

THE CORPORATION OF THE TOWN OF LAKESHORE

LEGISLATIVE AND LEGAL SERVICES

TO: Mayor and Members of Council

FROM: Kristen Newman, Director of Legislative & Legal Services

DATE: December 5, 2019

SUBJECT: Continuation of Appointment of Integrity Commissioner

RECOMMENDATION:

It is recommended that:

Council adopt By-law 137-2019 continuing the appointment of Bruce Elman as the Town's interim integrity commissioner and authorizing the Mayor and Clerk to execute an agreement with Bruce Elman, The Corporations of the City of Windsor and the City of Amherstburg to retain integrity commissioner services for the term of January 1, 2020 through to and including December 31, 2021 with the possibility of a further 2 year renewal upon mutual agreement and as further described in the report of the Director of Legislative & Legal Services presented at the December 10, 2019 Council meeting.

BACKGROUND:

The *Municipal Act, 2001* ["Act"] requires that municipal councils appoint an Integrity Commissioner effective March 1, 2019 for the following responsibilities in relation to municipal councils:

- The application of the code of conduct for members;
- The application of any procedures, rules and policies governing the ethical behaviour of members;
- The application of provisions of the *Municipal Conflict of Interest Act* to members;
- Requests from members for advice respecting a member's obligations under the code of conduct;
- Requests from Council Members for advice respecting their obligations under a procedure, rule or policy governing the ethical behaviour of members;
- Requests from Council Members for advice respecting their obligations under the *Municipal Conflict of Interest Act*; and
- Educating members, 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*.

On February 19, 2019, Council passed resolution 92-02-2019 directing the following:

Administration prepares a report to Council regarding the use of the City of Windsor's Integrity Commissioner and the use of LAS as a Closed Meeting Investigator for the Town of Lakeshore.

At the February 19, 2019 meeting, Council adopted By-law 22-2019 establishing the Office of the Integrity Commissioner.

On July 16, 2019, Council passed resolution number 346-07-2019 which states:

The Council of The Corporation of the Town of Lakeshore adopt By-law 85-2019 appointing Bruce Elman as the Town's integrity commissioner and authorizing the Mayor and Clerk to execute an agreement with Bruce Elman to retain interim integrity commissioner services;

And that Administration approach the City of Windsor and Town of Amherstburg to negotiate a proposal to the City of Windsor and Town of Amherstburg for a joint integrity commissioner services agreement for 2020, as described in the report of the Director of Legislative & Legal Services presented at the July 16, 2019 Council meeting.

On July 16, 2019, Council passed By-law 85-2019 appointing Bruce Elman as the integrity commissioner until December 31, 2019. Currently, Mr. Elman is providing services on an interim basis to allow time for Administration for the various Administrations to seek out the necessary approvals and arrange a multi-party agreement for Mr. Elman's services.

COMMENTS:

On November 25, 2019, Amherstburg's Town Council passed the following resolution reappointing Mr. Elman:

That:

Mr. Bruce Elman's contract BE RENEGOTIATED as Integrity Commissioner for the Town of Amherstburg to fulfill the duties as outlined in governing legislation for a term of 2 years beginning January 1, 2020; and,

The Mayor and Clerk BE AUTHORIZED to execute the agreement with Mr. Elman, the City of Windsor and the Town of Lakeshore for Shared Integrity Services.

On December 2, 2019, Windsor's City Council passed the following resolution reappointing Mr. Elman:

THAT Council direct that Bruce Elman BE APPOINTED as the Integrity Commissioner for the City of Windsor for the term January 1, 2020-December 31, 2021 with the possibility of a further two year renewal upon mutual agreement, on the terms and conditions stated herein; and,

That the City of Windsor BE AUTHORIZED re-enter into an agreement with the Town of Amherstburg for shared Integrity Commissioner Services as outlined in the report; and,

That the City of Windsor BE AUTHORIZED to likewise enter into an agreement with the Town of Lakeshore as outlined in the report; and,

That the Chief Administrative Officer and City Clerk BE AUTHORIZED to execute a contract with Mr. Elman on the said terms and conditions, provided that such contract is approved as to form and technical content by the City Solicitor and as to financial content by the Chief Financial Officer & City Treasurer; and

That, when this contract is expires and is next considered by Council, that Administration include in its report to Council information regarding the advisability of term limits for Integrity Commissioners, including information on what Windsor's municipal comparators are implementing in this regard.

Along with the other 2 municipalities, Mr. Elman has indicated to Administration that he would be willing to continue in his role as Integrity Commissioner and enter in a multi-party agreement with the Town of Lakeshore, City of Windsor and the Town of Amherstburg.

The proposed terms of the agreement are as follows:

- Include cost sharing on the monthly retainer as follows:

Windsor: \$650

Amherstburg: \$300

Lakeshore: \$300

- The hourly rate of \$300 for services would continue.
- Costs associated with advisory bulletins (education and advice to Council, board and committee members) will be shared equally between the 3 municipalities. Each municipality will be billed separately for services rendered for that municipality.
- The Town will continue to be required to indemnify Mr. Elman (as required under the Municipal Act, 2001).
- The Town will be able to reserve the right to terminate the services at any time throughout the term of the contract. The agreement will include a 2 year renewal option which Administration will bring forward for consideration prior to the end of the initial 3 year term.

Sharing the service will allow the Town to share the costs of other value-added services (i.e., advisory bulletins). Furthermore, the Town will benefit from an escape clause because the City of Windsor is providing the Town with the opportunity to opt out at the City's expense should the Town wish to discontinue the services of Mr. Elman.

Based on the foregoing, Administration recommends adopting By-law 137-2019 to continue the appointment of Mr. Elman and authorize the Mayor and Clerk to execute the agreement with Windsor pursuant to the terms and conditions described in this report.

OTHERS CONSULTED:

Bruce Elman
City of Windsor, City Clerk
Town of Amherstburg, Town Clerk

FINANCIAL IMPACTS:

This purchase constitutes a non-competitive purchase; however, consulting services are not subject to competitive processes under the Town's Purchasing By-law. Administration proposes to fund expenses associated with the Integrity Commissioner from the Integrity Commissioner budget.

Prepared by:



Kristen Newman
Director of Legislative & Legal Services

Submitted by:



Truper McBride
Chief Administrative Officer

Attachment(s): Schedule "A" – City of Windsor Administrative Report of November 18, 2019

R:\2019 Meeting Dates - Reports\12 - December 10, 2019\Legislative & Legal Services\R2C-
ContinuationofAppointmentIntegrityCommissioner.docx



Subject: Appointment of Integrity Commissioner

Reference:

Date to Council: December 2, 2019
Author: Sandra Gebauer, Council Assistant
519-255-6100 x 6331
sgebauer@citywindsor.ca
Council Services
Report Date: November 18, 2019
Clerk's File #: GM/12076

To: Mayor and Members of City Council

Recommendation:

That Council **DIRECT** that Bruce Elman **BE APPOINTED** as the Integrity Commissioner for the City of Windsor for the term January 1, 2020-December 31, 2021 with the possibility of a further two year renewal upon mutual agreement, on the terms and conditions stated herein; and,

That the City of Windsor **BE AUTHORIZED** to re-enter into an agreement with the Town of Amherstburg for shared Integrity Commissioner Services as outlined in the report; and,

That the City of Windsor **BE AUTHORIZED** to likewise enter into an agreement with the Town of Lakeshore as outlined in the report; and,

That the Chief Administrative Officer and City Clerk **BE AUTHORIZED** to execute a contract with Mr. Elman on the said terms and conditions, provided that such contract is approved as to form and technical content by the City Solicitor and as to financial content by the Chief Financial Officer & City Treasurer.

Executive Summary:

N/A

Background:

Bill 68, "The Modernizing of Ontario's Municipal Legislation Act 2017", passed third reading and received Royal Assent in Ontario's Legislature on May 30, 2017. One of the biggest changes is the requirement that all municipalities have a code of conduct and either appoint an integrity Commissioner or make arrangements for the Integrity Commissioner of another municipality to fulfill the relevant duties. The City of Windsor has already introduced a Code of Conduct and has retained the services of an Integrity

Commissioner since 2008, however Bill 68 has expanded the role of the Integrity Commissioner to incorporate a greater scope of powers, which became effective March 1, 2019.

The purpose of this report is to provide Council with information regarding the continued appointment of Bruce Elman as Integrity Commissioner for the City of Windsor for the term of January 1, 2020 through December 31, 2021.

Discussion:

Mr. Bruce Elman, former Dean of the University of Windsor Law School, has held the post of Integrity Commissioner at the City of Windsor since August 1, 2011. Windsor City Council at its meeting held January 15, 2018 adopted Council resolution B39/2018:

*THAT Council direct that Bruce Elman **BE APPOINTED** as the Integrity Commissioner for the City of Windsor for the term January 1, 2018-December 31, 2019 with the possibility of a further one year renewal upon mutual agreement, on the terms and conditions stated herein and that the City of Windsor **BE AUTHORIZED** to enter into an agreement with the Town of Amherstburg for shared Integrity Commissioner Services as outlined in the report and that the Chief Administrative Officer and City Clerk **BE AUTHORIZED** to execute a contract with Mr. Elman on the said terms and conditions, provided that such contract is approved as to form and technical content by the City Solicitor and as to financial content by the Chief Financial Officer & City Treasurer.*

Mr. Elman has indicated to Administration that he would be willing to continue in this role as Integrity Commissioner for the City of Windsor and the Town of Amherstburg. The Town of Lakeshore has recently approached the City Clerk about also sharing Bruce Elman's services and Mr. Elman has indicated that he is agreeable to such an arrangement with similar terms and conditions as stipulated in his present contract. The terms of his most recent agreement are as follows:

- 2-year term. (Mr. Elman has indicated he would be agreeable to a renewal to December 31, 2021 with the possibility of a further two year renewal upon mutual agreement);
- Payment of a retainer of \$1,250 per month (an increase of \$250 per month from the current \$1,000 retainer) as well as an hourly rate of \$300.
 - As of January 2018, the \$1,000 monthly retainer for the City of Windsor was reduced to \$700 due to the shared services with Amherstburg. This will be further reduced to \$650 when the Town of Lakeshore joins in the shared services.
- All other expenses, such as travel, mileage or independent legal advice, reimbursed at cost, subject to the prior approval of such expenses;

- Occasional secretarial services provided through the Office of the City Clerk.

During Mr. Elman's tenure as the Integrity Commissioner he has had the opportunity to provide members of Council with advice, conduct educational sessions, review and where necessary investigate complaints and report the outcome to Council, and has appeared before Council to provide Annual Reports summarizing and detailing his activities.

For information purposes, since Mr. Elman was appointed as Integrity Commissioner in 2011, his total billings are as follows:

Year	Retainer	Total Hours	Total Fees	Total Fees Discounted	Total Fees Charged	Disbursements	Travel Expenses	Total Fees Charged
2011	5,000.00	22.5	6,750.00	(4,050.00)	2,700.00	Nil	Nil	7,700.00 ¹
2012	12,000.00	137.9	41,370.00	(10,890.00)	30,480.00	73.34 (online publication)	479.78	43,033.12
2013	12,000.00	69.6	20,880.00	(2,280.00)	18,600.00	Nil	Nil	30,600.00
2014	12,000.00	36.2	10,860.00	(510.00)	10,350.00	Nil	Nil	22,350.00
2015	12,000.00	42.0	12,600.00	(3,975.00)	8,625.00	Nil	Nil	20,625.00
2016	12,000.00	60.9	18,270.00	(5,640.00)	12,630.00	Nil	Nil	24,630.00
2017	10,000.00 ²	71.3	21,390.00	(3,900.00)	17,490.00	Nil	Nil	27,490.00
2018	7,000.00 ³	39.25	11,775.00	(1,440.00)	10,335.00	Nil	Nil	17,335.00
2019	3,850.00	19.9	5,970.00	(1,380.00)	4,590.00	Nil	Nil	8,440.00 ⁴
Total	85,850.00	499.60	149,865.00	(34,065.00)	15,800.00	73.34	479.78	202,203.12

¹Contract commenced August 1, 2011

²Retainer discounted by \$2,000.00

³Retainer discounted by \$1,400.00

⁴Fee billings for the months of July through December 2019 not yet submitted

As can be seen by the chart above, there have been minimal charges for disbursements and travel during Mr. Elman's tenure. In addition, total fees of \$34,065 have been discounted during this time. An additional \$3,400 has been discounted off of the monthly retainer fee, which brings the total savings to \$37,465.

Shared services with the Town of Amherstburg and the Town of Lakeshore

Beginning January 2019 the City of Windsor and the Town of Amherstburg entered into an agreement sharing the services of Bruce Elman. The Town of Lakeshore has recently approached the City Clerk about the possibility of also sharing Bruce Elman's Services, an arrangement that Mr. Elman has indicated that he is agreeable to.

The proposed terms of the agreement include cost sharing on the monthly retainer, with the City of Windsor paying \$650. per month, the Town of Amherstburg, and the Town of Lakeshore, each paying \$300. per month. Costs associated with advisory bulletins that may arise will be shared equally between the three municipalities. Each municipality

will be billed separately for services rendered. It should be noted that both the Town of Amherstburg and the Town of Lakeshore would reserve their right to terminate this arrangement at any time throughout the term of the contract.

Risk Analysis:

There are no critical or significant risks associated with the recommendations in this report. As Council is aware Bill 68, "The Modernizing Ontario's Municipal Legislation Act", has introduced a series of reforms to the *Municipal Act*, and *Municipal Conflict of Interest Act (MCIA)* and as a result has expanded the role of the Integrity Commissioner to provide advice under the *Municipal Conflict of Interest Act (MCIA)*. These changes took effect until March 2019 and Administration will continue to assess these changes as they may drive up costs of Integrity Commissioner services in the future. This is anticipated to be a low risk and the City Clerk / Corporate Leader – Public Engagement & Human Services, is actively monitoring any changes to legislation.

In terms of the Town of Amherstburg's and the Town of Lakeshore's cost sharing proposals this would generate some cost savings that could be realized through the sharing of the retainer fees and educational services. However, it must be stressed that the Town of Amherstburg and/or the Town of Lakeshore could terminate this arrangement at anytime throughout the term of the contract and the City of Windsor would have to once again absorb the remaining costs for the term of the contract.

Financial Matters:

An amount of \$25,500. is allotted for the services of the Integrity Commissioner in the approved operating budget. A further \$5,000. is budgeted for Meeting Investigation services.

Consultations:

The Town of Amherstburg

The Town of Lakeshore

Conclusion:

The current Integrity Commissioner for the City of Windsor is Mr. Bruce Elman, former Dean of the University of Windsor Law School. Mr. Elman has served in this capacity since August 1, 2011. He has indicated that he would be willing to continue to serve in this capacity on similar terms as his past contract until December 31, 2021 with the possibility of a further renewal.

With respect to the sharing of the Integrity Commissioner's service with the Town of Amherstburg and the Town of Lakeshore, Mr. Elman is agreeable with the proposed terms, which would see each municipality billed separately for services rendered, yet some cost savings could be realized through the sharing of the retainer fees and educational services.

Planning Act Matters:

N/A

Approvals:

Name	Title
Sandra Gebauer	Council Assistant
Alexandra Taylor	Financial Planning Administrator
Steve Vlachodimos	Senior Manager of Council Services/ Deputy City Clerk
Shelby Askin Hager	City Solicitor
Joe Mancina	City Treasurer
Valerie Critchley	City Clerk
Onorio Colucci	Chief Administrative Officer

Notifications:

Name	Address	Email
Bruce Elman		belman@uwindsor.ca
Paula Parker, Municipal Clerk, Town of Amherstburg		pparker@amherstburg.ca
Kristen Newman, Director of Legislative and Legal Services, Town of Lakeshore		knewman@lakeshore.ca

Appendices: