

THE CORPORATION OF THE TOWNSHIP OF PERTH EAST

BY-LAW NUMBER 79-2016

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT TO
APPOINT A MUNICIPAL INTEGRITY COMMISSIONER
BETWEEN THE CORPORATION OF THE TOWNSHIP OF PERTH EAST, AND
GREGORY STEWART OF THE FIRM DONNELLY & MURPHY**

DECEMBER 6, 2016

WHEREAS Section 223.3 through 223.8 of the of the *Municipal Act* authorizes municipalities to appoint an Integrity Commissioner to provide advice and guidance to members of Council and local boards as to the application of any Code of Conduct and municipal procedures, rules, and policies;

AND WHEREAS the Council of the Corporation of the Township of Perth East deems it desirable to establish an Integrity Commissioner for the Township of Perth East;

NOW THEREFORE the Council for the Corporation of the Township of Perth East enacts as follows:

1. THAT the Mayor and the Clerk are hereby authorized to sign and enact the Agreement to Appoint Gregory Stewart as Municipal Integrity Commissioner for the Township of Perth East, attached hereto as Schedule 'A' and forming a part of this By-law; and
2. THAT this By-law comes into force and effect on the date of final passing.

READ A FIRST AND SECOND TIME THIS 6th DAY OF DECEMBER, 2016.

READ A THIRD TIME AND PASSED THIS 6th DAY OF DECEMBER, 2016.

Theresa Campbell, Municipal Clerk

Bob McMillan, Mayor

AGREEMENT FOR MUNICIPAL INTEGRITY COMMISSIONER

THIS AGREEMENT made as of the 6th day of December, 2016.

BETWEEN:

**THE CORPORATION OF THE MUNICIPALITY OF NORTH PERTH,
THE CORPORATION OF THE TOWNSHIP OF PERTH EAST**
(hereinafter each referred to as the "Municipality", and collectively as the "Municipalities")

AND:

GREGORY F. STEWART
(hereinafter referred to as "Gregory F. Stewart") OF THE SECOND PART

WHEREAS:

- (A) Section 223.3 through 223.8 of the Municipal Act, 2011, S.O. 2011, c.25 (the "Act") contemplates and authorizes a municipality to appoint an Integrity Commissioner to, among other things, provide advice and guidance to members of Council and local boards as to the application of any Code of Conduct and municipal procedures, rules, and policies relating to their ethical behavior, and, furthermore, to making inquiry 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 is to have regard to, among other things:
 - i) the independence and impartiality of the said Commissioner;
 - ii) confidentiality in respect of the activities of the Integrity Commissioner;
 - iii) the credibility required to be attributed to the role of the Integrity Commissioner; and
- (C) The Municipalities are satisfied that Gregory F. Stewart has the skills and ability to meet the foregoing criteria.

NOW THEREFORE, in consideration of the payment of the sum of one dollar (\$1.00) by each party to the other and the covenants and hereinafter set forth, the sufficiency and receipt of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. Term – The term of this agreement is for the period commencing January 1, 2017 (the "commencement date") and ending on December 31, 2018 unless subject to prior early termination by either of the parties hereto and/or as otherwise renewed or extended by agreement of the parties.
2. Services – The Municipalities hereby each retain and appoint Gregory F. Stewart as Integrity Commissioner for the purposes of Sections 223.3 through 223.8 of the Act and Gregory F. Stewart accepts such appointment and agrees to provide such services as are reflected in the Act and as requested by the municipalities, at all times in accordance with and to the standards as set forth in the Act.
3. Duties – As Integrity Commissioner, Gregory F. Stewart shall perform the duties and have the powers provided for in the Act, including but not limited to the following:
 - (1) *Advisory*: Providing the full Council with specific and general opinions and advice respecting compliance by elected officials in respect of the provisions of governing statutes the Code of Conduct and any other applicable procedures, rules, and policies.
 - (2) *Compliance Investigation/Determinations*: upon proper request from a member of Council or local board, municipal administration or one or more members of the public, to conduct an inquiry and make a determination as to any alleged contravention of the Code of Conduct or applicable procedures, rules, and policies by a member of Council or local board and, thereafter, to report the details and results of such inquiry to municipal Council.
 - (3) *Educational*: provide the Chief Administrative Officer or as directed with an annual report of activities during the previous calendar year as Integrity Commissioner, including but not necessarily limited to advice given to Council or individual members of Council and a summary of inquiry results and determinations; furthermore, provide outreach programs to

members of Council and local boards and relevant staff on legislation, protocols, and office procedures emphasizing the importance of compliance with a Code of Conduct for public confidence in Municipal Government; and, furthermore, dissemination of information available to the public on the websites operated by the Municipalities.

Notwithstanding that set forth above, the parties acknowledge and agree that the function of the Integrity Commissioner is to provide advice and opinion to Council and members thereof, to provide independent complaint prevention, investigation, adjudication, and resolution to members of Council and the public, and education respecting adherence with the Code of Conduct for members of Council and other procedures, rules, and policies governing ethical behavior.

The parties hereto also acknowledge and agree that Gregory F. Stewart, as Integrity Commissioner, will perform services, and in particular those services relating to advisory and educational duties, in a manner so as to avoid duplicated advice, opinion, and cost in respect of identical requests and inquiries – for example, the Integrity Commissioner shall decline to provide individualized advice and opinion to more than one member of Council or a local board on identical issues but should choose to provide general advice to Council or such local board as a whole to answer all such inquiries. In addition, it is recognized that Gregory F. Stewart, as Integrity Commissioner, will likely receive requests for advice on matters involving compliance with the Municipal Conflict of Interest Act (the "MCIA") – while the Integrity Commissioner may provide general interpretation of the MCIA, it is expected that individual members of Council or local boards will seek independent legal advice on a specific question of individual compliance with such legislation.

4. Fees

Hourly Rate – Gregory F. Stewart will be paid a fee of TWO HUNDRED FIFTY DOLLARS PER HOUR (\$250.00/hour), plus applicable taxes, for time devoted to services as Integrity Commissioner for each of the Municipalities.

- a) Expenses – Upon presentation of receipts, Gregory F. Stewart will be entitled to reimbursement of expenses incurred in relation to performance of duties contemplated by this agreement, including but not limited to food and hotel costs, car rental, railway transportation, and/or fuel charges, all at the respective municipal rates then in affect.
 - b) Legal Advice/Fees – The parties agree that, when necessary, Gregory F. Stewart may arrange for and receive legal assistance and advice to properly perform the duties contemplated by this agreement. The parties agree that, as a direct cost and not as a reimbursable expense, the Municipalities shall pay the cost of such legal assistance and advice.
5. Independent Contractor – Notwithstanding the appointment as a statutory officer, the parties agree and acknowledge that Gregory F. Stewart is a contractor independent of the Municipalities. 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 Gregory F. Stewart and the Municipalities.
6. Statutory Officer – For purposes of the agreement and solely for the purpose of arranging for errors and omission insurance, the Integrity Commissioner shall be deemed to hold the status of "Statutory Officer" under the Municipal Act.
7. Indemnification – Each of the Municipalities agree to indemnify and save harmless Gregory F. Stewart, his 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 as contemplated hereunder, including but not necessary limited to any alleged breach of this agreement, any procedural defect, or any breach of relevant statutory provisions.
8. Early Termination – This agreement is composed of separate agreements between each Municipality and the Independent Investigator. Any individual agreement may be terminated by the respective Municipality or the Independent Investigator on ninety (90) 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 by-law and all related fees shall be paid as set out in the agreement. In such event, the agreements between the remaining Municipalities and the Independent Investigator shall remain in full force and effect unless and until they are also terminated pursuant to the terms of this paragraph

9. Notice – Any notice required pursuant to this agreement shall be delivered to the respective parties hereto at the following addresses:

For Municipality of North Perth:
330 Wallace Avenue North
Listowel, Ontario
N4W 1L3

Township
For Municipality of Perth East:
P.O. Box 455
25 Mill Street East
Milverton, Ontario
N0K 1M0

For Gregory F. Stewart:
c/o Donnelly Murphy Lawyers PC
18 The Square
Goderich, Ontario
N7A 3Y7

Any written notice between the parties hereto which specifically excludes any invoice rendered herein, shall be delivered or sent by pre-paid registered mail addressed to the parties at the respective addresses listed above. Notice shall be deemed to have been received on the date on which notice was delivered to the addresses designated or, in the case of mailing, on the fifth day after the date of mailing.

10. Severability – All paragraphs, terms, and conditions of this agreement are severable and the invalidity, illegality or unenforceability of any such paragraph, term, or condition shall be deemed not to affect the validity, legality, or enforceability of the remaining paragraphs, terms and conditions.
11. Complete Agreement – This agreement, including any schedule hereto, constitutes 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.
12. Enurement – This agreement shall enure to the benefit of and is binding upon the parties hereto and their respective successors and permitted assigns.
13. 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.

IN WITNESS WHEREOF the parties are to have caused the agreement to be signed and sealed and/or executed by their respective officers which are duly authorized as of the date first written above.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF: _____

