
HALDIMAND COUNTY

Report CS-CL-01-2018 Appointment of an Integrity Commissioner for Complaint Investigation

For Consideration by Council in Committee on March 27, 2018



OBJECTIVE:

To appoint an Integrity Commissioner in order to perform an investigation into a formal complaint, filed on March 2, 2018, under the Code of Conduct and Complaint Protocol for Members of Council.

RECOMMENDATIONS:

1. THAT Report CS-CL-01-2018 Appointment of an Integrity Commissioner for Complaint Investigation be received;
2. AND THAT Memorandum CS-CL-M01-2018 Additional Information to Report CS-CL-01-2018 Appointment of an Integrity Commissioner for Complaint Investigation be received and remain confidential;
3. AND THAT _____ be appointed as Integrity Commissioner for the purposes of performing an investigation into a formal complaint, received March 2, 2018, under the Code of Conduct and Complaint Protocol for Members of Council;
4. AND THAT the unbudgeted costs associated with the review of this formal complaint be reported to Council along with the Integrity Commissioner's final report and funded from the Contingency Reserve.

Prepared by: Evelyn Eichenbaum, Clerk

Respectfully submitted: Karen General, CPA, CGA, General Manager of Corporate Services

Approved: Karen General, CPA, CGA, Deputy Chief Administrative Officer

EXECUTIVE SUMMARY:

Haldimand County has had the current Code of Conduct and Complaint Protocol for Members of Council in place since 2008. On March 2, 2018, a formal complaint was submitted to the Clerk about an alleged contravention of the code by Councillor Fred Morison. As required in Policy 2008-02, the services of qualified candidates to serve as Integrity Commissioner (IC) are outlined in this report and the related confidential addendum, in order for Council to appoint an IC to review and conduct an investigation into the complaint.

BACKGROUND:

In 2006, the Province introduced significant changes to the *Municipal Act, 2001* (Act) introducing a number of mechanisms to ensure accountability and transparency of municipal government. This included a mandatory requirement to establish a policy related to public accountability and transparency of the municipality's actions, and a discretionary authority to establish a code of conduct for members of Council and to appoint an IC to be responsible for providing advice and conducting any related

investigations. Subsequently, Council approved the Accountability and Transparency Policy 2007-05 which also required the adoption of a code of conduct for members of Council. Policy 2008-02 Code of Conduct and Complaint Protocol for Members of Council was adopted in September 2008, and is included as Attachment 1 to this report, for reference.

The policy originally required the appointment of an IC, for a contracted term and in advance of any complaints, to conduct investigations related to Code of Conduct complaints. In 2010, Mr. Stuart Ellis of Lampard, Ellis & Walsh was appointed as Haldimand County's IC. At the end of the contract period, Mr. Ellis retired, and as his Integrity Commissioner services had not been utilized to that point, the County took a different approach in 2013. The Code of Conduct was amended to require that, upon receipt of a formal complaint, the Clerk shall recommend the services of a qualified candidate for appointment as an IC to perform an investigation into the matter, and this requirement is still in place.

ANALYSIS:

A formal complaint under the Code of Conduct and Complaint Protocol for Members of Council, alleging that Councillor Morison has contravened the Code, was submitted to the Clerk on March 2, 2018. (The complaint was initially submitted through the informal complaint procedure, as outlined in the Complaint Protocol of the Code; but, as this process was not satisfactory to the complainant, the formal complaint was initiated.)

In order to proceed with having the complaint reviewed, an IC must be appointed to fulfill the role outlined in the Complaint Protocol (Schedule 1 to the Code of Conduct). As outlined in Policy 2008-02, there are a number of steps to be taken by the IC to review that the complaint is complete, compliant and applicable to the Code of Conduct. If the complaint is deemed within the IC's jurisdiction, an investigation shall be conducted in accordance with the procedure. The IC is obliged to report to Council on whether a complaint is not within his/her jurisdiction, whether the complaint has been terminated, and the results of any investigation and related recommendations. The Code of Conduct states that the IC report(s) shall be made public.

When the authority to appoint a municipal IC was first introduced in 2007, there were few practitioners in the field. The Request for Proposal that the County issued in 2009 for an IC resulted in no responses, and staff sought a referral for the purposes of appointment in 2010. Since that time, the volume of Code of Conduct complaints throughout the Province has increased, and there are now a number of practitioners in the field, especially in light of the requirement to appoint an IC being mandatory in 2019. The Act does not outline qualifications for ICs. Staff have utilized the following criteria, taken from approved criteria for the County's initial IC recruitment in 2009, along with input from other Ontario municipal IC recruitment requirements:

- Possess a degree from a recognized university in a relevant field of study, with an emphasis on law, ethics or public administration, or a combination of equivalent education, training or experience
- Possess comprehensive experience in managing municipal investigation activities, including the application of alternative dispute resolution methods
- Possess extensive knowledge of relevant legislation, including the Municipal Act and the ability to interpret relevant statutes, regulations and policies
- Possess municipal law adjudication experience
- Has no present or past involvement in political campaigning/endorsements of the current Council members or a potential conflict of interest related to Haldimand County services or its constituents
- Possess a current and clear police record

- Has no other dealings or employment with Haldimand County or financial interest in work undertaken by the County.

Staff reviewed a Provincial listing showing a number of individuals that indicate they are able to act as ICs. From that, the following three individuals were invited to submit a proposal to act as IC to review the currently submitted formal complaint, conditional on meeting the above noted qualifications:

- John Mascarin
- Principles Integrity
- Robert Swayze

As their responses were supplied in confidence, Confidential Memorandum CS-CL-M01-2018 outlines each individual's proposal for providing IC services to Haldimand County for review of the March 2, 2018 complaint. Staff also conducted reference checks to verify the capabilities of each individual.

Although the County's complaint procedure allows 90 days for a final report to be completed, staff recognize that time is of the essence in this case, due to the impending municipal election period. An estimate of fees and costs charged for acting as IC were requested from the prospective candidates, as well as anticipated timelines for dealing with the complaint.

For future reference (as outlined in Report CS-CL-11-2017, Bill 68 Implications Re: Accountability and Transparency and Update to the Procedure By-law), revised legislation will require codes of conduct to be in place for each Council and its local boards. Also, the responsibilities of the IC have been expanded as of March 1, 2019 to include the provision of educational information to Council, local boards, the municipality and the public about the municipality's codes of conduct. The role has also been expanded to include authority to provide advice to members of Council and local boards concerning obligations under the Municipal Conflict of Interest Act (MCIA) and to provide educational information about the MCIA. Within the next year, staff will bring forward a report recommending updates to the Code of Conduct for Members of Council, and recommending the appointment of an IC for a set term in order to reflect the above noted changes to legislation. The amended Act clearly states that if a municipality has not appointed an IC, the municipality shall make arrangements for all of the responsibilities to be provided by an IC of another municipality.

FINANCIAL/LEGAL IMPLICATIONS:

The required filing fee of \$200 was paid upon submission of the formal complaint. As noted in section B (2) of the Complaint Protocol (Schedule 1 to the Code of Conduct), the fee will be refunded if it is determined by the IC that the complaint warrants proceeding to the investigation stage.

There is currently no approved budget for costs associated with an IC review of a formal complaint submitted under Policy 2008-02 Code of Conduct and Complaint Protocol for Members of Council. Given the nature of the complaint process, it is difficult to estimate costs that may be incurred. Once a final report is submitted by the IC, staff will publicly advise of the costs resulting from this investigation. Since this is an unbudgeted cost, the expenditure should be funded by the Contingency Reserve.

Beginning next year, staff will recommend budgeting for an annual retainer fee for IC services based on the revised framework that comes into effect under the Act, as of March 1, 2019.

STAKEHOLDER IMPACTS:

Not applicable.

REPORT IMPACTS:

Agreement: No

By-law: No

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Policy 2008-02 Code of Conduct and Complaint Protocol for Members of Council