



## Staff Report

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**Report To:** Council Meeting

**From:** Jana Nethercott, Clerk

**Date:** 2022-10-06

**Subject:** Integrity Commissioner, Closed Meeting Investigator and Municipal Ombudsman

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### **Recommendation:**

That West Elgin Council hereby receives the report from Jana Nethercott, Clerk re: Integrity Commissioner, Closed Meeting Investigator and Municipal Ombudsman; and

That West Elgin Council hereby \_\_\_\_\_.

### **Purpose:**

The purpose of this report is to provide Council with information on their options for the appointment of an Integrity Commissioner, Closed Meeting Investigator and Municipal Ombudsman.

### **Background:**

The Municipality received information in June 2022 that our current provider of Integrity Commissioner, Closed Meeting Investigator and Municipal Ombudsman, Independent Resolutions Inc., was no longer going to be providing these services. As we had partnered with the County of Elgin for these services, the County issued a joint RFP which included all local municipal partners, except Aylmer and included the City of St Thomas. This RFP allowed each municipality to cross appoint the same firm under separate agreement.

Three proposals were received from proponents and the Evaluation Committee met in September to review the three proposals. Then the Evaluation Committee eventually selected Aird & Berlis LLP as the highest scoring qualified proposal. The County of Elgin appointed Aird & Berlis as their new Integrity Commissioner, Closed Meeting Investigator and Municipal Ombudsman in September and provided the information to all local municipal partners so that each Council can make their own determination. Proposal from Aird & Berlis is attached.

### **Highlights of the Proposal from Aird & Berlis**

The hourly rate for services varies depending on the individual staff member that is performing the work. The average rate proposed for the new contract term is \$489.75 per hour, with the average being formulated based on percentage allocation of work among staff members based on past experience and projections. This hourly rate is fixed for the two-year term. Disbursements and travel costs are extra should on-site services be required.

The quantity of Integrity Commissioner, Closed Meeting Investigator and Municipal Ombudsman hours utilized is contingent upon the number of complaints received, therefore it is not possible to

predict the precise cost on an annual basis. In the past the County of Elgin covered a retainer cost associated with Integrity Commissioner, Closed Meeting Investigator and Municipal Ombudsman services for all local municipal partners (\$20,375). This current proposal does not have a retainer and therefore the County of Elgin is no longer covering any costs associated with these services. The County of Elgin is suggesting each municipality budget \$3,000 to \$5,000 annually.

There are other options that Council needs to be aware of. The Ontario Ombudsman can act as the Closed Meeting Investigator and Municipal Ombudsman for public complaints. Municipalities are required to appoint an Integrity Commissioner that reports directly to Municipal Council as per Section 223.3 and there is no cost for these services.

### Explanation of the Three Roles

*Integrity Commissioner:* The Integrity Commissioner is required by Section 223.3 of the Municipal Act. This person must be an independent body performing the functions of:

- Application of the Code of Conduct for members of Council and Municipal Boards
- Application of the procedures, rules and policies of the Municipality governing the ethical behaviour of members of Council and Municipal Boards
- Application of the *Municipal Conflict of Interest Act* relating to disclosure and exerting influence of members of Council and Municipal Boards
- Requests from members of Council or Municipal Boards for advice respecting their obligations under the code of conduct
- Requests from members of Council or Municipal Boards for advice under procedural, rule of policy that govern the ethical behaviour of members
- Requests from members of Council or Municipal Boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*
- Provision of educational information to members of Council, Municipal Boards, General Public about the municipality's code of conduct for members of Council.

\*\*Ontario Ombudsman cannot act as Integrity Commissioner due to the fact that they investigate complaints against Integrity Commissioners.

*Closed Meeting Investigator:* The Closed Meeting Investigator is required by Section 239.2 of the *Municipal Act*. This section authorizes the Municipality to appoint an investigator who has the function to investigate in an independent manner, on a complaint made to them by any person, whether the municipality or municipal board has complied with section 239 or a procedural by-law in respect of a meeting or part of a meeting that was closed to the public. If a municipality does not appoint someone, the Ontario Ombudsman is the default investigator.

*Municipal Ombudsman:* The Municipal Ombudsman is required by Section 223.13 of the *Municipal Act*. This section authorizes the Municipality to appoint an Ombudsman whose function it is to investigate any decision or recommendation made or act done or omitted in the course of administration of the municipality, its local boards and such municipally controlled corporations. . If a municipality does not appoint someone, the Ontario Ombudsman is the default investigator.

Council has the following options:

1. Approve the RFP of Aird & Berlis for all services and pass a resolution approving entering into a 2-year contract and later pass a by-law to adopt the contract (when its provided)

2. Approve using Aird & Berlis for ONLY Integrity Commissioner and use the Ontario Ombudsman for the other services
3. Direct staff to Issue an RFP for Integrity Commissioner and use the Ontario Ombudsman for the other services.

Across the County, each municipality is making its own decision, there is a mix between the ones just going with Aird & Berlis and those choosing to utilize the Ontario Ombudsman for some of the services.

Staff are recommending Option number 2 as it is difficult to predict the total cost required for the Integrity commissioner in the first year of a new term of Council with the possibility of majority of new Councillors, who make seek advise on conflict of interest. In the past this advise was at no charge to the Municipality as it was part of the retainer fee paid for by the County of Elgin and staff don't want a new Councilor worried about the budget when asking for advice that only an IC can provide. It is hoped that by removing the costs for Closed Meeting investigations and Ombudsman complaints West Elgin can keep their costs down.