

Report to Corporate Service Committee

To: Chair and Members
Corporate Services Committee
From: Cathy Saunders, City Clerk
Subject: Integrity Commissioner Agreement
Date: April 19, 2021

Recommendation

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

- a) the staff report, dated April 19, 2021, entitled “Integrity Commissioner Agreement” BE RECEIVED;
- b) the City Clerk BE DIRECTED to bring forward to the May 10, 2021 Corporate Services Committee meeting, a draft Agreement between The Corporation of the City of London and Gregory F. Stewart for the provision of services as The Corporation of the City of London’s and local boards Integrity Commissioner for the term ending as determined by the Municipal Council; it being noted that the draft Agreement will include additional provisions which speak to anticipated timelines for responding to complaints and enquiries in accordance with the Code of Conduct for Members of Council.

Executive Summary

The purpose of this report is to seek direction from Municipal Council with respect to the extension of the current contract of the Integrity Commissioner.

Linkage to the Corporate Strategic Plan

Leading In Public Service – The City of London is a trusted, open and accountable service of our community through improved public accountability and transparency in decision making.

Analysis

1.0 Background Information

1.1 Previous Reports Related to this Matter

April 16, 2019 – Corporate Services Committee – Item #2.6
March 19, 2019 – Corporate Services Committee – Item #2.3

2.0 Discussion and Considerations

2.1 Background Information

The Municipal Council appointed an Integrity Commissioner on May 16, 2017 after undertaking both a Request for Proposal process and a targeted recruitment process. At the conclusion of the processes, Mr. Gregory Stewart was appointed as the Integrity Commissioner. The Corporation of the City of London and Mr. Stewart entered into an “Agreement for Municipal Integrity Commissioner” with the term of the Agreement ending on May 31, 2019.

At the Municipal Council meeting held on April 23, 2019, By-law No. A.-7842-121 was enacted to approve an Agreement for the Municipal Integrity Commissioner for a period ending May 31, 2021.

The current contract with the Integrity Commissioner establishes an hourly rate of \$250.00 per hour, plus applicable taxes, for time devoted to services as an Integrity Commissioner. The costs billed to-date are as follows:

- 2017: \$8,028.33
- 2018: \$6,055.78
- 2019: \$0.00
- 2020: \$3,230.88

2.2 Role of the Integrity Commissioner

In accordance with section 223.3(1) of the *Municipal Act, 2001*, the Integrity Commissioner shall carry out the following functions:

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.
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*.

Municipalities are required to appoint an Integrity Commissioner to perform the responsibilities noted above. It should also be noted that the *Municipal Act, 2001* requires all municipalities to appoint an Integrity Commissioner or make arrangements for that role to be carried out by an Integrity Commissioner of another municipality. The following rules will apply:

- a) where a municipality has not appointed an Integrity Commissioner, it must make arrangements for those responsibilities to be performed by a Commissioner of another municipality; and
- b) if a municipality has appointed an Integrity Commissioner but has not assigned to them all of the responsibilities set out in section 223.3(1) of the *Municipal Act, 2001*, the municipality must make arrangements for those responsibilities to be performed by an Integrity Commissioner of another municipality.

The functions of the Integrity Commissioner were expanded in 2019 to include the following matters, noting that these functions are mandatory:

- a) 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;
- b) requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member;
- c) 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;
- d) requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*; and
- e) 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*.

In addition, the Integrity Commissioner has the authority to conduct inquiries concerning alleged contraventions of section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* by a member of council or a local board:

- a) an Integrity Commissioner may conduct an inquiry into any such matter if made on the application of an elector or a person demonstrably acting in the public interest;
- b) time restrictions apply with respect to when an application may be made and when the Integrity Commissioner must complete the inquiry;
- c) upon completion of the inquiry an Integrity Commissioner may exercise their discretion and apply to a judge for a determination as to whether the member has contravened section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*; and
- d) the costs of an Integrity Commissioner's application to a judge are to be paid by the municipality or the local board.

The expanded powers and role of the Integrity Commissioner have been incorporated into the Terms of Reference appended to the current Agreement attached as Appendix "A" to this Report.

2.3 Discussion

The Civic Administration is seeking direction as to how to proceed with this matter. It is recommended that a new Agreement with Mr. Stewart be entered into that specifically references timelines as set out in the "The Corporation of the City of London Code of Conduct for Members of Council Complaint Protocol attached as Appendix "B" to this report. Mr. Stewart has indicated a willingness to enter into a new Agreement for a period desired by the Municipal Council, noting that he is not seeking a term beyond 2 years. Entering into a new Agreement for the time period Municipal Council deems to be appropriate would provide Municipal Council with sufficient time to proceed with a process to retain a new Integrity Commissioner to replace Mr. Stewart when the proposed new Agreement with Mr. Stewart expires.

Mr. Stewart is receptive to including responsive timelines in a new Agreement subject to an understanding that should extenuating circumstances cause a delay, consideration would be given to an extension of those timelines.

3.0 Financial Impact/Considerations

The costs related to the actions undertaken by the Integrity Commissioner are provided for within the City Clerk's Office Budget.

Conclusion

The Civic Administration is seeking direction to bring forward to the May 10, 2021 Corporate Services Committee meeting, a draft Agreement between The Corporation of the City of London and Gregory F. Stewart for the provision of services as The Corporation of the City of London's and local boards Integrity Commissioner for the term ending as determined by the Municipal Council; it being noted that the draft Agreement will include additional provisions which speak to anticipated timelines for responding to complaints and enquiries in accordance with the Code of Conduct for Members of Council.

Prepared by and Recommended by: **Cathy Saunders, City Clerk**

Appendix "A"

Current Agreement

AGREEMENT FOR MUNICIPAL INTEGRITY COMMISSIONER

THIS AGREEMENT made this 23rd day of April, 2019.

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON

(hereinafter referred to as the "City")

OF THE FIRST PART

AND:

GREGORY F. STEWART

(hereinafter referred to as "Stewart" and or the "Integrity Commissioner")

OF THE SECOND PART

WHEREAS section 223.3 of the *Municipal Act, 2001* authorizes the City to appoint an Integrity Commissioner who reports to Municipal Council and who is responsible for performing in an independent manner the functions assigned by Municipal Council in accordance with the legislation and the Municipal Council approved "The Corporation of the City of London Integrity Commissioner Terms of Reference" attached hereto as Schedule 1;

WHEREAS the City wishes to retain Stewart as its Integrity Commissioner under the authority of the *Municipal Act, 2001* to perform the duties and responsibilities of that office pursuant to the terms of the legislation and this Agreement;

NOW THEREFORE, in consideration of the covenants hereinafter set forth, and other good and valuable consideration, the sufficiency and receipt of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. Term - The term of this Agreement is for the period commencing June 1, 2019 (the "commencement date") and ending on December May 31, 2021.
2. Services - The City hereby retains and appoints Stewart as Integrity Commissioner in accordance with the *Municipal Act, 2001* and Stewart accepts such appointment and agrees to perform the functions of Integrity Commissioner in accordance with this Agreement and the "The Corporation of the City of London Integrity Commissioner Terms of Reference" attached hereto as Schedule 1 and as set out in the "Code of Conduct for Members of Council" and "The Corporation of the City of London Code of Conduct for Members of Council Complaint Protocol", the "Code of Conduct for Local Boards" and "The Corporation of the City of London Code of Conduct for Members of Local Boards Complaint Protocol" and as requested by the Council or Members of Council at all times in accordance with this Agreement and the *Municipal Act, 2001*.

3. Functions - As Integrity Commissioner, Stewart shall perform the functions and have the powers provided for in the Act, including but not limited to the following:

(1) *Advisory*: Upon proper request, provide written and/or verbal advice to individual members of Council respecting the application of the Code of Conduct for Members of Council and City's Code of Conduct for Members of Council Complaint Protocol, hereinafter collectively referred to as the "Code of Conduct for Members of Council" and/or any other procedures, rules, and policies relating to and reflecting upon their ethical behavior, including but not limited to general interpretation of the *Municipal Conflict of Interest Act*; and furthermore and when appropriate, provide the full Council with specific and general opinions and advice respecting compliance by elected officials in respect of the provisions of governing statutes, the Code of Conduct for Members of Council and any other applicable procedures, rules, and policies.

The Integrity Commissioner may be requested to provide such advice confidentially to the Member of Council making the request in respect of specific facts, and in a way in which the Member of Council may rely upon the advice provided. In such circumstances and where the Integrity Commissioner is requested to do so, he may provide advice in a general way to all Members of Council respecting the interpretation of the Code of Conduct for Members of Council.

Upon proper request, provide written and/or verbal advice to individual members of Local Boards respecting the application of the Code of Conduct for Members of Local Boards and The Corporation of the City of London Code of Conduct for Members of Local Boards Complaint Protocol, hereinafter collectively referred to as the "Code of Conduct for Members of Local Boards" and/or any other procedures, rules, and policies relating to and reflecting upon their ethical behavior, including but not limited to general interpretation of the *Municipal Conflict of Interest Act*; and furthermore and when appropriate, provide the Local Boards with specific and general opinions and advice respecting compliance by Local Board Members in respect of the provisions of governing statutes, the Code of Conduct for Member of Local Boards and any other applicable procedures, rules, and policies

(2) *Compliance Investigation/Determinations*: Upon receipt of a complaint, the Integrity Commissioner shall assess the validity of the complaint to determine if it is appropriate and within the mandate of the Integrity Commissioner to investigate any alleged contraventions of the Code of Conduct for Members of Council and/or the Code of Conduct for Members of Local Boards identified in the complaint. Where the Integrity Commissioner has determined that the allegations made would, if substantiated, constitute a breach of the Code of Conduct for Members of Council and/or the Code of Conduct for Members of Local Boards, the Integrity Commissioner will investigate the alleged breach.

(3) *Inquiry under s 223.4 of the Municipal Act, 2001*: Upon proper request from a member of Council or local board, municipal administration or one or more members of the public and having determined it is appropriate in the circumstances to initiate an inquiry under Subsection 223.4 of the *Municipal Act, 2001*, the Integrity Commissioner will conduct an inquiry and make a determination as to any alleged contravention of

the Code of Conduct for Members of Council and/or the Code of Conduct for Members of Local Boards or applicable procedures, rules and policies by a member of Council and/or member of a local board and, thereafter, will report to Council and/or the local board the details and results of such inquiry.

- (4) *Reporting:* The Integrity Commissioner shall file an annual report to Municipal Council and local boards respecting the advice, education and investigations carried out in the previous year, and developments or recommendations of significance related to the role of the City's Integrity Commissioner.
- (5) *Educational:* The Integrity Commissioner shall provide outreach programs to members of Council and local boards and relevant staff on legislation, protocols, and office procedures emphasizing the importance of compliance with a Code of Conduct for Members of Council and the Code of Conduct for Members of Local Boards for public confidence in Municipal Government; and, furthermore, dissemination of information available to the public on the website operated by the City and local board.
- (6) *Municipal Conflict of Interest Act:* Members of Council and Members of local boards are governed by the *Municipal Conflict of Interest Act*. The Integrity Commissioner when requested by a Member of Council or Member of a local board will provide advice respecting their obligations under the *Municipal Conflict of Interest Act*. The Integrity Commissioner may provide educational information to Members of Council and/or Members of local boards, the municipality and the public about the *Municipal Conflict of Interest Act*. The Integrity Commissioner is to receive and conduct such formal or informal processes as may be appropriate, in accordance with the *Municipal Conflict of Interest Act*.
- (7) *Clarification or Withdrawal:* If the Integrity Commissioner is unclear about the substance of a request for advice, or if the Integrity Commissioner is unclear as to whether a request received from a Member of Council or a Member of a local board is a request for advice or a request for an investigation, then before commencing work on the matter, the Integrity Commissioner will seek clarification from the Member of Council or Member of the local board who referred the matter. Likewise, if as a result of any action taken by the Integrity Commissioner the Member of Council or the Member of a local board who referred the matter believes the action is not what was intended, the Member of Council or the Member of a local board may provide clarification to the Integrity Commissioner or may withdraw their request.
- (8) *Report to Council or local board:* The Integrity Commissioner is responsible for performing the duties set out in this section independently, and shall report directly to Council or local board in respect of all such matters.
- (9) *Documents:* The Integrity Commissioner shall provide electronic copies of any reports to the City Clerk or the secretary of the local board who shall be responsible for ensuring distribution to the appropriate individuals, except for matters received as fact-specific requests from individual Members of Council or individual member of a local board, in which case

the Integrity Commissioner shall correspond directly with that individual Member of Council or individual member of a local board.

4. Fees

Hourly Rate - Stewart will be paid a fee of TWO HUNDRED FIFTY DOLLARS PER HOUR (\$250.00/hour), plus applicable taxes, for time devoted to services as Integrity Commissioner for the City of London.

a) Expenses – Stewart will be entitled to reimbursement of expenses incurred in relation to performance of duties contemplated by this Agreement, including but not limited to food and hotel costs, car rental, railway transportation, and/or mileage charges, all at the respective municipal rates then in effect.

b) Legal Advice/Fees - The parties agree that, when necessary, Stewart may arrange for and receive legal assistance and advice to properly perform the duties contemplated by this Agreement. The parties agree that, as a direct cost and not as a reimbursable expense, the City of London shall pay the cost of such legal assistance and advice.

5. Reviewing Records - If requested by the City, the Integrity Commissioner shall make available to the City such time sheets, accounts, records, receipts, vouchers and other documents as the City Solicitor or City Clerk considers necessary for the purpose of substantiating the Integrity Commissioner's invoices.

The City may, at any time and from time to time during the term of this Agreement and up to ten (10) years following its termination or expiry, audit and inspect the Integrity Commissioner's accounts, records, receipts, vouchers, records of accessible customer service training (if applicable), and other similar documents relating to performance of the duties herein and shall have the right to make copies thereof and take extracts therefrom.

The Integrity Commissioner shall make available to the City the materials referred to in this section in order that the City may carry out audits and inspections as provided in this section and shall furnish the City and its authorized representative with such information as they may from time to time require. The Integrity Commissioner shall furnish such materials to the City within such timeframe as is reasonably required by the City. Without limiting the generality of the foregoing, the Integrity Commissioner shall furnish any required records of accessible customer service training to the City within ten (10) business days of the City's request, unless otherwise agreed upon by the City.

6. Confidential Process - During the term of this Agreement, pursuant to Subsection 223.5 of the *Municipal Act, 2001*, the Integrity Commissioner is entitled to have access to all books, financial records, electronic data, processing records, reports, files and any other papers, things or property belonging to or used by the municipality or a local board that the Integrity Commissioner believes to be necessary for an inquiry.

The Integrity Commissioner and every person acting under the instructions of the Integrity Commissioner shall reasonably preserve secrecy with respect to all matters that come to their knowledge in the course of carrying out any of the duties of the Integrity Commissioner under this Agreement, except as required by law in a criminal proceeding or in accordance with Subsection 223.5(1) of the *Municipal Act, 2001*.

Where the Integrity Commissioner reports to the City or a local board that in their opinion, a Member of Council or a member of a local board has contravened the Code of Conduct for Members of Council or the Code of Conduct for Members of Local Boards, the Integrity Commissioner may disclose in the report such matters as in the Integrity Commissioner's opinion are necessary, subject to applicable law.

If the Integrity Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of the *Criminal Code of Canada* or of any other Act, the Integrity Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge has been finally disposed of, and shall report the suspension to Council or the local board.

Except as may be required by law, the Integrity Commissioner shall not disclose confidential information that was the subject of a closed meeting under Section 239 of the *Municipal Act, 2001*, or which could identify a person concerned.

In the event the Integrity Commissioner believes access is required to files and documents for which solicitor-client privilege is claimed, the Integrity Commissioner shall discuss such request with the City Solicitor or the Solicitor for the local board and, if in the opinion of the City Solicitor or the Solicitor for the local board, such request needs to be discussed with City Council or the local board, then the direction of City Council or the local board will be sought by the City Solicitor or Solicitor for the local board, with the exclusion of the Member(s) of Council or Member of a local board, if any, under investigation.

Upon receipt of a formal complaint pursuant to the Code of Conduct for Members of Council or the Code of Conduct for Local Boards, and where the Integrity Commissioner determines that the complaint meets the criteria to be investigated, the Integrity Commissioner may elect to conduct an informal investigation or alternatively to exercise the powers of a Commission under Parts I and II of the *Public Inquiries Act*, as contemplated by Subsection 223.4(2) of the Act.

Upon receipt of a formal complaint pursuant to the Code of Conduct for Members of Council or the Code of Conduct for Local Boards, the Integrity Commissioner will first determine whether the complaint is invalid by virtue of the reason that the Integrity Commissioner determines the complaint to be,

- a) outside of the jurisdiction of the Integrity Commissioner;
- b) frivolous or vexatious;
- c) made in bad faith or without substance; or
- d) insufficient basis to conduct an investigation, including not relevant to the objectives of the *Municipal Act, 2001*, the Council Code of Conduct for Members of Council or the Code of Conduct for Local Boards or in the public interest.

Where the Integrity Commissioner so determines, they shall report the nature of the formal complaint and the reason for not investigating to Municipal Council or the local board.

If the Integrity Commissioner is satisfied that a formal complaint regarding a Member of Council or a Member of a local board does not contain sufficient information to set out in a *prima facie* contravention of the Code of Conduct for Members of Council or the Code of Conduct for Members of Local Boards, the Integrity Commissioner shall stay any inquiry into the complaint. The Integrity Commissioner shall notify the complainant that the matter is stayed and provide an opportunity for the complainant to provide additional information to allow the Integrity Commissioner to determine whether there has been a possible contravention of the Code of Conduct for Members of Council or the Code of Conduct for Local Boards. Where satisfied that the information sets out a *prima*

facie contravention of the Code of Conduct for Members of Council or the Code of Conduct for Local Boards, the Integrity Commissioner shall lift the stay and conduct the inquiry and where not satisfied, the Integrity Commissioner shall file a report setting out that decision.

If the Integrity Commissioner is satisfied, after considering the information contained in the complaint and any other relevant information, that a complaint regarding a Member of Council or a Member of a local board is frivolous, vexatious or not made in good faith, or where the complaint is not within the mandate of the Integrity Commissioner, they shall not conduct an inquiry. Where this becomes apparent in the course of an inquiry, the Integrity Commissioner shall terminate the inquiry and prepare and file a report to Council or the local board.

7. Insurance - During the term of this Agreement, the Integrity Commissioner shall procure and maintain errors and omissions insurance of not less than \$2 million.

The insurance as required under this section shall not be terminated, cancelled or materially altered unless written notice of such termination, cancellation or material is given by the insurers to the City at least sixty (60) clear days before the effective date thereof. Any revisions must be submitted to the City Solicitor for approval.

The Integrity Commissioner shall provide the City with a certificate of insurance indicating compliance with this section upon execution of this Agreement.

8. General Indemnity

The City will save harmless and fully indemnify the Integrity Commissioner, both during and following the term of this Agreement, from and against all costs, actions, suits, claims, demands whatsoever incurred in the course of actions taken within the terms of the duties to be performed by the Integrity Commissioner described herein, for any act done in good faith in the performance or intended performance of a duty or authority under the *Municipal Act, 2001* or a by-law passed under it or for any alleged neglect or default in the performance in good faith of the duty or authority. The City shall indemnify the Integrity Commissioner by i) assuming the cost of defending the Integrity Commissioner in an action or proceeding; ii) paying any damages or costs awarded against the Integrity Commissioner as a result of an action or proceeding, iii) paying, either by direct payment or by reimbursement, any expenses reasonably incurred by the Integrity Commissioner as a result of an action or proceeding or iv) paying any sum required in connection with the settlement of an action or proceeding, to the extent that such costs, damages, expenses or sums are not assumed, paid or reimbursed under any provision of any insurance maintained by the City or the Integrity Commissioner for the benefit and protection of them against any liability incurred by them. The City shall have the right to select and retain the lawyer to represent the Integrity Commissioner in circumstances where they seek indemnity pursuant to this Agreement and shall have the right to approve any settlement of any action or proceeding. Where the Integrity Commissioner is served with any process issued out of or authorized by any court, administrative tribunal or other administrative, investigative or quasi-judicial body in connection with any action or proceeding, they shall deliver a copy of the process forthwith to the City Solicitor if they are seeking indemnity under this Agreement. The Integrity Commissioner shall cooperate fully with the City and any lawyer retained by the City to defend such action or proceeding and shall make available to such lawyer all information and documents relevant to the matter subject to applicable requirements of privilege and confidentiality.

9. Conflict of Interest - The Integrity Commissioner represents that no known conflict of interest is likely to interfere with the duties which arise from this appointment, and further, that these duties will be carried out in an impartial and neutral manner: skillfully, competently, independently and in accordance with all applicable law.

If the Integrity Commissioner becomes aware of circumstances where a conflict of interest could arise, the Integrity Commissioner shall:

- a) advise the City Solicitor immediately in writing of the nature of the conflict; and,
- b) refrain from conducting any further investigation or providing advice on the matter at issue until further direction is given by the City Solicitor.

Upon receipt of a notice in writing from the Integrity Commissioner in accordance with this section the City may:

- a) suspend or terminate this Agreement; or
 - b) request the Integrity Commissioner to remove themselves from an investigation/inquiry or to stop any further work on a matter, in which case, the Integrity Commissioner shall immediately make arrangements to transfer all related documentation to the City Solicitor or City Clerk as soon as possible. In that case, the City Solicitor may retain another person to conduct the investigation/inquiry or to carry on the work in question in place of the Integrity Commissioner, as the City Solicitor deems appropriate.
10. No Amendment - This Agreement may only be amended in writing, duly executed by the authorized representatives of the parties.
11. Independent Contractor - Notwithstanding the appointment as a statutory officer, the parties agree and acknowledge that Stewart is a contractor independent of the City. Nothing in this Agreement shall be interpreted to render or create a relationship of employer/employee, partnership, franchise, agency, joint venture or other like arrangement as between Stewart and the City of London.
12. Statutory Officer - For all purposes relating to this Agreement, the Integrity Commissioner shall be deemed to hold the status of "Statutory Officer" under the *Municipal Act, 2001*.
13. Early Termination - This Agreement may be terminated by either party upon fifteen (15) days' written notice of early termination, delivered during the term of this Agreement.
14. Notice - Any notice required pursuant to this Agreement shall be delivered to the respective parties hereto at the following addresses:

For the City of London:
300 Dufferin Avenue
PO Box 5035
London, Ontario
N6A 4L9

Attention: City Manager

For Gregory F. Stewart:
Donnelly Murphy Lawyers Professional Corporation
18 The Square
Goderich, Ontario
N7A 3Y7

Any written notice between the parties hereto pursuant to this Agreement which specifically excludes any invoice rendered herein, shall be delivered or sent by pre-paid registered mail addressed to the parties at the respective addresses listed above. Notice shall be deemed to have been received on the date on which notice was delivered to the addresses designated or, in the case of mailing, on the fifth day after the date of mailing.

15. Severability - All paragraphs, terms, and conditions of this Agreement are severable and the invalidity, illegality or unenforceability of any such paragraph, term, or condition shall be deemed not to affect the validity, legality, or enforceability of the remaining paragraphs, terms and conditions.
16. Complete Agreement - This Agreement constitutes the entire Agreement between the parties and supersedes all prior Agreements, negotiations and discussions, whether oral or written, with respect to the subject matter of this Agreement.
17. Amendments to Code of Conduct -The City may in writing at any time after the execution of this Agreement or the commencement of the duties delete, extend, vary or otherwise alter the Code of Conduct and the duties forming the subject of this Agreement. The City shall consult with the Integrity Commissioner prior to changing the duties.

IN WITNESS WHEREOF the parties are to have caused the Agreement to be signed and sealed and/or executed by their respective officers which are duly authorized as of the date first written above.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

THE CORPORATION OF THE CITY OF
LONDON

Per:

Mayor

Per:

Clerk

We have authority to bind the Corporation

Gregory F. Stewart

Schedule "1"

The Corporation of the City of London Terms of Reference for the Integrity Commissioner

1. Policy Statement

This Policy establishes a Terms of Reference for The Corporation of City of London Integrity Commissioner in accordance with section 223.3 of the *Municipal Act, 2001*.

2. Definitions

None.

3. Applicability

This Policy applies to all Members of Council and Local Boards.

4. The Policy

4.1 The Integrity Commissioner is an independent officer, appointed by Council by by-law passed under section 223.3 of the *Municipal Act, 2001*. The Integrity Commissioner reports directly to Council or Local Boards and functions independently of the Civic Administration and Local Board Administration.

4.2 Municipal Council

In accordance with section 223.3(1) of the *Municipal Act, 2001*, the Integrity Commissioner shall carry out the following functions:

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.
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*.

The duties of the Integrity Commissioner with respect to Municipal Council are to:

- a) provide advice to Members of Council on the application of the City's Code of Conduct for Members of Council and any procedures, rules and policies of the municipality governing the ethical behaviour of Members of Council;
- b) provide advice to Members of Council on the application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act*;
- c) receive and conduct such formal or informal processes as may be appropriate (including inquiries or mediations), in accordance with the Council approved Complaint Protocol, concerning complaints by the Council, or any person that a Member of Council has contravened the City's Code of Conduct for Members of Council, the *Municipal Conflict of Interest Act*, or rules and policies of the municipality governing the ethical behaviour of Members of Council;
- d) report to Council, in writing, where an inquiry under part c) has been conducted and the Integrity Commissioner is of the opinion that a Member of Council has contravened the Code of Conduct for Members of Council and/or and include any recommendations with respect to the inquiry for the Council to consider;
- e) report to Council annually, in writing, summarizing any activities undertaken and advice given; and,
- f) provide such training and written reference materials, upon the request of Municipal Council, for distribution to and use by Members of Council and the public regarding the role of the Integrity Commissioner, the obligations and responsibilities of Members of Council under the City's Code of Conduct for Members of Council and under the *Municipal Conflict of Interest Act*, the meaning of the City's Code of Conduct for Members of Council and any procedures, rules and policies of the municipality governing the ethical behaviour of Members of Council under the City's Code of Conduct for Members of Council and the *Municipal Conflict of Interest Act*.

4.3 Local Boards

The duties of the Integrity Commissioner with respect to Local Boards are to:

- a) provide advice to Members of Local Boards on the application of the City's Code of Conduct for Local Boards and any procedures, rules and policies of the Local Boards governing the ethical behaviour of Members of Local Boards;
- b) provide advice to Members of Local Boards on the application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act*;
- c) receive and conduct inquiries, in accordance with the Council approved Complaint Protocol for Local Boards, into requests by Local Boards, a Members of the Local Boards or a member of the public about whether a Member of a Local Board has contravened the City's Code of Conduct for Local Boards;
- d) receive and conduct inquiries or initiate inquiries about whether a Member of a Local Board has contravened the *Municipal Conflict of Interest Act*, in accordance with sections 5, 5.1 and 5.2 of the Act;
- e) report to the Local Board, in writing, where an inquiry has been conducted under part c) and the Integrity Commissioner is of the opinion that a

Member of the Local Board has contravened the Code of Conduct for Members of Local Boards and include any recommendations with respect to the inquiry for the Local Board to consider;

- f) report to Local Boards, annually, in writing, summarizing any activities undertaken and advice given; and
- g) provide such training and written reference materials, upon the request of Local Boards, for distribution to and use by Members of Local Boards and the public regarding the role of the Integrity Commissioner, the obligations and responsibilities of Members of Local Boards under the City's Code of Conduct for Members of Local Boards and under the *Municipal Conflict of Interest Act*, the meaning of the City's Code of Conduct for Members of Local Boards and any procedures, rules and policies of the Local Boards governing the ethical behaviour of Members of Local Boards under the City's Code of Conduct for Members of Local Boards and the *Municipal Conflict of Interest Act*.

APPENDIX “B”

THE CORPORATION OF THE CITY OF LONDON CODE OF CONDUCT FOR MEMBERS OF COUNCIL COMPLAINT PROTOCOL

AUTHORITY

Section 223.3 of the *Municipal Act, 2001* authorizes a municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the powers and duties assigned by the municipality with respect to the application of the Code of Conduct for Members of Council.

Sections 223.4 of the *Municipal Act, 2001* provides that an Integrity Commissioner has certain powers duties and protections.

The Code of Conduct for Members of Council was adopted by Council by By-law No. CPOL.-383-90 on March 26, 2019.

This Complaint Protocol was adopted by Council by By-law No. CPOL.-383-90 on March 26, 2019.

PART A: INFORMAL COMPLAINT PROCEDURE

Any person or any representative of an organization who has identified or witnessed behaviour or an activity by a Member of Council that they believe is in contravention of the *Code of Conduct for Members of Council* (the “Code”) may wish to address the prohibited behaviour or activity themselves as follows:

- (1) advise the Member that the behaviour or activity contravenes the Code;
- (2) encourage the Member to acknowledge and agree to stop the prohibited behaviour or activity and to avoid future occurrences of the prohibited behavior or activity;
- (3) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;
- (4) request the Integrity Commissioner to assist in informal discussion of the alleged complaint with the Member in an attempt to resolve the issue;
- (5) if applicable, confirm to the Member your satisfaction with the response of the Member; or, if applicable, advise the member of your dissatisfaction with the response; and
- (6) consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with another applicable judicial or quasi-judicial process or complaint procedure.

All persons and organizations are encouraged to initially pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that is prohibited by the Code. With the consent of the complaining individual or organization and the Member, the Integrity Commissioner may be part of any informal process. However, it is not a precondition or a prerequisite that those complaining must pursue the informal complaint procedure before pursuing the Formal Complaint Procedure in Part B.

PART B: FORMAL COMPLAINT PROCEDURE:

Integrity Commissioner Requests for Inquiries - Section 1

1. (1) A request for an investigation of a complaint that a Member has contravened the Code (the "complaint") shall be sent directly to the Integrity Commissioner by mail, e-mail, fax or courier and shall be in writing.
- (2) All complaints shall be signed by an identifiable individual (which includes the authorized signing officer of an organization).
- (3) A complaint shall set out reasonable and probable grounds for the allegation that the Member has contravened the Code. For example, the complaint should include the name of the alleged violator, the provision of the Code allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information for the complainant during normal business hours.
- (4) Municipal Council may also file a complaint and/or request an investigation of any of its members by public motion.

Initial Classification by Integrity Commissioner - Section 2

2. (1) Upon receipt of the complaint, the Integrity Commissioner shall make an initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code and not covered by other legislation or other Council Policies as described in subsection (2).
- (2) If the complaint is not, on its face, a complaint with respect to non-compliance with the Code or the complaint is covered by other legislation or a complaint procedure under another Council Policy, the Integrity Commissioner shall advise the complainant in writing as follows:
 - (a) if the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate police force;
 - (b) if the complaint on its face is with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter will be referred for review to the City Clerk;
 - (c) if the complaint on its face is with respect to non-compliance with a more specific Council policy with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure;
 - (d) if the complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a Human Rights complaint or similar process, the Integrity Commissioner may, in their sole discretion and in accordance with legislation, suspend any investigation pending the result of the other process; and,
 - (e) in other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to process, with any additional reasons and referrals as the Integrity Commissioner considers appropriate.
- (3) The Integrity Commissioner may report to Municipal Council that a specific complaint is not within the jurisdiction of the Integrity Commissioner, but shall not disclose information that could identify a person concerned.

(4) The Integrity Commissioner shall report semi - annually to Municipal Council on complaints not within the jurisdiction of the Integrity Commissioner, but shall not disclose information that could identify a person concerned.

Integrity Commissioner Investigation - Sections 3 – 5

3. (1) If the Integrity Commissioner is of the opinion that a complaint is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, terminate the investigation.

(2) Other than in exceptional circumstances, the Integrity Commissioner will not report to Municipal Council on any complaint described in subsection (1) except as part of a semi- annual or other periodic report.

4. (1) If a complaint has been classified as being within the Integrity Commissioner's jurisdiction and not rejected under section 3, the Commissioner shall investigate and in so doing, at any time may attempt to settle the complaint.

(2) Upon receipt of a formal complaint pursuant to the Code, and where the Integrity Commissioner determines that the complaint meets the criteria to be investigated, the Integrity Commissioner may elect to conduct an informal investigation, which may include mediation, or alternatively to exercise the powers of a Commission under sections 33 and 34 of the *Public Inquiries Act, 2009* as contemplated by subsection 223.4(2) of the Act.

(3) When the *Public Inquiries Act, 2009* applies to an investigation of a complaint, the Integrity Commissioner shall comply with the procedures specified in that Act and this Complaint Protocol, but, if there is a conflict between a provision of the Complaint Protocol and a provision of the *Public Inquiries Act, 2009* the provision of the *Public Inquiries Act, 2009* prevails.

5. (1) The Integrity Commissioner will proceed as follows, except where otherwise required by the *Public Inquiries Act, 2009*:

(a) serve the complainant and supporting material upon the Member whose conduct is in question with a request that a written response to the allegation by way of affidavit or otherwise be filed within ten business days; and

(b) serve a copy of the response provided upon the complainant with a request for a written reply within ten business days.

(2) If necessary, after reviewing the written materials, the Integrity Commissioner may speak to anyone relevant to the complaint, access and examine any of the information described in subsections 223.4(3) and (4) of the *Municipal Act*, and may enter any City work location relevant to the complaint for the purposes of investigation and settlement.

(3) The Integrity Commissioner shall not issue a report finding a violation of the Code on the part of any Member unless the Member has had reasonable notice of the basis for the proposed finding and any recommended penalty and an opportunity either in person or in writing to comment on the proposed finding and any recommended penalty.

(4) The Integrity Commissioner may make interim reports to Municipal Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during an investigation.

(5) If the Integrity Commissioner has not completed an investigation before Nomination Day for a regular election, as set out in the *Municipal Elections Act, 1996*, the Integrity Commissioner shall terminate the inquiry on that day.

If an investigation is terminated in accordance with subsection 223.4(7) of the *Municipal Act, 2001*, the Integrity Commissioner shall not commence another inquiry in respect to the matter unless, within six weeks after Voting Day in a regular election, the complainant who made the request or the Member or former Member whose conduct is concerned makes a written request to the Integrity Commissioner that the investigation be commenced.

(6) The Integrity Commissioner shall retain all records related to the complaint and investigation.

Integrity Commissioner Investigation - Sections 6 – 9

6. Notwithstanding any other provisions of this Protocol, in the year of a regular election the following rules apply during the period starting on Nomination Day for a regular election, as set out in section 31 of the *Municipal Elections Act, 1996* and ending on Voting Day in a regular election, as set out in section 5 of the Act:

(i) there shall be no requests for an inquiry about whether a Member has contravened the Code applicable to the Member;

(ii) the Integrity Commissioner shall not report to the municipality about whether in their opinion, a Member has contravened the Code applicable to the Member; and,

(iii) the municipality shall not consider whether to impose penalties referred to in subsection 223.4(5) of the *Municipal Act, 2001*, on a Member.

7. (1) The Integrity Commissioner shall report to the complainant and the Member generally no later than 90 days after the intake process has been completed and an investigation has been commenced. If the investigation process takes more than 90 days, the Integrity Commissioner shall provide an interim report and must advise the parties of the date the report will be available.

(2) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Municipal Council outlining the findings, the terms of any settlement or recommended penalty. The City Clerk shall process the report for the next meeting of Municipal Council.

(3) Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behavior or activity does not continue.

(4) Where the complaint is dismissed, other than in exceptional circumstances, the Integrity Commissioner shall not report to Municipal Council except as part of a semi-annual or other periodic report.

8. If the Integrity Commissioner determines that there has been no contravention of the Code or that a contravention occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.

9. Notwithstanding any other provision of this Protocol, the Integrity Commissioner shall not make any report to Municipal Council or to any other person during the period of time starting on Nomination Day and ending on Voting Day in any year in which a regular municipal election will be held, as set out in the *Municipal Elections Act, 1996*.

Municipal Council Review – Section 10

10. (1) Municipal Council shall consider and respond to the report within 90 days after the day the report is laid before it.

(2) Municipal Council shall not consider whether to impose sanctions on a Member, where the Integrity Commissioner makes a report to the Municipal Council regarding a contravention of the Code, during the period of time starting on Nomination Day and ending on Voting Day in a year in which a regular election will be held, as set out in the *Municipal Elections Act, 1996*.

(3) In responding to the report, Municipal Council may vary a recommendation that imposes a penalty, subject to section 223.4, subsection (5) of the *Municipal Act, 2001*, but shall not refer the recommendation other than back to the Integrity Commissioner.

(4) Upon receipt of recommendations from the Integrity Commissioner, Municipal Council may, in circumstances where the Integrity Commissioner has determined there has been a violation of the Code impose either of two penalties:

(a) a reprimand; or

(b) suspension of the remuneration paid to the member in respect of his/her services as a Member of Council or a local board, as the case may be, for a period of up to 90 days.

(5) The Integrity Commissioner may also recommend that Municipal Council impose one of the following sanctions:

(a) written or verbal public apology;

(b) return of property or reimbursement of its value or of monies spent;

(c) removal from membership of a committee; and,

(d) removal as a chair of a committee.

(6) The Integrity Commissioner has the authority to apply sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* and investigate complaints or initiate an investigation of suspected violations of the Act. If the Integrity Commissioner determines that a violation has occurred, the Integrity Commissioner may apply to a judge for determination of the questions of whether the member has contravened sections 5, 5.1 or 5.2 of the Act.

Confidentiality – Section 11

11. (1) A complaint will be processed in compliance with the confidentiality requirements in sections 223.5 and 223.6 of the *Municipal Act*, which are summarized in the following subsections.

(2) The Integrity Commissioner and every person acting under her or his instructions shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of any investigation except as required by law in a criminal proceeding.

(3) All reports from the Integrity Commissioner to Council will be made available to the public.

(4) Any references by the Integrity Commissioner in a semi-annual or other periodic report to a complaint or an investigation shall not disclose confidential information that could identify a person concerned.

(5) The Integrity Commissioner in a report to Council on whether a member has violated the Code shall only disclose such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.