



THE CORPORATION OF THE TOWN OF KEARNEY

By-law No. 2023 - 05

Being a Bylaw to Appoint an Integrity Commissioner

WHEREAS Section 223.3 of the *Municipal Act, 2001, S.O. 2001, c.25*, as amended, authorizes municipalities 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, 2017, c. 10, Sched. 1, s. 19 (1); 2022, c. 24, Sched. 3, s. 3*.

AND WHEREAS a Request for Proposal was issued on behalf of the Almaguin Municipalities jointly seeking services of an Integrity Commissioner;


AND WHEREAS the Clerks of the participating municipalities appointed an Evaluation Committee to evaluate the proposals, with the proposal from ADR Chamber Inc. receiving the highest combined score based on the evaluation criteria as detailed in the Request for Proposals document;

NOW THEREFORE BE IT ENACTED AS A BY-LAW OF THE CORPORATION OF THE TOWN OF KEARNEY AS FOLLOWS:


1. **THAT** the Request for Proposal for an Integrity Commissioner be awarded to ADR Chamber Inc.;
2. **THAT** Michael Maynard of ADR Chambers Inc. is hereby appointed Integrity Commissioner for the Town of Kearney;
3. **THAT** Schedule 'A' attached hereto shall form the Agreement between the Town of Kearney and ADR Chambers Inc.;
4. That By-law No. 2018-55 is hereby repealed.
5. **THAT** this By-law shall come into force and effect on the date of its passing.

READ A FIRST, SECOND AND THIRD TIME, passed, signed and the Corporate Seal attached hereto, this 11th day of January, 2023.

**THE CORPORATION OF THE
TOWN OF KEARNEY**



Cheryl Philip, Mayor



Brenda J. Fraser, Clerk

THIS AGREEMENT FOR PROFESSIONAL SERVICES
made as of the 19th day of December, 2022

BETWEEN:

Town of Kearney
(hereinafter called "the Town")

- and -

ADR CHAMBERS INC.
(hereinafter called "ADRC")

WHEREAS the Town would like to retain the services of Michael Maynard of ADRC as its Integrity Commissioner under the authority of section 223.3(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 (the "Act") to perform the Services of this position in accordance with the terms of the Act and the provisions of this Agreement;

NOW THEREFORE, the Town and ADRC for good and valuable consideration hereto covenant and agree as follows:

Services

1. ADRC agrees to provide Integrity Commissioner services with Michael Maynard of ADRC as the appointed Integrity Commissioner (the "Commissioner"), in accordance with the authority for such appointment as prescribed in Section 223.3 (1) of the Act. ADRC will also make available to the Municipality other ADRC support persons, as permitted by this Agreement, including Ellen Fry and Ben Drory as Associate Investigators.
2. ADRC agrees to perform the services (the "Services") set out in the Almaguin Municipalities' Request for Proposals and any Addendums, issued September 29, 2022, attached together hereto as Schedule "A" (the "RFP"). The Services shall be provided in accordance with the terms of the Agreement, the RFP, and the response to the RFP submitted by ADRC attached hereto as Schedule "B" (the "Proposal"). If there is any contradiction between one or all of the Agreement, the RFP, and the Proposal, then the terms of the Agreement shall prevail.
3. The Services provided by ADRC include the expanded responsibilities of the Integrity Commissioner set forth in the amended section 223.3 of the Act. Neither

ADRC nor the Commissioner will provide legal advice and none of the advice provided in the delivery of the Services should be considered legal advice. Anyone who requires legal advice should seek that advice from a practising lawyer.

4. Services shall be performed in relation to the Town's Code of Conduct, as amended. A copy of the Town's current Code is attached to the Agreement as Schedule "C".
5. The Commissioner is appointed for the purpose of addressing Integrity Commissioner-related issues as set out in the RFP and the Proposal. The Commissioner's jurisdiction over complaints is established only upon ADRC's receipt of a Formal Complaint. ADRC shall not provide advice to persons who wish to file or are thinking about filing a Formal Complaint to ADRC.
6. The Town may in writing at any time after the execution of the Agreement or the commencement of Services delete, extend, increase, vary, or otherwise alter the Code. The Town and ADRC may jointly agree to alter the services. ADRC shall have the option of terminating this Agreement immediately if the scope of the Services is materially altered without ADRC's consent.
7. (a) The Town may at any time, by giving 60 days' notice in writing to ADRC, suspend or terminate this Agreement and the Services or any portion thereof. This may be done for any reason. If the Town determines or is informed pursuant to this Agreement that ADRC has a conflict of interest, the Town may ask ADRC to make arrangements to ensure Services are provided without a conflict (whether through assignment or otherwise) in a manner satisfactory to the Town, failing which, the Town may terminate this Agreement. Upon receipt of written notice of termination, ADRC shall perform no further Services other than those reasonably necessary to close out the Services. In such an event, ADRC shall be entitled to payment for those Services rendered and disbursements incurred.

(b) Should a conflict of interest arise, ADRC shall disclose such conflict to the Town and shall make arrangements to ensure Services are provided without a conflict (whether through assignment or otherwise) in a manner satisfactory to both the Town and ADRC. If unable to address the conflict to the satisfaction of both the Town and ADRC, ADRC may, at any time by notice in writing to the Town, terminate the Agreement and the Services. Upon ADRC's delivery of written notice to the Town, ADRC shall not, without the consent of the Town's Clerk, perform any further Services other than those reasonably necessary to close out ADRC's Services. In such an event, ADRC shall be entitled to payment for those Services rendered and disbursements incurred.
8. ADRC shall perform the Services, in an independent and consistent manner to meet the requirements of the Town as set out in the RFP and the Proposal. ADRC shall complete the Services on a flexible and as-needed basis as required by the Town.

9. The Town acknowledges and agrees that ADRC shall make all final reports to Council. These reports to Council will be made using the proper administrative reporting procedures as directed by the Town's Clerk. Notwithstanding anything in this paragraph, ADRC may provide advice to Councillors on a confidential basis.

Term, Termination, and Expiration

10. (a) Subject to the provisions of this Agreement, the initial Term of this Agreement shall be for **three (3) years** and shall commence on the date of execution of the Agreement by both parties (the "Term").

(b) Upon any termination of this Agreement, ADRC shall provide to the Town's next Integrity Commissioner all material/documentation related to any investigations underway and such documentation/material shall become the property of the new Integrity Commissioner of the Town. In the event the Town has not contracted the services of a new Integrity Commissioner upon termination of this Agreement, ADRC shall make arrangements with the Town to transfer documentation/material relating to on-going investigations to the Town's Clerk in a manner that satisfies ADRC's concerns respecting confidentiality of the records while allowing their use for the purposes for which they were created.

(c) Following termination of the Agreement, ADRC shall retain all records and documentation relating to the Services for seven (7) years (the "Retention Period"). Upon completion of the Retention Period, ADRC shall dispose of the records.

Impartiality

11. ADRC acknowledges that neither ADRC, nor any of its employees or agents providing Services to the Town has any conflicts of interest. Specifically, ADRC acknowledges that neither the Commissioner, nor any other employee or agent of ADRC providing Services are employed by the Town, have any financial interest in matters involving the Town, have any interest in matters before the Town's Council, or have any interest in any work undertaken by the Town. ADRC further agrees that ADRC, its employees and agents involved in providing Services will not have any involvement in political campaigning/endorsements, or related conflicts of interest, with any current member of the Town's Council, Committees, Local Boards, or with any current member of a council, committee or local board of a local municipality within the Town preceding or during the Term of the Agreement. ADRC acknowledges that ADRC and the Commissioner shall be and always remain impartial and neutral. ADRC shall perform the Services skilfully, competently, and in accordance with the law.

Compensation

12. (a) The Town shall pay ADRC the fees and disbursements, as set out in the Proposal. ADRC will bill monthly.

(b) Should ADRC require a meeting space in the Town during the course of an investigation, the Town shall provide such space in a Town facility on an as needed and as available basis. In arranging for such space, the Town will be mindful of the importance of confidentiality. For greater certainty, ADRC may request space in another Town facility where the space offered could, in the opinion of ADRC, give rise to confidentiality concerns.

(c) The Town will print ADRC's reports and will provide services with respect to service of summonses or subpoenas, as may be requested by ADRC at the expense of the Town.

(d) The Town shall provide public access to the Code through its website. The Town shall also provide information about the Code, the functions of the Integrity Commissioner, and the complaint process on its website. ADRC's Services do not include development of a website or such information. Review of the website content does not constitute part of ADRC's Services, unless requested.

(e) If the Town Clerk refuses to authorize any of ADRC's fees and expenses contemplated by the Agreement, ADRC is entitled to appeal such decision directly to the Town's Council.

(f) Should fees or expenses that ADRC feels are necessary for the reasonable performance of the Services be refused on appeal to the Town's Council, then the issue shall be resolved by arbitration pursuant to paragraph 30 of this Agreement.
13. ADRC shall not assume responsibility for, nor seek reimbursement from, the Town for any costs incurred by ADRC not specifically set out in the Agreement unless such costs are authorized, in writing, by the Town's Clerk (in advance).
14. ADRC shall submit an invoice to the Town for all services completed in the immediately preceding month. Interest at the annual rate of 12 percent per annum will be paid on the total outstanding unpaid balance commencing 30 days after the Town has received ADRC's invoice. Any applicable Harmonized Sales Tax shall be added to each monthly invoice as prescribed by law from time to time and shall be paid to ADRC by the Town. ADRC shall provide its HST Registration Number on all invoices to the Town.
15. ADRC shall provide copies of receipts with respect to any disbursement, for which receipts would normally be available, for which ADRC claims payment under this Agreement.

Insurance and Indemnification

16. (a) Indemnity

ADRC agrees to indemnify and save harmless and shall obtain, maintain, pay for and provide evidence of the following insurance.

(b) Professional and Commercial General Liability Insurance

ADRC shall obtain, maintain, pay for, and provide evidence of Professional Liability Insurance with limits of not less than \$2 million (\$2,000,000.00), inclusive per claim, covering services or activities by ADRC and ADRC's agents and employees (inclusive of the Commissioner) that are professional in nature and thereby excluded under the Commercial General Liability Policy.

ADRC shall obtain, maintain, pay for, and provide evidence of Commercial General Liability Insurance that includes as an additional insured the Town, with limits of not less than \$2 million (\$2,000,000.00) inclusive per occurrence for bodily and personal injury, death and damage to property including loss of use hereof.

(c) Workplace Safety and Insurance Board ("WSIB")

ADRC is not required to register with the WSIB and, upon request, can provide a letter from the WSIB attesting to this.

(d) *Municipal Act, 2001* Indemnity

The Town hereby provides the Integrity Commissioner and any person acting under the Integrity Commissioner's instructions with the indemnity provided for and required in section 223.3(6) of the *Municipal Act, 2001*, as amended by Bill 68 and effective March 1, 2019.

Representation of ADRC

17. ADRC is appointed under authority of subsection 223.3(1) of the Act and, as such, is responsible for performing the Services in an independent manner. ADRC and the Commissioner may be identified publicly as the Integrity Commissioner appointed by the Town. ADRC shall be an independent contractor and shall not be considered and shall at no time represent itself or permit any of its employees or agents to represent themselves to be legal counsel, an agent, or an employee of the Town.

Confidentiality

18. The Commissioner is entitled to have access to all books, records, electronic data processing records, reports, files, and all other papers, things or property belonging

to or used by the Town or a local board that the Commissioner believes to be necessary for an inquiry.

19. ADRC, the Commissioner, and every person acting under the instructions of either ADRC or the Commissioner shall preserve secrecy with respect to all matters that come to their knowledge in the course of its Services, save and except information that may be disclosed in a criminal proceeding, as required by law or otherwise set out in subsection 223.5(2) of the Act.
20. ADRC shall comply with the confidentiality provisions of the Act and specifically the requirements set out in sections 223.5, 223.6, 223.7, and 223.8 of the Act.
21. Except as may be required by law, ADRC shall not disclose confidential information that was the subject of a closed meeting under section 239 of the Act, or which could identify a person concerned. Nothing herein precludes the ADRC from making public disclosure of information as is permitted by law.
22. In the event the Commissioner believes access is required to files and documents for which solicitor client privilege is claimed, then ADRC shall discuss such request with the Town's solicitor. If, in the opinion of the Town's solicitor, such request needs to be approved by the Town's Council, then the direction of the Town's Council will be sought by the Town's solicitor.
23. Upon receipt of a Formal Complaint pursuant to the Code, the Commissioner may conduct an informal investigation or may elect to exercise the inquiry powers under sections 33 and 34 of the *Public Inquiries Act*, as contemplated by subsection 223.4(2) of the Act.

General Conditions

24. Except as set out herein, neither ADRC, nor any person, firm, or corporation associated or affiliated with or subsidiary to ADRC shall have an interest either directly or indirectly with the business of the Town.
25. ADRC is not permitted to assign this Agreement in whole or in part, subject to paragraphs 26 and 27.
26. ADRC recognizes and agrees that the Commissioner has been selected by the Town to perform the Services based on his or her unique qualifications for the position, combined with the support systems provided by ADRC as described in the Proposal. In the event of any delegation of the Services by ADRC to an agent, employee, or other person beyond what is expressly set out in the Proposal, ADRC will notify the Town's Clerk of the identity of the proposed designate, as well as his or her qualifications, experience, and expertise necessary to perform the Services to the same standard.

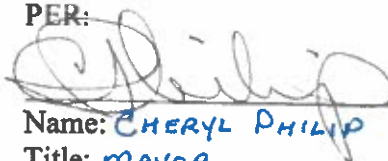
27. Nothing herein shall preclude the Commissioner from delegating his or her authority to individuals referred to in the Proposal or such other individuals who may be agreed to by the Town in accordance with the provisions of the *Municipal Act, 2001*.
28. Powers and Services assigned to ADRC under this Agreement shall apply to ADRC only while in performance of the Services during the Term of this Agreement.
29. This Agreement supersedes all previous agreements, arrangements, or understandings between the parties whether written or oral in connection with or incidental to ADRC's Services.
30. Any dispute, difference or disagreement between the parties hereto in relation to this Agreement may be referred to arbitration. The parties will agree on a suitable arbitrator and if they are unable to do so, an arbitrator will be appointed by the ADR Institute of Ontario. The award of the arbitrator shall be final and binding upon the parties. The provisions of the *Arbitration Act, 1991*, S.O., 1991, as amended shall apply.
31. The headings used in the Agreement are for convenience of reference only and do not limit or otherwise affect the meaning of the terms, provisions, interpretation, or language of the Agreement.
32. This Agreement may be executed in one or more counterparts, each of which is deemed an original, but all of which taken together constitute one and the same instrument.

IN WITNESS THEREOF ADRC has set its corporate seal attested by the hands of its duly authorized officers and the Town has affixed its corporate seal attested by the hands of its duly authorized officers on the day and year first above written.

SIGNED, SEALED AND DELIVERED

The Town of Kearney

PER:

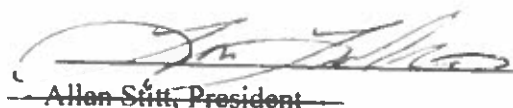


Name: CHERYL PHILIP
Title: MAYOR



Name: BRENDA FRASER
Title: Clerk

ADR CHAMBERS INC.



~~Allan Stitt, President~~

I have authority to bind the corporation
Name: LORI LALONDE
Title: ADR Program Associate

Schedule "A"
Request for Proposal

Schedule "B"
ADRC Proposal

Schedule "C"
Code of Conduct