

DATED as of this 1<sup>st</sup> day of January, 2015

**A M O N G:**

**The Municipalities Listed in Schedule "A" to this Agreement**

(the "Municipal Parties")

- and -

**PAUL S. HEAYN**

(the "Investigator")

**RECITALS:**

1. Subsection 239.2 (1) of the *Municipal Act, 2001* authorizes municipalities to appoint a person to investigate, in an independent manner, complaints made to him or her by any person as to whether the municipality or a local board has complied with Section 239 or a procedure by-law under Subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation.
2. In appointing an investigator and in assigning powers and duties to him or her, a municipality is to have regard to, among other things:
  - (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.
3. The Municipal Parties are satisfied that the Investigator has the skills and ability to meet these criteria.

**THIS AGREEMENT IS ENTERED** in consideration of payment of the Retainer by each Municipality to the Investigator, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged.

**ARTICLE 1.00: INTERPRETATION**

**1.01 Definitions:** Wherever a term set out below appears in the text of this Agreement with its initial letters capitalized, the term is intended to have the meaning set out for it in this Section 1.01. Wherever a term below appears in the text of this Agreement in regular case, it is intended to have the meaning ordinarily attributed to it in the English language.

- (a) **Agreement** means this agreement, including its recitals and schedules, which form integral parts of it, as amended from time to time in accordance with Section 5.02.
- (b) **Complaint** means a bona fide complaint received by any Municipal Party, or by the Investigator with respect to any Municipal Party, from a member of the public with the right to make the complaint, that the Municipal Party held a meeting in closed session contrary to the provisions of the *Municipal Act, 2001*.
- (c) **Dispute** means any controversy, dispute, difference, question or claim arising between the Parties (or any of them) in connection with this Agreement.
- (d) **Expenses** means any out-of-pocket sums paid or incurred by the Investigator during the course of investigation of a Complaint. Examples include: travel, lodging & meals, photocopying, telephone, facsimile, document binding, mileage, etc. Mileage shall be charged to and from Dryden at a rate of forty-four cents (\$0.44/km) per kilometre travelled. Where travel is involved, the

Expenses will be calculated on the basis of the policies of The Corporation of the City of Thunder Bay with respect to travel by its employees on municipal business.

- (e) **Fees** means the sum of fifty (\$50.00) dollars per hour paid to the Investigator for the Services rendered by the Investigator with respect to that Complaint.
- (f) **Investigator** means Paul S. Heayn, an individual carrying on business under the name and style "P.S. Heayn Municipal Consultant".
- (g) **Municipal Parties** means all Parties except the Investigator. Where additional municipal corporations join as Parties to this Agreement, as permitted by Section 4.03, the term "Municipal Parties" includes those additional signatories. Where meetings of Municipal Parties are referenced, the term includes meetings of that municipality's local boards or corporations.
- (h) **Original Parties** means the Investigator and the municipalities in Schedule "A".
- (i) **Parties** means any of the Original Parties together with any municipalities that sign on to this Agreement as provided for in Section 4.03. The term "Party" refers to any of them, individually.
- (j) **Retainer** means, for each Municipality, the sum of five hundred (\$500.00) dollars per annum.
- (k) **Services** means the conduct of investigations from time to time on behalf of each Municipal Party who has received a Complaint, to determine whether or not the Complaint has merit, and to report to that Municipal Party on the outcome of the investigation.
- (l) The **Term** means the entire time period during which this Agreement is operational, as set out in Article 2.00. In the event that a renewal occurs, as provided for in Section 2.02, the definition of Term shall be deemed to be amended by adding the renewal period.

**1.02**        **Legislation, By-laws:** Each reference to Provincial legislation in this Agreement is printed in italic font. Where the statute name does not contain a date, the reference is to the Revised Statutes of Ontario, 1990 edition. Where the statute name does contain a date, the reference is to the Statutes of Ontario for that particular year. In either case, the reference includes all applicable amendments to the legislation, including successor or replacement legislation.

**1.03**        **Construing this Agreement:** This Section contains the rules for reading and interpreting this Agreement:

- (a) The captions, article and section names and numbers appearing in this Agreement are for convenience of reference only and have no effect on its interpretation.
- (b) All provisions of this Agreement creating obligations on any Party will be construed as covenants.
- (c) This Agreement is to be read with all changes of gender or number required by the context.
- (d) The words "**include**", "**includes**", "**including**" and "**included**" are not to be interpreted as restricting or modifying the words or phrases which precede them.
- (e) All references to money are references to Canadian dollars.

## **ARTICLE 2.00: TERM OF AGREEMENT**

**2.01** **Term:** The Parties agree that the Term of this Agreement is one (1) year, to be computed from the 1st day of January, 2015, concluding on the 31st day of December, 2018, subject to renewal and termination as provided in this Agreement. January 1, 2015 will be the effective date of the Agreement regardless of the date that each Municipal Party's Council formally approves the appointment of the Investigator and/or execution of this Agreement.

**2.02** **Renewals:** Subject to Section 2.03, this Agreement contains two (2) automatic renewals, each for a further term of one (1) year, on the same terms and conditions as this Agreement.

**2.03** **Electing not to Renew:** Any Party to this Agreement who does not wish to renew shall give at least ninety (90) days' written notice to all of the other Parties prior to the end of the Term of his or its intention not to renew this Agreement.

**2.04** **Termination Without Cause:** Any Municipal Party may terminate its participation in this Agreement with thirty (30) days' written notice to the other Parties. Termination mid-year does not give any Municipal Party the right to a refund or partial refund of the Retainer or any Fees or Expenses paid to the Investigator. Upon receiving notice of termination, the Investigator shall cease any ongoing work and shall issue an invoice to any Municipal Party for whom he was providing Service at the time of termination, for all Fees and Expenses to the date of termination.

**2.05** **Termination For Cause:** Any Municipal Party who is dissatisfied with the Services provided by the Investigator shall provide the Investigator with written notice stipulating the nature of its concern and requesting that the Investigator rectify any default noted. Where this notice results in a Dispute, the provisions of Section 4.06 apply. If the default complained of by the Municipal Party is not rectified to that Party's satisfaction, it may withdraw from participation in this Agreement by providing written notice to all other current Parties in accordance with Section 5.01.

If the Investigator considers any Municipal Party to be in breach of its obligations under the terms and conditions of this Agreement, he shall provide the Municipal Party with written notice stipulating the nature of his concern and requesting that the Municipal Party rectify any default noted. Where this notice results in a Dispute, the provisions of Section 4.06 apply. In any event, if the default complained of by the Investigator is not rectified to his satisfaction, the Investigator may withdraw his Services from that Municipal Party by providing thirty (30) days' written notice to that Municipal Party in accordance with Section 5.01. After passage of the thirty (30) days, absent agreement or court or tribunal order otherwise, this Agreement shall be considered to have been terminated insofar as the Investigator and that Municipal Party are concerned, and the Investigator shall then notify all of the other Municipal Parties that he is no longer providing the Services for the Party from whom he has withdrawn under this clause. The Investigator acknowledges and agrees that notice under this Section cannot be given during the course of an ongoing investigation into a Complaint, but may only be given after completion of his report with respect to a Complaint.

**2.06** **Agreement Continues:** Withdrawal from the Agreement by any Municipal Party does not affect the validity of the Agreement with all of the remaining Parties.

## **ARTICLE 3.00: COVENANTS, WARRANTIES & ACKNOWLEDGEMENTS RELATING TO THE SERVICES AND PAYMENT FOR THEM**

**3.01** **Appointment:** The Municipal Parties retain and appoint the Investigator as an investigator for the purposes of Subsection 239.2 (1) of the *Municipal Act, 2001*. The Investigator agrees to provide the Services for, and at the request of, each of the Municipal Parties, and accepts the appointment.

**3.02 Investigator's Duties with Respect to Services:** In providing the Services, the Investigator agrees that he shall:

- (a) follow the procedure outlined in Schedule "C" to this Agreement, which formed the Investigator's response to the request for proposals that the Municipal Parties issued when seeking the services of a person to act as their investigator;
- (b) have regard to the importance of the matters listed in the second recital of this Agreement;
- (c) proceed without undue delay and with due diligence to investigate a Complaint;
- (d) conduct each investigation in private and in accordance with law;
- (e) hear or obtain information from such persons as the Investigator thinks fit and to make such inquiries as he thinks fit;
- (f) provide an opportunity to the members of Council and the senior administrative officials of each Municipal Party as well as any other person that may be adversely affected by a proposed report of the Investigator, an opportunity to make representations respecting the report or recommendation; and
- (g) preserve confidentiality and secrecy with respect to all matters that come to his or her knowledge in the course of performing duties under the terms of this Agreement, save and except disclosure of such matters as in the Investigator's opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations.

In performing such duties, the Investigator shall have the powers set out in the *Municipal Act, 2001*. Copies of relevant excerpts from legislation are attached to this Agreement as Schedule "D" for ease of reference.

**3.03 Report Required:** After concluding a "full investigation" as outlined in Schedule "C", the Investigator shall render his opinion as to whether or not the Complaint has merit, including an opinion as to whether any meeting or part of the meeting that was the subject matter of the Complaint was closed to the public contrary to the *Municipal Act, 2001* or the Municipal Party's procedure by-law. Regardless of the outcome, the Investigator shall report his opinion and the reasons for it to the applicable Municipal Party and shall make such recommendations as he thinks fit.

**3.04 Use of Delegates:** At the discretion of the Investigator, he or she may at any time delegate, in writing, some or all of his responsibilities under this Agreement, as provided for in the *Municipal Act, 2001*. The Investigator agrees that such delegation will be first submitted to the Municipal Party to whose Complaint the delegation applies for its approval. The Investigator acknowledges that he was selected by the Municipal Parties to provide the Services on the basis of his experience and knowledge, and that no Municipal Party will be forced to accept any delegate. Consent for any delegation may be withheld by any Municipal Party arbitrarily and without reason being provided. Where delegation is consented to, the person to whom the Investigator's duties are delegated must agree in writing to be governed by the terms and conditions of this Agreement as if he or she was the Investigator. Such person shall always be under the supervision and direction of the Investigator. The delegation must not result in any additional costs or fees to the Municipal Parties. Regardless of whether the Services are provided by the Investigator or by a delegate, all invoices for the Services shall be rendered by the Investigator and payments made to the Investigator, and the Investigator shall be responsible for the fees and disbursements of any his delegates.

**3.05 Unavailability of Investigator:** If the Investigator is unable to respond to a Complaint directly or through delegation as set out in Section 3.04, a Municipal Party has the right to call in an alternate service provider. In that case, the Investigator shall not have any recourse against the Municipal Party for breach of this Agreement.

**3.06 Covenant to pay the Retainer:** Each Municipality agrees to pay the Retainer to the Investigator on an annual basis, during the Term, on or before January 31<sup>st</sup> of each year.

**3.07 Covenant to pay Fees and Expenses:** Each Municipal Party agrees to individually pay the Fees to the Investigator relating to any Complaint for that Party, and to reimburse the Investigator for any Expenses relating to any Complaint for that Party. The Investigator agrees that, to be eligible to receive reimbursement for an Expense, the receipt or invoice relating to that Expense will have to be surrendered to the paying Municipal Party. The Parties agree that Fees and Expenses relating to any particular Complaint are to be paid by the Municipal Party which is the subject matter of that Complaint, and that, despite the joint retainer, the Investigator will not hold any other Municipal Party responsible for payment of Fees and Expenses relating to Complaints.

Where the Investigator incurs expenses that relate to the administration of this Agreement as a whole and are not applicable to any particular Complaint, those expenses shall be shared equally by the Municipal Parties.

**3.08 Calculation of Fees:** The Investigator agrees that the Fee will be charged only for such time that he is actively investigating a Complaint and preparing and/or presenting his report with respect to that Complaint.

**3.09 Limiting Expenses:** The Investigator agrees that all investigations will, as much as is possible, be conducted without travel to the subject municipality, so as to limit the expenses relating to the Complaints.

**3.10 Timing:** The Investigator will invoice the Municipal Party which is the subject matter of a Complaint upon completion of his report related to that Complaint. Payment shall be due thirty (30) days after the date of delivery of the Invoice.

**3.11 Taxes:** All amounts payable to the Investigator shall be paid without deduction. If goods and services tax is applicable to any Fees or Expenses, the same are payable in addition to the Fee or Expense. The Investigator shall be responsible for any contributions imposed or required under employment insurance, health tax, social insurance, income tax laws, Worker's Compensation (if elected to enroll), or pension with respect to any amounts paid to the Investigator. The Municipal Parties assume no obligation or liability as between the Parties to this Agreement to deduct or remit any statutory or government remittances.

**3.12 Liability Insurance:** The Investigator agrees to place and at all times maintain general liability (for both bodily injury and property damage) insurance against claims for personal injury, death or damage to property arising out of any of the operations of the Investigator under this Agreement, or of any of the acts or omissions of the Investigator. This insurance shall be with a company or companies acceptable to the Municipal Parties and shall have a minimum inclusive limit of two million (\$2,000,000.00) dollars per occurrence. In addition, the Investigator agrees to place and at all times maintain automobile liability (for both bodily injury and property damage) insurance against claims for personal injury, death or damage to property arising out of any of the operations of the Investigator under this Agreement. This insurance shall be with a company or companies acceptable to the Municipal Parties and shall have a minimum inclusive limit of two million (\$2,000,000.00) dollars per occurrence.

**3.13 Insurance Documents:** The Investigator agrees, upon request, to provide to any Municipal Party which requests it either:

- (a) the insurance policies described in Section 3.12, or
- (b) the certificates of insurance relating to those policies.

**3.14 Indemnification:** The Investigator agrees that he shall at all times indemnify and save harmless the Municipal Parties from and against all claims and demands, by whomsoever made, which are occasioned by or attributable to the existence of this Agreement or any action taken or things done or maintained because of this Agreement, or the exercise of rights arising pursuant to this Agreement (excepting claims for damage resulting from the negligence of any officer, servant or agent of the Municipal Parties while acting within the scope of his or her duties or employment).

## **ARTICLE 4.00: OTHER COVENANTS, WARRANTIES & ACKNOWLEDGEMENTS**

**4.01**        **Laws & Rules:** The Investigator agrees to abide by all applicable Federal, Provincial, and/or Municipal or local Statutes, Regulations, and by-laws in providing the Services. Where any permits or licences are required, same shall be obtained by the Investigator.

**4.02**        **Joint Retainer:** The Investigator acknowledges that he is appointed as an investigator, as outlined in the *Municipal Act, 2001*, for each of the Municipal Parties.

**4.03**        **Additional Municipal Parties:** The Parties agree that other municipalities from within the Districts of Kenora, Rainy River and Thunder Bay, may join as Parties to this Agreement, becoming part of the collective group of Municipal Parties, in such numbers as the Investigator agrees in writing to accept. Such additional municipalities shall be subject to all conditions of this Agreement, and will, as condition of becoming a Municipal Party, sign a document in form and substance equivalent to that in Schedule "B" to this Agreement, and provide each current Party to this Agreement with a copy of that page as set out in Section 5.01. Any new Municipal Party shall pay the Retainer for the calendar year in which it joins, regardless of what point in the year that it joins. The City Clerk for The Corporation of the City of Thunder Bay will keep a current list of all Municipal Parties, available upon request of any Party.

**4.04**        **Communications by Electronic Mail:** The Parties agree that they may communicate with one another with respect to this Agreement by electronic transmission over the internet, but that they do so at their own risk with respect to inadvertent disclosure to third parties resulting from the use of that media. The Parties agree that no formal notice required by this Agreement shall be sent through electronic mail, but rather through regular mail or facsimile transmission as provided for in Section 5.01.

**4.05**        **Municipal Freedom of Information and Protection of Privacy Act:** The Parties acknowledge that this Agreement is a public document, and that this Agreement and the Services rendered under it are subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*. No Party shall be considered to have breached a requirement of confidentiality if disclosure is ordered by the Information and Privacy Commissioner in a procedure under that legislation. The Investigator agrees that the Municipal Party involved in any procedure under that legislation with respect to this Agreement or the Services shall have control of that procedure. The Investigator will co-operate in any and all such procedures, and abide by the orders of the Information and Privacy Commissioner that result, but the involved Municipal Party will make any decisions with respect to that procedure as it unfolds. Any expenses of the Investigator relating to any such procedure shall be reimbursed to the Investigator by the Municipal Party involved, and the Investigator may charge that Municipal Party a fee that does not exceed the amount of the Fees applicable to the Services, for his time spent in dealing with that procedure.

**4.06**        **Dispute Resolution:** Any Dispute that cannot be resolved by a manager from each Party involved shall be settled in accordance with this Section. The Party wishing to rectify the Dispute shall send the other Party written notice clearly identifying the Dispute, that Party's position with respect to the Dispute, and the remedy which the Party seeks. Any Party receiving such a notice shall refer it to a senior officer, who shall enter into good faith negotiations with senior officers of all Parties involved in the Dispute. If the Dispute has not been resolved within thirty (30) days of the original notice, any Party involved in the Dispute may avail itself of any process or means legally available to resolve the Dispute.

## **ARTICLE 5.00: MISCELLANEOUS**

**5.01            Notice:** Any notice to be given under this Agreement shall be sufficiently given if delivered by hand, or facsimile, or if sent by prepaid first class mail and addressed to the Investigator at:

Paul S. Heayn, A.M.C.T.  
41 Clearwater Crescent  
Dryden, Ontario P8N 3H8  
Telephone: (807) 223-6824

or to the Municipal Parties at the addresses and facsimile numbers set out in Schedule "A" (respecting Original Parties) or at the addresses and facsimile numbers set out on the signatory page provided by any Party who joins under Section 4.03 of this Agreement.

Receipt of notice shall be deemed on:

(a) the date of actual delivery of a hand delivered document; or  
(b) the business day next following the date of facsimile transmission; or  
(c) five (5) days following the date of mailing of the notice;  
whichever is applicable. Notice shall not be given by electronic mail. Notwithstanding Section 5.02, any Party may change its address for notice by giving notice of change of address pursuant to this Section.

**5.02            Amendments:** No supplement, amendment or waiver of or under this Agreement (apart from amendments to notice provisions of Section 5.01) shall be binding unless executed in writing by the Parties to be bound. No waiver by a Party of any provision of this Agreement shall be deemed to be a waiver of any other provision unless otherwise expressly provided.

**5.03            Entire Agreement:** This Agreement constitutes the entire agreement between the Parties with respect to the Services. It is agreed that there is no covenant, promise, agreement, condition precedent or subsequent, warranty or representation or understanding, whether oral or written, other than as set forth in this Agreement and this Agreement fully replaces and supersedes any letter, letter of intent, request for proposals, response to requests for proposals, or other contractual arrangement between the Parties related to the Services that may have been in existence at the time of execution and delivery of this Agreement.

**5.04            Force Majeure/Time:** Notwithstanding anything in this Agreement, no Party shall be in default with respect to the performance of any of the terms of this Agreement if any non-performance is due to any force majeure, strike, lock-out, labour dispute, civil commotion, war or similar event, invasion, the exercise of military power, act of God, government regulations or controls, inability to obtain any material or service, or any cause beyond the reasonable control of the Party (unless such lack of control results from a deficiency in financial resources). Otherwise, time shall be of the essence of this Agreement and all the obligations contained in it.

**5.05            Successors:** The rights and liabilities of the Parties shall enure to the benefit of and be binding upon the Parties and their respective successors and approved assignees.

**5.06            Partial Invalidity:** If any article, section, subsection, paragraph, clause or subclause or any of the words contained in this Agreement shall be held wholly or partially illegal, invalid or unenforceable by any court or tribunal of competent jurisdiction, the Parties agree that the remainder of this Agreement shall not be affected by the ruling, but shall remain in full force and effect.

**5.07            Relationship of Parties:** Nothing in this Agreement shall create any formal legal relationship between the Parties. It is specifically agreed that none of the Parties is a partner, joint venturer, agent, employee, employer, or trustee of any other Party. The Investigator is a contractor independent of the Municipal Parties.

**5.08** **Governing Law:** This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario.

**5.09** **Independent Legal Advice:** Each Party acknowledges that it has either received or waived the benefit of its own legal advice with respect to the execution of this Agreement.

**TO WITNESS**, the undersigned affixed their corporate seals attested by the hands of our properly authorized officers. By so executing this document, the officers warrant and certify that the municipal corporations for which they are signing are in good standing and duly incorporated and organized under the laws of the jurisdiction in which they are incorporated, and that the officers are authorized and empowered to bind the municipal corporation(s) to the terms of this Agreement by their signatures.

**THE CORPORATION OF THE TOWNSHIP OF ATIKOKAN**

*Cornia Brown* Mayor

*Angela Sharbot* Clerk

**THE CORPORATION OF THE TOWN OF FORT FRANCES**

*[Signature]* Mayor

*[Signature]* Clerk

**THE TOWNSHIP OF OLIVER PAIPOONGE**

*[Signature]* Mayor

*Margaret Dupuis* Clerk

**THE TOWNSHIP OF O'CONNOR**

*[Signature]* Mayor

*Lorna Beal* Clerk

**THE TOWNSHIP OF MACHIN**

*[Signature]* Mayor

*Sammy Pot* Clerk

(Signatures of Parties continue on next page)



THE CORPORATION OF THE CITY OF THUNDER BAY

Neil J. Hollis  
Mayor  
[Signature]  
Clerk

Signed before me this 5<sup>TH</sup> day of OCT.

2015

Carole Jarem  
Witness: CAROLE JAREM  
(Name printed beneath signature)

INVESTIGATOR

Paul S. Heayn  
Paul S. Heayn

Schedules:

- "A" Municipal Parties
- "B" Additional signatory page
- "C" Investigator's Procedure
- "D" Legislation excerpts

[Signature]  
CERTIFIED TRUE COPY

City Clerk

## SCHEDULE "A"

### Municipal Parties

The Corporation of the Township of Atikokan  
Attention: Clerk/Town Manager  
120 Mark Street  
Box 1330  
Atikokan, Ontario P0T 1C0  
Facsimile: 807-597-6186

The Corporation of the Town of Fort Frances  
Attention: Clerk  
320 Portage Avenue  
Fort Frances, Ontario P9A 3P9  
Facsimile: 807-274-8479

The Corporation of the City of Thunder Bay  
Attention: City Clerk  
500 Donald Street West  
Third Floor  
Thunder Bay, Ontario P7E 5V3  
Facsimile: 807-623-5468

The Township of Oliver Paipoonge  
Attention: CAO/Clerk  
P.O. Box 10,  
4569 Oliver Road,  
Murillo, Ontario P0T 2G0

The Corporation of the Township of O'Connor  
Attention: Deputy Clerk-Treasurer  
Township of O'Connor  
R.R. #1,  
Kakabeka Falls, ON P0T 1W0

The Corporation of the Municipality of Machin  
Attention: Clerk Treasurer  
Municipality of Machin  
P.O. Box 249, 75 Spruce Street  
Vermilion Bay, ON  
P0V 2V0

**SCHEDULE "B"**

**Additional Signatory Page**

[This page to be completed by any qualifying municipality who wishes to participate in this Agreement, and delivered to all other Parties in accordance with Section 5.01. Contact the City Clerk in Thunder Bay for information on the current list of Parties at any given time.]

The Corporation of the \_\_\_\_\_ of \_\_\_\_\_, (the "Municipality") by resolution dated \_\_\_\_\_(insert date), the text of which is appended (append resolution), agrees to become a "Municipal Party" as that term is defined within an agreement dated as of January 1, 2015, between several Northwest Ontario municipalities and Paul S. Heayn (the "Agreement").

The Municipality will become a party to the Agreement effective \_\_\_\_\_ (insert date) and will pay the Retainer to the Investigator within thirty (30) days of this date.

The Municipality has read the Agreement and agrees to be bound by all of its terms and conditions as if it were an Original Party, as that term is defined within the Agreement.

The Municipality has obtained the Investigator's written consent to become a party, as required by Section 4.03 of the Agreement.

Executed at \_\_\_\_\_ (insert location), Ontario this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

The Corporation of the \_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_  
Per: (insert name, title)

\_\_\_\_\_  
Per: (insert name, title)  
(We have the authority to bind  
this municipal corporation)

## SCHEDULE "C" Investigator's Procedures

- Receive Complaint (made in writing, in either English or French) by a person. Complaint should be on the relevant Municipal Party's "Complaint Intake Form" if one has been adopted.
- Receive current certified copy of Municipal Party's procedure by-law(s).
- Undertake Step One: Initial Review & Report as follows:
  - Interview the complainant
  - Review any actions taken by the complainant and/or the Municipal Party to resolve the matter without formal investigation
  - Satisfy the complainant, if possible, without further investigation
  - Assuming Complaint is withdrawn and/or complainant is satisfied, prepare/present report to Council with respect to the Initial Review and resolution.
- Undertake Step Two: Full Investigation & Report as follows:
  - Interview all members of the elected council of the Municipal Party which is subject to the Complaint, whether or not those members were present at each of: the open meeting at which the resolution to hold the closed meeting was passed; the closed meeting itself; and the subsequent open meeting, if any, which dealt with any matters which were discussed in closed session.
  - Interview all members of senior administration of the Municipal Party who were present at each of the meetings referenced above, and in addition, the Clerk-Treasurer or Chief Administrative Officer, or equivalent, whether or not he or she was in attendance at any of those meetings.
  - If the complainant involves the Ontario Ombudsman, and if it is warranted, the Municipal Party may be given a formal hearing opportunity pursuant to Section 18 of the *Ombudsman Act*.
  - Prepare a draft report that:
    - ❖ explains the nature and background of the reason the Complaint was filed;
    - ❖ explains the reason and facts of why the Municipal Party held the closed meeting; the general nature of its subject matter;
    - ❖ explains the actions on the part of the complainant that were undertaken (if any) to resolve the issues;
    - ❖ explains the actions on the part of the Municipal Party (if any) to resolve the issues;
    - ❖ outlines the facts of why the Municipal Party held the closed meeting;
    - ❖ presents an opinion as to whether or not the meeting which is the subject matter of the Complaint (or any part of that meeting) was closed to the public contrary to either the *Municipal Act, 2001* or the Municipal Party's procedure by-law;
    - ❖ supports the opinion noted above with clear reasons; and
    - ❖ makes any recommendations to resolve the Complaint, for future actions, or any other relevant recommendations.
  - Present the draft report to the council of the Municipal Party involved and receive feedback from that council (in the form of a resolution – not in the form of feedback from individual members of that council) regarding anything written in the draft report.
  - Finalize a final report, considering the input from the Municipal Party's council as noted above.
  - Deliver the final report to the Municipal Party's council, appearing before it if necessary or requested. [It will be the Municipal Party's obligation to make reports available to the public as provided in Subsection 239(10) of the *Municipal Act, 2001*.]
  - Recommend to the Municipal Party's council that a copy of the final report be sent to the complainant.

**SCHEDULE “D”**  
**Relevant Legislation Excerpts**

**Part One: Excerpts from the *Municipal Act, 2001***

223.13 (6) – Ombudsman – 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.

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

223.14 (2) – Opportunity to make representations – 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.

223.14 (3) – Application of *Ombudsman Act* – Section 19 of the *Ombudsman Act* applies to the exercise of powers and the performance of duties by the Ombudsman under this Part.

223.14 (4) – Same – For the purposes of subsection (3), references in section 19 of the *Ombudsman Act* to “any governmental organization”, “the *Freedom of Information and Protection of Privacy Act*” and “the *Public Service of Ontario Act, 2006*” are deemed to be references to “the municipality, a local board or a municipally-controlled corporation”, “the *Municipal Freedom of Information and Protection of Privacy Act*” and “this Act”, respectively.

223.15 (1) – Duty of confidentiality – 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.

223.15 (2) – Disclosure – 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.

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

223.16 – No review, etc. – 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.

223.17 (1) – Testimony – 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.

223.17 (2) – Same – 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.

223.18 – Effect on other rights, etc. – 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.

## **Part Two: Excerpts from the *Ombudsman Act*:**

18(1) - Proceedings of Ombudsman - Before investigating any matter, the Ombudsman shall inform the head of the governmental organization affected of his or her intention to make the investigation.

18(2) - Investigation to be in private - Every investigation by the Ombudsman under this Act shall be conducted in private.

18(3) - Where hearing necessary - 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 any governmental organization or person, the Ombudsman shall give to that organization or person an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel.

18(4) - May consult minister - The Ombudsman may in his or her discretion, at any time during or after any investigation, consult any minister who is concerned in the matter of the investigation.

18(5) - Must consult minister - On the request of any minister in relation to any investigation, or in any case where any investigation relates to any recommendation made to a minister, the Ombudsman shall consult that minister after making the investigation and before forming a final opinion on any of the matters referred to in subsection 21(1) or (2).

18(6) - Breach of duty or misconduct - If, during or after an investigation, the Ombudsman is of opinion that there is evidence of a breach of duty or of misconduct on the part of any officer or employee of any governmental organization, the Ombudsman may refer the matter to the appropriate authority.

19. (1) – Evidence - The Ombudsman may from time to time require any officer, employee or member of any governmental organization 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.

19(2) - Examination under oath -- 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 governmental organization 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.

19(3) - Secrecy - Subject to subsection (4), no person who is bound by the provisions of any Act, other than the *Public Service Act*, 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.

19(3.1) - Providing personal information despite privacy Acts - A person who is subject to the *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).

19 (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.

19(5) - Privileges - 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.

19(6) - Protection - 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.

19(7) - Right to object to answer - 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.

19(8) - Prosecution - 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.

19(9) - Fees - 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.

...

21(1) - Procedure after investigation - This section applies in every case where, after making an investigation under this Act, the Ombudsman is of opinion that the decision, recommendation, act or omission which was the subject-matter of the investigation,

- (a) appears to have been contrary to law;
- (b) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;
- (c) was based wholly or partly on a mistake of law or fact; or
- (d) was wrong.

21(2) - Idem - This section also applies in any case where the Ombudsman is of opinion that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.