



COUNTY OF WELLINGTON

COMMITTEE REPORT

To: Chair and Members of the Administration, Finance and Human Resources Committee
From: Donna Bryce, County Clerk
Date: Tuesday, November 21, 2017
Subject: Joint Integrity Commissioner

Background

The purpose of this report is to recommend the appointment of a Joint Integrity Commissioner for Wellington County and its member municipalities.

Bill 68, Modernizing Ontario's Municipal Legislation Act, 2016 was passed in May, 2017 and brought in some significant requirements for municipalities. As of March, 2019 it will be mandatory for municipalities to have a code of conduct for members of council and local boards (members) in place; and access to an Integrity Commissioner (IC).

Duties of an Integrity Commissioner

The legislation authorizes a municipality to appoint an IC who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to any or all of the following:

- Application of the code of conduct for members
- Application of any procedures, rules and policies of the municipality and local boards governing the ethical behavior of members
- Application of the Municipal Conflict of Interest Act to members
- Requests from members for advice respecting their obligations under the code of conduct applicable to the member
- Requests from members for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board governing the ethical behavior of members
- Requests from members for advice respecting their obligations under the Municipal Conflict of Interest Act
- The provision of educational information to members regarding the code of conduct and the Municipal Conflict of Interest Act.

ICs will have new powers to conduct inquiries about whether members have contravened the Municipal Conflict of Interest Act (MCIA):

- An elector or a person demonstrably acting in the public interest could apply to the Commissioner for an inquiry
- Upon completion of an inquiry, a Commissioner may bring the matter to court
- Costs of applying to a judge to be paid by the respective municipality
- IC can conduct inquiry as he/she considers necessary, includes public meetings, can elect to exercise powers under the Public Inquiries Act, 2009.

Joint Services

Wellington County Clerks have discussed the appointment of an Integrity Commissioner and have agreed to a joint approach to share the services similar to the arrangements currently in place for the Closed Meeting Investigator. The County will coordinate the preparation and signing of the agreements.

The timeline to start using an Integrity Commissioner will be different for each of our municipalities based on whether a code of conduct is in place, however the provisions of the Act to expand the role of the IC with respect to the Municipal Conflict of Interest Act won't come into effect until March, 2019.

The County, Minto and Wellington North plan to have a code of conduct in place and appoint an Integrity Commissioner for March, 2019. Mapleton, Centre-Wellington, Erin, Guelph/Eramosa and Puslinch have codes of conduct and have indicated a start date of January, 2018.

Appointment

On November 16, 2017, an interview was conducted with Guy Giorno, Partner, Fasken Martineau by a three-member panel consisting of the County Clerk, Clerk of Centre Wellington and Deputy Clerk, Minto.

Mr. Giorno practices public law with an emphasis on accountability and ethics laws. He has significant experience in public sector ethics, conflict of interest, codes of conduct, accountability legislation, lobbyist registration law and election and election finance law. He also serves as IC for 20 municipalities in Ontario. Correspondence regarding Mr. Giorno's services and experience are attached to this report.

Staff are recommending that Mr. Giorno be appointed as the Joint IC for the County and member municipalities for a 4-year term at an hourly rate of \$300.00 plus mileage and expenses, without a retainer.

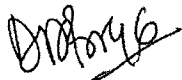
Recommendation:

That Guy Giorno, Partner, Fasken Martineau be appointed as the County's Integrity Commissioner effective March, 2019 for a 4-year term; and

That the Warden and Clerk be authorized to enter into an agreement with Mr. Giorno; and

That the report be sent to the Member Municipal Clerks for presentation to their Councils to appoint Mr. Giorno as a Joint Integrity Commissioner.

Respectfully submitted,



Donna Bryce
County Clerk

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VIA EMAIL

November 17, 2017

Ms Donna Bryce
County Clerk
County of Wellington
74 Woolwich Street
Guelph, Ontario
N1H 3T9

Dear Ms Bryce:

Re: Integrity Commissioner Services

Further to our meeting, I confirm that I and the Fasken law firm would be willing to provide integrity commissioner services to the County of Wellington and to any local town or township that wishes to appoint me, on the following terms:

- Minimum three-year appointment to ensure independence (best practice would be a four-year term that straddles two different terms of Council).
- Rates of \$300 per hour for my services and \$200 for the services of junior members of Fasken, plus travel and other disbursements.
- Despite supporting services from other members of Fasken, I alone would be responsible for all interpretations, advice, findings, recommendations and reporting to Council.

Thank you for your interest. I look forward to being able to support the County.

Yours truly,

A handwritten signature in black ink, appearing to read 'Guy W. Giorno', written in a cursive style.

Guy W. Giorno

Guy Giorno

Municipal Integrity Commissioner

Guy Giorno serves as Integrity Commissioner for the Ontario municipalities of Durham Region, Dufferin County, Renfrew County, Amaranth, Brock, Clarington, Deep River, Dryden, East Garafraxa, Grand Valley, Horton, Madawaska Valley, Melancthon, North Algona Wilberforce, Orangeville, Pickering, Scugog, Shelburne, Uxbridge and Whitby.

He also serves as Integrity Commissioner and Lobbyist Registrar for the City of Brampton.

As a municipal Integrity Commissioner, Guy Giorno has:

- Handled code of conduct complaints
- Conducted investigations
- Issued reports
- Presented to municipal councillors on code of conduct and conflict of interest issues
- Established processes for handling code of conduct complaints where municipalities did not have one
- Advised municipalities on ethics issues

What others say ...

“well respected as an expert in accountability and ethics law”

Althia Raj, *Huffington Post*, June 6, 2013

“an ethics and lobbying bulldog who has built a reputation as a vocal advocate of accountable government”

Olesia Plokhii, *iPolitics*, February 25, 2013

“Canada’s leading expert on the new *Federal Accountability Act*”

Ontario Bar Association

“lawyer specializing in public accountability”

Alex MacPherson, *Saskatoon StarPhoenix*, June 10, 2017

Expert in Ethics Laws

Guy practises public law with an emphasis on accountability and ethics laws.

He leads the Fasken law firm's Government Ethics, Transparency and Political Law practice. He is Chair of the "Law of Lobbying and Ethics" committee of the Canadian Bar Association, is co-author of the legal text *Lobbying in Canada* and as a recognized expert in the law of lobbying routinely speaks, writes and advises on these, evolving, complex rules.

Codes of Conduct Proceedings

Guy Giorno has extensive experience in proceedings and investigations under codes of conduct and other government ethics laws.

Guy's Proceedings under Codes of Conduct (and Government Ethics Laws)

- Represented/advised MPPs (both complainants and respondents) in inquiries by the Integrity Commissioner (Ontario) under the *Members' Integrity Act*.
- Represented MP in inquiry under the *Conflict of Interest Code for Members of the House of Commons*.
- Represented federal officials (including a Minister, two former Deputy Ministers, and several former officials) in examinations by the federal Conflict of Interest and Ethics Commissioner and other proceedings under the *Conflict of Interest Act*.
- Represented persons being investigated for alleged breaches of the federal *Lobbyists' Code of Conduct*.
- Advised and represented witnesses in examinations by the federal Conflict of Interest and Ethics Commissioner under the *Conflict of Interest Act*.

Guy Drafts Codes of Conduct

- Drafted a Code of Conduct Complaint Protocol for an Ontario municipality
- Drafted employee code of conduct for national organization.
- Drafted Annex B of *Open Government: A Guide for Ministers* (now known as *Open and Accountable Government*).
- Drafted policies on conflict of interest, transparency, and whistle-blowing.

Other

- Routinely advises on compliance with:
 - Conflict of Interest Rules for Public Servants (regulations under *Public Service of Ontario Act*)

- *Conflict of Interest Act* (Canada)
 - *Conflict of Interest Code for Members of the House of Commons*
 - Policy on Conflict of Interest and Post-Employment (Canada)
 - Code of Conduct for Procurement (Canada)
 - Ethical and Political Activity Guidelines for Public Office Holders (Canada)
 - *Lobbyists' Code of Conduct* (Toronto)
 - *Lobbyists' Code of Conduct* (Ottawa)
 - *Lobbyists' Code of Conduct* (Canada)
 - Public corruption provisions of *Criminal Code*
- Advised various government agencies/entities on conflict of interest, transparency and whistle-blowing.
 - Testified on conflict of interest before House of Commons Standing Committee on Access to Information, Privacy and Ethics.
 - Consulted by three different provinces on law-of-lobbying issues.

Independence

Guy Giorno has no involvement in political campaigning or endorsements, or related conflict of interests, with any current council member of the County of Wellington or a local town or township.

Further Municipal and Ethics Experience

Municipal Act, Municipalities and Municipal Law

- Faculty, Advanced Roundtable in Municipal Law, Law Society of Upper Canada (May 2, 2008)
- "Municipal Mergers: A Case Study of Municipal Amalgamation in Ontario, 1996-2001," presentation to Ryerson University Department of Politics and Public Administration and Canada25 (March 2005)

Municipal Conflict of Interest Act and Municipal Ethics

Guy Giorno has lectured and publicly demonstrated advanced knowledge of Municipal Ethics and Code of Conduct matters:

Guy's Presentations

- "Municipal Conflict of Interest - What's New?" Ontario Bar Association (February 8, 2013)
- "Municipal Conflict of Interest," OBA Summer Institute, live Q&A following rebroadcast (July 11, 2013)
- "The Ethical Council: Conflict Codes, Lobbyist Registration and Other Best Practices for Councils and Councillors," presented to Association of Municipalities of Ontario (August 16, 2005)

Guy's Articles and Writings

- "Leasing lives on: Toronto's MFP scandal provides lessons," *Summit*, January/February 2006 (p. 12)
- "Comments on Implementation of the Recommendations of the Bellamy Inquiry," Presentation to Policy and Finance Committee, Toronto City Council Meeting No. 10, November 22, 2005

Other

During 2006, when the *Municipal Act* was being amended (including to provide for municipal Integrity Commissioners), Guy was there: commenting on lobbyist registries, on democratic accountability and other issues related to open and ethical government. For example:

- "We need more democracy locally- not less," *Globe and Mail* (May 3, 2006)
- "Act needs to be stronger to curb lobbyists at City Hall," *National Post* (June 12, 2006)

Expertise in Government Ethics and Integrity

Guy Giorno has extensive experience in conflict of interest and ethics matters involving government officials:

- Represented Member of Parliament in inquiry under the *Conflict of Interest Code for Members of the House of Commons*.
- Advised MPPs (both complainants and respondents) in inquiries by the Integrity Commissioner (Ontario) under the *Members' Integrity Act*.

- Represented federal officials (including a Minister, two former Deputy Ministers, and several former officials) in examinations by the federal Conflict of Interest and Ethics Commissioner and other proceedings under the *Conflict of Interest Act*.
- Advised and represented witnesses in examinations by the federal Conflict of Interest and Ethics Commissioner under the *Conflict of Interest Act*.
- Represented persons being investigated for alleged breaches of the federal Lobbyists' Code of Conduct.
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 - Ethical and Political Activity Guidelines for Public Office Holders (Canada)
 - *Lobbyists' Code of Conduct* (Toronto)
 - *Lobbyists' Code of Conduct* (Ottawa)
 - *Lobbyists' Code of Conduct* (Canada)
 - Public corruption provisions of *Criminal Code*

General Municipal Experience

Guy Giorno has extensive experience working with and for municipalities. In fact, he has worked for municipal clients since starting his legal career.

- **Toronto** – Conducted workplace “equal employment opportunity” investigations for former Municipality of Metropolitan Toronto (1989 – while Guy was a student-at-law)
- **Gravenhurst** – Acted for the Town in precedent-setting freedom of information litigation
- **Ontario** – While employed by the Government of Ontario (1995 - 2002) Guy was closely involved in the municipal restructuring reforms of the mid to late 1990s
- **Ontario** – Acted for the Ministry of Municipal Affairs and Housing on project related to the Toronto Islands community (2002-03)
- **Brantford** – Facilitator for Council strategic planning session, then delivered written report (2004)
- **Grimsby** – Facilitator for Council strategic planning session, then delivered written report (2004)
- **Oakville** – Represented the Town in labour relations proceedings

- **Pembroke** – Represented Police Services Board in significant case: *Pembroke (City) Police Services Board v. Kidder* (1995), 22 O.R. (3d) 663 (Div. Ct.)

Municipal Freedom of Information and Protection of Privacy Act

Guy Giorno has been practising municipal freedom of information law for 25 years. He has represented institutions and requesters in FOI appeals and litigation, helped institutions to process access requests and trained employees in FOI-Privacy implementation and compliance.

Guy founded the FOI practice at Hicks Morley in 1991, the year that *MFIPPA* took effect and extended freedom of information to Ontario school boards and municipalities. When the new law took effect, he worked with the Ontario Public School Boards Association to educate and train school boards in their legal responsibilities. Two decades later, he helped the Ontario Hospital Association to implement FOI among hospitals by co-authoring its comprehensive Hospital Freedom of Information Toolkit and delivering training.

His extensive experience includes:

- Representing the institution in Ontario's first-ever school board FOI appeal.
- Representing institutions in two of the first five judicial reviews under the *Municipal Freedom of Information and Protection of Privacy Act*.
- Winning a landmark, multi-year case over access to records concerning the sale of Toronto's street lights.
- Winning a precedent-setting Divisional Court judgment over access to records during judicial review of an Information and Privacy Commissioner (IPC) order.
- On behalf of a hospital, winning an historic Divisional Court decision giving the hospital access to internal records of the Pay Equity Hearings Tribunal.
- While working for the Ontario Government, helping to develop the 1996 amendments to the *Freedom of Information and Protection of Privacy Act*.
- Acting for institutions in response to IPC privacy compliance investigations.
- Speaking about freedom of information to both Ontario and federal parliamentary committees.
- Training and educating employees of institutions in Freedom of Information and Privacy implementation and compliance.

Guy's Freedom of Information Cases

- *Gravenhurst (Town) v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 531, 49 C.P.R. (3d) 550 (Div. Ct.) – Counsel to Town of Gravenhurst

- *Ontario Secondary School Teachers' Federation v. Wellington County Board of Education and Information and Privacy Commissioner* (Ont. Div. Ct. File No. 407193) – Counsel to Wellington County Board of Education
- *Re City of Toronto*, Order MO-2468-F (Information and Privacy Commissioner/Ontario) (October 27, 2009) – Counsel to the Requester
- *Re City of Toronto*, Orders MO-2135-I, MO-2226, MO-2275, MO-2282-I, MO-2389, MO-2396-F (2006 through 2009) (Information and Privacy Commissioner/Ontario) – Counsel to the Requester
- *Saraga v. Wellington County Board of Education*, [1995] O.J. No. 1693, 1995 CanLII 7280, Ontario Court of Justice (General Division) – Counsel to Wellington County Board of Education