

Subject: Integrity Commissioner Update**Recommendation:**

BE IT RESOLVED THAT Council receive Report #2021-0133 – Clerks - Integrity Commissioner Update;

AND THAT Council direct staff to update The Town's Fees and Charges By-Law to include an Integrity Commissioner Complaint Filing fee of:

\$100.00 for infrequent complainants (two or fewer complaints filed per term of Council) and \$300.00 for frequent complainants (more than two complaints filed per term of Council);

AND THAT Council authorize an exemption to said filing fees if the complaint relates to alleged physical or sexual harassment, any complaint relating to alleged criminal behavior or any complaint filed by a Town of Pelham staff person;

AND THAT Council authorize the full reimbursement of said filing fee if contravention of the Code of Conduct is found by the Integrity Commissioner;

AND THAT Council authorize and grants the CAO, Town Solicitor and Town Clerk the authority, individually in their sole discretion, to waive any of the said filing fees which they deem to be appropriate;

AND THAT Council direct staff to present to Council a revised Policy S201-15 – Code of Conduct – Appendix 1 Complaint and Investigation Protocol to include provisions for:

- 1. Integrity Commissioner Complaint Filing Fees and exemptions;**
- 2. That requests from members of Council for advice from the Integrity Commissioner be drafted by the Town Solicitor, CAO or Town Clerk according to the preference of the member;**

- 3. Annual Activities Reports to include summary of advice given;**
- 4. Council to receive Final Reports for matters the Integrity Commissioner deems to be frivolous, vexatious or not made in good faith or that there are no grounds or insufficient grounds for an investigation; and**
- 5. Council, the Member and Complainant to receive the same Final Report from the Integrity Commissioner (requiring only one version of a final report);**

AND THAT Council direct staff to proceed with The Town's Request for Proposals / procurement process to award Integrity Commissioner Services for The Town commencing April 1, 2022.

Background:

Section 223.3 of the *Municipal Act, 2001* requires a municipality to appoint an Integrity Commissioner, or make arrangements with an Integrity Commissioner of another municipality, who reports to Council and who is responsible for performing in an independent manner the functions assigned by the municipality.

In 2017, the Niagara Region ("Region") advised its lower-tier municipalities that the Region would be appointing an Integrity Commissioner through a Request for Proposal ("RFP"). Several lower-tier municipalities expressed interest in a shared service approach, therefore the Region included language within their RFP allowing lower-tier municipalities to receive the same Integrity Commissioner services, under the same terms and conditions at the same price as the Region. The Region received three proposals, and subsequently appointed ADR Chambers Inc. as its Integrity Commissioner.

On January 21, 2019, Council for the Town of Pelham authorized the execution of an Agreement with ADR Chambers Inc. for providing services as The Town of Pelham's Integrity Commissioner. Currently ADR Chambers Inc. is the Integrity Commissioner for the Region, Town of Pelham and seven other lower-tier municipalities in the Niagara region.

On February 4, 2019, Council for the Town of Pelham passed By-law No. 4070(2019) appointing ADR Chambers Inc. and Mr. Edward T. McDermott as the Town's Integrity Commissioner.

The Agreement executed by the Town of Pelham and ADR Chambers Inc. commenced on February 4, 2019 with an end date of March 31, 2022. The Agreement allows the Town of Pelham, in its sole discretion, an option to renew for an additional four-year period on the same terms and pricing. The Agreement

allows either party, upon 30 days written notice, to terminate the said Agreement and services provided thereunder.

On May 17, 2021, Council for the Town of Pelham directed staff to prepare a report recommending options to ensure the municipality is provided a copy of any document(s) or report(s) provided from the Integrity Commissioner to the complainant or elected official requesting advice.

Analysis:

Pursuant to Policy S201-15 any Code of Conduct complaints against a Member of Council is filed, in writing with a supporting affidavit, with the Town Clerk. The Town Clerk delivers the said complaint to the Integrity Commissioner for investigation.

For each Code of Conduct investigation conducted by the Integrity Commissioner The Town receives a report and invoice. Depending on the outcome, the report provided to The Town of Pelham may be in-depth or simply indicate the matter is outside the Integrity Commissioner's jurisdiction. The complainant may receive a different report than the municipality. In the present system, the Town is not entitled to a copy of the report received by the complainant, but is obligated to pay for it.

Members of Council may at any time contact the Integrity Commissioner directly to request advice. The Member of Council directly receives the written advice from the Integrity Commissioner. The Town does not receive a copy of the question asked or advice given.

The Integrity Commissioner provides an Annual Report advising the municipality of activities during the year, the expenses incurred by the municipality within that current year and provides a summary of issues for Council's consideration.

Town of Pelham - Integrity Commissioner Yearly Activities and Cost Chart

****As of July 23, 2021****

February 4, 2019 – December 31, 2019	
Activities	<ul style="list-style-type: none">• Reviewed and proposed revisions to The Town's Code of Conduct and Town's protocol for the processing of complaints;• Provided an education seminar to Council; and• Two (2) requests for advice from Members of Council
Cost	<ul style="list-style-type: none">• \$7,000.92 (including taxes)

January 1, 2020 – December 31, 2020	
Activities	<ul style="list-style-type: none"> Two (2) Code of Conduct investigations; and One (1) request for advice from a Member of Council
Cost	<ul style="list-style-type: none"> \$23,953.18 (including taxes)
January 1, 2021 – July 23, 2021 (review of Town records)	
Activities	<ul style="list-style-type: none"> Three (3) Code of Conduct investigations; and Two (2) requests for advice from Members of Council
Cost	<ul style="list-style-type: none"> \$36,849.31 (including taxes)
	** Costs per year may have a timing difference from financial statements with respect to year billed vs. year expensed**

The majority of investigated code of conduct complaints filed against Members of Council have been disposed of without finding contravention of the Code of Conduct by any Member of Council, and without the IC even having jurisdiction. The Town of Pelham is responsible for all costs associated with investigations concluded or advice given by the Integrity Commissioner, regardless of the degree of merit associated with the claim.

Integrity Commissioner Complaint Filing Fee

In an effort to reduce frivolous or vexatious complaints, staff recommend including a required Integrity Commissioner Complaint Filing Fee to file a complaint with the Integrity Commissioner. Multiple municipalities within the Niagara area have adopted this model, as indicated in the table below:

Niagara Region - Integrity Commissioner Complaint Fee Comparison Chart

As of July 23, 2021

Municipality	Fee	Notes
Niagara Region	\$0.00	
Fort Erie	\$100.00	<ul style="list-style-type: none"> Application fee is refundable if complaint is judged to be valid
Grimsby	\$200.00	<ul style="list-style-type: none"> Application fee is refundable if complaint is judged to be valid

		<ul style="list-style-type: none"> Town Solicitor has the authority to reimburse application fee and relevant expenses if complaint does not substantiate a contravention or if the member was not blameworthy
Lincoln	\$0.00	
Niagara Falls	\$500.00	<ul style="list-style-type: none"> 50% of fee is refundable if complaint is found to be valid If complaint found to be frivolous, vexatious or contains insufficient grounds to support an investigation, the complainant forfeits application fee
Niagara-on-the-Lake	\$0.00	
Port Colborne	\$200.00	
St. Catharines	\$36.90	
Thorold	\$0.00	
Wainfleet	\$100 (for infrequent complainants) \$500 (for frequent complainants)	<ul style="list-style-type: none"> No posted description of "infrequent" or "frequent" complainant Application fee is refundable if complaint is judged to be valid
Welland	\$0.00	
West Lincoln	\$0.00	
Pelham	\$0.00	

Staff recommend a filing fee of \$100.00 for infrequent complainants (two or fewer

complaints filed per term of Council) and a \$300.00 filing fee for frequent complainants (more than two complaints filed, per term of Council). If the Integrity Commissioner determines that a contravention of the Code of Conduct occurred, the filing fee shall be refunded. If the complaint is found by the Integrity Commissioner to be frivolous, vexatious, made in bad faith, contain insufficient grounds to support an investigation or outside the jurisdiction of the Integrity Commissioner, the complainant forfeits the fee.

Staff further recommend filing fees be waived for: any complaint relating to alleged physical or sexual harassment, any complaint relating to alleged criminal behavior or any complaint filed by a Town of Pelham staff person. Additionally staff recommend, the CAO, Town Solicitor and Town Clerk, individually in their sole discretion, have the sole authority to waive filing fees, should they deem appropriate. The suggested exemptions are intended to mitigate any potential barrier with respect to certain complainants.

Importantly, the Ontario Ombudsman recommends municipalities not charging filing fees with respect to code of conduct complaints as this can be seen as a hindrance or barrier to filing a complaint. While recognizing the validity of the Ombudsman's position, the Ombudsman does not have to bear the cost of frivolous complaints, while the Town of Pelham has already experienced several this term. Staff believe that providing a full refund of fees when contravention to the Code of Conduct is found, having fee exemption categories and ensuring residents have the ability to request waived fees from the CAO, Town Solicitor and Town Clerk is a balanced and fair approach which both respects ability to pay and protects the taxpayer.

Integrity Commissioner Advice

Section 223.5 of the *Municipal Act, 2001* requires the Integrity Commissioner, and every person acting under the instructions of the Integrity Commissioner, to preserve secrecy with respect to all matters that come to his or her knowledge in the course of their duties. As such, subsection 2.1 indicates advice provided by the Integrity Commissioner, to a Member of Council or a member of a local board, can only be released with the member's written consent. Subsection 2.2 indicates if a Member of Council or a member of a local board releases only part of the advice the Integrity Commissioner may release part or all of the advice without obtaining the member's consent.

If Council wishes the municipality to receive copies of all advice provided to Members of Council and members of local boards, each member can provide written consent to the Integrity Commissioner to provide a copy of the requested advice to

the Town Clerk and/or CAO. It is important to note that copies of such documents may be subject to disclosure under the *Municipal Freedom of Information and Protection of Privacy Act* as the legislation provides any document under the control of the municipality shall be released, subject to exemptions provided within the Act.

In related fashion, it is important that Members of Council seek advice from the Integrity Commissioner when needed. Declaring a conflict of interest is important to not only protect the Member of Council, but also to protect the corporation to ensure projects, policies and by-laws are not vulnerable to challenge by litigation. In order to ensure that (i) inquiries submitted to the Integrity Commissioner adequately identify the issue; and (ii) the advice received is relevant and helpful, staff recommend that requests from Members of Council for advice from the Integrity Commissioner be drafted by the Town Solicitor, CAO or Town Clerk, according to the preference of the member. The staff member consulted would treat the matter in confidence.

Section 223.6 of the *Municipal Act, 2001* indicates the Integrity Commissioner may provide a summary of advice he or she has given within the Annual Report of activities provided to Council. The Act stipulates the summary within the report shall not disclose confidential information that could identify a person requesting the advice.

Staff recommend Council direct staff to request the Integrity Commissioner to provide a summary of advice given as part of the Annual Report of activities provided by the Town. Staff further recommend Policy S201-15 – Code of Conduct – Appendix 1 Complaint and Investigation Protocol be revised to include this as a requirement of the Annual Report. This will allow both Council and Town Administration to have an understanding of the advice being sought annually.

Integrity Commissioner Code of Conduct Reports

Section 223.6 (2) of the *Municipal Act, 2001* indicates that where the Integrity Commissioner reports to Council regarding whether a Member of Council or of a local board has contravened the applicable Code of Conduct, the Integrity Commissioner may disclose matters in his or her opinion as necessary. Pursuant to subsection (3) the municipality shall ensure that reports received from the Integrity Commissioner are made available to the public. In this regard, the Town Clerk publishes all received reports on the upcoming Council Agenda.

Pursuant to Policy S201-15 – Code of Conduct – Appendix 1 Complaint and Investigation Protocol, Section 3(I) and (II) other than in exceptional circumstances, the Integrity Commissioner shall not report to Council on any complaint described as: frivolous, vexatious or not made in good faith or that there are no grounds or insufficient grounds for an investigation, except as part of an

annual or periodic report. Should Council wish to receive individual reports for matters which the Integrity Commissioner deems to be frivolous, vexatious or not made in good faith or that there are no grounds or insufficient grounds for an investigation, Council may direct staff to revise Policy S201-15 and notify the Integrity Commissioner upon its adoption. Staff note, additional or more in-depth reports will result in additional fees from the Integrity Commissioner.

Furthermore, pursuant to Policy S201-15 – Code of Conduct – Appendix 1 Complaint and Investigation Protocol, Section 5(I) the Integrity Commissioner shall report to the Complainant, the Member of Council and Council, generally no later than 90 days after the making of the complaint. Should Council wish the Complainant, Member of Council and Council to all receive the same report, Council may direct staff to revise Policy S201-15 to provide that the Integrity Commissioner shall not prepare more than one final report in relation to a complaint and that no party (Council, Member of Council or Complainant) shall receive a different report than another, and notify the Integrity Commissioner upon its adoption. This recommendation supports Council's request to ensure the Town of Pelham's taxpayers do not pay for reports the Town does not receive.

It is important to note, should Council direct staff to revise the said policy as stated above for Council's consideration, all reports received from the Integrity Commissioner are public documents. Should unflattering and false accusations (frivolous, vexatious or not made in good faith) be made, any related report would become public and placed on the upcoming Council Agenda. Staff are not in a good position to speculate upon the potential implications or potential for harm from this theoretical eventuality.

Contract Term

The Town's current Agreement with ADR Chambers Inc. ends March 31, 2022. The current contract includes a transition period whereby ADR Chambers Inc. will provide all documents and materials related to any investigations underway to the new Integrity Commissioner for the Town. Staff recommend that the Town of Pelham fulfils the initial term of the Agreement and starts the procurement process to award Integrity Commissioner Services starting April 1, 2022 to the successful bidder.

Completing the current term of the Agreement allows staff sufficient time to start working on the required procurement process and award the contract to the successful service provider prior to the expiry of the current term. Additionally, this will allow sufficient time for a transition period from the Town's current Integrity Commissioner and a potential new service provider, if applicable.

Financial Considerations:

There will likely be increased fees associated with additional or more in-depth reports provided by the Integrity Commissioner. Staff are unable to predict the potential increase of fees associated with said reports. If Council approves changes, then it is recommended that a corresponding increase be made to the budget line in the 2022 budget.

Alternatives Reviewed:

Complaint Filing Fee

Council can direct staff to continue to process Integrity Commissioner complaints without implementing a filing fee.

Council may also consider imposing other filing fee amounts than those suggested by staff.

Integrity Commissioner Advice and Reports

Council can direct staff to not revise the Code of Conduct Policy and continue to receive reports in the same fashion and manner as the Town has traditionally received from ADR Chambers Inc.

Integrity Commissioner Contract

Council can consider terminating the current term of the Agreement with ADR Chambers Inc. early and start the procurement process; however, this is not recommended, as there is only a short amount of time remaining on the current term. Additionally this may not provide enough time for a thorough transition from one service provider to the next.

Strategic Plan Relationship: Strong Organization

Accountability and transparency builds both strong organizations and strong communities. Reviewing The Town of Pelham's relationship with the Integrity Commissioner and associated policies regularly are critical to ensuring The Town of Pelham remains open, accountable and transparent.

Consultation:

Jennifer Stirton, Town Solicitor

Other Pertinent Reports/Attachments:

None.

Prepared and Recommended by:

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Town Clerk

Prepared and Submitted by:

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