

### REPORT FROM THE DIRECTOR OF FINANCE AND TREASURER

#### DESCRIPTION

Re: Review of Legal / Integrity Commissioner Fees

#### RECOMMENDATION

**That the** report of the Director of Finance/Treasurer re: Review of Legal / Integrity Commissioner Fees be received,

**and that** staff be directed to provide Council with a Review of Legal / Integrity Commissioner Fees annually

**and that** this report be published to the City's website on the Integrity Commissioner page.

## BACKGROUND

Section 223.3 of the Municipal Act enables a municipality to appoint an Integrity Commissioner (IC) to address the application of the Code of Conduct for elected officials and/or members of local boards and committees. An IC has the power to investigate alleged contraventions of the Code and has the right of free access to all records of a municipality, a councillor or a local board in pursuit of that investigation. The province's Integrity Commissioner Regulations allow for considerable discretion for the IC to commence legal proceedings on behalf of the municipality (and at the municipality's sole cost).

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### INTEGRITY COMMISSIONER'S MAIN FUNCTIONS

**Advisory:** Provide written and oral advice to members of Council about the Code of Conduct and other by-laws or policies governing ethical behaviour, including general interpretations of the Municipal Conflict of Interest Act and provide Council with general opinions and advice as ethical issues arise.

**Investigative:** Assess and investigate Code of Conduct complaints made by an individual or by Council

**Adjudicative:** Determine whether an infraction has occurred and recommend sanctions.

**Education:** Publish an annual report on findings of typical advice and complaint cases. Provide outreach programs to council and members of staff. Promote public awareness of the office.

At the regularly scheduled meeting of council on September 26, 2022 Council directed staff to assemble a report outlining costs of IC fees, investigations, law firms and other costs associated with Integrity Commissioners' during this term of Council.

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### HISTORY OF INTEGRITY COMMISSIONERS

2017- February 2019	Robert Swayze
February 2019 – May 2019	Expertise for Municipalities (E4M)
May 2019 – August 2020	Cunningham Swan LLP – Tony Fleming
August 2020 – Present	Robert Swayze

Robert Swayze: Certified by the Law Society of Upper Canada as a specialist in Municipal Law: Local Government and Land use Planning and Development

Expertise for Municipalities (E4M): a non-profit corporation represented by President, Peggy Young Lovelace

Cunningham Swan LLP: Tony Fleming IC is a supervising partner in Cunningham Swan's Municipal Law group. Certified by the Law Society of Upper Canada as a specialist for his demonstrated expertise in Municipal Law, Land Use Planning and Development Law

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## LEGAL FIRMS USED BY THE CITY

Aird & Berlis LLP: City solicitor in several areas, including Integrity Commissioner & Council Relations, General Legal and Other Consulting as well as some high profile Property Sales and Dispositions. The firm has considerable municipal governance experience and providing advice to the City's overall interests and where needed advice related to IC and procedural matters.

Cassels Brock & Blackwell LLP: City solicitor for Integrity Commissioner files. Chosen by E4M for the legal proceedings against Councillor Patrie and Pearce. All costs from this firm are related to those legal proceedings.

Cunningham, Swan, Carty, Little & Bonham LLP: City solicitor for Integrity Commissioner & Council Relations (for the period noted above) and more frequently Human Resources files.

Wishart Law LLP: City solicitor in several areas, including Integrity Commissioner & Council Relations (as delegated by E4M for the period noted above), Property Sales and Dispositions and some assistance to the Fire Department on fire code violations. The City is no longer using Wishart law for any active files.

## ANALYSIS

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### EXPENSES BY FIRM

The City has relationships with several firms as detailed above. The following chart details all payments made to these firms for all services rendered for the fiscal years and year to date for 2022. Please note that amounts detailed are on the face of invoice, HST has been recovered where applicable.

Expenses By Firm	2022	2021	2020	2019	2018	Total
AIRD & BERLIS	\$148,700	\$117,883	\$49,141	\$24,552		\$340,277
CASSELS BROCK & BLACKWELL	\$172	\$150,709	\$320,100	\$7,192		\$478,173
CUNNINGHAM, SWAN, CARTY, LITTLE & BONHAM	\$7,746	\$13,624	\$36,685	\$24,777	\$9,754	\$92,586
EXPERTISE FOR MUNICIPALITIES		\$6,433		\$174,767	\$3,086	\$184,287
WISHART LAW FIRM	\$5,853	\$38,113	\$37,320	\$116,718	\$82,612	\$280,616
ROBERT J SWAYZE	\$4,954	\$17,827	\$15,115	\$9,908	\$27,192	\$74,996
<b>Total of All Firms</b>	<b>\$167,425</b>	<b>\$344,590</b>	<b>\$458,361</b>	<b>\$357,914</b>	<b>\$122,644</b>	<b>\$1,450,935</b>

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## EXPENSES BY ACTIVITY

The activities included in the expenses above are varied. Analysis of invoices reveals the following themes of activity.

- Integrity Commissioner & Council Relations
- General Legal and Other Consulting
- Property Sales and Dispositions
- Human Resources Advice and Consulting
- Fire Department, compliance and legal action associated with the Ontario Fire Code

Expenses By Activity	2022	2021	2020	2019	2018	Total
Integrity Commissioner & Council Relations	\$13,930	\$199,387	\$375,121	\$239,467	\$30,740	\$858,644
General Legal and Other Consulting	\$61,571	\$95,910	\$53,749	\$74,002	\$91,904	\$377,135
Property Sales and Dispositions	\$78,326	\$22,386	\$17,941	\$23,828	\$0	\$142,480
Human Resources & Fire Department	\$13,599	\$26,907	\$11,551	\$20,618	\$0	\$72,676
<b>Total Expenses By Activity</b>	<b>\$167,425</b>	<b>\$344,590</b>	<b>\$458,361</b>	<b>\$357,914</b>	<b>\$122,644</b>	<b>\$1,450,935</b>

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## EXPENSES SPECIFIC TO INTEGRITY COMMISSIONER & COUNCIL RELATIONS

From the expenses by activity, further analysis of invoices reveals the following themes of activity.

- Conflict of Interest Investigation Specific to Councillor Patrie
- Conflict of Interest Investigation Specific to Councillor Pearce
- Investigations of Code of Conduct, Conflict of Interest
- IC Reports and General Council Relations

Integrity Commissioner & Council Relations	2022	2021	2020	2019	2018	Total
Conflict of Interest Councillor Patrie		\$121,484	\$180,855	\$58,194		\$360,534
Conflict of Interest Councillor Pearce	\$8,804	\$53,548	\$159,898	\$41,008		\$263,259
Investigations of Code of Conduct, Conflict of Interest			\$14,992	\$62,767		\$77,759
IC Reports and Council Relations	\$5,126	\$24,354	\$19,375	\$77,498	\$30,740	\$157,093
<b>Total Integrity Commissioner &amp; Council Relations</b>	<b>\$13,930</b>	<b>\$199,387</b>	<b>\$375,121</b>	<b>\$239,467</b>	<b>\$30,740</b>	<b>\$858,644</b>

## FINANCIAL IMPACT

Legal fees including Integrity Commissioner & Council Relations included in General Government expenses. In 2020 and 2021, all interim unaudited financial statements from the office of the Treasurer and Director of Finance have detailed that legal fees are over budget. The August 2022 unaudited financial statements provided that legal is under budget in this fiscal year. Please note that amounts detailed are extracted from the general ledger after HST has been recovered where applicable.

<b>Legal Actual</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022 FC to YE</b>
Clerk	\$4,216			\$2,655	\$4,118	\$9,502
General Government	\$101,606	\$141,619	\$286,510	\$431,426	\$399,528	\$148,732
By-law Enforcement			\$186	\$1,779	\$151	
<b>Total</b>	<b>\$105,822</b>	<b>\$141,619</b>	<b>\$286,696</b>	<b>\$435,860</b>	<b>\$403,797</b>	<b>\$158,234</b>

<b>Legal Budget</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Clerk	\$5,000	\$5,000	\$2,500	\$2,500	\$2,500	\$2,500
General Government	\$60,000	\$50,000	\$50,000	\$100,000	\$150,000	\$200,000
By-law Enforcement	\$500	\$500	\$500	\$500	\$250	\$250
<b>Total</b>	<b>\$65,500</b>	<b>\$55,500</b>	<b>\$53,000</b>	<b>\$103,000</b>	<b>\$152,750</b>	<b>\$202,750</b>

<b>Variance</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Clerk	-\$784	-\$5,000	-\$2,500	\$155	\$1,618	\$7,002
General Government	\$41,606	\$91,619	\$236,510	\$331,426	\$249,528	-\$51,268
By-law Enforcement	-\$500	-\$500	-\$314	\$1,279	-\$99	-\$250
<b>Total</b>	<b>\$40,322</b>	<b>\$86,119</b>	<b>\$233,696</b>	<b>\$332,860</b>	<b>\$251,047</b>	<b>-\$44,516</b>

## LINKS TO STRATEGIC PLAN

Strong Municipal Corporate Administration and Governance

## SUMMARY

It is recommended that staff be directed to provide Council with a Review of Legal / Integrity Commissioner Fees annually and that this report be published to the City's website within the Integrity Commissioner section.