



MEMORANDUM

To: Mayor and Members of Council

From: Kimberley Kitteringham, City Clerk
Martha Pettit, Deputy Clerk

Date: May 26, 2021

Re: 274-R-20 Integrity Commissioner Services for City Council

RECOMMENDATION:

To provide Markham City Council with additional information regarding:

- 1) The options available for the provision of Integrity Commissioner (IC) Services in Ontario; and,
- 2) The expertise of ADR Chambers and the process they will undertake when reviewing complaints received regarding potential contraventions of Markham's Code of Conduct.

BACKGROUND:

At the General Committee on April 26, 2021, Committee considered a report on the award of IC Services for Markham to ADR Chambers Inc. for a term of five (5) years. At this meeting, staff were requested to prepare a Memo for the May 26, 2021 Council meeting on:

- 1) The options available for the provision of IC Services in Ontario; and,
- 2) The expertise of ADR Chambers and the process they will undertake when reviewing complaints received regarding potential contraventions of Markham's Code of Conduct.

ANALYSIS:

1. Options Available for the Delivery of IC Services

In accordance with the *Municipal Act, 2001* (the Act), Ontario municipalities are authorized to appoint an IC who reports to Council and who is responsible for performing in an independent manner the functions assigned by the City with respect to the following:

- The application of the City's Code of Conduct for Members of Council;
- The application of any procedures, rules and policies of the City governing the ethical behaviour of Members of Council;
- The application of Sections 5, 5.1, and 5.2 of the *Municipal Conflict of Interest Act* to Members of Council;
- Requests from Members of Council for advice respective to their obligations under the Code of Conduct;
- Requests from Members of Council for advice respective to their obligations under a procedure, rule or policy of the City governing the ethical behavior of Members of Council;
- Requests from Members of Council for advice respective of the obligations under the *Municipal Conflict of Interest Act*; and,
- The provision of education or educational information to Members of Council, the City and the public about the City's Code of Conduct and about the *Municipal Conflict of Interest Act*.

As prescribed by the Act, if the City of Markham does not appoint an IC, the City is required to make arrangements for the IC responsibilities noted above to be provided by an IC of another municipality.

From staff's perspective this is not a feasible option, as it would not allow the IC to become familiar with the City's Code of Conduct, processes and procedures

There is no Provincial IC that can be used by municipalities. It should be noted that this is different from Ombudsman complaints, where complaints arising from any decision or recommendation made or act done or omitted in the course of the administration of the municipality, its local boards and certain municipally-controlled corporations can be referred to the Provincial Ombudsman, if a municipality does not have an appointed Ombudsman.

Ontario municipalities have retained IC services in a number of ways (see *Appendix "A"*). The City of Markham has had an IC since 2013. At the time the contract was awarded in 2013, it was as a result of a competitive procurement process.

In 2021, the City again issued an RFP for IC services and followed the established City procurement process.

Six potential providers picked up the bid document and three responded to the bid (ADR Chambers Inc., Investigative Solutions Network Inc., and SC Consulting).

The evaluation panel included the Commissioner of Corporate Services, the City Solicitor and Director of Human Resources, the City Clerk, and the Deputy City Clerk and the process was facilitated by Procurement Staff. The bids were evaluated and scored independently by each evaluator and results were tabulated by Procurement Staff and reviewed with the group.

ADR Chambers Inc. was the highest ranked, lowest priced bidder. In addition to scoring the highest of their technical submission, they also have demonstrated experience having served as Markham's IC from 2013 to the present, along with many other municipalities.

2. The expertise of ADR Chambers and the process they will undertake when reviewing complaints received regarding potential contraventions of Markham's Code of Conduct.

ADR Chambers Inc. has been the City of Markham's IC for the past 8 years (see *Appendix "B"* - By-law 2013-135). During this time, the City has received two complaints regarding their services. Of these complaints, one related primarily to the outcome of an IC investigation. The other related to the advice provided by one of ADR's advisors, something which was immediately addressed with ADR.

During the April 26, 2021 General Committee meeting, Staff was asked to provide additional information regarding the expertise and experience of ADR Chambers.

ADR Chambers Inc. offers a roster of professionals who will provide the City with the required expertise and flexibility to perform the functions of the Integrity Commissioner. ADR Chambers currently serves a number of municipal clients (see *Appendix "C"* – ADR Chambers' Clients).

Charles Harnick will serve as the City's Integrity Commissioner, supported by other panel members with extensive experience in conducting investigations, including municipal matters. Mr. Harnick is a former Ontario Attorney General, with over 40 years of experience and is the Integrity Commissioner for the City of Richmond Hill, Municipality of Leamington, City of Kawartha Lakes, Town of Grimsby, and Haldimand County.

Deborah C. Anschell, Marvin J. Huberman and Michael L. Maynard who are also commissioned have similar background experience and are Integrity Commissioners for The City of Timmins, City of Waterloo, Town of Georgina, and City of Brantford. A copy of the Biographies of ADR Chambers Inc. Key Personnel are attached as *Appendix "D"*.

ADR Chambers Inc. provides a high level of experience and technical expertise while also having a number of dedicated personnel that can serve as IC. As well, ADR Chambers Inc. have a comprehensive approach to investigating complaints that meets the City's established protocols for Integrity Commissioner complaint investigations (see *Appendix "E"* - ADR Chambers' Process for Investigating Code of Conduct Complaints).

Furthermore, the City will have access to numerous resources and value-added services offered including:

- Full-time staff who are available during office hours to act as the liaison between the City and the IC;

- All reports are subject to a **dual review**. Two reviewers read each report as part of a quality control process to ensure that the report meets appropriate standards and that the facts and analysis support the conclusion or recommendation. This dual review is also included in the annual retainer;
- Over 20 Associate Investigators, beyond the proposed investigators, who are able to fill in if necessary;
- Expert panel of approximately 60 experienced mediators not connected to the case to serve as neutral resources if required; and
- Training materials are provided free of charge with all educational workshops provided by the IC.

Should a Member of Markham City Council have a concern with the advice and/or service they receive from ADR Chambers Inc., they are encouraged to alert the City Clerk as soon as possible. The Clerk will follow up with ADR Chambers immediately to address the identified issue.

NEXT STEPS:

Once the contract is awarded, Staff will arrange for ADR Chambers Inc. to conduct a Council Training and Education Session to review the Council Code of Conduct and to provide an update on current and emerging issues in Ontario regarding Codes of Conduct. This session will be scheduled in early Fall 2021.