

THE CORPORATION OF THE CITY OF WINDSOR
Office of the City Clerk - Council Services

**MISSION STATEMENT:**

"The City of Windsor, with the involvement of its citizens, will deliver effective and responsive municipal services, and will mobilize innovative community partnerships"

LiveLink REPORT #: 16896 GM/10017	Report Date: October 22, 2013
Author's Name: Valerie Critchley	Date to Council: December 16, 2013
Author's Phone: 519 255-6100 ext. 6434	Classification #:
Author's E-mail: veritchley@city.windsor.on.ca	

To: Mayor and Members of City Council

Subject: Accountability & Transparency Measures Update

1. RECOMMENDATION: City Wide: _____ Ward(s): _____

1. THAT Council direct that Bruce Elman **BE APPOINTED** as the Integrity Commissioner for the City of Windsor for a two year term commencing November 4, 2013, on the terms and conditions stated herein and that the Chief Administrative Officer and City Clerk **BE AUTHORIZED** to execute a contract with Dr. Elman on the said terms and conditions, provided that such contract is approved as to form and technical content by the City Solicitor and as to financial content by the Chief Financial Officer & City Treasurer.
2. (a) THAT Local Authority Services Ltd. **BE APPOINTED** as the Meetings Investigator for the City of Windsor pursuant to section 239(2) of the *Municipal Act*, S.O. 2001, c.25, as amended and THAT the Chief Administrative Officer and City Clerk be authorized to execute an agreement with Local Authority Services Ltd. for the period January 1, 2014-December 31, 2018, which agreement is satisfactory in technical content to the City Clerk, in legal form to the City Solicitor and in financial content to the CFO/City Treasurer; OR, alternatively
 - (b) THAT Bruce Elman **BE APPOINTED** as the Meetings Investigator for the City of Windsor pursuant to section 239(2) of the *Municipal Act*, S.O. 2001, c.25, as amended and THAT the Chief Administrative Officer and City Clerk be authorized to execute an agreement with Mr. Elman for these services for the period January 1, 2014-December 31, 2015, which agreement is satisfactory in technical content to the City Clerk, in legal form to the City Solicitor and in financial content to the CFO/City Treasurer.

EXECUTIVE SUMMARY:

N/A

2. BACKGROUND:

On October 22, 2007, Council passed resolutions CR408-415/2007 with respect to the Accountability & Transparency provisions of the *Municipal Act*, 2001, as amended. The purpose of this report is to provide Council with an update regarding the subject matter of these resolutions.

3. DISCUSSION:

Integrity Commissioner

On October 22, 2007, Council passed CR410/2007 which stated as follows:

THAT Council APPROVE the creation of the Office of the Integrity Commissioner together with the terms of reference and qualifications as set out in this report, together with the Integrity Commissioner Complaint Procedure appended hereto as Appendix "D" and that Council DIRECT Administration to commence the engagement process for the Integrity Commissioner, subject to final approval of the selected candidate and terms of the contract for service;

Pursuant to Council's direction, a request for proposal process was conducted in order to engage an Integrity Commissioner for the City of Windsor and on September 2, 2008, Council appointed Earl Basse to this office. Mr. Basse served as Integrity Commissioner from September 2, 2008-June 30, 2010. Following Mr. Basse's term, Council appointed Mr. Bruce Elman, former Dean of the University of Windsor Law School, as Integrity Commissioner and Mr. Elman has held that post since August 1, 2011.

Mr. Elman's current term expired on October 15, 2013 and he will be presenting his Annual Report to Council on December 16, 2013. He has indicated to Administration that he would be willing to continue in this role under the same terms and conditions of his present contract, save and except the issue of the term of the contract – he would like to have a two year contract rather than the present one year term. The terms of his current agreement are as follows:

a. Duration of Contract

As stated, Mr. Elman would be willing to contract for a further two year term. As his current contract actually expired on October 15, 2013, and considering the anticipated approval date for the new term, it is suggested that the approved term of the contract be November 4, 2013 to November 3, 2015. The contract could be renewed, by mutual agreement, for a further period of one year. However, either party could cancel the contract at any time upon providing 30 days' notice to that effect to the other party.

b. Remuneration:

Dr. Elman will be paid a retainer of \$1,000.00 per month and an hourly rate of \$300.00 per hour.

c. Other Expenses:

All other expenses, such as travel, mileage or independent legal advice, will be reimbursed at cost, subject to the prior approval of such expenses. This approval will be given by Administration within the approved budget for this position. Should these expenses exceed the approved budget, or should it be anticipated that they will exceed the approved budget, City Council approval will be sought.

d. Support Services

Should the Integrity Commissioner require occasional secretarial services, those will be provided through the Office of the City Clerk.

Given Mr. Elman's reputation and skill set, as well as the reasonableness of his proposal, it is the recommendation of Administration that he be appointed as the Corporation's Integrity Commissioner for the term November 4, 2013-November 3, 2015, subject to the terms set out herein.

Meetings Investigations

With respect to the issue of meetings investigations and the mandatory appointment of a Meetings Investigator, on October 22, 2007, Council passed CR408/2007 which states as follows:

THAT Local Authority Services Ltd. be appointed as the Meetings Investigator for the City of Windsor pursuant to section 239.2 of the Municipal Act, S.O. 2001, c.25, as amended and THAT the Chief Administrative Officer and City Clerk be authorized to execute an agreement with Local Authority Services Ltd. for the period January 1, 2008-December 31, 2009, which agreement is satisfactory in technical content to the City Clerk, in legal form to the City Solicitor and in financial content to the CFO/City Treasurer;

As Council is aware, the *Municipal Act, supra*, now includes a mandatory section which allows the public to request an investigation of any meeting of Council to determine if there has been compliance with rules of procedure or with the legislation as a whole.

Further, Council will recall that, while this section of the *Municipal Act* is mandatory, it is within Council's discretion to appoint a Meetings Investigator to deal with these complaints. If Council does not make such an appointment, any complaints will be investigated by the Provincial Ombudsman.

In accordance with resolution 408/2007, Local Authority Services Ltd. was appointed as the Meetings Investigator for the City of Windsor for the initial term of January 1 –December 31, 2008 and, in accordance with the terms of their contract, the retainer has been automatically

renewed each year and will currently expire on December 31, 2013. Local Authority Services Ltd. In turn sub-contracts this work to Amberley Gavel Ltd. The fee for this service has been \$300.00 per year as a retainer plus the costs of each investigation which have been charged at \$1,250.00 per day of investigation (\$156.25 per hour) plus reasonable out of pocket expenses, all of which is subject to H.S.T.

Since the legislation came into effect on January 1, 2008, there have been six requests filed for meetings investigations and these investigations have all been completed by Amberley Gavel Ltd. To date, including the yearly retainer fee, the City has paid a total of \$9,253.43.

The current term with LAS will end on December 31, 2013 however, in accordance with the terms of the contract; the agreement will be automatically renewed on the same terms and conditions unless cancelled by the Corporation upon 90 days written notice. Administration has been advised that the retainer fees for the 2014-2015 term will be \$330.00 per year plus HST and the investigation fee will now be charged at a rate of \$225.00 per hour plus HST and any reasonable out of pocket expenses incurred by the investigator. As the terms of the Agreement are now changing, this matter is being brought to Council for further consideration and decision.

In moving forward, Administration has conducted research with other municipalities of like size to the City of Windsor with respect how they deal with meetings investigations. The following table demonstrates the results of this research.

	Municipality	Meeting Investigator
1	Chatham/Kent	LAS
2	Peel Region	LAS
3	Barrie	LAS
4	Halton Region	LAS
5	Waterloo Region	LAS
6	Durham Region	LAS
7	Sudbury	LAS
8	Muskoka Region	Provincial Ombudsman
9	Niagara Region	Provincial Ombudsman
10	London	Provincial Ombudsman

11	Hamilton	Provincial Ombudsman
12	Ottawa	Integrity Commissioner fulfills the role of Meetings Investigator
13	Thunder Bay	Paul Heayn, who represents, through a joint agreement, 10 other municipalities in north west Ontario

From this research, it appears that there are three clear options for Council to consider regarding the appointment of a Meetings Investigator. These options are as follows:

- a) Re-appoint Local Authority Services Ltd. ("LAS") as Meetings Investigator under the new terms outlined above;
- b) Do not appoint a Meetings Investigator and allow any complaints to be handled by the Provincial Ombudsman; or
- c) Follow the course taken by at least two other municipalities and appoint someone other than LAS, such as the City's Integrity Commissioner, Bruce Elman, as the Meetings Investigator for the City.

To date, the City's experience with the LAS service (via Amberley Gavel) has been generally favourable in that it has investigated all complaints with integrity and has provided well reasoned and thoughtful reports. Through this process, valuable insight into the City's processes has been given in a constructive manner and the receipt of this feedback has allowed these processes to be improved. However, should Council wish to appoint an entity other than LAS it should be aware that there are pros and cons to each alternative option listed above.

The benefit to having the Ombudsman deal with meetings investigations is that the service is offered at no cost to municipalities. Closed meetings complaints are handled in the same manner as any other complaint made to the Ombudsman's office and are investigated by staff of that Office. Under the current program, Amberley Gavel provides a roster of meetings investigators which have past municipal experience – usually as past municipal clerks and/or solicitors - and are well versed in the rules and legislation surrounding closed meetings.

Regarding the option of having the Integrity Commissioner investigate closed meetings complaints, Council will recall that Mr. Elman resides locally and having this local presence may assist to reduce any out of pocket expenses incurred in the investigation process as well as the time in which it takes to complete an investigation. Appointing the Integrity Commissioner to this role would also have the added result of effectively "combining" two of the municipality's accountability and transparency measures which may be beneficial as existing experience and expertise could be effectively leveraged. This is the case in the City of Ottawa where the Integrity Commissioner fulfills both roles. Council should be aware that Mr. Elman is prepared to take on this role under his proposed retainer for Integrity Commissioner services. While there would not be a separate retainer for this engagement,

there would be an hourly investigation fee of \$300.00 per hour which is higher than the LAS rate. However, this difference in hourly rate may be offset by the fact that he is local and would likely not incur out of pocket expenses.

Given that the experience to date with LAS (Amberley Gavel) has been satisfactory, it is the recommendation of Administration that the contract with LAS be renewed. Should it be the preference of Council not to renew this contract, Administration recommends appointing the Integrity Commissioner as the Meetings Investigator for the Corporation pursuant to the terms of his proposed contract for the 2013-2015 term.

Lobbyist Registry

Regarding the implementation of a Lobbyist Registry for the City CR411/2007 stated as follows:

THAT Council APPROVE the implementation of a voluntary lobbyist registry to be used by members of Council on a one-year trial basis and that Administration be DIRECTED to draft a procedure for the same to be brought back to Council for approval by the end of the year.

As background for Council, a Lobbyist Registry is a formal tracking of lobbyists and their meetings with public officials that would be made available for public inspection. Generally, Lobbyist Registries are administered through an online registration process, similar to the federal and provincial lobbyist registries.

Generally, lobbying involves communicating with a public office holder in respect of a defined subject matter with the intent to influence. In creating a Lobbyist Registry Council would have to consider what types of communication are considered lobbying: oral (formal meeting, telephone conversation, etc.) and /or written (letter, email, etc.).

At the federal and provincial level, there are three general categories of lobbyists:

- 1) consultant lobbyists paid to lobby on behalf of a client;
- 2) in-house lobbyists employed by persons (including corporations) and partnerships that carry on commercial activities for financial gain; and
- 3) in-house lobbyists employed by non-commercial organizations such as advocacy groups, and industry, professional and charitable organizations.

Some individuals may be exempt from registering as lobbyists, including:

- 1) public officials at the municipal, provincial and federal level;
- 2) staff of the federal, provincial or other municipal government;
- 3) union representatives; and
- 4) staff of not-for-profit or volunteer groups.

The revised *Municipal Act, supra*, allows a municipality to appoint a Registrar who would be responsible for performing duties related to a lobby registry. These duties may include conducting inquiries with respect to a request made by Council, a Member of Council, or a

member of the public regarding compliance with the system of registration or a lobbyist code of conduct if established.

While a voluntary registry was created by Council in 2007 (to date no filings have been made), formal protocols were not drafted by Administration pending the review of this complex area while also monitoring the work of other municipalities of similar size with respect to such registries.

To date, the only two municipalities that have incorporated mandatory lobbyist registries are the City of Toronto and the City of Ottawa. Both registries use on-line tools for registration and public disclosure and are overseen by a Lobbyist Registrar (in the City of Ottawa, this role is filled by the Integrity Commissioner.) Of note is that both municipalities, unlike the City of Windsor, have full time Councillors who have dedicated offices and staff on site. Certainly, these elements make reporting into the registry easier and helps to formalize the process.

Further, the City of Hamilton is also currently reviewing the issue of implementation of a mandatory Lobbyist Registry which would be also be web-based and would use on-line tools for registration and monitoring. Administrative staff in Hamilton have estimated that the one time costs for the development of this registry would be \$50,000.00-\$100,000.00 and that the annual operating budget for this system would be in the range of \$114,000.00-\$127,000.00 which would include the cost of one FTE staff member to support the registry and also the costs of retaining a Lobbyist Registrar who would oversee the registry and investigate complaints associated with it. At this time, the matter has been referred to Hamilton's 2014 budget deliberations.

Although there has been no activity in the voluntary lobbyist registry, it is of note that the City did pass its Code of Conduct for Councillors in 2007 and this document sets out clear rules for issues that could be entwined with lobbyist activity such as the disclosure of gifts and benefits, the keeping of confidential information, conduct respecting current and prospective employment and the improper use of influence. As Council is aware, the Integrity Commissioner deals with any complaints made pursuant to the Code of Conduct.

Given the fact that the use of a lobbyist registry is a tool which seems to have been embraced in only two, large scale, municipalities within the Province, each of which have full time Councillors and dedicated offices and staff, and one of which is mandated to have a registry (Toronto), it is the recommendation that the voluntary lobbyist registry be discontinued and that no other form of lobbyist registry be implemented in the City of Windsor at this time.

Municipal Ombudsman

Council Resolution 412/2007 stated:

THAT Council DIRECT Administration to monitor the need for a municipal Office of the Ombudsman and to also monitor the developments in other municipalities with respect to this issue and to report back to Council no later than December 31, 2008, on this issue;;

As reported to Council on October 22, 2007, section 223.13 of the *Municipal Act* authorizes a municipality to appoint an Ombudsman, however this appointment is not mandatory. An Ombudsman would have the authority to investigate decisions or recommendations made or acts done in the course of the administration of the municipality, local boards or municipally controlled corporations.

Investigations of the Ombudsman are conducted in private and the Ombudsman is given broad investigative powers including access to any documentation. Upon completion of the investigation, the Ombudsman would prepare a public report containing such recommendations as he/she sees fit. There is no review by the Courts of the proceedings and decisions of the Ombudsman, except on the grounds of jurisdiction. Furthermore, the Ombudsman may not investigate any decision, recommendation, act or omission where a right of appeal or objection has not yet been exercised, or of any person acting as legal advisor to the municipality, its local boards or a municipally controlled corporation.

As was the case when this issue was first reported to Council in 2007, apart from the City of Toronto, which is mandated to appoint an Ombudsman pursuant to the *City of Toronto Act*, there are presently no other municipalities in Ontario that have exercised their discretion to appoint an Ombudsman. The City of Ottawa did consider this matter and received an administrative 'white paper' on the subject to guide discussion but decided not to pursue the establishment of such an office.

As Council has taken the step of creating the Office of the Integrity Commissioner, any complaints made with respect to the actions of elected officials vis a vis the Code of Conduct are dealt with by that office. Further, any complaints made regarding the actions of Administration are presently dealt with by the Chief Administrative Officer and Council. Therefore, it is the recommendation of Administration that Council not establish such an office at this time.

Other Items

Finally, the remaining resolutions passed by Council on October 22, 2007 with respect to accountability and transparency measures are reproduced below together with a brief update on the status of each:

CR409/2007:

THAT Council ADOPT the Code of Conduct for Members of Council in the form appended hereto as Appendix "C" and that Council DIRECT Administration to include this Code of Conduct in the revised Procedural By-law to be brought forward by the end of this year;

Update: The Code of Conduct for Members of Council was adopted by Council and has been incorporated in the Procedure By-law 98-2011.

CR413/2007:

THAT Council REFER the following matters to the Audit Committee for its review and recommendations:

- a. the need for the City to appoint an Auditor General pursuant to the *Municipal Act*;
- b. the audit structures of other municipalities across the province, including a review of internal audit & consulting functions; and
- c. the recommended structure and reporting relationship for the audit function within the City of Windsor.

Update: As Council is aware, the firm of Price Waterhouse Coopers has been appointed to perform the work of internal; audit for the City of Windsor.

CR414/2007:

THAT Council DIRECT Administration to complete a comprehensive review of the Procedure By-law, incorporating all applicable amendments to the *Municipal Act* and also incorporating any matters as directed by Council as a result of consideration of this report and that Administration BE DIRECTED to present the revised Procedural By-law to Council for consideration in due course.

Update: This direction has been completed and the Procedure By-law 98-2011 was passed by Council on June 7, 2011.

CR 415/2007:

THAT Council DIRECT Administration to draft an Accountability & Transparency Policy for the City of Windsor in compliance with the *Municipal Act, supra*, and that this policy BE PRESENTED to Council for its consideration on or before December 31, 2007.

Update: This direction has been completed as the policy, a copy of which is attached as Appendix "A", was passed by Council on November 8, 2010 by CR 403/2010.

4. RISK ANALYSIS:

Having a robust accountability and transparency program is one of the hallmarks of a progressive municipality. The failure to implement and maintain accountability and transparency programs can potentially lead to public criticism and poor decision making. Therefore, it is in the interest of the municipality to review its systems with respect to accountability and transparency to ensure that they are in compliance with the *Municipal Act* and that they serve the citizens of the City of Windsor in an effective manner.

5. FINANCIAL MATTERS:

The 2013 Operating Budget for Accountability and Transparency matters is \$50,500.00 of which \$45,500.00 is earmarked for the Office of the Integrity Commissioner and \$5,000.00 is earmarked for costs associated with meetings investigations. Council will also recall that there is an annual budget of \$300,000.00 for the contract held with Price Waterhouse Coopers regarding the auditor general function.

Meetings Investigations:

Since 2008, a total of \$9,253.42 has been spent on the meetings investigations program. Of this, a total of 1810.56 has been for the retainer fee and \$7,442.86 has been spent on actual investigations. As six investigations have been completed, the average cost per investigation was \$1,240.48.

Integrity Commissioner:

The following amounts have been expended on this office since the inception of this office in 2008:

September 2, 2008- December 31, 2008:	\$	7,263.77
January 1, 2009-December 31, 2009:		36,093.89
January 1, 2010-December 31, 2010:		3,434.77
January 1, 2011-December 31, 2011:		7,700.00
January 1, 2012-December 31, 2012:		43,024.68
January 1, 2013-September 30, 2013:		16,350.00
Blackberry Costs – 2011-2013:		1,535.72
TOTAL	\$	115,402.83

It is anticipated that there will be a further \$3,000.00 in retainer costs for 2013 which will bring the total anticipated expenditure to the end of 2013 to \$118,402.83. Based on a six year average, the average annual costs for this program have been \$19,733.80.

Lobbyist Registry:

Should Council wish to implement a mandatory lobbyist registry, Administration anticipates that the costs would be similar to those projected in Hamilton for both the capital investment in creating the web-based tool and for the support and administration of the system. Hamilton is currently projecting a capital investment of \$50,000-\$100,000 and annual operating costs in the range of \$114,000-\$127,000.

Ombudsman:

Regarding potential costs should Council wish to implement a Municipal Ombudsman program, it is anticipated that the office would be structured in a similar fashion to the Office of the Integrity Commissioner. It is likely that the person selected for the role of Ombudsman would charge a retainer fee and an hourly investigation fee as well which would likely be in the same

range as what is currently being charged by the Integrity Commissioner. Therefore, Council could expect annual retainer fees in the area of \$12,000.00 and an hourly investigation fee in the range of \$200.00-250.00. The actual cost of the program would then depend on the number of complaints received and investigated. For example, each complaint required an average of three hours of investigation, the cost for each complaint, based on a \$200.00 per hour investigation fee would be \$600.00. If 10 complaints were received in the year the annual cost would then be \$6,000.00 plus the retainer fee of \$12,000.00 for a total of \$18,000.00 per year.

Of course the cost of such a program could differ if Council negotiated a different fee structure and if there were more or less complaints investigated. These costs are difficult to project as no other municipality in Ontario (other than Toronto where the office is mandated) has implemented an Ombudsman and there is no other municipal experience to use as a guideline.

6. CONSULTATIONS:

N/A

7. CONCLUSION:

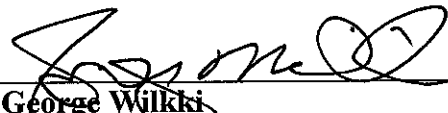
An effective accountability and transparency program is an essential part of a progressive municipality. Since 2007, the City has instituted many accountability and transparency measures in order to comply with the *Municipal Act* and also in order to serve the citizens of the City. Moving forward with the recommendations in this report will ensure that these programs continue to operate efficiently and effectively.



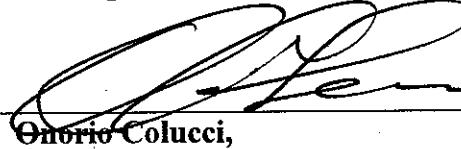
Valerie Critchley
City Clerk/Licence Commissioner,
Corporate Leader Public Engagement and
Human Services



Helga Reidel
Chief Administrative Officer



George Wilkhi
City Solicitor, Corporate Leader Economic
Development and Public Safety



Onorio Colucci,
Chief Financial Officer and City Treasurer

VCC/hs

APPENDICES:

DEPARTMENTS/OTHERS CONSULTED:**Name:****Phone #: 519 ext.****NOTIFICATION :**

Name	Address	Email Address	Telephone	FAX