipal Council with Terms of Reference outlining the duties and functions to be assigned to an Integrity Commissioner established under sections 223.3 to 223.8 of the

Municipal Act, 2001, that would include, but is not limited to, the following; it being noted that those duties and functions would exclude the responsibilities of “Closed Meeting Investigator” currently being provided by the Ombudsman:

- (i) appointment by Council by by-law under section 223.3 of the *Municipal Act, 2001*;
 - (ii) to function independently from the Civic Administration and report directly to Municipal Council;
 - (iii) to review the Code of Conduct for Members of Municipal Council and to make recommendations thereon as necessary, at a minimum of once per year;
 - (iv) to serve a multi-faceted role to act not only as a complaint investigator, but also as an advisor to individual Members of Council in relation to the Municipal Code of Conduct, and any procedures, rules and policies of the municipality governing the ethical behaviour as well as any associated policies, and act as a proactive educator for the Municipal Council, the Civic Administration and the Public;
 - (v) to provide semi-annual reports to the Municipal Council summarizing his/her activities in accordance with section 223.6 of the *Municipal Act, 2001*; and
 - (vi) to provide individual investigative reports, as required, which will include background concerning the complaint and recommendations to Municipal Council with respect to the complaint for its consideration, in accordance with section 223.6 of the *Municipal Act, 2001*; and
- b) the City Clerk, in consultation with the City Solicitor, BE DIRECTED to report back to Municipal Council with a process for the recruitment of an Integrity Commissioner that would include, but is not limited to the following provisions:
- (i) preparation of a Request for Proposal (RFP) that will require the submission of the following information: fees to be charged, under an independent contract and outline the following general qualifications;
 - A. proven impartiality and neutrality, such as that of a judge;
 - B. an ability to provide services on a part-time, flexible, and as-needed basis;
 - C. no other involvement in political campaigning/endorsements, or related conflict of interest;
 - D. no financial interest in the work undertaken by the City;
 - E. an independent person who personifies high ethical standards;
 - F. experience managing sensitive inquiries, conducting investigations and making appropriate recommendations;
 - G. excellent communications skills;
 - H. familiarity with investigatory procedures and the applicable legal principles, particularly as they relate to evidence, legal interpretation and natural justice;
 - I. general knowledge and appreciation of municipal government;
 - J. ability to interpret and apply the provisions of various statutes, regulations, policies and other enabling frameworks;
 - K. impartiality, wisdom, sound judgment combined with the ability to inspire trust and confidence; and
 - L. at least ten years of senior-level management, legal or quasi-judicial experience.
 - (ii) appointment to be for a four-year term, to be staggered two years between Council terms to ensure continuity; and
 - (iii) fees to be paid to the Integrity Commissioner, under an independent contract; and,
- c) the Managing Director, Corporate Services & City Treasurer, Chief Financial Officer BE DIRECTED to provide a source of financing for the establishment of an Integrity Commissioner;
- d) the City Clerk, in consultation with the City Solicitor, BE DIRECTED to report back in one year, after the implementation of the Integrity Commissioner, to evaluate the need for the establishment of a Lobbyist Registry;

- e) the City Clerk, in consultation with the City Solicitor, BE DIRECTED to report back with respect to the potential incorporation into the complaint resolution process, an opportunity for early stage mediation.”

In response to this direction, you will find attached to this report the following documents:

- “The Corporation of the City of London Integrity Commissioner Terms of Reference (Appendix “A”);
- “The Corporation of the City of London Code of Conduct for Members of Council Complaint Protocol” (Appendix “B”);
- “Request for Proposal for Appointment of an Integrity Commissioner” (Appendix “C”); and,
- Policy 5(30) – Code of Conduct for Members of Municipal Council (Appendix “D”).

A copy of the previous staff report regarding this matter is attached to this report as Appendix “E”.

Terms of Reference (Appendix “A”)

In response to Municipal Council direction, “The Corporation of the City of London Integrity Commissioner Terms of Reference” is attached as Appendix “A” to this report.

The draft Terms of Reference sets out the duties and responsibilities of the Integrity Commissioner, which is reflective of the direction given by Municipal Council on April 30, 2013. The Terms of Reference will be incorporated into the Request for Proposal for Appointment of an Integrity Commissioner and will also be included in the contract for services and appointment by-law.

In summary, the Terms of Reference includes the following duties and responsibilities for the Integrity Commissioner:

- provide advice to Members of Council on the application of the City’s Code of Conduct for Members of Council;
- receive and conduct inquiries, in accordance with a Council-approved Complaint Protocol;
- report to Municipal Council, in writing, when an enquiry has been conducted where the Integrity Commission has concluded that a contravention of the Code of Conduct for Members of Council has occurred;
- report to Municipal Council, in writing, semi-annually of any activities undertaken and advice that has been given; and,
- provide training and written reference materials, upon request, to Members of Council and the Public regarding the role of the Integrity Commissioner.

Complaint Protocol (Appendix “B”)

Attached as Appendix “B” to this report, is a draft of “The Corporation of the City of London Code of Conduct for Members of Council Complaint Protocol” that sets the procedures to be undertaken by the Integrity Commissioner when processing a complaint.

The Complaint Protocol is consistent with those used by the current Integrity Commissioners for the City of Toronto and the City of Mississauga, and reflects the procedures generally accepted in the province. In summary, the Complaint Protocol includes the following:

- an informal complaint procedure which invites the complainant to work with the individual to cease the behaviour they believe to be in contravention of the Code of Conduct for Members of Council;
- a formal complaint procedure for the submission of a complaint to the Integrity Commissioner;
- processes for the Integrity Commissioner to review a complaint and determine if the complaint falls under the Code of Conduct for Members of Council or another Council Policy or other legislation;
- a process to determine if the complaint is frivolous, vexatious or not made in good faith;

- a process to undertake an investigation, which may include an informal investigation and mediation;
- a process to undertake a more formal investigation which may result in a report to Municipal Council of the Integrity Commissioner's findings;
- a provision for the Integrity Commissioner to recommend to Municipal Council penalties should the Integrity Commissioner determine that there has been a violation of the Code of Conduct for Members of Council;
- a provision that the Integrity Commissioner will stay any investigation of any complaints received after July 1st in any municipal election year, until after the inaugural meeting of the new Municipal Council has taken place; and,
- requirements for confidentiality consistent with the provisions of the *Municipal Act, 2001*.

Draft Request for Proposal (Appendix "C")

Attached as Appendix "C" to this report, is a "Request for Proposal for Appointment of an Integrity Commissioner".

The draft Request for Proposal includes:

- identification of an evaluation team comprised of members of the Corporate Services Committee, with support being provided by the City Clerk's Office, the City Solicitor's Office and the Purchasing and Supply Division;
- details as to the duties and responsibilities of the Integrity Commissioner, which are reflective of the direction provided by Municipal Council and those contained in the Terms of Reference noted above;
- details as to the required qualifications for the Integrity Commissioner, which reflect the direction of Municipal Council as follows:
 - A. proven impartiality and neutrality, such as that of a judge;
 - B. an ability to provide services on a part-time, flexible, and as-needed basis;
 - C. no other involvement in political campaigning/endorsements, or related conflict of interest;
 - D. no financial interest in the work undertaken by the City;
 - E. an independent person who personifies high ethical standards;
 - F. experience managing sensitive inquiries, conducting investigations and making appropriate recommendations;
 - G. excellent communications skills;
 - H. familiarity with investigatory procedures and the applicable legal principles, particularly as they relate to evidence, legal interpretation and natural justice;
 - I. general knowledge and appreciation of municipal government;
 - J. ability to interpret and apply the provisions of various statutes, regulations, policies and other enabling frameworks;
 - K. impartiality, wisdom, sound judgment combined with the ability to inspire trust and confidence; and
 - L. at least ten years of senior-level management, legal or quasi-judicial experience.
- identification of the appointment term, which is a two-year term, with the potential for a four-year term extension;
- a request for the submission of a fee structure;
- a requirement for the Bidder to provide a proposed work plan;
- an outline of the evaluation process; and,
- details regarding insurance requirements.

Financial Implications

As part of the 2009 year-end surplus allocation, Municipal Council set aside \$25,000 to cover the costs of an Integrity Commissioner through the Operating Budget Contingency Reserve. In 2015, once the Integrity Commissioner is appointed and the terms of their contract are established, a base budget will need to be identified as part of the 2016 Draft Operating Budget.

PREPARED AND RECOMMENDED BY:	PREPARED AND CONCURRED BY:
CATHY SAUNDERS CITY CLERK	JENNIFER A. SMOUT SOLICITOR II

Attachments