



## **Administrative Report**

### **Office of the Manager, Records and Accessibility/Deputy Clerk**

**To:** Warden MacDonald and Members of Essex County Council

**From:** Katherine Hebert  
Manager, Records and Accessibility/Deputy Clerk

**Date:** Wednesday, September 06, 2023

**Subject:** Appointment of Integrity Commissioner for the Corporation of the County of Essex

**Report #:** 2023-0906-LCS-R15-KH

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#### **Purpose**

The purpose of this Administrative Report (the "Report") is to recommend the appointment of an Integrity Commissioner for the Corporation of the County of Essex (the "County"), for a three-year period with two optional one-year extensions, at the discretion of the County, should it be deemed to be advantageous to do so.

#### **Background**

As described in more detail below, Sections 223.3, 223.4, and 223.4.1. of the *Municipal Act, 2001* require that all municipalities make arrangements for all of the responsibilities set out in subsection 223.3(1) to be provided by an Integrity Commissioner and outlines the roles and responsibilities of an Integrity Commissioner once appointed.

Further to the relevant provisions of the *Municipal Act, 2001*, the mandate of an Integrity Commissioner is to investigate and adjudicate complaints made to the Integrity Commissioner from a member of Council or the public. The Integrity Commissioner has the power to assess and investigate complaints received and make penalty recommendations when it is determined that a complaint is valid and there has been a violation of a Code of Conduct or other ethical breach. The Integrity Commissioner can also provide advice to Council members about their own situation respecting the Code of Conduct and other procedures, rules, policies, etc., governing ethical behaviour.

Finally, the Integrity Commissioner can provide other value-added services, including reviewing the Code of Conduct and other related policies and procedures and providing training sessions to Council.

In addition, there are numerous benefits associated with such an appointment, including:

- Relieving the Warden and Council of the responsibility to investigate complaints;
- Promoting accountability and transparency; and
- Enhancing public trust in our municipal government.

## **History**

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The County first appointed an Integrity Commissioner in 2016, following a procurement process held by one of the lower-tier municipalities. Since that time, the contract with the successful proponent was further extended for single year terms. Recently, the County began an informal extension on a temporary month to month basis, until such a time as Administration could go to market for quotes, which is required for compliance with the County's Procurement Policy.

Historically, the County has had very few instances where interactions with the Integrity Commissioner have been required. Since 2016, inclusive of 2023, the Integrity Commissioner has been engaged one time for an investigation of a complaint against a member of Council which was deemed to be frivolous and therefore was dismissed.

Integrity Commissioners have mandates in four general areas:

### **1. Advisory Role:**

The Integrity Commissioner will provide written and oral advice to individual members of County Council in respect of the County's Code of Conduct and other procedures, rules, and policies governing the ethical behaviour of members, including general interpretation of the *Municipal Conflict of Interest Act*.

They further provide County Council with opinions and advice respecting compliance by elected officials with respect to procedures, rules, and policies governing the ethical behaviour of members.

### **2. Complaint Investigation:**

The Integrity Commissioner assesses and investigates complaints made by Council, or member(s) of Council or member of the public pursuant to section 223.3 of the *Municipal Act, 2001*.

### **3. Complaint Adjudication:**

Once a complaint is received, the Integrity Commissioner performs an investigation to determine whether a member of Council has violated an applicable Code of Conduct, or procedure, rule, or policy governing ethical behaviour. Once the investigation is complete, the Integrity Commissioner completes a report, and makes recommendations to Council, in open session, based on the factual findings. The recommendations made to Council will include the recommended application of penalties, if any.

### **4. Education:**

The Integrity Commissioner reports on County activity and investigations as required. Further the Integrity Commissioner consults with members of Council and administration on matters related to legislation, codes of conduct, protocols and office procedures emphasizing the importance of ethics, accountability, and transparency in municipal government.

## **Legislation**

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Pursuant to Subsection 223.3(1) of the *Municipal Act, 2001*, as amended, the Integrity Commissioner "reports to council and 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.
- 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."

This same subsection requires a municipality to appoint the Integrity Commissioner. Section 223.3(5) of the Act provides that the Integrity Commissioner "is not required to be a municipal employee."

## **Discussion**

As noted above, the current contract with the County's Integrity Commissioner has expired, and the County's Integrity Commissioner is currently being retained on a month-to-month service agreement basis until Council provides direction to County Administration on this matter.

Administration contacted multiple Integrity Commissioners to secure quotes and background information, in compliance with the County's Procurement Policy. Four quotes were obtained and Administration reviewed proposals provided.

## **Results and Recommendation**

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Discussion with each respondent, including the current Integrity Commissioner, provided Administration with information and background as well as a sense of the approach that each Integrity Commissioner would take in providing services to the County.

After consideration of the submissions, Administration recommends that Council appoint Aird & Berlis LLP as the County's Integrity Commissioner. Based on the proposal, quote, and background information provided, County Administration believes that Aird & Berlis LLP would be the best fit for the County's needs in appointing an Integrity Commissioner. Further, Aird & Berlis LLP is already a partner in LAS, and is the Closed Meeting Investigator appointed by the County.

Aird & Berlis LLP has the requisite experience, capacity and expertise to serve as a knowledgeable, efficient and cost-effective Integrity Commissioner to the County. John Mascarin, who is a partner in the firm is the lead on the Integrity Commissioner services team, and is widely recognized across the province as a leader in the area of municipal law. Mr. Mascarin, along with several other Aird & Berlis LLP team members, have facilitated presentations and workshops through AMCTO, the Association of Municipalities of Ontario (AMO) and through the Ministry of Municipal Affairs and Housing (MMAH) on multiple occasions. Mr. Mascarin has been recognized extensively through his work with Municipalities as an expert in

municipal law and land use planning, by peer organizations, by the Ontario Bar Association and the Law Society of Ontario. Mr. Mascarin has held several teaching arrangements and is a well published author on several municipally focused books and publications over the past several years.

Aird & Berlis LLP has an extensive team of partners and associates who have expertise in municipal law and specifically Integrity Commissioner and Code of Conduct investigations. The firm provides more than 80 municipalities in Ontario with Integrity Commissioner services, Closed Meeting Investigator services, and Ombudsman services. The firm further supports many independent Integrity Commissioners across Ontario when they require legal counsel or litigation support.

Other services provided by Aird & Berlis LLP and John Mascarin specifically relate to the review of municipal codes of conduct, accountability and transparency policies, and rules and procedures governing the ethical conduct and behaviour of members of Council as well as conducting training sessions for members of Council with respect to same.

## **Financial Implications**

The 2023 budget includes \$5,000 for Integrity Commissioner services. The number of instances where Integrity Commissioner services are utilized may impact the amount set aside in future budgets.

The County's Procurement Policy was followed to obtain quotes for this purpose.

## **Consultations**

David Sundin, County Solicitor, was consulted during the collection of research information and review of proposals by the respondents to the County's request for proposals, as well in the drafting of this Report.

Mary Birch, Director, Legislative and Community Services was consulted during the collection of information, research and review of proposals by the respondents and in the drafting of this Report.

## **Recommendation**

That Essex County Council receive report 2023-0906-LCS-R15-KH Appointment of Integrity Commissioner for the Corporation of the County of Essex as information; and

That Aird & Berlis LLP be appointed Integrity Commissioner as defined in the Municipal Act, 2001 as amended, for the Corporation of the County of Essex; and

That the Warden and Clerk be authorized to enter into a three-year Service Agreement with two additional optional 1 year term extensions, should it be deemed to be advantageous to extend the contract by County Administration, with Aird & Berlis LLP for Integrity Commissioner services, as negotiated in consultation with the County Solicitor; and

That County Council enact By-law number 2023-43, being a by-law to appoint an Integrity Commissioner for the Corporation of the County of Essex.

## Approvals

Respectfully Submitted,

*Katherine Hebert*

Katherine Hebert, Manager, Records and Accessibility/Deputy Clerk

Concurred With,

*Mary Birch*

Mary Birch, Director, Legislative and Community Services/Clerk

Concurred With,

*Sandra Zwiers*

Sandra Zwiers, MAcc, CPA, CA, Chief Administrative Officer

Appendix Number	Title
N/A	N/A