

The Corporation of the Town of Erin

By-Law # 14-10

Being a By-Law to authorize the execution of an agreement between the Corporation of Town of Erin to appoint Robert James Williams, PH.D as Integrity Commissioner

WHEREAS the Municipal Act, R.S.O. 2001, provides that a municipality has the capacity, rights powers, and privileges of a natural person of exercising its authority under this or any other act;

AND WHEREAS the Council of the Corporation of the Town of Erin wishes to appoint an Integrity Commissioner for the Town;

AND WHEREAS the Council of the Corporation of the Town of Erin deems it expedient to enter into an agreement to appoint Robert James Williams, PH.D as the Integrity Commissioner for the Town;

NOW THEREFORE the Council of the Corporation of the Town of Erin Enacts as follows:

1. **THAT** the Mayor and CAO/Town Manager are hereby authorized to enter into an Agreement with Robert James Williams, PH.D attached to and forming part of this By-Law;
2. **AND THAT** Robert James Williams, PH.D be appointed Integrity Commissioner for the Town of Erin to conduct investigations in accordance with the Municipal Act in response to a request received by the Municipality for investigation of an alleged breach of the Municipality's Code of Conduct (Ethics) by a member of the Council of the Municipality;
3. **AND THAT** this By-law shall come into force and take effect on the date of passing.

BYLAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 18th DAY OF MARCH 2014.


Lou Maieron, Mayor


Dina Lundy, Clerk

**THIS AGREEMENT RE: INTEGRITY COMMISSIONER
MADE THIS 15TH DAY OF OCTOBER, 2013**

BETWEEN

**THE CORPORATION OF THE TOWN OF ERIN
(THE “MUNICIPALITY”)**

AND

**ROBERT JAMES WILLAMS, PH.D
(THE “CONSULTANT”)**

WHEREAS Section 223.2 of the *Municipal Act, 2001*, as amended (the “Act”), authorizes the municipality to establish a code of conduct for members of the council of the municipality and of local boards of the municipality;

AND WHEREAS 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,

- (a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;
- (b) 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 or of either of them; or
- (c) both of clauses (a) and (b);

AND WHEREAS the Municipality deems it desirable that all requests for an investigation be undertaken in the public interest by an appointed independent and impartial investigator (the “Integrity Commissioner”);

AND WHEREAS the Municipality is satisfied that the Consultant has the skills and ability to meet the foregoing criteria and deems it desirable to appoint the Consultant as the Integrity Commissioner to provide the services of “Integrity Commissioner for the Town of Erin”, in accordance with Section 223 of the Municipal Act, attached as Schedule “A”, and to investigate requests received by the Municipality pursuant to the Act respecting an alleged contravention of the municipality’s Code of Conduct (Ethics);

AND WHEREAS the Consultant wishes to provide services to the Municipality, and is interested in acting as the Integrity Commissioner for the Municipality on the terms and conditions set out in this Agreement;

NOW THEREFORE the parties hereby agree as follows:

1. The Municipality does hereby retain and appoint the Consultant as its “Integrity Commissioner” to perform the following services:

Conduct investigations in accordance with the Municipal Act in response to a request received by the Municipality for investigation of an alleged breach of the Municipality’s Code of Conduct (Ethics) by a member of the Council of the Municipality effective January 1, 2014;
2. For the purposes of this Agreement, the Code of Ethics as adopted by the Town Council and as amended from time to time shall apply.
3. The Consultant agrees to provide such services for and at the request of the Municipality and accepts such appointment subject to adoption of a bylaw providing legal indemnification for the costs or damages awarded against an the Consultant and the payment of expenses incurred by him as a result of any action or other proceeding arising out of acts or omissions done or made by him in his capacity as Integrity Commissioner.
4. 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, settlements 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 his duties including, but not limited to any alleged breach of any representation, warranty, covenant or any provision of this Agreement, any procedural defect or other breach of relevant statutory provisions.
5. Notwithstanding Section 4, neither Party shall be responsible for any liability in respect of a third-party claim arising under this Agreement due to the willful misconduct, negligence, or bad faith of the other Party.
6. The Consultant shall not be liable under this Agreement for any consequential, special, or indirect damages whatsoever and the maximum aggregate amount of indemnification payable by the Consultant under this Agreement for any reason whatsoever shall not exceed the Fees.
7. For the purposes of this Agreement the “Integrity Commissioner” shall be deemed to hold status as a “Statutory Officer” under the Municipal Act.
8. The Municipality hereby grants to the Consultant those powers and duties outlined in Section 223.3 of the Act in accordance with Part V of the Act, and as set out in Schedule “A” to this Agreement.

9. The Municipality and the Consultant agree not to disclose any confidential information related to the services to any party except as agreed to by the parties or to comply with any applicable law.
10. The Municipality and the Consultant agree that records created or under the control of the Integrity Commissioner, except personal records, are records owned by the municipality and subject to the municipality's corporate records and records retention policies.
11. The Municipality acknowledges and agrees that the Consultant, pursuant to Section 223.3 of the Act, may delegate all of his powers and duties as an Integrity Commissioner to a third party. Any and all rights and obligations of the Consultant under this Agreement shall also be assigned to the delegate accordingly.
12. The Municipality acknowledges that the Consultant may be unavailable during periods of time for vacation or illness. Should the Consultant become unavailable, the Municipality and the Consultant agree that the Consultant will inform the Town Clerk of such absence.
13. The Municipality and the Consultant are not and shall not be deemed to be partners or joint venturers with one another and nothing herein shall be construed so as to impose any liability as such on any of them. The Municipality agrees that the Consultant shall perform its obligations under this Agreement as an independent contractor recognized as a Statutory Officer under the Municipal Act, and shall not be deemed to be a trustee for any person, whether or not a party to this Agreement, in connection with the discharge by the Consultant of such obligations.
14. The Municipality agrees to pay fees and expenses of the Consultant for the Services plus applicable taxes (the "Fees"):
 - a. Retainer fee of \$500 for the first year and \$300 for subsequent years;
 - b. For all services including reports, advice, inquiries, compliance, etc. an hourly rate - \$125.00;
 - c. All legal fees incurred by the Consultant or the Delegate arising out of a claim made by a third-party regarding this Agreement;
 - d. All reasonable expenses at cost that are incurred during the course of providing the Services, including but not limited to legal fees, any costs associated with transportation expenses (mileage at the rate of \$0.54/km), meals, report preparation including translation costs where appropriate, accommodations, and reasonable out-of-pocket administrative costs.

15. The Fee, including expenses shall be billed by the Consultant or its Delegate, as appropriate.
16. The Municipality agrees to be responsible for such fees and expenses as are submitted by the Consultant.
17. The term of this Agreement shall be for the duration of the inquiry/investigation and reporting requirement outlined in the Town's Code of Ethics. (the "Term").
18. This Agreement may be terminated by either Party **on fifteen (15) days written notice** to the other Party provided that any investigations commenced prior to the termination date shall be completed pursuant to this Agreement and the appointing bylaw, and all related Fees shall be paid as set out herein.
19. Any controversy, dispute, difference, question or claim arising between the Parties in connection with this Agreement that cannot be resolved by a manager from each Party (collectively, the "Dispute") shall be settled in accordance with Section 20.
20. The aggrieved Party shall send the other Party written notice identifying the Dispute, its position on the Dispute and the remedy sought. Upon receipt of such written notice, a senior officer of the other Party shall enter into good faith negotiations with a senior officer of the aggrieved Party to resolve the Dispute.
21. If the Dispute has not been resolved within thirty (30) days after such written notice has been given, either Party may avail itself of any process or means legally available to resolve the Dispute.
22. All provisions herein shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
23. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In respect of any provision so determined to be unenforceable or invalid, the Parties agree to negotiate in good faith to replace the unenforceable or invalid provision with a new provision that is enforceable and valid in order to give effect to the business intent of the original provision to the extent permitted by law and in accordance with the intent of this Agreement.
24. This Agreement, including any Schedule attached hereto, constitutes the entire Agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior agreements, undertakings, declarations,

commitments, representations, written or oral, in respect thereof. This Agreement shall be read with all changes of gender or number required by the context.

25. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable.
26. All notices which may be necessary or proper for either Party to serve upon the other shall be served by delivery to the Party to whom the notice is to be given or sent postage pre-paid to the following addresses or by facsimile transmission to the facsimile number set out below:

To: The Clerk
The Corporation of the Town of Erin
5684 Trafalgar Road
R. R. # 2, Hillsburgh, ON N0B 1Z0.

To: Robert J Williams, Ph.D.

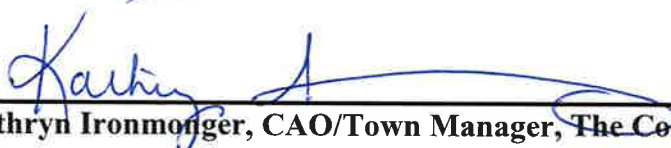
All such notices shall be conclusively deemed to have been given and received upon the day the same is personally delivered or, if mailed or sent by facsimile as aforesaid, three (3) business days after the same is mailed as aforesaid. Either Party may at any time by notice in writing to the other change its address for service of notice.

IN WITNESS HEREOF each of the parties hereto has set its hand and seal:

SIGNED, SEALED & DELIVERED

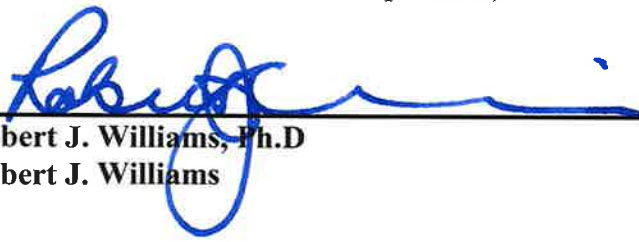


Lou Maieron, Mayor, The Corporation of the Town of Erin



Kathryn Ironmonger, CAO/Town Manager, The Corporation of the Town of Erin

(I have authority to bind this Corporation)



Robert J. Williams, Ph.D
Robert J. Williams

Schedule A

Excerpt from the Municipal Act, S.O. 2001, Chapter 25:

**PART V.1
ACCOUNTABILITY AND TRANSPARENCY**

Definitions

223.1 In this Part,

“code of conduct” means a code of conduct described in section 223.2; (“code de déontologie”)

“grant recipient” means a person or entity that receives a grant directly or indirectly from the municipality, a local board or a municipally-controlled corporation; (“bénéficiaire d’une subvention”)

“local board” means a local board other than,

- (a) a society as defined in subsection 3 (1) of the *Child and Family Services Act*,
- (b) a board of health as defined in subsection 1 (1) of the *Health Protection and Promotion Act*,
- (c) a committee of management established under the *Homes for the Aged and Rest Homes Act*,

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (c) is amended by the Statutes of Ontario, 2007, chapter 8, subsection 218 (5) by striking out “*Homes for the Aged and Rest Homes Act*” and substituting “*Long-Term Care Homes Act, 2007*”. See: 2007, c. 8, ss. 218 (5), 232 (2).

- (d) a police services board established under the *Police Services Act*,
- (e) a board as defined in section 1 of the *Public Libraries Act*,
- (f) a corporation established in accordance with section 203,
- (g) such other local boards as may be prescribed; (“conseil local”)

“municipally-controlled corporation” means a corporation that has 50 per cent or more of its issued and outstanding shares vested in the municipality or that has the appointment of a majority of its board of directors made or approved by the municipality, but does not include a local board as defined in subsection 1 (1); (“société contrôlée par la municipalité”)

“public office holder” means,

- (a) a member of the municipal council and any person on his or her staff,
- (b) an officer or employee of the municipality,
- (c) a member of a local board of the municipality and any person on his or her staff,

- (d) an officer, director or employee of a local board of the municipality, and
- (e) such other persons as may be determined by the municipality who are appointed to any office or body by the municipality or by a local board of the municipality. (“titulaire d’une charge publique”) 2006, c. 32, Sched. A, s. 98.

Code of conduct

223.2 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to establish codes of conduct for members of the council of the municipality and of local boards of the municipality. 2006, c. 32, Sched. A, s. 98.

No offence

(2) A by-law cannot provide that a member who contravenes a code of conduct is guilty of an offence. 2006, c. 32, Sched. A, s. 98.

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,

- (a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;
- (b) 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 or of either of them; or
- (c) both of clauses (a) and (b). 2006, c. 32, Sched. A, s. 98.

Powers and duties

(2) Subject to this Part, in carrying out the responsibilities described in subsection (1), the Commissioner may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality. 2006, c. 32, Sched. A, s. 98.

Delegation

(3) The Commissioner may delegate in writing to any person, other than a member of council, any of the Commissioner’s powers and duties under this Part. 2006, c. 32, Sched. A, s. 98.

Same

(4) The Commissioner may continue to exercise the delegated powers and duties, despite the delegation. 2006, c. 32, Sched. A, s. 98.

Status

(5) The Commissioner is not required to be a municipal employee. 2006, c. 32, Sched. A, s. 98.

Inquiry by Commissioner

223.4 (1) This section applies if the Commissioner conducts an inquiry under this Part,

- (a) in respect of a request made by council, a member of council or a member of the public about whether a member of council or of a local board has contravened the code of conduct applicable to the member; or
- (b) in respect of a request made by a local board or a member of a local board about whether a member of the local board has contravened the code of conduct applicable to the member. 2006, c. 32, Sched. A, s. 98.

Powers on inquiry

(2) The Commissioner may elect to exercise the powers of a commission under Parts I and II of the *Public Inquiries Act*, in which case those Parts apply to the inquiry as if it were an inquiry under that Act. 2006, c. 32, Sched. A, s. 98.

Information

(3) The municipality and its local boards shall give the Commissioner such information as the Commissioner believes to be necessary for an inquiry. 2006, c. 32, Sched. A, s. 98.

Same

(4) The Commissioner is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality or a local board that the Commissioner believes to be necessary for an inquiry. 2006, c. 32, Sched. A, s. 98.

Penalties

(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days. 2006, c. 32, Sched. A, s. 98.

Same

(6) The local board may impose either of the penalties described in subsection (5) on its member if the Commissioner reports to the board that, in his or her opinion, the member has contravened the code of conduct, and if the municipality has not imposed a penalty on the member under subsection (5) in respect of the same contravention. 2006, c. 32, Sched. A, s. 98.

Duty of confidentiality

223.5 (1) The Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part. 2006, c. 32, Sched. A, s. 98.

Exception

(2) Despite subsection (1), information may be disclosed in a criminal proceeding as required by law or otherwise in accordance with this Part. 2006, c. 32, Sched. A, s. 98.

Section prevails

(3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*. 2006, c. 32, Sched. A, s. 98.

Report to council

223.6 (1) If the Commissioner provides a periodic report to the municipality on his or her activities, the Commissioner may summarize advice he or she has given but shall not disclose confidential information that could identify a person concerned. 2006, c. 32, Sched. A, s. 98.

Report about conduct

(2) If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board has contravened the applicable code of conduct, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report. 2006, c. 32, Sched. A, s. 98.

Publication of reports

(3) The municipality and each local board shall ensure that reports received from the Commissioner by the municipality or by the board, as the case may be, are made available to the public. 2006, c. 32, Sched. A, s. 98.

Testimony

223.7 Neither the Commissioner nor any person acting under the instructions of the Commissioner is a competent or compellable witness in a civil proceeding in connection with anything done under this Part. 2006, c. 32, Sched. A, s. 98.

Reference to appropriate authorities

223.8 If the Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code* (Canada), the Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to council. 2006, c. 32, Sched. A, s. 98.