

# THE CORPORATION TOWN OF MATTAWA

MOVED BY COUNCILLOR FERN LEVESQUE

SECONDED BY DEPUTY MAYOR MATHEW GARDINER

**BE IT RESOLVED THAT** Council of the Corporation of the Town of Mattawa adopt By-Law Number 23-15 which is a by-law to appoint an Integrity Commissioner.

Recorded Vote – Yes	___	No	___ <input checked="" type="checkbox"/>
Recorded Vote Requested by:			
_____			
	Yea	Nay	
Mayor Bélanger	___	___	
Councillor Gardiner	___	___	
Councillor Sarrazin	___	___	
Councillor Levesque	___	___	
Councillor Mick	___	___	
Councillor Ross	___	___	
Councillor Thibert	___	___	

*RA. Bélanger*  
 \_\_\_\_\_  
**MAYOR**

Deferred \_\_\_ Tabled \_\_\_ Lost \_\_\_ Carried

Declaration of Pecuniary Interest:  
 \_\_\_\_\_  
 Disclosed his/her/their interest(s), vacated he/her/their seat(s), abstained from discussion and did not vote

## CORPORATION OF THE TOWN OF MATTAWA

### BY-LAW NUMBER 23-15

**BEING** a bylaw to appoint an integrity commissioner.

**WHEREAS** subsection 8(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, ("*Municipal Act*"), as amended, provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate, and to enhance their ability to respond to municipal issues;

**AND WHEREAS** section 9 of the *Municipal Act* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

**AND WHEREAS** subsection 11(2) of the *Municipal Act* provides that a lower-tier municipality may pass bylaws respecting matters that include: 1. Governance structure of the municipality and its local boards. 2. Accountability and transparency of the municipality and its operations and of its local boards and their operations;

**AND WHEREAS** subsection 5(1) of the *Municipal Act* provides that the powers of a municipality shall be exercised by its Council;

**AND WHEREAS** subsection 5(3) of the *Municipal Act* provides that a municipal power, including a municipality's capacity, rights, powers and privileges under section 9, shall be exercised by bylaw unless the municipality is specifically authorized to do otherwise;

**AND WHEREAS** subsection 223.3(1) of the *Municipal Act* provides that sections 9 and 11 [as well as section 10, which does not apply to Mattawa] authorize a 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, 5.2 and 5.3 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** the Municipality has chosen to appoint Guy W. Giorno, partner in the law firm Fasken Martineau DuMoulin LLP, as Integrity Commissioner, such appointment to be for a period of two years; and

**WHEREAS** the Municipality and Giorno and his law firm will enter into an agreement, attached as "Schedule A", that sets the terms under which Integrity Commissioner services will be provided.

**NOW THEREFORE**, the Council of the Corporation of the Town of Mattawa enacts as follows:

1. **THAT** Guy W. Giorno is appointed as Integrity Commissioner of the Town, effective April 11, 2023.
2. **THAT** the appointment shall be for a two-year term, expiring 11:59 p.m., April 10, 2025.
3. **THAT** the Mayor and Clerk are hereby authorized to execute an agreement for Integrity Commissioner services between the Corporation of the Town of Mattawa, Guy W. Giorno and his law firm.
4. **THAT** any previous appointment of an Integrity Commissioner is rescinded and any by-law previously passed that is contrary to this by-law is repealed.

READ A FIRST AND SECOND TIME, this 11<sup>th</sup> day of April, 2023.

READ THIRD TIME AND FINALLY PASSED, this 11<sup>th</sup> day of April, 2023.

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Clerk

**AGREEMENT (INTEGRITY COMMISSIONER SERVICES)**

BETWEEN:

THE CORPORATION OF THE TOWN OF MATTAWA ("Municipality")

AND:

GUY W. GIORNO ("Giorno")

AND:

FASKEN MARTINEAU DUMOULIN LLP ("Law Firm")

**BACKGROUND:**

- A. Sections 223.3 through 223.8 of the *Municipal Act, 2001*, contemplate and authorize a municipality to appoint an Integrity Commissioner, among other things, to provide advice and guidance to members of Council and local boards on application of any Code of Conduct and municipal procedures, rules, and policies relating to their ethical behavior, and, to conduct inquiries into requests as to alleged contraventions of any such Code of Conduct by a member of Council or board and to report the results of such inquiry to the municipality.
- B. In appointing an Integrity Commissioner and in assigning powers and duties to him or her, a municipality should have regard to, among other things:
- 1) The independence and impartiality of the Integrity Commissioner.
  - 2) The Integrity Commissioner's ability to interpret and apply the *Municipal Conflict of Interest Act* and Part V.1 of the *Municipal Act*.
  - 3) The Integrity Commissioner's understanding of procedural fairness, the conduct of statutory inquiries, and sections 33 and 34 of the *Public Inquiries Act*.
  - 4) The Integrity Commissioner's demonstrated expertise in laws and codes pertaining to government ethics and in the law of conflict of interest.
  - 5) The credibility required of an Integrity Commissioner.
- C. The Municipality is satisfied that Giorno has the skills, ability, and expertise to meet the above criteria.
- D. Giorno is a partner in the Law Firm; the services covered by this agreement, except as lawfully delegated under subsection 223.3(3) of the *Municipal Act*, will be provided through the Law Firm by Giorno in his capacity as a lawyer and other

professionals within the Law Firm working under his supervision; and the Law Firm agrees to make the services of Giorno available to the Municipality on the terms set out in this agreement.

**THE PARTIES AGREE AS FOLLOWS, EFFECTIVE MARCH 2, 2023:**

1. Purpose of the Agreement: Municipal powers, including the appointment of an Integrity Commissioner, must be exercised by by-law. This Agreement does not appoint the Integrity Commissioner. The appointment is made by by-law. This Agreement sets out the terms under which the Integrity Commissioner will perform functions under the appointment and the Municipality will provide compensation for those services.
2. Services: The Municipality confirms that it has, by by-law, appointed Giorno as Integrity Commissioner under Part V.1 of the *Municipal Act*. Giorno accepts the appointment and commits to exercise the functions of the Integrity Commissioner in accordance with the Act.
3. Term: The term of this Agreement is the period of appointment stated in the by-law, namely April 11, 2023, until 11:59 p.m., April 10, 2025. This Agreement is subject to early termination as provided below. It may be renewed or extended by agreement of the parties. If the Integrity Commissioner's appointment is extended or renewed by by-law, then the terms of this Agreement shall continue to apply unless and until the parties enter into a new agreement.
4. Duties: As Integrity Commissioner, Giorno shall perform the duties and exercise powers provided by the *Municipal Act*, and his performance of duties and his exercise of powers shall at all times be subject to the requirements of the Act.

While the requirements of the *Municipal Act* must at all times be satisfied and upheld, Giorno undertakes to discharge his functions in a manner that is reasonable and efficient and that avoids duplication and unnecessary cost.

5. Fees: For the services of Giorno as Integrity Commissioner, the Municipality shall pay the Law Firm a fee of \$300 per hour plus applicable taxes. For the services of other staff (junior lawyer, researcher, paralegal) assisting the Integrity Commissioner, the Municipality shall pay the Law Firm a fee of \$225 per hour plus applicable taxes. For time spent travelling, the fees paid to the Law Firm will be based on 50 per cent of these hourly rates.
6. Expenses: Upon presentation of receipts if requested by the Municipality, the Law Firm will be entitled to reimbursement of reasonable expenses incurred in relation to the provision of services under this agreement, Subject to the following:
  - a) No expense shall be claimed for fax, postage, or small copying jobs.
  - b) The expense claim for a large copying job shall be the actual cost to the

Law Firm of a third-party copying service.

- c) The expense claim for courier or Xpresspost shall be the actual cost to the Law Firm.
  - d) Mileage shall be reimbursed at the rate of 50 cents per kilometre to a maximum of 300 km per day.
  - e) Reimbursement for accommodation and meals shall be subject to the applicable policy of the Municipality if any. The Law Firm and Giorno agree that expense claims for accommodation and meals will rarely be necessary.
7. Legal Advice/Fees: The parties recognize that an Integrity Commissioner must understand and be able to interpret and apply applicable laws. Consequently, except in the event of litigation, Giorno and the Law Firm undertake not to ask the Municipality to pay for external legal advice to them.
8. Litigation/Fees: The parties acknowledge that sometimes, though infrequently, an Integrity Commissioner may be a party to litigation, and the parties agree that, in such instance, as a direct cost and not as a reimbursable expense, the Municipality shall pay the cost of the Integrity Commissioner's litigation counsel. Giorno will first consult with Clerk about the selection of litigation counsel and the reasonableness and estimated amount of such counsel's fees. Where it is more efficient to do so, and only with the prior approval of the Clerk, the Law Firm itself may act as the Integrity Commissioner's litigation counsel.
9. Statutory Officer: The parties recognize that an Integrity Commissioner is a statutory officer under the *Municipal Act*.
10. Independent Contractor / No Solicitor-Client Relationship / No Exclusivity: Notwithstanding the appointment as a statutory officer, the parties agree and acknowledge that Giorno and the Law Firm are contractors independent of the Municipality. Nothing within this agreement shall be interpreted to render or create a relationship of employer/employee, partnership, franchise, agency, joint venture or other like arrangement as between Giorno and the Municipality or the between the Law Firm and the Municipality.
- The Municipality understands, agrees and confirms that Giorno is not the Municipality's lawyer and the Law Firm is not the Municipality's law firm. No solicitor-client relationship is created by this Agreement or by the appointment of Giorno as Integrity Commissioner.
- The Municipality confirms, agrees and consents that this Agreement and the appointment of Giorno as Integrity Commissioner do not prohibit Giorno from acting as Integrity Commissioner for other municipalities.
11. Indemnification: The Municipality agrees to indemnify and save harmless the Law

Firm and Giorno, and their 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 provision of services and carrying out of duties under this Agreement, including but not necessary limited to any alleged breach of this agreement, any procedural defect, or any breach of relevant statutory provisions.

12. Early Termination: An Integrity Commissioner serves at the pleasure of Council and, by by-law, Council may terminate the appointment at any time, so long as the Integrity Commissioner is first afforded procedural fairness (including notice and an opportunity to be heard). Should Council terminate the appointment before its expiry, this Agreement shall remain in force until the completion of any inquiries (investigations) and any requests for advice commenced prior to termination of the appointment, and until payment of any fees and expenses under this Agreement. Should Giorno wish to resign as Integrity Commissioner, he shall give 90 days' written notice to the Municipality.

13. Notice: Any notice under this Agreement shall be delivered to the parties at the following addresses:

For the Town of Mattawa:  
160 Water Street  
P.O. Box 390  
Mattawa, Ontario  
P0H 1V0

For Guy W. Giorno:  
c/o Fasken Martineau DuMoulin LLP  
333 Bay Street, Suite 2400  
P.O. Box 20  
Toronto, Ontario  
M5H 2T6

For the Law Firm:  
Fasken Martineau DuMoulin LLP  
333 Bay Street, Suite 2400  
P.O. Box 20  
Toronto, Ontario  
M5H 2T6

Any written notice from one party to another, except an invoice, shall be delivered, couriered, or sent by pre-paid registered mail to the other party's address above. Notice shall be deemed to have been received on the date on which notice was delivered or, in the case of mailing, on the fifth day after the date of mailing.

14. Severability: All paragraphs, terms, and conditions of this agreement are severable and the invalidity, illegality or unenforceability of any one paragraph,

term, or condition shall not to affect the validity, legality, or enforceability of the remaining paragraphs, terms and conditions.

15. Complete Agreement: This Agreement is the entire agreement between the parties and supersedes all prior agreements, negotiations and discussions, whether oral or written, with respect to the subject matter of this agreement.
16. Successorship: This Agreement shall benefit and bind the parties and their respective successors and assigns. Despite this provision, it is understood that Giorno has been appointed personally as Integrity Commissioner and the appointment does not survive his death or incapacity.
17. Counterparts: This Agreement may be signed in any number of counterparts each of which is an original and all of which together form a signed document.
18. Confidentiality: The parties acknowledge that an Integrity Commissioner is subject to the confidentiality requirements of Part V.1 of the *Municipal Act*. Nothing in this Agreement is intended to prevent Giorno, as Integrity Commissioner, from complying with those confidentiality obligations.

The Law Firm and Giorno will, inside the law firm, create a “confidentiality wall” so that only those professionals within the Law Firm working on the Municipality’s Integrity Commissioner files have access to such information related to the Municipality.

19. Conflict of Interest: The Law Firm declares that, to its knowledge, (a) no Councillor, official or employee of the Municipality has any direct or indirect beneficial interest, whether financial or otherwise, in the Law Firm, or in the performance of the services under this Agreement; (b) the Law Firm is not engaged in any other projects nor is it providing services to any other client that would give rise to an actual or potential conflict of interest; and (c) the Law Firm is not engaged in any direct or indirect beneficial interest, whether financial or otherwise with any other consultant or company retained by the Municipality.

The Law Firm and Giorno declare that they have no direct or indirect financial interest in any matter in which the Municipality is concerned that would give rise to an actual or potential conflict of interest. If a conflict of interest exists or arises pursuant to this section during the term of the agreement then the Municipality may, at its discretion, suspend any services being performed until the matter is resolved to the Municipality’s sole satisfaction or terminate the agreement.

The Municipality confirms, agrees and consents that the appointment of Giorno and this Agreement do not prohibit the Law Firm 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: (a) Giorno does not act in the other mandate; (b) no one else providing services under this Agreement acts in the other mandate; (c) the other mandate is unrelated to Integrity Commissioner services; and (d) the Law Firm possesses no confidential information obtained in



the course of providing services under this Agreement that is relevant to the other mandate.

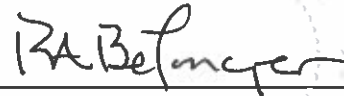
20. Municipal Act Prevails: Should any portion of this agreement be inconsistent with the *Municipal Act* then, to the extent of the inconsistency, the Act shall prevail over that portion.

*[remainder of page intentionally left blank]*

The parties have caused this Agreement to be signed and sealed and/or executed by their respective, duly-authorized officers, effective April 11, 2023.

SIGNED BY AND IN THE PRESENCE OF:

THE CORPORATION OF THE  
TOWN OF MATTAWA:



\_\_\_\_\_  
Mayor Raymond A. Bélanger



\_\_\_\_\_  
Clerk, Amy Leclerc

We have authority to bind the Municipal Corporation

\_\_\_\_\_  
Guy W. Giorno

FASKEN MARTINEAU DUMOULIN  
LLP

\_\_\_\_\_  
I have authority to bind the partnership