

THE CORPORATION OF THE TOWNSHIP OF GREATER MADAWASKA

BY-LAW 11-2022

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Being a By-Law to appoint an Integrity Commissioner pursuant to  
Section 223.3 of the Municipal Act, 2001, as amended

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**WHEREAS** the Municipal Act, 2001, S.O. 2001, c. 25, as amended, 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** subsection 223.3(1) of the *Municipal Act* will state that “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,

“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** subsection 223.3(3) of the *Municipal Act* states that “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”:

**NOW THEREFORE** the Council of the Corporation of the Township of Greater Madawaska hereby enacts as follows:

1. That pursuant to section 223.3 of the *Municipal Act, 2001*, as amended, (the “Act”) the Township hereby appoints **Guy W. Giorno**, partner of the law firm Fasken Martineau DuMoulin LLP, as the Integrity Commissioner for the Corporation of the Township of Greater Madawaska to exercise all of the functions listed in subsection 223.3(1) of the Act as it may be amended from time to time.

2. The appointment shall be for a term of four years commencing the 24th day of April, 2022, and ending on the 24th day of April, 2026, and thereafter will be renewed annually, unless 60 days' written notice of termination is given by either party.

3. That this By-law shall come into force and take effect as of the date of enactment.

**READ** a first and second time this 21<sup>st</sup> of March, 2022

**READ** a third time and passed this 21<sup>st</sup> of March, 2022

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Brian Hunt  
Mayor

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Allison Holtzhauer  
CAO/Clerk Deputy-Treasurer

**SCHEDULE "A"**  
**BY-LAW 11-2022**

**AGREEMENT**

THIS AGREEMENT effective the 24th day of April, 2022

BETWEEN:

**CORPORATION OF THE TOWNSHIP OF GREATER MADAWASKA**

Hereinafter called the "Municipality"

-and-

**FASKEN MARTINEAU DUMOULIN LLP,**

Hereinafter called the "Contractor"

WHEREAS section 223.2 of the Act will require the municipality to establish a code of conduct for members of the council of the municipality and of its local boards;

AND WHEREAS the Council of the Municipality has adopted a Council Code of Conduct which it may amend from time to time ("the Code");

AND WHEREAS subsection 223.3(1) 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 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 section 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 behavior 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 subsection 223.3(3) of the Municipal Act states that "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";

AND WHEREAS, the Municipality appointed Guy W. Giorno, partner in the Contractor as Integrity Commissioner for the Municipality in accordance with section 223.3 of the Municipal Act through By-law 11-2022, passed March 21, 2022;

NOW THEREFORE the Contractor and Municipality agree as follows:

1. The Municipality shall:

- a) Pay to the Contractor \$300 per hour, exclusive of tax, for services provided under this agreement, and reimburse the Contractor's reasonable expenses.
- b) Arrange and make provision for the Contractor's access to the Municipality's staff, offices and records, as necessary to enable the performance of the services required.
- c) Identify the Chief Administrative Officer, or any person designated by the Chief Administrative Officer, as the individual who will receive and transmit communications between the Council and the Contractor, without changing the direct reporting relationship between the Integrity Commissioner and Council.
- d) Give prompt written notice to the Contractor whenever the Municipality or their representative become aware of any defects or deficiencies in the work or in the services provided. For the purposes of this agreement "defects and deficiencies" shall be defined as "any failure of the Contractor to meet and/or deliver any agreed upon deliverable/service and/or meet an applicable deadline as set out in this Agreement.
- e) Indemnify and save harmless the Contractor from any claims, demands or actions brought against the Contractor in relation to the provision of services by employees, officers or Council members of the Municipality who are not acting under instructions from the Contractor.
- f) Make the following information and documents readily and easily available on the same section of its Website: the Code; any form for submitting complaints under the Code; any protocol or document that governs the complaint process; any educational, interpretive or guidance materials prepared by the Integrity Commissioner; and Giorno's contact information.
- g) Acknowledge that other individuals belonging to Contractor and working under Giorno's supervision may assist Giorno by also providing services under this Agreement.

2. The Contractor shall:

- a) Provide all services as stated in the appointment By-law 11-2022. The parties acknowledge that Council has appointed Giorno as Integrity Commissioner and that, unless Council by resolution approves, Contractor has no right to replace him.
- b) Provide all necessary labour, materials, equipment and subcontractors necessary to complete the work.
- c) As provided in the Code, keep the Council informed of the status of any investigation.
- d) Not perform any additional work outside of the scope of the mandate.
- e) Designate Giorno to act as its representative, such person to have complete and exclusive authority to transmit instructions to and/or receive information.

3. The Parties agree:
- a) Authority for general co-ordination of the project shall reside with the Municipality to the extent provided for in this Agreement. This Agreement does not create any master and servant or partnership relationship between the Municipality and the Contractor. At no time will the Contractor or anyone acting for the Contractor; be considered employees of the Municipality.
  - b) The Contractor shall co-ordinate the activities of any subcontractors, under direction from the Municipality.
  - c) If the Contractor is shown to be in default in the performance of any of its material obligations set forth in this Agreement then the Municipality may, by written notice to the Contractor, require such default to be corrected. If within 15 days after receipt of such notice such default has not been corrected or reasonable steps to correct such default have not been taken then the Council may terminate the appointment.
  - d) If the Council terminates the appointment as provided above then subject to the Municipal Act the Municipality shall be entitled to take possession of copies of any research materials and the deliverables that have been prepared to the point of termination.

4. Legal Services, Confidentiality, Independence and Conflicts of Interest

- a) The parties confirm that the services covered by this agreement, except as where lawfully delegated under subsection 223.3(3) of the Act, will be provided by Contractor through Giorno in his capacity as a lawyer and other professionals within the firm working under his supervision.
- b) Contractor and Giorno will, inside the 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 Contractor do not prohibit Giorno from acting as Integrity Commissioner for other municipalities both inside and outside the County of Renfrew.
- d) The Municipality understands, agrees and confirms that Giorno is not the Municipality's lawyer and Contractor 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 Contractor is engaged only to provide integrity commissioner services under the Municipal Act and the Code. Municipality understands and accepts the Giorno and Contractor do not represent the Municipality or the Council, and Giorno and Contractor 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 Contractor do not prohibit Contractor 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 Contractor 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.
5. Licence and Ownership.
- a) Ownership of Deliverables. For purposes of this engagement, “Deliverables” shall mean all work product first created by Contractor for delivery to Municipality in connection with the services provided hereunder, but shall not include any third-party software or related documentation licensed directly to the Municipality from a third party, or any modifications or enhancements thereto or derivatives thereof. Subject to Municipality’s full and final payment to Contractor hereunder, Contractor shall (i) transfer, assign and convey to Municipality all right, title and interest in and to the Deliverables (except for any Contractor Technology contained therein), and (ii) grant to Municipality a non- exclusive, royalty-free, worldwide, perpetual, non-transferable licence to use, for Municipality’s internal business purposes, any Contractor Technology contained in the Deliverables.
  - b) For greater certainty, the parties agree that Giorno’s final (not draft) reports to Council are the only Deliverables contemplated by this Agreement, and that reports of section 223.4 and section 223.4.1 inquiries are public documents in the public domain.
  - c) The Municipality shall make Giorno’s reports easily accessible on its Website.
- 6.
- a) If the Municipality is shown to be in default in the performance of any of its material obligations set forth in this Agreement, then the Contractor may, by written notice to the Municipality, require such default to be corrected. If within 7 days after receipt of such notice such default shall not have been corrected, Contractor may terminate this Agreement. In such an event Contractor shall be paid by the Municipality for all services performed and for all disbursements incurred pursuant to this Agreement and remaining unpaid as of the effective date of such termination.
  - b) If the Contractor’s services are suspended by the Municipality at any time for more than 30 days through no fault of the Contractor, then the Contractor shall have the right at any time until such suspension is lifted by the Municipality, to terminate this Agreement upon giving 7 days written notice thereof to the Municipality. In such event the Contractor shall be paid by the Municipality for all services performed and for all disbursements incurred pursuant to this Agreement and remaining unpaid as of the effective date of such suspension.
- 7.
- a) The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a substitution for any duties, obligations, rights and remedies otherwise available by law.
  - b) No action or failure to act by the Municipality or Contractor shall constitute a waiver of any right or duty afforded either of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
8. Neither party may assign this Agreement in any manner without the prior consent in writing of the other.
9. Delegation
- a) A delegation of powers or duties by Giorno under the *Municipal Act* is not does not constitute an assignment of this Agreement.

- b) If due to recusal to avoid a perceived conflict of interest or for any other reason Giorno delegates powers or duties to a person who does not belong to Contractor then Giorno shall make best efforts to identify a delegate who will agree to discharge the powers or duties for the same rate of pay as the Municipality and Contractor have agreed will be paid under this Agreement.
  - c) For a delegation under subsection 223.3(3) of the *Municipal Act* the Municipality's approval is not required.
10. All notices required by this Agreement to be given by either party shall be deemed to be properly given and received within two business days if made in writing to the other party by registered mail, or e-mail, addressed to the regular business address of such other party as stated within this Agreement.

Corporation of the Township of Greater Madawaska 19 Parnell Street Calabogie, Ontario K0J 1H0 E-mail: admin@greatermadawaska.com	Fasken Martineau DuMoulin LLP 1300-55 Metcalfe Street Ottawa, Ontario K1P 6L5 E-mail: ggiorno@fasken.com
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11. Contractor 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. Contractor 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 Contractor in breach hereof, (ii) was disclosed to the Contractor 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 Contractor independently of, or was known by the Contractor 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 to the extent 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 Contractor and the Municipality relating to the Contractor's services for the Municipality or this Agreement.

This clause 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.

12. This Agreement constitutes the sole and entire agreement between the Municipality and Contractor relating to the project, and supersedes all prior agreements between them, whether written or oral, respecting the subject matter hereof, and no other terms, conditions or warranties, whether expressed or implied, shall form a part thereof. This Agreement may be amended only by written instrument signed by both the Municipality and Contractor.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

**THE CORPORATION OF THE TOWNSHIP OF GREATER MADAWASKA**

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Brian Hunt, Mayor

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Allison Holtzhauer, CAO/Clerk-Deputy Treasurer

**FASKEN MARTINEAU DUMOULIN LLP**

\_\_\_\_\_  
*I have authority to bind the Partnership*

Print name \_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_  
*Witness*

Print name \_\_\_\_\_