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Municipality of Markstay-Warren
21 Main Street South
Markstay, Ontario
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Dear Mayor and Members of Council:

**Re: Integrity Commissioner Services - Annual Report – 2025
Our File No. 33233-1**

This report summarizes the services provided by the Integrity Commissioner to The Municipality of Markstay-Warren in 2025, in accordance with section 223.6 (1) of the *Act*. The purpose of this report is to highlight the mandate of the Integrity Commissioner and to inform Council and the public about changes to the Act that affect the process of the Integrity Commissioner and subsequently, Councils and Local Boards.

Role of the Integrity Commissioner

The Act mandates that the Integrity Commissioner is responsible for providing the following functions:

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* (“MCIA”) to members of council and of local boards.

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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 governing the ethical behaviour of members.
6. Requests from members of council and of local boards for advice respecting their obligations under the MCIA.
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 MCIA.¹

Integrity Commissioner Activity

If Council requires ongoing training under the Code of Conduct and the MCIA, Mr. Fleming is available upon request. Individual members may request advice from the Integrity Commissioner at any time. Council or members may contact Mr. Fleming in the following ways:

- 1) Council may pose a question to the Integrity Commissioner in writing regarding the broad obligations of all members (not specific to any one member);
- 2) Individual members may request advice in writing from the Integrity Commissioner in accordance with the Act.

Requests for Advice

We received five requests for advice in 2025 under the Code of Conduct, relating to potential conflicts of interests either general or under the *Municipal Conflict of Interest Act*.

We continue to encourage members of Council and Local Boards for The Municipality of Markstay-Warren to contact us in writing should they find themselves unsure of their obligations under the Code or the *Municipal Conflict of Interest Act*. If a member requests and follows our advice, that advice may be relied on should there be a complaint to the Integrity Commissioner on the same facts in the future.

¹ *Municipal Act*, section 223.3(1).

Complaints/Applications for Inquiry

There were three complaints submitted to the Integrity Commissioner for The Municipality of Markstay-Warren.

There were two reports submitted to council. The remaining complaint was dismissed. The reason for dismissing a complaint varies, but can include complaints that are not within the jurisdiction of the Integrity Commissioner, or that despite being within the Integrity Commissioner's jurisdiction, allegations that do not amount to a breach after undertaking a preliminary review of the facts.

With respect to the advice and investigations:

1. Costs associated with Advice provided was \$2,076.50; and
2. Costs associated with Complaints was \$4,323.58.

Strong Mayor Powers

In 2025, a number of municipalities started to navigate the complexities of strong mayor powers. The latest round of legislation broadened the list of municipalities subject to strong mayor powers and we saw first-hand the law of unintended consequences from some of our clients. We thought it would be helpful to share some lessons learned to assist council and staff to better understand the limits of these powers.

Provincial Priorities

A number of strong mayor powers can only be exercised if they advance a Provincial Priority. O. Reg 580/22 has only created two provincial Priorities at present: building additional housing and creating infrastructure to support this new housing.

Strong mayors may not add matters or by-laws to agendas on topics other than those that advance a provincial priority. The decision as to what will advance a Provincial Priority is left to the opinion of the strong mayor, but this does not mean that simply saying something might advance a Provincial Priority invests the mayor with unlimited powers. The matter being proposed must still reasonably relate to supporting a Priority.

Direction to Staff

A strong mayor may direct staff, but only for matters where a strong mayor power exists. For example, if a strong mayor wants to bring forward a by-law to advance a housing development, staff can be directed to prepare a report and a draft by-law and put that matter on an agenda. Staff can also be directed to implement a re-organization of internal departments or prepare the mayor's budget.

The strong mayor powers do not assign mayors any general administrative powers over the municipality or any operational authority.

Dealing with Uncertainty

What strong mayor powers have done in some cases we have been involved with is create uncertainty. Staff and Council must now (in some cases) deal with a strong mayor who issues a written directive that may be outside of their authority as a strong mayor.

The language of the Act gives strong mayors considerable leeway in how they determine what may advance a Provincial Priority. However, where staff or Council believe that the mayor has exceeded their authority, the municipality is in a difficult position. In our opinion, it is unreasonable to expect that a municipality will simply agree with every direction if the direction appears on its face to be outside the strong mayor powers. In those situations, we recommend that municipalities obtain legal advice as to the validity of the direction, and act accordingly. This may mean that a municipal Council decides to ignore a strong mayor's direction; but it is preferable to following an otherwise illegal direction and exposing the municipality to legal action from aggrieved parties.

Integrity Commissioner and Municipal Solicitor

2025 also saw a few of our clients receive letters from the Ontario Ombudsman that were critical of our firm's dual role of Integrity Commissioner and municipal solicitor (for municipalities where we hold both roles). While this circumstance represents less than a quarter of our clients for whom we act as Integrity Commissioner, it is an interesting analysis of conflict of interest that may be of interest to all.

The Ombudsman published a "Best Practices Guide" for Codes of Conduct and Integrity Commissioners for municipalities in 2024. The Guide states:

An integrity commissioner's independence, both real and perceived, from the council, local boards and municipal staff should be maintained to the greatest degree possible. Integrity commissioners should be prevented from taking on other roles or responsibilities for the municipality during the time they serve as commissioner, including acting as legal counsel, municipal clerk, workplace harassment investigator or policy advisor.

This is not the law; it is not found in legislation and is simply a recommendation from the Ombudsman.

We agree that fulfilling both municipal solicitor and Integrity Commissioner roles has the potential for conflicts of interest. We assess the potential for conflicts with every new complaint and decline to act where actual conflicts exist (where we have provided legal advice in advance of receiving a complaint where that advice is relevant to the complaint).

We disagree that fulfilling both roles creates a general conflict that disqualifies a municipal solicitor from also being that municipality's Integrity Commissioner.

We come to this conclusion based on a principled assessment of the nature of conflict. As both solicitor and Integrity Commissioner our client is the same – the municipal corporation. Our client is neither Council, staff nor any individual council member. Only a majority of

Council can retain our firm, instruct our firm or delegate its authority to retain or instruct. Therefore, investigating an individual member of Council is not a conflict as no individual member of Council is our client (as solicitor or Integrity Commissioner).

If the Ombudsman were correct, every Integrity Commissioner in Ontario has a conflict – as they are all retained by Council and their role is to investigate individual members of Council. This is not a conflict, provided that your Integrity Commissioner has integrity and fearlessly investigates members of Council regardless of the fact that their retainer exists at the pleasure of Council. We take this role seriously and expect that Council will respect our independence and impartiality.

Closing Remarks

As Council is no doubt aware, the government continues to propose changes to the *Municipal Act* to change the Integrity Commissioner regime. We are not aware of when the changes are expected.

One of the changes that would impact elected officials most is the proposal to impose a province-wide code of conduct. No details are yet available, but we encourage all municipalities to participate in consultation on any amendments that might be implemented so that you have some input when this occurs.

The amendments will also create an Ontario Integrity Commissioner whose role would be to provide advice to municipalities about removing a member from council in certain circumstances.

The ability to remove a member from council is the other significant change that members of Council should be aware of. The amendment would establish rules to allow the new Ontario Integrity Commissioner to recommend to Council that it remove a member if they meet four criteria:

1. The member must contravene the Code;
2. The contravention must be of a serious nature;
3. The conduct resulted in harm to health, safety or well-being of persons; and
4. Existing penalties are insufficient to address the contravention or ensure that it is not repeated.

We thank The Municipality of Markstay-Warren for the opportunity to act as its Integrity Commissioner. We remind members that the Integrity Commissioner is available to provide advice in accordance with the Act regarding a member's obligations. We note that this service provides members with the proactive ability to avoid potential complaints by requesting and acting on advice which may apply to the circumstances of the member.

Members are held to the highest standards of office in their elected positions, and we thank members for their continued attention to the ethical obligations expected of them.

Please contact us with any follow-up questions.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP

A handwritten signature in dark ink, appearing to read 'Tony E. Fleming', with several horizontal strokes extending to the right.

Tony E. Fleming, C.S.
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