



## Regular Council Meeting

<b>To:</b>	Mayor and Council
<b>Date:</b>	August 2, 2022
<b>From:</b>	Cindy Page, Clerk
<b>Report Number:</b>	Corporate Services 2022-13
<b>Subject:</b>	Integrity Commissioner Agreement Renewal

### Recommendation:

That Council authorizes staff to renew the current Integrity Commissioner Services Agreement with Cunningham, Swan, Carty, Little & Bonham LLP expiring on August 31, 2022, for a further four (4) years on the same terms as outlined in By-law No. 2020-47.

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### Overview:

Section 223.2 of the Municipal Act, 2001, as amended, requires a municipality to establish codes of conduct for members of Council and local boards. Section 223.3 of the Act authorizes the municipality to appoint an Integrity Commissioner to govern the codes of conduct as outlined below:

### Integrity Commissioner

**223.3** (1) Without limiting sections 9, 10 and 11, those sections authorize 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 of 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*. 2017, c. 10, Sched. 1, s. 19 (1).

Council at the Regular Meeting of August 4, 2020 passed the below motion, which approved appointing an Integrity Commissioner, within the terms of that Agreement included the expiry date of August 31, 2022. The Agreement also included a Renewal section that outlined that the appointment pursuant to the Agreement may be renewed for a further four (4) years, on the same terms and on the mutual agreement of the Parties.

**That Council approve By-law No. 2020-47 being a by-law to appoint Cunningham, Swan, Carty, Little & Bonham LLP as the Integrity Commissioner for the Township of Cavan Monaghan effective September 1, 2020.**

Staff are recommending that Council authorize the renewal of the current terms of the agreement as part of By-law No. 2020-47 with Cunningham, Swan, Carty, Little & Bonham LLP for a further four years with an expiry date of August 31, 2026.

**Financial Impact:**

There is no annual retainer required by Cunningham, Swan, Little and Bonham LLP., charges will only occur if services are required.

**Attachment:**

By-law No. 2020-47 being a by-law to appoint an Integrity Commissioner

Respectfully submitted by,

Reviewed by,

Cindy Page  
Clerk

Yvette Hurley  
Chief Administrative Officer

**The Township of Cavan Monaghan**

**By-law No. 2020-47**

**Being a by-law to appoint an Integrity Commissioner**

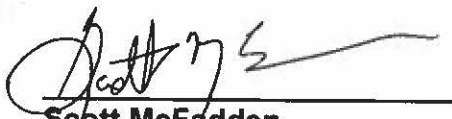
**Whereas** Section 223.2 (1) of the Municipal Act 2001, S.O. 2001 c.25 as amended, authorizes Council to appoint an Integrity Commissioner who performs functions with respect to the application of the Code of Conduct for Members of Council and other procedures, rules or policies governing their ethical behaviour;

**And Whereas** Section 11 of the Municipal Act 2001, S.O. 2001, c.25 as amended, authorizes municipalities to pass by-laws regarding Accountability and Transparency of the municipality and its operations;

**Now Therefore** the Council of the Township of Cavan Monaghan hereby enacts as follows:

1. That Cunningham, Swan, Little and Bonham LLP. be appointed as the Integrity Commissioner for the Township of Cavan Monaghan.
2. That Council authorize the execution the agreement with Cunningham, Swan, Little and Bonham LLP., attached as Schedule 'A' to this By-law;
3. That By-law No. 2020-11 be repealed in its entirety.

Read a first, second and third time and passed this 4<sup>th</sup> day of August, 2020.

  
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**Scott McFadden**  
Mayor

  
\_\_\_\_\_  
**Elana Arthurs**  
Clerk

## INTEGRITY COMMISSIONER SERVICES

This Agreement shall be executed in three (3) original copies dated this 4<sup>th</sup> day of August 2020.

**BETWEEN:**            **THE TOWNSHIP OF Cavan Monaghan**  
988 County Rd 10, Millbrook ON L0A 1G0

(Hereinafter referred to as "the Municipality")

- and -

## CUNNINGHAM SWAN CARTY LITTLE & BONHAM LLP

(hereinafter referred to as "the Consultant")

1. WHEREAS, the Municipality 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 Consultant has represented, and the Municipality is satisfied, that the Consultant has the skills and abilities necessary to perform the role of the Integrity Commissioner;
3. AND WHEREAS, the Municipality wishes to retain the Consultant as an independent Integrity Commissioner for the Municipality;
4. NOW THEREFORE, in consideration of the covenants, terms and conditions contained herein, the Municipality and the Consultant agree as follows:

## **Powers and Duties**

1. The Municipality hereby retains and appoints the Consultant as an Integrity Commissioner for the Municipality and the Consultant 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 *Act*, as amended from time to time.

## **Term of the Agreement**

3. The Consultant's appointment pursuant to this Agreement is effective on September 01, 2020 and will continue for a period of two (2) years, ending on August 31, 2022 unless terminated earlier in accordance with this clause:
  - a. The Municipality, or any individual municipality, may be released from the Agreement at any time, with 30 days written notice.
  - b. The Consultant shall provide thirty (30) days written notice to the Municipality of his intention to resign as the Municipality's Integrity Commissioner and his resignation shall only be effective at the expiry of the notice period.

## **Records**

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

## **Renewal**

5. The Consultant's appointment pursuant to this Agreement may be renewed for a further four (4) years, on the same terms and on the mutual agreement of the Parties, with one or more individual Municipality.

**Compensation**

6. The Consultant will not require an annual retainer and will provide services on an as needed basis.
7. The Municipality agree to pay to the Consultant an hourly fee of Two Hundred and Ninety-Five Dollars (\$295.00) per hour, plus applicable taxes, during such time that the Consultant is actively carrying out his duties pursuant to this Agreement. The Consultant shall provide the Municipality with a monthly invoice detailing the hours worked and expenses incurred for the period in question and the Municipality agrees to pay such invoices within thirty (30) days of the receipt thereof.
8. The Township of Cavan Monaghan agrees to pay for services rendered by the Consultant that are common to all Municipalities (e.g. the development and joint training of the Code of Conduct, other ethical procedures and policies, Council-Staff Relations Policy, policies and procedures developed for the Office of the Integrity Commissioner).
9. The Municipality agrees to reimburse the Consultant for all reasonable expenses and disbursements incurred by the Consultant which are necessary to enable the Consultant to perform his duties pursuant to this Agreement. All such expenses must be supported by appropriate receipts.

**Consultant Status**

10. In performing his duties and responsibilities as Integrity Commissioner pursuant to this Agreement, it is recognized that the Consultant is independent of the Municipality's administration and shall report directly to the Municipal Council.
11. The Consultant acknowledges that he is an independent contractor and shall not be deemed an employee of the Municipality, for any purpose. The Consultant further acknowledges that, as an independent contractor, he will not be entitled to any employment-related benefit, including such benefits that are applicable to employees of the Municipality.

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

### **Confidential Information**

13. The Consultant acknowledges that the Municipality is an institution for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*. Accordingly, the Consultant undertakes not to disclose information subject to the *MFIPPA* except as may be necessary in the proper discharge of his duties and responsibilities pursuant to the terms of this Agreement and in accordance with the *MFIPPA*.

14. This Article shall survive the termination of this Agreement.

### **Delegation**

15. In the event that more than one complaint is made at any time requiring more than one investigation and the Consultant determines it to be necessary to delegate some or all of his powers and duties, then he may do so in writing to any person other than a Member of Council, provided that the person to whom such a delegation is made possesses the requisite skills and abilities and agrees in writing to be governed by the same duties of confidentiality as the Consultant and to abide by the terms and conditions of this Agreement. The Consultant shall not assign or sublet the whole or any part of this Agreement without the prior written consent of the Municipality.

### **Insurance**

16. The Consultant shall, at its expense, obtain and keep in force during the term of this Agreement, Comprehensive General Liability Insurance satisfactory to the Municipality, 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 vendor relating to its obligations under this Agreement. Such insurance shall include, but is not limited to bodily injury and property damage including loss of use; personal & advertising injury; contractual liability; premises, property & operations; non-owned automobile; broad form property damage; owners & contractors protective; occurrence property damage; products & completed operations; employees as Additional Insured(s); contingent employers liability; tenants legal liability; cross liability and severability of interest clause. Such insurance shall not contain a failure to perform exclusion.

The Consultant shall also, at its expense, obtain and keep in force during the term of this Agreement errors and omissions insurance satisfactory to the Municipality in an amount of at least \$5,000,000.

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

### **Indemnity**

17. The Municipality hereby agrees to indemnify and save harmless the Consultant and his 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 Consultant and his 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 consultant shall indemnify and hold the Municipality 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 Municipality harmless from and against any liability, loss, claims, demands, costs



(including legal costs), damages, suits, judgments, penalties, and expenses, including reasonable legal fees, occasioned wholly or in part by any negligence, acts or omissions whether willful or otherwise by the consultant, their agents, officers, employees or other persons for whom the consultant 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 Consultant and the Municipality, the Consultant and Municipality 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 Municipality and the Consultant agree to equally share the cost of the arbiter and any related expenses.

This Article shall survive termination of this Agreement.

### **General Provisions**

18. This Agreement shall be governed by and construed exclusively in accordance with the laws of the province of Ontario.

19. 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.

20. This Agreement, along with the attached Schedule(s), 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.

21. This Agreement shall ensure to the benefit of, and be binding on, the Parties and

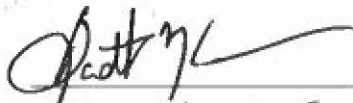
their successors and assigns.

*[Signature page follows]*

The Parties have executed this Agreement this 4<sup>th</sup> day of August, 2020.

**THE TOWNSHIP OF CAVAN  
MONAGHAN**

By:



Name:

Scott McFadden

Title:

Mayor

Date:

August 4, 2020

**CUNNINGHAM, SWAN,  
CARTY, LITTLE AND BONHAM  
LLP**

By:



Name:

TONY FLEMING

Title:

ASSOCIATE MANAGING PARTNER

Date:

JULY 23/20

**Witness:**

By:



Name:

Elana Arthurs

Title:

Clerk

Date:

August 4, 2020

By:



Name:

Angela MacLeod

Title:

Law Clerk

Date:

July 23, 2020

**Schedule "A"**  
**Statement of Duties & Responsibilities**

The duties of the Integrity Commissioner shall be:

**Education and Advice:**

1. To provide advice, education, and training on the Council Code of Conduct to Members of Council and those to whom the Code applies, either collectively or individually, for Members of Council;
2. 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 Municipality governing ethical behaviour;
4. To provide advice and opinions to the Chair, Members of Local Boards 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 Municipality governing ethical behaviour;
5. 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*;
6. To develop policies and procedures for the Office of the Integrity Commissioner, and to review these on an annual basis;
7. 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;
8. To assist with the creation of a Council-Staff Relations Policy; and
9. To assist in confirming the list of applicable local boards of the Municipality

## **Investigations:**

10. 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.
11. 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;
12. 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;
13. 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;
14. 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;
15. To hear or obtain information from such persons as the Integrity Commission thinks fit and to make such inquiries as he/she thinks fit;
16. To provide an opportunity to the affected municipality or 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;
17. 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;
18. 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);
19. 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);

20. 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.