

Schedule "A" to By-Law #2018-28

**Municipal Ombudsman, Closed Meeting Investigator
And
Integrity Commissioner Agreement**

Memorandum Of Agreement effective the 1st day of January, 2018.

Between:

Corporation Of The Municipality of West Elgin
(hereinafter, the "**Municipality**")

Of The First Part

- and -

Independent Resolutions Inc.
(hereafter, the "**Municipal Ombudsman, Closed Meeting Investigator and Integrity
Commissioner**" or the "**Independent Investigator**")

Of The Second Part

(hereinafter, collectively referred to as the "**Parties**")

Whereas:

- A. Elgin County and Middlesex County issued a joint Request for Proposals (Reference No. ADM 2017-1) to seek out and retain the services of a combined Municipal Ombudsman, Closed Meeting Investigator, and Integrity Commissioner for each of the said municipal corporations;
- B. Section 223.13(1) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended (the "**Act**"), authorizes municipalities to appoint an Ombudsman (hereafter, "**Municipal Ombudsman**") who reports to council and whose function it is to investigate in an independent manner any decision or recommendation made or act done or omitted in the course of the administration of the appointing municipality, its local boards and specified municipally-controlled corporations;
- C. Section 239.2(1) of the *Act* authorizes a municipality to appoint an investigator (hereafter, "**Closed Meeting Investigator**") who has the function of investigating in an independent manner upon a complaint made to him or her by any person, whether a municipality or local board has complied with Section 239 of the *Act* or a procedure by-law under subsection 238(2) of the *Act* in respect of a meeting or part of a meeting that was closed to the public, and to report on such investigation;
- D. Section 223.3(1) of the *Act* authorizes a municipality to appoint an Integrity Commissioner (hereafter, "**Integrity Commissioner**") who reports to council and who is responsible for performing in an independent manner functions assigned by the municipality with respect to,
 - (a) the application of the code of conduct for members of council, its local boards and/or their committees;
 - (b) the application of procedures, rules and policies governing the ethical behavior of members of council, its local boards and/or committees; or
 - (c) both of clauses (a) and (b).

Initials

- E. Sections 223.13(2), 239.2(2) and 223.13(2) of the *Act* provide that a Municipal Ombudsman, Closed Meeting Investigator and Integrity Commissioner may exercise the powers and perform the duties assigned to him or her by the appointing municipality;
- F. Sections 223.13(10), 239.2(8) and 223.4(1) of the *Act* provide that a Municipal Ombudsman, Closed Meeting Investigator and Integrity Commissioner are not required to be an employee of the appointing municipality;
- G. Section 223.4(5) of the *Act* does not preclude a municipally-appointed Integrity Commissioner from recommending to council such remedial measures other than those measures listed in 223.4(5) to carry out the objectives of the procedures, rules and policies governing the ethical behavior of members of council and/or local boards, so long as such measures are not penalties and do not constitute offences;
- H. The Council of the Corporation of the Municipality of West Elgin, located within the territorial limits of Elgin County, hereby deems it to be in the public interest to engage in cooperative purchasing with respect to a Municipal Ombudsman, Closed Meeting Investigator, and Integrity Commissioner, under which arrangements the County, as per Elgin County By-Law #17-42, will pay the initial retainer required of the County and any one or more local municipalities and such local municipality or municipalities would secure and pay for any fees and expenses for the services of such Municipal Ombudsman, Closed Meeting Investigator, and Integrity Commissioner pursuant to a separate agreement between each such local municipality and the said Municipal Ombudsman, Closed Meeting Investigator, and Integrity Commissioner.
- I. The County of Elgin has by Elgin County By-Law #17-42 deemed it desirable to appoint and/or retain Independent Resolutions Inc. as its respective Municipal Ombudsman, Closed Meeting Investigator and/or Integrity Commissioner on an as needed basis, who may exercise the powers and perform the duties assigned to him, as set out in this Agreement and the Council of the Corporation of the Municipality of West Elgin hereby, on its own behalf and, to the extent set forth below, being one of the local municipalities located within the County of Elgin's territorial limits, also deems it desirable to appoint and/or retain Independent Resolutions Inc. as its respective Municipal Ombudsman, Closed Meeting Investigator and/or Integrity Commissioner on an as needed basis, who may exercise the powers and perform the duties assigned to him, as set out in this Agreement;
- J. Independent Resolutions Inc. has the skills, abilities, and has consented to act as the Municipal Ombudsman, Closed Meeting Investigator and Integrity Commissioner pursuant to the terms and conditions set out in this Agreement; and
- K. In appointing Independent Resolutions Inc. as Municipal Ombudsman and assigning powers and duties as set out in this Agreement, the County, by Elgin County By-Law #17-42, has had regard to the importance of the matters set out in section 223.13(5) of the *Act*, as required by section 223.13(3) of the *Act*.

Now Therefore, in consideration of payment of the sum of One Dollar (\$1.00) now paid by each Party hereto to the other such Party and the mutual covenants and obligations set forth herein, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties hereto agree as follows:

1 Interpretation

- 1.1 The above recitals are true and are hereby incorporated into this Agreement by reference.
- 1.2 For the purposes of this Agreement, "**committee**" and "**local board**" shall have the meanings as defined in section 1(1) of the *Act*, as amended or replaced.
- 1.3 For the purposes of this Agreement, "**inquiry(ies)**" shall have the meaning as defined in the *Public Inquiries Act*, 2009, SO 2009, c 33, Sch 6, as amended or replaced.

Initials

- 1.4 In this Agreement, "**Communication**" means any notice, demand, request, consent, approval or other communication which is required or permitted by this Agreement to be given or made by a party.

2 Appointment and Powers

- 2.1 Pursuant to the authority vested in sections 223.13(1), 239.2(1) and 223.3(1) of the *Act* and thereby as a statutory officer, the Municipality of West Elgin appoints Independent Resolutions Inc. as its respective Municipal Ombudsman, Closed Meeting Investigator and Integrity Commissioner (hereafter, collectively referred to as the "**Independent Investigator**"), who may exercise the powers and perform the duties assigned to him below:
- 2.1.1 In the role of Municipal Ombudsman, the Independent Investigator shall on an as needed basis and upon receipt of a request, investigate and report to the Municipality of West Elgin Council in an independent manner on any decision or recommendation made or act done or omitted in the course of the administration of the Municipality and its local boards, in accordance with section 223.13(1-2) of the *Act*.
- 2.1.2 In the role of Closed Meeting Investigator, the Independent Investigator shall on an as needed basis and upon receiving a complaint by any person, investigate in an independent manner, any meeting or part of a meeting of the Municipality and its local boards, that is closed to the public in accordance with section 239.2(1-2) of the *Act*; and
- 2.1.3 In the role of Integrity Commissioner, the Independent Investigator shall in accordance with sections 223.3(1-2) of the *Act*:
- (a) upon receiving a request by the Municipality of West Elgin Council, a member of West Elgin Council, the Municipal Clerk or a member of the public, conduct inquiries in an independent manner with respect to adherence to the procedures, rules and policies of the Municipality and the Municipality's local boards;
 - (b) upon request made by the Municipality of West Elgin Council, a member of West Elgin Council or a member of the public, conduct inquiries in an independent manner with respect to the ethical behaviour of Councillors and Members of West Elgin Council and the Municipality's local boards, in accordance with section 223.4 of the *Act*; and
 - (c) following any inquiry conducted pursuant to section 2.1.3(a-b) above, make a report and recommendations to West Elgin Council or local boards as applicable; and,
 - (d) without limiting that set forth above or herein and in respect of any such applicable inquiry:
 - (i) The Independent Investigator, when conducting an inquiry in accordance with section 2.1.3(b) of this Agreement and section 223.4 of the *Act*, shall treat the procedures, rules and policies of the Municipality and its local boards as part of the code of conduct applicable for the purposes of carrying out inquiries.
 - (ii) Following an inquiry pursuant to 2.1.3(b) herein and section 224.4 of the *Act*, the Independent Investigator may make recommendations to council and/or local boards, as set out in subsection 223.4(5) of the *Act* and in addition, may recommend to West Elgin Council and the Municipality's local boards at his or her discretion, such other remedial measures (including but not limited to apologies, return of property, etc.) necessary to carry out the objectives set out in the procedures,

rules and policies, so long as such remedies are not penalties and do not constitute offences do not provide that any Councilor or member is guilty of an offence.

- 2.2 In addition to and in furtherance of the appointments and powers provided to the Investigator in section 2.1 above, the Municipality hereby confirms that the Independent Investigator shall have the powers set out in **Schedule "A"** in his role as Ombudsman, the powers set out in **Schedule "B"** in his role as Close Meeting Investigator, and the powers set out in **Schedule "C"** in his role as Integrity Commissioner.
- 2.3 The Municipality shall provide to the Independent Investigator the following documents for the Municipality and its local boards:
 - 2.3.1 A certified copy of the Municipality's procedural by-law;
 - 2.3.2 A certified copy of the Municipality's notice by-law;
 - 2.3.3 A certified copy of the procedures, rules and policies of the Municipality and the Municipality's local boards;
 - 2.3.4 A listing of applicable local boards subject to this Agreement; and
 - 2.3.5 A certified copy of the Municipality's Council Code of Conduct.

3 Process and Duties

- 3.1 Every request for an investigation or inquiry of: (a) any decision or recommendation made or act done or omitted in the course of the administration of the Municipality or its local boards; (b) any meeting or part of a meeting of the Municipality or its local boards that is closed to the public; (c) adherence to the procedures, rules and policies of the Municipality or its local boards; or (d) the ethical behavior of members of West Elgin Council or the Municipality's local boards, shall:
 - 3.1.1 Be directed to the Independent Investigator;
 - 3.1.2 Be in writing;
 - 3.1.3 Include the reasons for the request;
 - 3.1.4 Be signed; and
 - 3.1.5 Include an address and telephone number of the person making the request or complaint.

Should a request for an investigation or inquiry noted in section 3.1(a)-(d) be received by any other person employed by the Municipality other than the Independent Investigator, that person shall forthwith notify the Municipal Clerk who shall provide the requesting party with the contact information of the Independent Investigator so that the requesting party may make the request directly to the Independent Investigator.

- 3.2 Upon receipt of a request for investigation or inquiry, the Independent Investigator will be provided immediate access to the following information by the Municipal Clerk or any other Department Head that the Investigator deems appropriate:
 - 3.2.1 The original request or complaint;
 - 3.2.2 A contact list for all members of West Elgin Council or local board relevant to the request or complaint; and
 - 3.2.3 Such other information or documentation that the Independent Investigator or Independent Investigator's Delegate may from time to time deem relevant to the investigation or inquiry.
- 3.3 The Independent Investigator shall fulfill the following duties:
 - 3.3.1 To conduct investigations and inquiries from time to time upon receipt of a request to determine compliance with the *Act*;

- 3.3.2 To report in writing on such investigations to West Elgin Council and local boards of the Municipality, as applicable;
 - 3.3.3 To proceed without undue delay and with due diligence to investigate a complaint, and to consider time to be of the essence with any and all investigations or inquiries;
 - 3.3.4 To proceed to investigate a complaint impartially and independently of the Municipality and its local boards;
 - 3.3.5 To hear or obtain information from such persons in accordance with the *Act*;
 - 3.3.6 To preserve the confidentiality of all matters of any investigation or inquiry that require secrecy, save and except disclosure of such matters permitted by the *Act* to establish grounds for report conclusions and/or recommendations;
 - 3.3.7 To properly apply the doctrine of legal privilege, as applicable to West Elgin municipal Councillors and members of local boards;
 - 3.3.8 If at any time during the course of an investigation or inquiry it appears to the Independent Investigator that there may be sufficient grounds for a report or recommendation that may adversely affect the Municipality, a local board of the Municipality, a West Elgin Municipal Councilor, a municipally-controlled corporation or any other individual person, the Independent Investigator shall give West Elgin Council the local board, or the individual an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel;
 - 3.3.9 To draft written report to West Elgin Council and/or local board, as applicable, with appropriate recommendations; and
 - 3.3.10 To dismiss complaints that are without merit or deemed to be vexatious and prepare a report confirming the non-meritorious nature of such complaints.
- 3.4 Without limiting and in addition to the duties provided for in section 3.3 above, the Municipality hereby confirms that the Independent Investigator shall be subject to the rules and shall have the duties set out in **Schedule "A"** in his role as Ombudsman, set out in **Schedule "B"** in his role as Closed Meeting Investigator, and set out in **Schedule "C"** in his role as Integrity Commissioner.
- 3.5 Upon receipt by the Municipality or a local board, a report of the Independent Investigator shall be part of the public record.

4 Fees

- 4.1 The County of Elgin, by Elgin County By-Law #17-42, deemed that the County shall pay the Independent Investigator an Annual Retainer of Three Thousand Dollars (\$3,000.00) in respect of services contemplated by the Agreement to the County. Additionally and on behalf of each and every participating local municipality located within the geographic limits of Elgin County, the County shall pay the Independent Investigator an Annual Retainer of Three Thousand Dollars (\$3,000.00) or the appropriate portion thereof based upon the nature and extent of services to be provided to each such local municipality, whichever is lower.
- 4.2 The County of Elgin By-Law #17-42 provides that the County shall pay the fees and expenses of the Independent Investigator at a rate of One Hundred And Fifty Dollars (\$150.00) per hour, plus applicable taxes and reasonable disbursements, during such time as the Independent Investigator is performing the duties set out in this Agreement. The Independent Investigator agrees that the above rate shall be charged only for such time that he is actively investigating a complaint and preparing/presenting a report to the Municipal Council or local board. It is hereby agreed that the Municipality of West Elgin shall pay the hourly rate of One Hundred

And Fifty Dollars (\$150.00) through this separate agreement and in respect of services contemplated by the County of Elgin Agreement but relating to matters directly involving the Municipality of West Elgin.

5 Term of Agreement

- 5.1 Subject to the termination and amendment provisions of this Agreement (sections 8 and 9), the term of this Agreement shall commence at 12:00 a.m. on January 1, 2018 and expire at 11:59 p.m. on December 31, 2020 ("**Term**").
- 5.2 At least six (6) months prior to the end of the Term, the Parties agree to discuss renewal terms. If no agreement is reached prior to the last day of the Term, this Agreement shall expire unless the Parties mutually agree in writing to extend the negotiation period for sixty (60) days ("**Extension Period**"). In the event renewal terms have not been agreed to by the Parties at the end of the Extension Period, this Agreement shall terminate immediately on the last day of the Extension Period.

6 Indemnification and Insurance

- 6.1 Subject to any statutory provision in respect of such obligation, the Municipality shall hold harmless and indemnify the Independent Investigator, or any person acting under instructions therefrom, from all claims, demands, liability, and costs incurred or suffered in relation to or connection with the defence of a proceeding if such proceeding relates to an act done in good faith in the performance or intended performance of a duty, authority, or power contemplated by this Agreement or the legislation referred to herein or an alleged neglect or default in the performance in good faith of such duty, authority, or power.
- 6.2 Throughout the term of this Agreement, the Independent Investigator, at its expense, shall secure and maintain in force policies of insurance providing coverages for commercial general liability and errors and omissions, both of terms and conditions acceptable to the Municipality and to be in effect and providing coverage while the Independent Investigator is acting as contemplated by this Agreement, which policies shall be underwritten by an insurer licensed to conduct business in the Province of Ontario and, further thereto, shall include, among others, the following terms:
 - 6.2.1 a limit of liability of not less than \$2,000,000.00 per occurrence;
 - 6.2.2 the Municipality shall be named as an additional insured;
 - 6.2.3 the policy or policies shall contain a provision for cross-liability in respect of the named insured;
 - 6.2.4 non-owned automobile coverage with a limit of at least \$1,000,000.00, including contractual non-owned coverage;
 - 6.2.5 products and completed operations coverage (broad form) with an aggregate limit of not less than \$2,000,000.00; and,
 - 6.2.6 that thirty (30) days prior notice of an alteration, cancellation, or material change in policy terms, which reduces coverage, shall be given in writing to the Municipality.

Within fifteen (15) days of execution of this Agreement, the Independent Investigator shall provide, and thereafter replace as is required, adequate proof of the said policy or policies of insurance or any renewal or replacement thereof, including but not necessarily limited to a then current Certificate of Insurance or true copy thereof.

- 6.3 During the term of this Agreement and upon receipt of payment of the annual premiums for the insurance coverages referred to in section 6.2 above, the County of Elgin By-Law #17-42 provides that the County shall reimburse the Independent

Investigator an amount equal to fifty percent (50%) of the paid premium for errors and omissions coverage only, plus taxes accruing thereto.

7 Dispute Resolution

- 7.1 Upon written request to resolve any disputes arising from this Agreement which is sent by one party to another, the parties hereby agree to resolve all disputes pursuant to this section. Upon receipt by the receiving party of a written request to resolve disputes, the Parties shall first attempt to resolve all disputes by way of formal negotiation between the Parties and their appointed representatives. If the disputes cannot be settled within thirty (30) days from the receipt of the written request to resolve disputes by the receiving party, then the Parties shall enter into a structured negotiation on a without prejudice basis with the assistance of a mediator appointed by them. If the disputes cannot be settled within ninety (90) days from the receipt of written request to resolve disputes by the receiving party, or such longer period as may be agreed to by the Parties, the Parties shall, refer the matter forthwith to an arbitration which shall finally resolve the dispute(s). The aforementioned arbitration shall be conducted in accordance with the *Ontario Arbitration Act, 1991*, SO 1991, c 17, as amended or replaced.

8 Termination

- 8.1 This Agreement may be terminated by any party on ninety (90) days written notice to the other party, provided that any investigations or inquiries commenced prior to the termination date shall be completed pursuant to this Agreement and all related fees shall be paid as set out in the Agreement.

9 Amendment

- 9.1 No amendment, discharge, modification, restatement, supplement, or termination of this Agreement is binding unless it is in writing and executed by the Parties.
- 9.2 The Parties hereto agree that, in the event of legislative changes affecting the provisions of this Agreement, including but not limited to changes contemplated by Bill 68 and potentially relating to, among other things, the duties and powers of a Municipal Ombudsman, Closed Meeting Investigator, and/or Integrity Commissioner and further reflecting upon Fees chargeable by and payable to such officials, they will negotiate in good faith and execute an agreement to account for any such legislative changes, and the effects thereof, while otherwise maintaining the spirit and intent of this Agreement.

10 Notices

- 10.1 Any Communication between the Parties must be in writing and either be:

- (a) delivered personally or by courier;
- (b) sent by prepaid registered mail; or
- (c) transmitted by facsimile, e-mail or functionally equivalent electronic means of transmission, and

in any such circumstances, all charges (if any) prepaid.

Any Communication must be sent to the intended Party at its address for service listed on the signature pages of this Agreement or to any other address as any party may at any time advise the other by Communication given or made in accordance with this section. Any Communication delivered to a party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that party's address, provided that if that day is not a business day then the Communication will be deemed to have been given or made and received on the next business day. Any Communication transmitted by facsimile, e-mail or other functionally equivalent electronic means of transmission will be deemed to have been

given or made and received on the day on which it is transmitted; but if the Communication is transmitted on a day which is not a business day or after 4:00pm (local time of the recipient), the Communication will be deemed to have been given or made and received on the next business day.

11 Assignment

- 11.1 The Parties agree that the Independent Investigator shall not assign or alienate, in whole or in part, this Agreement or the power or authority granted hereunder without the prior written approval of the Municipality, which approval may be unreasonably withheld.

12 Entire Agreement

- 12.1 The Parties agree this Agreement, including any Schedule hereto, constitutes the entire agreement and consensus between the Parties as of the date hereof. There are not and shall not be any verbal statements, representations, warranties, undertakings, or other agreements relating to the specific power or authorization contemplated herein as between the Parties.

13 Severability

- 13.1 Each section of this Agreement is distinct and severable. If any section of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that section, in whole or in part, will not affect:

- (a) the legality, validity or enforceability of the remaining sections of this Agreement, in whole or in part; or
- (b) the legality, validity or enforceability of that section, in whole or in part, in any other jurisdiction.

14 Governing Law

- 14.1 This Agreement is governed by, and is to be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province.

15 Counterparts

- 15.1 This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail, or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.

16 Enurement

- 16.1 The Parties hereto agree that this Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, and assigns.

In Witness Whereof this Agreement has been executed by the Parties hereto on the date(s) set out below and the Parties agree that this Agreement shall be effective on the date set out at the top of page one (1) of this Agreement.

Corporation Of The Municipality of West Elgin


Date: April 26th, 2018

Address for Service:
Attn: West Elgin CAO/Clerk
22413 Hoskins Line,
P.O. Box 490
Rodney, ON N0L 2C0

Per:


Bernhard Wiehle, Mayor

Per:


Genevieve Scharback, Chief Administrative
Officer/Clerk

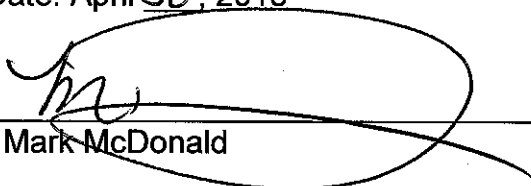
We have authority to bind the Corporation

Independent Resolutions Inc.

Date: April 30, 2018

Address for Service:
17 Hummingbird Lane
St. Thomas, ON N5R 6L8

Per:


Mark McDonald

I have authority to bind the Corporation

Schedule "A"

Additional Rules & Duties: Municipal Ombudsman (By Reference To Applicable Statutory Authorities)

Municipal Act, 2001, S.O. 2001, c.25, as amended

Same, Ombudsman

223.13 (4) In carrying out his or her functions under subsection (1), the Ombudsman shall have regard to, among other matters, the importance of the matters listed in subsection (5).

Same

- (5) The matters referred to in subsections (3) and (4) are,
- (a) the Ombudsman's independence and impartiality;
 - (b) confidentiality with respect to the Ombudsman's activities; and
 - (c) the credibility of the Ombudsman's investigative process.

Powers paramount

- (6) The powers conferred on the Ombudsman under this Part may be exercised despite any provision in any Act to the effect that any such decision, recommendation, act or omission is final, or that no appeal lies in respect of them, or that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question.

Decisions not reviewable

- (7) Nothing in this Part empowers the Ombudsman to investigate any decision, recommendation, act or omission,
- (a) in respect of which there is, under any Act, a right of appeal or objection, or a right to apply for a hearing or review, on the merits of the case to any court, or to any tribunal constituted by or under any Act, until that right of appeal or objection or application has been exercised in the particular case, or until after any time for the exercise of that right has expired; or
 - (b) of any person acting as legal adviser to the municipality, a local board or a municipally-controlled corporation or acting as counsel to any of them in relation to any proceedings. 2006, c. 32, Sched. A, s. 98.

Delegation

- (8) The Ombudsman may delegate in writing to any person, other than a member of council, any of the Ombudsman's powers and duties under this Part.

Same

- (9) The Ombudsman may continue to exercise the delegated powers and duties, despite the delegation.

Investigation

223.14 (1) Every investigation by the Ombudsman shall be conducted in private.

Opportunity to make representations

- (2) The Ombudsman may hear or obtain information from such persons as he or she

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thinks fit, and may make such inquiries as he or she thinks fit and it is not necessary for the Ombudsman to hold any hearing and no person is entitled as of right to be heard by the Ombudsman, but if at any time during the course of an investigation it appears to the Ombudsman that there may be sufficient grounds for him or her to make any report or recommendation that may adversely affect the municipality, a local board, a municipally-controlled corporation or any other person, the Ombudsman shall give him, her or it an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel.

Application of Ombudsman Act

- (3) Section 19 of the *Ombudsman Act* applies to the exercise of powers and the performance of duties by the Ombudsman under this Part and, for the purpose, references in section 19 of that Act to “any public sector body” are deemed to be references to “the municipality, a local board or a municipally-controlled corporation”.

(Secondary Statutory Reference Set Forth Immediately Below)

Ombudsman Act, R.S.O. 1990, c. O.6, as amended

Evidence

19. (1) *The Ombudsman may from time to time require any officer, employee or member of any public sector body who in his or her opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him or her any such information, and to produce any documents or things which in the Ombudsman’s opinion relate to any such matter and which may be in the possession or under the control of that person.*

Examination under oath

- (2) *The Ombudsman may summon before him or her and examine on oath,*
- (a) any complainant;*
 - (b) any person who is an officer or employee or member of any public sector body and who, in the Ombudsman’s opinion, is able to give any information mentioned in subsection (1); or*
 - (c) any other person who, in the Ombudsman’s opinion, is able to give any information mentioned in subsection (1),*

and for that purpose may administer an oath.

Secrecy

- (3) *Subject to subsection (4), no person who is bound by the provisions of any Act, other than the Public Service of Ontario Act, 2006, the Municipal Act, 2001 or the City of Toronto Act, 2006, as the case may be, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.*

Providing personal information despite privacy Acts

- (3.1) *A person who is subject to the Freedom of Information and*

Protection of Privacy Act, the Municipal Freedom of Information and Protection of Privacy Act or the Personal Health Information Protection Act, 2004 is not prevented by any provisions in those Acts from providing personal information to the Ombudsman, when the Ombudsman requires the person to provide the information under subsection (1) or (2).

Idem

- (4) With the previous consent in writing of any complainant, any person to whom subsection (3) applies may be required by the Ombudsman to supply information or answer any question or produce any document or thing relating only to the complainant, and it is the duty of the person to comply with that requirement.*

Privileges

- (5) Every person has the same privileges in relation to the giving of information, the answering of questions, and the production of documents and things as witnesses have in any court.*

Protection

- (6) Except on the trial of any person for perjury in respect of the person's sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Ombudsman is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Ombudsman shall be given against any person.*

Right to object to answer

- (7) A person giving a statement or answer in the course of any inquiry or proceeding before the Ombudsman shall be informed by the Ombudsman of the right to object to answer any question under section 5 of the Canada Evidence Act.*

Prosecution

- (8) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with any requirement of the Ombudsman under this section.*

Fees

- (9) Where any person is required by the Ombudsman to attend before him or her for the purposes of this section, the person is entitled to the same fees, allowances, and expenses as if he or she were a witness in the Superior Court of Justice, and the provisions of any Act, regulation or rule in that behalf apply accordingly.*

Duty of confidentiality

- 223.15 (1) Subject to subsection (2), the Ombudsman and every person acting under the instructions of the Ombudsman shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.

Disclosure

- (2) The Ombudsman may disclose in any report made by him or her under this Part such matters as in the Ombudsman's opinion ought to be disclosed in order to establish grounds for his or her conclusions and recommendations.

Section prevails

- (3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

No review, etc.

223.16 No proceeding of the Ombudsman under this Part shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman is liable to be challenged, reviewed, quashed or called in question in any court.

Testimony

223.17 (1) The Ombudsman and any person acting under the instructions of the Ombudsman shall not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions under this Part.

Same

- (2) Anything said or any information supplied or any document or thing produced by any person in the course of any investigation by or proceedings before the Ombudsman under this Part is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

Effect on other rights, etc.

223.18 The rights, remedies, powers, duties and procedures established under sections 223.13 to 223.17 are in addition to the provisions of any other Act or rule of law under which any remedy or right of appeal or objection is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Part limits or affects any such remedy or right of appeal or objection or procedure.

Schedule "B"

Additional Rules & Duties: Closed Meeting Investigator (By Reference To Applicable Statutory Authorities)

Municipal Act, 2001, S.O. 2001, c.25, as amended

Meetings open to public

239. (1) Except as provided in this section, all meetings shall be open to the public.

Exceptions

- (2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,
- (a) the security of the property of the municipality or local board;
 - (b) personal matters about an identifiable individual, including municipal or local board employees;
 - (c) a proposed or pending acquisition or disposition of land by the municipality or local board;
 - (d) labour relations or employee negotiations;
 - (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
 - (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
 - (g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act.
 - (h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
 - (i) a trade secret or scientific, technical, commercial, financial, or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
 - (j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or,
 - (k) a position, plan, procedure, criteria, or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

Other criteria

- (3) A meeting or part of a meeting shall be closed to the public if the subject matter being considered is,
- (a) a request under the *Municipal Freedom of Information and Protection of Privacy Act*, if the council, board, commission or other body is the head of an institution for the purposes of that Act; or
 - (b) an ongoing investigation respecting the municipality, a local board or a municipally-controlled corporation by the Ombudsman appointed under the *Ombudsman Act*, an Ombudsman referred to in subsection 223.13 (1) of this Act, or the investigator referred to in subsection 239.2 (1).

Educational or training sessions

- (3.1) A meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:

1. The meeting is held for the purpose of educating or training the members.
2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

Resolution

- (4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,
 - (a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting; or
 - (b) in the case of a meeting under subsection (3.1), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection.

Open meeting

- (5) Subject to subsection (6), a meeting shall not be closed to the public during the taking of a vote.

Exception

- (6) Despite section 244, a meeting may be closed to the public during a vote if,
 - (a) subsection (2) or (3) permits or requires the meeting to be closed to the public; and
 - (b) the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board.

Record of meeting

- (7) A municipality or local board or a committee of either of them shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not.

Same

- (8) The record required by subsection (7) shall be made by,
 - (a) the clerk, in the case of a meeting of council; or
 - (b) the appropriate officer, in the case of a meeting of a local board or committee.

Record may be disclosed

- (9) Clause 6 (1) (b) of the *Municipal Freedom of Information and Protection of Privacy Act* does not apply to a record of a meeting closed under subsection (3.1).

Same, investigator

- 239.2 (4) In carrying out his or her functions under subsection (1), the investigator shall have regard to, among other matters, the importance of the matters listed in subsection (5).

Same

- (5) The matters referred to in subsections (3) and (4) are,
- (a) the investigator's independence and impartiality;
 - (b) confidentiality with respect to the investigator's activities; and
 - (c) the credibility of the investigator's investigative process.

Delegation

- (6) An investigator may delegate in writing to any person, other than a member of council, any of the investigator's powers and duties under this Part.

Same

- (7) An investigator may continue to exercise the delegated powers and duties, despite the delegation.

Application

- (9) Subsection 223.13(6) and sections 223.14 to 223.18 apply with necessary modifications with respect to the exercise of functions described in this section.

(Secondary Statutory Reference Set Forth Immediately Below)

Powers paramount

223.13 (6) *The powers conferred on the Ombudsman under this Part may be despite any provision in any Act to the effect that any such decision, recommendation, act or omission is final, or that no appeal lies in respect of them, or that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question.*

Investigation

223.14 (1) *Every investigation by the Ombudsman shall be conducted in private.*

Opportunity to make representations

- (2) *The Ombudsman may hear or obtain information from such persons as he or she thinks fit, and may make such inquiries as he or she thinks fit and it is not necessary for the Ombudsman to hold any hearing and no person is entitled as of right to be heard by the Ombudsman, but if at any time during the course of an investigation it appears to the Ombudsman that there may be sufficient grounds for him or her to make any report or recommendation that may adversely affect the municipality, a local board, a municipally-controlled corporation or any other person, the Ombudsman shall give him, her or it an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel.*

Application of Ombudsman Act

- (3) *Section 19 of the Ombudsman Act applies to the exercise of powers and the performance of duties by the Ombudsman under this Part and, for the purpose, references in section 19 of that Act to "any public sector body" are deemed to be references to "the municipality, a local board or a municipally-controlled*

corporation”.

(Further Secondary Statutory Reference Set Forth Immediately Below)

Ombudsman Act, R.S.O. 1990, c. O.6, as amended

Evidence

19. (1) *The Ombudsman may from time to time require any officer, employee or member of any public sector body who in his or her opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him or her any such information, and to produce any documents or things which in the Ombudsman's opinion relate to any such matter and which may be in the possession or under the control of that person.*

Examination under oath

- (2) *The Ombudsman may summon before him or her and examine on oath,*
- (a) any complainant;*
 - (b) any person who is an officer or employee or member of any public sector body and who, in the Ombudsman's opinion, is able to give any information mentioned in subsection (1); or*
 - (c) any other person who, in the Ombudsman's opinion, is able to give any information mentioned in subsection (1),*

and for that purpose may administer an oath.

Secrecy

- (3) *Subject to subsection (4), no person who is bound by the provisions of any Act, other than the Public Service of Ontario Act, 2006, the Municipal Act, 2001 or the City of Toronto Act, 2006, as the case may be, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.*

Providing personal information despite privacy Acts

- (3.1) *A person who is subject to the Freedom of Information and Protection of Privacy Act, the Municipal Freedom of Information and Protection of Privacy Act or the Personal Health Information Protection Act, 2004 is not prevented by any provisions in those Acts from providing personal information to the Ombudsman, when the Ombudsman requires the person to provide the information under subsection (1) or (2).*

Idem

- (4) *With the previous consent in writing of any complainant, any person to whom subsection (3) applies may be required by the Ombudsman to supply information or answer any question or produce any document or thing relating only to the complainant, and it is the duty of the person to comply with that requirement.*

Privileges

- (5) *Every person has the same privileges in relation to the giving of information, the answering of questions, and the production of documents and things as witnesses have in any court.*

Protection

- (6) *Except on the trial of any person for perjury in respect of the person's sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Ombudsman is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Ombudsman shall be given against any person.*

Right to object to answer

- (7) *A person giving a statement or answer in the course of any inquiry or proceeding before the Ombudsman shall be informed by the Ombudsman of the right to object to answer any question under section 5 of the Canada Evidence Act.*

Prosecution

- (8) *No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with any requirement of the Ombudsman under this section.*

Fees

- (9) *Where any person is required by the Ombudsman to attend before him or her for the purposes of this section, the person is entitled to the same fees, allowances, and expenses as if he or she were a witness in the Superior Court of Justice, and the provisions of any Act, regulation or rule in that behalf apply accordingly.*

Duty of confidentiality

- 223.15 (1) Subject to subsection (2), the Ombudsman and every person acting under the instructions of the Ombudsman shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.

Disclosure

- (2) The Ombudsman may disclose in any report made by him or her under this Part such matters as in the Ombudsman's opinion ought to be disclosed in order to establish grounds for his or her conclusions and recommendations.

Section prevails

- (3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

No review, etc.

- 223.16 No proceeding of the Ombudsman under this Part shall be held bad for want of form,

and, except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman is liable to be challenged, reviewed, quashed or called in question in any court.

Testimony

223.17 (1) The Ombudsman and any person acting under the instructions of the Ombudsman shall not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions under this Part.

Same

(2) Anything said or any information supplied or any document or thing produced by any person in the course of any investigation by or proceedings before the Ombudsman under this Part is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

Effect on other rights, etc.

223.18 The rights, remedies, powers, duties and procedures established under sections 223.13 to 223.17 are in addition to the provisions of any other Act or rule of law under which any remedy or right of appeal or objection is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Part limits or affects any such remedy or right of appeal or objection or procedure.

Report and recommendations

239.2 (10) If, after making an investigation, the investigator is of the opinion that the meeting or part of the meeting that was the subject-matter of the investigation appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the investigator shall report his or her opinion and the reasons for it to the municipality or local board, as the case may be, and may make such recommendations as he or she thinks fit.

Publication of reports

(11) The municipality or local board shall ensure that reports received under subsection (10) by the municipality or local board, as the case may be, are made available to the public.

Schedule "C"

**Additional Rules & Duties:
Integrity Commissioner**
(By Reference To Applicable Statutory Authorities)

Municipal Act, 2001, S.O. 2001, c.25, as amended

Delegation

223.3 (3) The Commissioner may delegate in writing to any person, other than a member of council, any of the Commissioner's powers and duties under this Part.

Same

(4) The Commissioner may continue to exercise the delegated powers and duties, despite the delegation.

Powers on inquiry

223.4 (2) The Commissioner may elect to exercise the powers under sections 33 and 34 of the *Public Inquiries Act, 2009*, in which case those sections apply to the inquiry.

(Secondary Statutory Reference Set Forth Immediately Below)

Public Inquiries Act, 2009, SO 2009, c 33, Sch 6, as amended

Definition

33. (1) *In this section,*

"inquiry" includes a determination, examination, hearing, inquiry, investigation, review or other activity to which this section is applicable.

Definition

34. (1) *In this section,*

"inquiry" includes an inquiry or other activity to which this section is applicable.

Application

(2) *This section applies to,*

(c) *an inquiry conducted under subsections 223.4 (2) and 223.12 (2) of the Municipal Act, 2001; and*

Information

(3) The municipality and its local boards shall give the Commissioner such information as the Commissioner believes to be necessary for an inquiry.

Same

(4) The Commissioner is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality or a local board that the Commissioner believes to be necessary for an inquiry.

Penalties

- (5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days.

Same

- (6) The local board may impose either of the penalties described in subsection (5) on its member if the Commissioner reports to the board that, in his or her opinion, the member has contravened the code of conduct, and if the municipality has not imposed a penalty on the member under subsection (5) in respect of the same contravention.

Duty of confidentiality

- 223.5 (1) The Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.

Exception

- (2) Despite subsection (1), information may be disclosed in a criminal proceeding as required by law or otherwise in accordance with this Part.

Section prevails

- (3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

Report to council

- 223.6 (1) If the Commissioner provides a periodic report to the municipality on his or her activities, the Commissioner may summarize advice he or she has given but shall not disclose confidential information that could identify a person concerned.

Report about conduct

- (2) If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board has contravened the applicable code of conduct, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report.

Publication of reports

- (3) The municipality and each local board shall ensure that reports received from the Commissioner by the municipality or by the board, as the case may be, are made available to the public.

Testimony

- 223.7 Neither the Commissioner nor any person acting under the instructions of the Commissioner is a competent or compellable witness in a civil proceeding in connection with anything done under this Part.

Reference to appropriate authorities

223.8 If the Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code* (Canada), the Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to council.