

The Corporation of The Township of Adjala-Tosorontio

By-Law No. 19-15

A By-law to Appoint an Integrity Commissioner for the Township of Adjala-Tosorontio

Whereas the *Municipal Act, 2001*, as amended (the "Municipal Act") provides that the powers of a municipal corporation are to be exercised by its Council through the adoption of by-laws; and

Whereas the Municipal Act authorizes the Township to establish codes of conduct for members of Council and to appoint an Integrity Commissioner who reports to Council; and

Whereas Township of Adjala-Tosorontio Council has adopted a Code of Conduct ADM 2016-02 and

Whereas an Integrity Commissioner is responsible for performing in an independent manner the functions assigned by the municipality; and

Whereas by March 1, 2019, the Municipal Act, pursuant to Part V.1, Accountability and Transparency, will oblige all municipalities in Ontario to appoint an integrity Commissioner to perform the following functions:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards.
2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards.
3. The application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to members of council and of local boards.
4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
6. Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.

7. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of council and members of local boards and about the *Municipal Conflict of Interest Act*; and

Whereas by the adoption of resolution 109-19 Council deems it expedient to appoint Guy Giorno of Fasken Martineau DuMoulin LLP as the Township of Adjala-Tosorontio's Integrity Commissioner to perform the functions, powers and duties recited above and as may be set out in the Municipal Act from time to time.

Now Therefore Be It Resolved That the Council of the Corporation of the Township of Adjala-Tosorontio hereby enacts as follows:

1. **That** Guy Giorno of Fasken Martineau DuMoulin LLP is hereby appointed as the Township of Adjala-Tosorontio's Integrity Commissioner pursuant to Part V.1, Accountability and Transparency, of the Municipal Act.
2. **That** upon appointment Guy Giorno of Fasken Martineau DuMoulin LLP will have all the functions, powers and duties of an integrity commissioner as set out in Part V.1, Accountability and Transparency, of the Municipal Act, and in addition such functions, powers and duties as may be assigned by Council from time to time.
3. **That** the Township of Adjala-Tosorontio hereby indemnifies and save harmless the Integrity Commissioner or any person acting under the instructions of the Integrity Commissioner for costs reasonably incurred in connection with the defence of a proceeding if the proceeding relates to an act done in good faith in the performance or intended performance of a function, duty or authority under Part V.1 of the Municipal Act, or a by-law passed thereunder, or an alleged neglect or default in the performance in good faith of the function, duty or authority.
4. **That** all actions taken and required to be taken by the Mayor and Clerk on behalf of the Corporation of the Township of Adjala-Tosorontio to complete this matter including the execution of the Agreement and any other associated documentation are hereby authorized, confirmed and ratified.
5. **That**, notwithstanding anything contrary to the rules of procedure, this By-law be introduced and read a first and second time and be considered read a third time and finally passed this 15th day of March, 2019.



Floyd Pinto, Mayor



Kathryn A. Pearl, Clerk

INTEGRITY COMMISSIONER AGREEMENT

THIS AGREEMENT dated the 15th day of March, 2019

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF ADJALA-TOSORONTIO
(hereinafter referred to as the "Municipality")

- AND -

FASKEN MARTINEAU DUMOULIN LLP
(hereinafter referred to as the "Consultant")

WHEREAS:

- (A) On March 1, 2019, the date proclaimed by the Lieutenant Governor, section 223.2 of the *Municipal Act, 2001*, as amended (the "Act"), is repealed and a new section 223.2 substituted which provides that a municipality shall establish codes of conduct for members of the council of the municipality and of its local boards;
- (B) On March 1, 2019, the date proclaimed by the Lieutenant Governor, section 223.3 of the Act is repealed and a new section 223.3 of the Act authorizes the 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 with respect to any or all the following:
 - 1. The application of the code of conduct for members of council and the code of conduct for members of local boards.
 - 2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards.
 - 3. The application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to members of council and of local boards.
 - 4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
 - 5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
 - 6. Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.
 - 7. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for

members of council and members of local boards and about the *Municipal Conflict of Interest Act*.

- (C) The Municipality is satisfied that the Consultant has the skills and ability to meet the foregoing criteria and deems it desirable to appoint Guy Giorno ("Giorno"), a partner in the Consultant operating through Guy W. Giorno Professional Corporation, as the Integrity Commissioner to provide the services of Integrity Commissioner for the Municipality, in accordance with section 223.3 of the *Municipal Act*;

NOW THEREFORE the parties agree as follows:

1. Services: The Municipality hereby appoints Giorno as Integrity Commissioner and retains the Consultant to provide Integrity Commissioner services for the purposes of the new section 223.3 of the Act and the Consultant agrees to provide such services for and at the request of the Municipality and accepts such retainer. The parties acknowledge that the Municipality has appointed Giorno as Integrity Commissioner and that, unless the Municipality by resolution approves, the Consultant has no right to replace him.
2. Duties: The duties of the Consultant shall be to perform in an independent manner, in accordance with the provisions of the Act, the services identified in the Act. In performing such duties, the Consultant shall have the powers set out in the new sections 223.3 and 223.4 of the Act.
3. Fees and Reimbursement of Expenses:

Hourly Rates: The Consultant shall be paid a fee of \$400 per hour for the services of Giorno and \$250 per hour for the services of junior team members during such time as the Consultant is performing services under this Agreement. Travel time shall be charged at 50 per cent of the hourly rates. To these amounts will be added applicable taxes. The Consultant agrees such rates shall be charged only for such time that the Consultant is actively providing services, including preparing and presenting the Integrity Commissioner's reports related to the services.

Expenses: The Consultant shall be entitled to be reimbursed other reasonable expenses (receipts produced on request) related to the services, including food, hotel and travel costs, subject to the following:

- a. Photocopying: small jobs, no charge; large jobs only: 10 cents per page
- b. Faxing: no charge
- c. Courier: actual cost
- d. Postage: no charge
- e. Mileage: Municipality's prevailing rate per kilometer
- ~~f. Travel (airfare, airport transfers): actual cost~~
- g. Meals (travel): according to Municipality's policy

in all cases using 333 Bay Street, Toronto, as the point of departure and return



4. Term: The term of this Agreement (the "Term") is for a five-year term commencing March 1, 2019, and ending on the fifth anniversary date unless renewed and/or extended by agreement of all the parties. The Consultant or the Municipality shall give at least 30 days' written notice prior to the end of the Term of their intent not to renew this Agreement if such renewal were to be available.
5. Termination: Either party, without liability, cost or penalty may terminate this Agreement for any reason and at any time without penalty upon giving 30 days' written notice.
6. Taxes: All amounts payable to the Consultant shall be paid without deduction. The Consultant shall be responsible for any contributions imposed or required under employment insurance, health tax, social insurance, income tax laws, Worker's Compensation (if elected to enroll), pension with respect to any amounts paid to the Consultant. The Municipality assumes no obligation or liability as between the parties to this Agreement to deduct or remit any statutory or government remittances.
7. Independent Contractor: The Consultant is a contractor independent of the Municipality. Nothing herein shall be interpreted to create a relationship of employer/employee, partnership, franchise, agency or joint venture or other like arrangement.
8. Delegation:
 - a. Delegation inside the Consultant: In the event more than one investigation is required at any one time, Giorno may determine that it is necessary to delegate some or all of his powers and duties, then he may do so in writing to any person employed by the Consultant. Such person shall always be under the supervision and direction of Giorno. The Consultant shall invoice for the fees and expenses of the delegate(s) according to section 3.
 - b. Delegation outside the Consultant: If due to recusal to avoid a perceived conflict of interest or for other reasonable cause for recusal, Giorno delegates powers or duties to an individual who does not belong to Consultant then Giorno shall make best efforts to identify a delegate who will agree to discharge the powers or duties for the fees and expenses set out in section 3 of this Agreement and agree in writing to accept the terms and conditions of this Agreement. Consistent with the recusal, such delegate shall report directly to the Municipality and Council and invoice the Municipality directly.
 - c. Approval: Consistent with the statutory independence of the Integrity Commissioner, for a delegation under subsection 223.3(3) of the *Municipal Act* the Municipality's approval is not required.
9. Confidentiality: The Consultant shall at all times be responsible for keeping confidential, any files, data and other forms of information belonging to the Municipality that is encountered while fulfilling work within this Agreement. The Consultant shall take all necessary measures to guard any such information to ensure that it is kept secure at all times. The foregoing obligations shall not apply to information which (i) shall have otherwise become publicly available other than as a result of disclosure by the Consultant in breach of this Agreement, (ii) was disclosed to the Consultant on a non-confidential basis from a source other than the Municipality,

which is not prohibited from disclosing such information as a result of an obligation in favor of the Municipality, (iii) is developed by the Consultant independently of, or was known by the Consultant prior to, any disclosure of such information made by the Municipality, or (iv) is disclosed with the written consent of the Municipality.

A receiving party also may disclose confidential information as required by an order of a court of competent jurisdiction, administrative agency or governmental body, or by any law, rule or regulation, or by subpoena, summons or other administrative or legal process, or by applicable regulatory or professional standards, or in connection with any judicial or other proceeding involving the Consultant and the Municipality relating to the Consultant's services for the Municipality or this Agreement.

Should it be necessary to remove information, or systems which contain information, from the Municipality's premises, the Consultant will take additional precautions during transportation and at the Consultant's premises to make certain that the information is not accessed by or transmitted to a third party, either directly or indirectly. The Consultant shall not copy, share or transmit any of the Municipality's information, without seeking the written consent of the Municipality.

This section shall not limit the right of the Municipality or other party to seek remedy via any municipal, provincial or federal legislation guarding against the release of private or sensitive information.

10. Municipal Act Prevails over Section 9: The parties confirm that a use or disclosure by Giorno or a delegate in accordance with Part V.1 of the *Municipal Act* does not contravene section 9 of this Agreement. More generally, section 9 shall not limit the exercise of the Integrity Commissioner's authority under Part V.1 of the *Municipal Act*.
11. Transparency: The Municipality shall make Giorno's reports to Council publicly available and easily accessible on its Website. The parties agree that, once delivered to Council, Giorno's reports shall be in the public domain.

The Municipality shall also post Giorno's contact information on the section of its Website where Integrity Commissioner reports are posted.

12. Legal Services, Independence and Conflict of Interest
 - a. The parties confirm that the services covered by this agreement, except as lawfully delegated under subsection 223.3(3) of the *Municipal Act*, will be provided by the Consultant through Giorno in his capacity as a lawyer and other professionals within the Consultant working under his supervision.
 - b. The Consultant and Giorno will, inside the Consultant law firm, create a "confidentiality wall" so that only the those professionals within the firm working the Municipality's Integrity Commissioner files have access to such information related to the Municipality.
 - c. The Municipality confirms, agrees and consents that the appointment of Giorno and this Agreement with the Consultant do not prohibit Giorno from acting as Integrity Commissioner for other municipalities.

- d. The Municipality understands, agrees and confirms that Giorno is not the Municipality's lawyer and the Consultant is not the Municipality's law firm.
 - e. The Municipality understands that an Integrity Commissioner must exercise functions independently of the Municipality and of Council. Giorno is appointed and the Consultant is engaged only to provide integrity commissioner services under the *Municipal Act* and the Code of Conduct. The Municipality understands and accepts that Giorno and the Consultant do not represent the Municipality or the Council, and Giorno and the Consultant do not represent and do not advance the interests of the Municipality and the Council.
 - f. The Municipality confirms, agrees and consents that the appointment of Giorno and this Agreement with Consultant do not prohibit the Consultant from accepting from another client a mandate that is adverse to the interests of the Municipality, provided that all of the following conditions are satisfied: Giorno does not act in the other mandate; no one else providing services under this Agreement acts in the other mandate; the other mandate is unrelated to Integrity Commissioner services; and Consultant possesses no confidential information obtained in the course of providing services under this Agreement that is relevant to the other mandate.
 - g. A mandate that satisfies the conditions in paragraph f, above, does not constitute a conflict of interest, either actual or potential, and does not require notice to the Municipality or provide cause to terminate the appointment or this Agreement.
13. Binding: This Agreement shall enure to the benefit of and bind the parties and their respective heirs, successors and permitted assigns.
14. Indemnification: The Municipality agrees to indemnify and save harmless the Consultant, its agents and assigns, from and against any and all liabilities, losses, suits, claims, demands, damages, expenses, costs (including all legal costs), fines and actions of any kind or nature whatsoever arising out of or in connection with the Consultant's provision of services and carrying out of its duties including, but not limited to, any alleged breach of this agreement, any procedural defect or other breach of relevant statutory provisions.
- Further, as required by the *Municipal Act*, the Municipality shall indemnify and save harmless Giorno or any person acting under the instructions of Giorno for costs reasonably incurred by either of them in connection with the defence of a proceeding if the proceeding relates to an act done in good faith in the performance or intended performance of a duty or authority under this Part V.1 of the *Municipal Act* or a by-law passed under it or an alleged neglect or default in the performance in good faith of the duty or authority.
15. Applicable Laws: This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario.
16. Entire Agreement: This Agreement contains the entire agreement between the parties and supersedes all previous negotiations, understandings and agreements, verbal or written with respect to any matters referred to in this agreement.

17. Notices: Any notice required to be given by the parties to each other under this Agreement will be sufficiently given if delivered or if sent by prepaid registered mail as follows:

The Municipality: The Corporation of the Township of Adjala-Tosorontio
7855 30th Sideroad
Alliston, Ontario
L9R 1V1

The Consultant: Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400
Toronto, Ontario
M5H 2T6

or to such other address as any of them may indicate in writing.

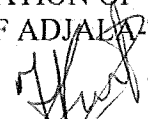
Any notice given by prepaid registered mail will be deemed to have been received on the fifth day after the notice is deposited with a post office.

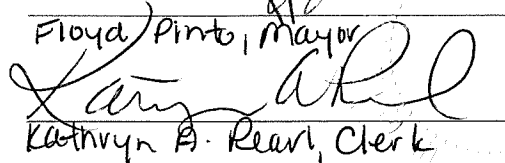
18. Assignment: A party shall not assign this Agreement without the prior written consent of the other parties, which consent may be withheld in their absolute discretion. A delegation of powers or duties by Giorno under the *Municipal Act* does not constitute an assignment of this Agreement.

19. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the parties adopt any signatures received by receiving fax machine as original signatures of the parties.

IN WITNESS HEREOF each of the parties hereto has set its hand and seal as of this 15th day of March, 2019.

THE CORPORATION OF THE
TOWNSHIP OF ADJALA-TOSORONTIO



Floyd Pinto, Mayor



Kathryn A. Reart, Clerk

The Consultant hereby accepts and agrees to the terms and conditions herein contained.

DATED: Feb 26, 2019



WITNESS:



FASKEN MARTINEAU DUMOULIN LLP