

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 this report be published to the City's website within the Integrity Commissioner section

BACKGROUND

On October 11, 2022, the office of the Director of Finance and Treasurer was directed to update the following report on an annual basis and that when available, the report be published to the City's website within the Integrity Commissioner section.

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 integrity Commissioner 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).

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 Councillor Pearce read a notice of motion. Regarding a request for costs of Integrity Commissioners (IC), investigations, law firms and other costs associated with Integrity Commissioners' during this term of Council.

HISTORY OF INTEGRITY COMMISSIONERS

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

LEGAL FIRMS UTILIZED BY THE CITY

Aird & Berlis LLP: City solicitor in several areas, including Integrity Commissioner & Council Relations, General Legal and Other Consulting as well as 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 in several areas, including Integrity Commissioner & Council Relations, General Legal and Other Consulting as well as Human Resources.

Wishart Law LLP: City solicitor in several areas, including Integrity Commissioner & Council Relations, General Legal and Other Consulting, Property Sales and Dispositions and the Fire Department

ANALYSIS

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 2023. Please note that amounts detailed are on the face of invoice, HST has been recovered where applicable.

Expenses By Firm	2023	2022	2021	2020	2019	2018	Total
A & B	\$215,347	\$190,921	\$117,883	\$49,141	\$24,552	\$0	\$597,845
C, B & B	\$151,246	\$172	\$150,709	\$320,100	\$7,192	\$0	\$629,419
C, S, C, L & B	\$2,712	\$21,439	\$13,624	\$36,685	\$24,777	\$9,754	\$108,991
E for M	\$0	\$0	\$6,433	\$0	\$174,767	\$3,086	\$184,287
Wishart	\$3,757	\$5,853	\$38,113	\$37,320	\$116,718	\$82,612	\$284,373
R. Swayze	\$37,100	\$5,713	\$17,827	\$15,115	\$9,908	\$27,192	\$112,855
Total	\$410,162	\$224,098	\$344,590	\$458,361	\$357,914	\$122,644	\$1,917,770

*Revised at 1:27 PM on December 20, 2023

Acronyms used above

AIRD & BERLIS LLP	A & B
CASSELS BROCK & BLACKWELL LLP	C, B & B
CUNNINGHAM, SWAN, CARTY, LITTLE & BONHAM LLP	C, S, C, L & B
EXPERTISE FOR MUNICIPALITIES	E for M
WISHART LAW FIRM LLP	Wishart
ROBERT J SWAYZE	R. Swayze

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

Legal Expenses By Activity	2023	2022	2021	2020	2019	2018	Total
Integrity	\$287,131	\$29,976	\$199,387	\$375,121	\$239,467	\$30,740	\$1,161,821
General	\$60,552	\$77,342	\$95,910	\$53,749	\$74,002	\$91,904	\$453,458
Property	\$50,762	\$89,489	\$22,386	\$17,941	\$23,828	\$0	\$204,405
HR & Fire	\$11,718	\$27,292	\$26,907	\$11,551	\$20,618	\$0	\$98,086
Total	\$410,162	\$224,098	\$344,590	\$458,361	\$357,914	\$122,644	\$1,917,770

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

Integrity Commissioner & Council Relations	2023	2022	2021	2020	2019	2018	Total
COI Councillor Patrie	\$238,560	\$0	\$121,484	\$180,855	\$58,194	\$0	\$599,094
COI Councillor Pearce	\$11,471	\$24,091	\$53,548	\$159,899	\$41,008	\$0	\$290,016
Investigations	\$0	\$0	\$0	\$14,992	\$62,767	\$0	\$77,759
IC Reports and Relations	\$37,100	\$5,885	\$24,354	\$19,375	\$77,498	\$30,740	\$194,952
Total	\$287,131	\$29,976	\$199,387	\$375,121	\$239,467	\$30,740	\$1,161,821

FINANCIAL IMPACT

Legal fees including Integrity Commissioner & Council Relations included in General Government expenses. Since 2020, all interim unaudited financial statements from the office of the Treasurer and Director of Finance have detailed that legal fees are over budget.

Please note that amounts detailed are extracted from the general ledger after HST has been recovered where applicable and there are additional 'one-off' legal firms included that may have been used for other activities including but not limited to insurance claims, property, and human resources.

Actual Legal	2017	2018	2019	2020	2021	2022	2023 FC to YE
Clerk	\$4,216			\$2,655	\$4,118	\$10,768	\$650
General Government	\$101,606	\$141,619	\$286,510	\$431,426	\$399,528	\$219,779	\$396,231
By-law Enforcement			\$186	\$1,779	\$151	\$4,180	
Total	\$105,822	\$141,619	\$286,696	\$435,860	\$403,797	\$234,727	\$396,883

Budget Legal	2017	2018	2019	2020	2021	2022	2023
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	\$200,000
By-law Enforcement	\$500	\$500	\$500	\$500	\$250	\$250	\$250
Total	\$65,500	\$55,500	\$53,000	\$103,000	\$152,750	\$202,750	\$200,252

Variance Legal	2017	2018	2019	2020	2021	2022	2023
Clerk	-\$784	-\$5,000	-\$2,500	\$155	\$1,618	\$8,268	\$650
General Government	\$41,606	\$91,619	\$236,510	\$331,426	\$249,528	\$19,779	\$196,231
By-law Enforcement	-\$500	-\$500	-\$314	\$1,279	-\$99	\$3,930	-\$250
Total	\$40,322	\$86,119	\$233,696	\$332,860	\$251,047	\$31,977	\$196,631

LINKS TO STRATEGIC PLAN

Strong Municipal Corporate Administration and Governance

SUMMARY

It is recommended that this report be published to the City's website within the Integrity Commissioner section.