

CORPORATION OF THE VILLAGE OF MERRICKVILLE - WOLFORD

BY-LAW NO. 09-2019

BEING A BY-LAW TO APPOINT TONY FLEMING OF CUNNINGHAM SWAN AS THE INTEGRITY COMMISSIONER FOR THE MUNICIPALITY

WHEREAS section 9(3) of the Municipal Act, 2001, as amended, does authorize that the council of a local municipality may pass by-laws as part of its general municipal powers;

AND WHEREAS Section 223.2 of the Act, as amended, authorizes a municipality to establish a code of conduct for members of the council of the municipality;

AND WHEREAS Section 223.3 of the Act, as amended, authorizes a municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality;

AND WHEREAS Council deems it advisable to appoint an Integrity Commissioner for the Village of Merrickville-Wolford in accordance with the *Municipal Act, 2001*, as amended;

NOW THEREFORE the Council of the Corporation of the Village of Merrickville-Wolford enacts as follows:

1. THAT Tony Fleming of the firm Cunningham Swan be appointed as the Integrity Commissioner for the Corporation of the Village of Merrickville-Wolford;
2. THAT the Mayor and Clerk be authorized to sign and execute, on behalf of the Village, the Agreement with Tony Fleming of the firm Cunningham Swan, attached hereto as Schedule "A" and forming part of this by-law;
3. THAT this by-law shall come into full force and effect upon its final passage;
4. THAT this by-law may be cited as the "Integrity Commissioner By-law".

READ a first and second time this 11th day of February, 2019

READ a third and final time and passed this 11th day of February, 2019



J. Douglas Struthers, Mayor



Doug Robertson, CAO/Clerk

SCHEDULE "A" to By-law 09-2019

FORM OF AGREEMENT

BETWEEN: THE CORPORATION OF THE VILLAGE OF MERRICKVILLE-WOLFORD
(hereinafter referred to as "the Village")

- and -

TONY FLEMING of the firm CUNNINGHAM SWAN
(hereinafter referred to as "the Integrity Commissioner")

1. WHEREAS, the Village is authorized, pursuant to Subsection 223.3 of the *Municipal Act, 2001* (the *Act*), as amended, to appoint an integrity commissioner (the "Integrity Commissioner") who has the function to investigate in an independent and confidential manner, a complaint made to him or her by any person, as to whether a member of council or a member of a local board has complied with the Code of Conduct, or other ethics-related policies, rules or procedures, and to report on the investigation;
2. AND WHEREAS, the *Act* has been amended to include additional powers of Integrity Commissioners, including the function to investigate as to whether a member of Council or a member of a local board has complied with section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*, effective March 1, 2019;
3. AND WHEREAS, the Integrity Commissioner has represented, and the Village is satisfied, that the Integrity Commissioner has the skills and abilities necessary to perform the role of the Integrity Commissioner;
4. AND WHEREAS, the Village wishes to retain Tony Fleming of the firm Cunningham Swan as an independent Integrity Commissioner;
5. NOW THEREFORE, in consideration of the covenants, terms and conditions contained herein, the Village and the Integrity Commissioner agree as follows:

POWERS AND DUTIES

1. The Village hereby retains and appoints Tony Fleming of the firm Cunningham Swan as an Integrity Commissioner and Tony Fleming of the firm Cunningham Swan accepts such appointment and agrees to carry out the responsibility of the Integrity Commissioner, as more specifically described in the Statement of Duties and Responsibilities, attached as Schedule "A" to this Agreement, during the term of this Agreement.
2. The Integrity Commissioner shall have all of the powers set out in Section 223.1 to 223.8 of the *Municipal Act*, and under sections 33 and 34 of the Public Inquiries Act, 2009, both as amended from time to time.

TERM OF AGREEMENT

3. The Integrity Commissioner's appointment pursuant to this Agreement is effective on March 1, 2019 and will continue for a period of five (5) years, ending on March 1, 2024 unless terminated earlier in accordance with this clause:
 - a. The Village may be released from the Agreement at any time, with ninety (90) days written notice.
 - b. The Integrity Commissioner shall provide ninety (90) days written notice to the Village of his or her intention to resign as the Integrity Commissioner and his or her resignation shall only be effective at the expiry of the notice period.

RECORDS

4. All records are the property of the Village and the records and should be submitted to the Clerk associated with the municipal record upon termination of the contract.

RENEWAL

5. The Integrity Commissioner's appointment pursuant to this Agreement may be renewed for a further five (5) years, on the mutual agreement of the Parties.

COMPENSATION

6. The Village agrees to pay to the Integrity Commissioner an hourly fee of \$295.00 per hour, plus applicable taxes, during such time that the Integrity Commissioner is actively carrying out his or her duties pursuant to this Agreement. The Consultant confirms that the hourly rates for other members of the Consultant firm as set out in the proposal for services shall also apply to this Agreement where work is performed by members of the firm other than Tony Fleming. The Consultant shall rely on other members of the firm as appropriate to ensure that the work is performed by only those members of the firm with the skill to undertake the work, at the most appropriate hourly rate, and who are also bound by the terms of this Agreement. The Integrity Commissioner shall provide the Village with a monthly invoice detailing the hours worked and expenses incurred for the period in question.

7. The Village agrees to reimburse the Integrity Commissioner for all reasonable expenses and disbursements, including mileage at a rate of .53 per kilometer (or any agreed-upon flat rate), incurred by the Integrity Commissioner, which are necessary to enable the Integrity Commissioner to perform his or her duties pursuant to this Agreement.

CONSULTANT STATUS

8. In performing his or her duties and responsibilities as Integrity Commissioner pursuant to this Agreement, it is recognized that the Integrity Commissioner is independent of the Village and administration and shall report directly to Council of the Corporation of Merrickville-Wolford.

9. The Integrity Commissioner acknowledges that he or she is an independent contractor and shall not be deemed an employee of the Village, for any purpose. The Integrity Commissioner further acknowledges that, as an independent contractor, he or she will not be entitled to any employment-related benefit, including such benefits that are applicable to employees of the Village.

10. In light of the Integrity Commissioner's status as an independent contractor, the Village shall have no responsibility whatsoever with regard to any income taxes or any other remittances which may be payable by the Integrity Commissioner on the fees paid under this Agreement. The Village assumes no obligation or liability to deduct or remit any statutory or government remittances.

CONFIDENTIAL INFORMATION

11. The Integrity Commissioner acknowledges that the Village is an institution for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*. Accordingly, the Integrity Commissioner, and any person assisting with the investigation at the request of the Integrity Commissioner, shall not disclose information subject to the *MFIPPA* except as may be necessary in the proper discharge of his or her duties and responsibilities pursuant to the terms of this Agreement, and in accordance with the Municipal Act and *MFIPPA*.

This Article shall survive the termination of this Agreement.

DELEGATION

12. The Integrity Commissioner shall not assign or sublet the whole or any part of this Agreement without the prior consent of the Village.

INSURANCE

13. The Integrity Commissioner shall, at their expense, obtain and keep in force during the term of this Agreement, Comprehensive General Liability Insurance satisfactory to the Village, including the following:

Issued on an occurrence basis for an amount of not less than \$2,000,000 per occurrence / \$2,000,000 annual aggregate for any negligent acts or omissions by the Integrity Commissioner relating to her or her obligations under this Agreement. Such

insurance shall include, but is not limited to, bodily injury and property damage including loss of use; personal and advertising injury; contractual liability; premises, property and operations; non-owned automobile; broad form property damage; owners & contractors protective; occurrence property damage; products and completed operations; employees as Additional Insured(s); contingent employer's liability; tenants legal liability; cross liability and severability of interest clause. Such insurance shall not contain a failure to perform exclusion.

The Integrity Commissioner is required to submit insurance documents listing all coverages and amounts as indicated, in a form satisfactory to the Village upon the signing of this Agreement.

INDEMNITY

14. The Village hereby agrees to indemnify and save harmless the Integrity Commissioner and his or her delegates from and against any and all liabilities, losses, expenses, costs (including legal costs), demands, damages, suits, judgments, penalties, expenses and liabilities of any kind or nature whatsoever arising out of the carrying out by the Integrity Commissioner and his or her delegates in good faith of their duties and responsibilities under this Agreement including, but not limited to, any alleged breach of this Agreement, any procedural defect or other breach of the relevant statutory provisions.

The Integrity Commissioner shall indemnify and hold the Village harmless from and against any alleged breach of this Agreement, any procedural defect or other breach of the relevant statutory provisions. Further, this indemnity shall hold the Village harmless from and against any liability, loss, claims, demands, costs (including legal costs), damages, suits, judgments, penalties, and expenses, including reasonable, occasioned wholly or in part by any negligence, acts or omissions whether willful or otherwise by the Integrity Commissioner, their agents, officers, employees or other persons for whom the Integrity Commissioner is legally responsible.

In the event of any dispute with respect to the payment of the invoices, or any other matter in dispute which cannot otherwise be resolved between the Integrity Commissioner and the Village, the Parties hereby agree to submit the matter to an impartial arbitrator under the *Arbitrations Act*, whose decision shall be final and binding. In the event that a matter is referred to an arbiter under this Article, the Village and the Integrity Commissioner agree to equally share the cost of the arbitrator and any related expenses.

This Article shall survive termination of this Agreement.

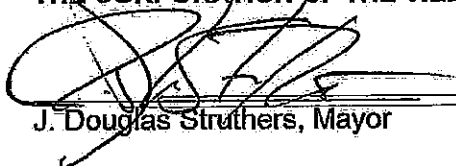
GENERAL PROVISIONS

15. This Agreement shall be governed by and construed exclusively in accordance with the laws of the Province of Ontario.
16. If any provision of this Agreement is declared to be void or unenforceable, such provision shall be deemed to be separate from the remainder of this Agreement to the extent of the particular circumstances giving rise to such declaration, and such provision as it applies to other persons and circumstances and the remaining terms and conditions of this Agreement shall remain in full force and effect.
17. This Agreement, along with the attached Schedule, constitutes the entire agreement between the Parties and supersedes all previous negotiations, understandings and agreement, whether verbal or written, with respect to any matters referred to in this Agreement.

18. This Agreement shall ensure to the benefit of, and be binding on, the Parties and their successors and assigns.

The Parties have executed this Agreement this 11th day of FEBRUARY, 2019.

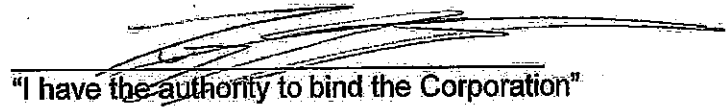
THE CORPORATION OF THE VILLAGE OF MERRICKVILLE-WOLFORD


J. Douglas Struthers, Mayor


Doug Robertson, CAO/Clerk

"I/We have the authority to bind the Corporation"

INTEGRITY COMMISSIONER


"I have the authority to bind the Corporation"

SCHEDULE "A" to the Agreement
STATEMENT OF DUTIES AND RESPONSIBILITIES

The duties of the Integrity Commissioner shall be:

EDUCATION AND ADVICE

1. Upon the request of Council, to provide advice, education, and training on the Code of Conduct to Members of Council and those to whom the Code applies, either collectively or individually, for Members of Council.
2. Upon the request of Council, to provide advice, education, and training on the Code of Conduct for Local Boards (if applicable) to the Members of the Local Board and those to whom the Code applies, either collectively or individually, for Members of Local Boards.
3. To provide advice and opinions to Members of Council and those to whom the Code applies, either collectively or individually, with respect to the *Municipal Conflict of Interest Act*, the Code of Conduct and other procedures, rules and policies of the Municipalities governing ethical behaviour.
4. Upon the request of Council, to provide educational information to the municipality and the public about the municipality's codes of conduct for members of council and members of local boards (if applicable), and about the *Municipal Conflict of Interest Act*.
5. At the request of Council, to develop policies and procedures for the Office of the Integrity Commissioner, and to review these.
6. At the request of Council, to review the Code of Conduct for Members of Council and the Code of Conduct for Members of Local Boards (if applicable) and any related policies and procedures, as required, and to make recommendations for any needed changes in respect thereof.

INVESTIGATIONS

7. In accordance with the Code of Conduct for Members of Council and the Code of Conduct for Members of Local Boards (if applicable), other applicable ethics-related policies, rules or procedures and the policies and procedures for conducting investigations, to engage in dispute resolution activities as deemed appropriate in advance of or as part of any investigation.

8. In conducting any investigations under this Agreement, to have regard to the importance of:
 - a. the investigator's independence and impartiality;
 - b. confidentiality with respect to the investigator's activities; and
 - c. the credibility of the investigator's investigative process.
9. To conduct investigations from time to time upon receipt of a request for investigation (a "Request") in respect of complaints and alleged breaches of the Code of Conduct for Members of Council and the Code of Conduct for Members of Local Boards (if applicable), or other applicable ethics-related policies, rules or procedures and to provide recommendations based on the outcome of the investigation.
10. To proceed without undue delay and with due diligence to investigate a Request and to report to the Council of the affected Municipality within a reasonable period of time.
11. To conduct each investigation in private and to not disclose the identity of the complainant to any person/body unless written authorization to do so is obtained from the complainant.
12. To hear or obtain information from such persons as the Integrity Commissioner thinks fit and to make such inquiries as he/she thinks fit.
13. To provide an opportunity to any person that may be adversely affected by a proposed report of the Integrity Commissioner, the opportunity to make representations respecting such report or recommendation.
14. To preserve confidentiality and secrecy with respect to all matters that come to his or her knowledge in the course of performing duties hereunder, save and except disclosure of such matters as in the Integrity Commissioner's opinion ought to be disclosed in order to establish grounds for his/her conclusions and recommendations.
15. After making an investigation into an alleged breach of the Council Code of Conduct, the Integrity Commissioner shall render his/her opinion as to whether or not a member of Council has contravened the Council Code of Conduct and, if so, recommend to the Council of the affected municipality any appropriate sanction(s) or remedial action(s).
16. After making an investigation into an alleged breach of the Code of Conduct for Local Boards (if applicable), the Integrity Commissioner shall render his/her opinion as to whether or not a member of Council has contravened the Council Code of Conduct and, if so, recommend to the Local Board any appropriate sanction(s) or remedial action(s).

17. After making an investigation into an alleged breach of the *Municipal Conflict of Interest Act*, the Integrity Commissioner shall render an opinion as to whether or not a Member of Council or a Member of a Local Board has contravened the *Act*, and if so whether any sanction or further action is recommended.