



Staff Report

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Report To:	Council		
Date of Meeting:	June 20, 2022	Report Number:	LGS-013-22
Submitted By:	Rob Maciver, Deputy CAO/Solicitor		
Reviewed By:	Mary-Anne Dempster, CAO	Resolution#:	
File Number:		By-law Number:	
Report Subject:	Appointment of Integrity Commissioner		

Recommendations:

1. That Report LGS-013-22, and any related delegations or communication items, be received;
2. That the Municipality of Clarington appoint Principles Integrity as Integrity Commissioner for the Term of Council (2022-2026) commencing November 15, 2022, subject to the Council of the Regional Municipality of Durham approving and authorizing the appointment of Principles Integrity in accordance with s. 223.3(1) of the Municipal Act, as the Regional Municipality of Durham's Integrity Commissioner, with the option to renew for an additional Council term;
3. That authority is granted to the Deputy CAO/Solicitor to execute an agreement with Principles Integrity for provision of Integrity Commissioner services for the Term of Council (2022-2026) to implement the provisions of Report LGS-013-22;
4. That the by-law (Attachment 1 to Report LGS-013-22), confirming the appointment of Principles Integrity, as Integrity Commissioner, with an effective date of the by-law being the later of the date of passage OR the date which Council of the Regional Municipality of Durham has appointed Principles Integrity as the Regional Municipality of Durham's Integrity Commissioner (as determined and affected by the Municipal Clerk), be approved;
5. That Staff be directed to update Clarington's Accountability and Transparency webpage, following Principles Integrity's appointment coming into effect; and
6. That all interested parties listed in Report LGS-013-22, and any delegations, be notified of Council's decision.

Report Overview

The purpose of this report is to provide information for Council to appoint an Integrity Commissioner for the Municipality of Clarington.

1. Background

Authority to Appoint an Integrity Commissioner

- 1.1 The Council Code of Conduct helps to ensure that Members of Council engage and debate using acceptable conduct. These standards should serve to enhance public confidence that the Municipality's elected representatives conduct Council Business in a civil and courteous manner.
- 1.2 Clarington's first Code of Conduct was established by [By-law 2009-163](#).
- 1.3 [By-law 2017-020](#), as amended, establishes the current Clarington Code of Conduct.
- 1.4 Subsection 223.3 (1) of the [Municipal Act, 2001, as amended](#), grants the authority to municipalities to appoint an Integrity Commissioner who would "report to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to,
 - (a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them; and
 - (b) 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 or of either of them; or
 - (c) both of clauses (a) and (b).

Previous Agreement

- 1.5 Arising out of [Report CLD-003-17](#), Clarington joined the retainer agreement with the Region and appointed Guy Giorno, Fasken, to provide Integrity Commissioner services on the payment of an annual retainer and hourly fee for service basis. Guy Giorno was appointed by [By-law 2017-019](#).
- 1.6 The current agreement expires with the end of the current term of Council, November 14, 2022.

- 1.7 Although the process was a Request for Proposal (RFP) in 2017, the Region chose a “selection process” in 2022, following the Region’s Consultant and Professional Services Contracting Procedure. Invitations to enter into a consulting and professional services contract with the Region were sent to six individuals/firms. Three proposals were received and evaluated by Regional Staff. Respondents also participated in the presentation, and interview sessions, which were evaluated by the same team, with the addition of the Clerks from Oshawa, Pickering, and Whitby.
- 1.8 Similar to the previous agreement, Durham's lower-tier municipalities were offered the opportunity to “piggyback” on the Region’s agreement in 2022, which will result in individual agreements with the municipalities and the Integrity Commissioner.

Integrity Commissioner Responsibilities

- 1.9 The Integrity Commissioner shall have the following responsibilities outlined under subsection 223.3 of the Municipal Act:
 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.

- 1.10 As part of the reporting process, the Integrity Commissioner may recommend that Council impose penalties in accordance with the Municipal Act, 2001 if, in the opinion of the Integrity Commissioner, a Member of Council has contravened the Code of Conduct.
- 1.11 The volume of calls/complaints cannot be predicted. There was one inquiry in 2018 and one inquiry in 2022, with several requests for opinion throughout the years.

Complaint Process and Reporting Relationship

- 1.12 Clarington's Complaint Procedures detail the steps for receipt, investigation, and resolution of complaints pursuant to the Code of Conduct. These procedures are contained in Appendix A to the Council Code of Conduct.

2. Discussion

Region's Appointment

- 2.1 The process to secure integrity commissioner services for the next term of Council followed the Region's Consultant and Professional Services Contracting Procedure.
- 2.2 The appointment of an Integrity Commissioner was a coordinated effort between the Region of Durham and the local municipalities. Appointing the same Integrity Commissioner as the Region allows the Region and Municipality to undertake coordinated efforts to review the Council Codes of Conduct, and for the Mayor and Regional Councillors to seek advice from one source for matters that may come before both lower-tier and Regional Council.
- 2.3 Invitations to enter into a consulting and professional services contract with the Region and local municipalities were forwarded to six individuals/firms. Three proposals were received and evaluated by the Region. Respondents also participated in presentation and interview sessions which were evaluated by the Region, with the addition of the Clerks from Oshawa, Pickering, and Whitby.
- 2.4 Based on the technical presentation, demonstration, and financial evaluation of the compliant bid proposals submitted to the Region of Durham, Principles Integrity achieved the highest combined score and was recommended for award. The Region considered a [Report #2022-A-19](#) at their June 14, 2022, Finance and Administration Committee meeting.

- 2.5 Although Clarington staff were not involved in the selection (but did provide input into terms of reference documents) of the particular proponent, several Area Clerks and Region Staff were part of the selection process and therefore Clarington Staff are confident in the procurement process undertaken by the Region of Durham and therefore recommend that Council appoint Principles Integrity as Integrity Commissioner for the Municipality of Clarington for the term ending November 14, 2026.

Principles Integrity

- 2.6 Established in early 2017, Principles Integrity is a partnership operated by its principals Jeffrey Abrams and Janice Atwood-Petkovski, experienced municipal leaders, with over 35 years of experience each working for municipalities in the fields of municipal law and governance, and now as integrity commissioners. Ms. Atwood-Petkovski previously worked as City Solicitor for two large GTHA municipalities and Mr. Abrams as a municipal solicitor and Clerk in the GTA.
- 2.7 Through its submission to the Region, Principals Integrity summarized its mandate as integrity commissioner as follows:

“The emphasis of our firm is to help public bodies enhance their ethical foundations through the drafting of effective codes of conduct and other policies governing ethical behaviour, through the provision of meaningful education related to such policies, providing pragmatic binding advice to elected officials seeking clarification on ethical issues and governance issues, and by seeking to resolve matters when allegations of transgression are made. Where appropriate and necessary, formal investigations are conducted under the tenets of procedural fairness, with a keen focus on what best serves the public interest.

We exercise our authority in a manner that promotes good governance and effective, ethical solutions. When responding to a complaint, we exercise restraint and apply a solutions oriented perspective, favouring teaching opportunities over sanctions. We have substantial expertise in the application of the Municipal Conflict of Interest Act and have compiled an effective codification of statutory and common law that assists elected officials in avoiding both real and apparent conflicts of interest while enabling them to carry out the duties for which they were elected.”

3. Financial Implications

- 3.1 The budget for the Integrity Commissioner is part of the “Administration-Professional Fees” account for Legislative Services, which has \$20,000 budgeted for 2022. Exact costs incurred on an annual basis depend on frequency of requests for advice and number of investigations undertaken.
- 3.2 The costs are expected to be \$1,250 for the annual retainer fee (previously paid by the Region of Durham). There is another “block fee” of \$1,750 for full day (half-day rates may be applied where applicable) attendance, including preparation, at any meeting of Council or local board for the purpose of conducting training or education. It is anticipated that the Integrity Commissioner will be called upon to provide at least one educational session. For the performance of the remaining duties, the hourly rate is \$275/hour, to be billed monthly, mileage is extra.

4. Timing

- 4.1 As a result of the timing of the Region’s recommendation report, this report is coming directly to Clarington Council rather than going to General Government Committee first.
- 4.2 The attached draft By-law (Attachment 1) to appoint the Integrity Commissioner is based on the Region’s draft appointment by-law and is very similar to the 2017 by-law. It is important to note that the effective date of the appointment by-law is recommended to be the later of the date of passing or the date the Region appoints Principles Integrity.
- 4.3 The current Integrity Commissioner Agreement expires on November 14, 2022. If no Integrity Commissioner is appointed, as per s. 223.3(1.1), “if a municipality has not appointed a Commissioner under subsection (1), the municipality shall make arrangements for all of the responsibilities set out in that subsection to be provided by a Commissioner of another municipality.”

- 4.4 If Clarington Council chooses not to appoint an Integrity Commissioner prior to November 14, 2022, Staff recommend the following resolution:

That Clarington Council delegate the authority to appoint Clarington's Integrity Commissioner, subject to the Council of the Regional Municipality of Durham approving and authorizing the appointment of Principles Integrity in accordance with s. 223.3(1) of the Municipal Act, as the Regional Municipality of Durham's Integrity Commissioner, and subject to the satisfaction of the Deputy CAO/Solicitor, for the Term of Council commencing November 15, 2022, and ending November 14, 2026.

5. Concurrence

The Deputy CAO/Treasurer concurs with the recommendations.

6. Conclusion

It is respectfully recommended that Principles Integrity be appointed as Integrity Commissioner for the Municipality of Clarington for the term ending November 14, 2026, subject to the Region appointing same and that the appropriate by-law be brought forward by Staff.

Staff Contact: June Gallagher, Municipal Clerk, 905-623-3379 ext. 2102 or jgallagher@clarington.net.

Attachments:

Attachment 1 – By-law to Appoint an Integrity Commissioner

Interested Parties:

The following is the list of the interested parties to be notified of Council's decision:

Alexander Harras, Regional Clerk/Director of Legislative Services, Region of Durham

Guy Giorno, Fasken

Principles Integrity