

REPORT ON CLOSED MEETING INVESTIGATION – 2020-01

THE CORPORATION OF THE MUNICIPALITY OF WAWA

Laura Dean

Aird & Berlis LLP

July 7, 2020

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INTRODUCTION

A complaint was filed with our office on February 26, 2020 (the “Complaint”) in our capacity as closed meeting investigator (“Investigator”) alleging that the Council of The Corporation of the Municipality of Wawa (the “Municipality”) and the Executive Committee of the Municipality contravened section 239 of the *Municipal Act, 2001*¹ and/or the Municipality’s Procedure By-law No. 2462-11 (the “Procedure By-law”).

Specifically, the Complaint asserts that:

- a meeting of Council held on January 31, 2019 for the purposes of council orientation was improperly held in a closed session, in contravention of section 239 of the *Municipal Act, 2001* and/or the Municipality’s Procedure By-law; and
- meetings of the Municipality’s Executive Committee are habitually held in closed session, in contravention of section 239 of the *Municipal Act, 2001* and/or the Municipality’s Procedure By-law.

CLOSED MEETING INVESTIGATOR – AUTHORITY & JURISDICTION

The Municipality enacted By-law No. 3263-20 on January 7, 2020, appointing Local Authority Services Inc. (“LAS”) as its Investigator pursuant to section 239.1 of the *Municipal Act, 2001*. LAS has delegated to Aird & Berlis LLP its authority to act as the Investigator for the Municipality.

Our jurisdiction as Investigator is set out in section 239.2 of the *Municipal Act, 2001* wherein we are authorized to investigate, in an independent manner, a complaint made by any person to determine whether the Municipality has complied with section 239 of the *Municipal Act, 2001* or its Procedure By-law enacted 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 to Council, together with any recommendations as may be applicable.

THE COMPLAINT

The Complaint was properly filed pursuant to section 239.2 of the *Municipal Act, 2001*.

The Complaint originally asserted three (3) distinct contraventions by the Municipality. We contacted the complainant with respect to the third matter set out in the Complaint and requested additional information to allow us to properly consider whether an investigation was warranted with respect to that aspect. The complainant indicated that they did not, at the time, have additional information and we provided notice that we would not investigate that allegation of the Complaint without prejudice to the complainant’s ability to bring forward additional evidence at a later date.

¹ S.O. 2001, c. 25, as amended.

Therefore, the Complaint alleges that the Municipality acted in contravention of its legislative obligations under section 239 of the *Municipal Act, 2001* or pursuant to the Procedure By-law in respect of two matters: (1) when it held a closed meeting on January 31, 2019 for the purposes of council orientation; and (2) when its Executive Committee routinely meets in a closed session.

ISSUES

We have investigated and proceeded to review the following issues:

Issue 1:

1. Was the meeting of Council held on January 31, 2019 for the purposes of council orientation improperly held in closed session, in contravention of section 239 of the *Municipal Act, 2001* and/or the Municipality's Procedure By-law?

Issue 2:

2. Are the meetings of the Municipality's Executive Committee habitually held in closed session, in contravention of section 239 of the *Municipal Act, 2001* and/or the Municipality's Procedure By-law?

INVESTIGATION

In order to assess the allegations set out in the Complaint and make a determination with respect to the issues, we have reviewed the following materials, in addition to the applicable law, as set out below:

- the Complaint;
- the Procedure By-law;
- the Municipality's Notice By-law (By-law No.2641-13);
- the agenda and presentations for the training session held on January 31, 2019;
- RC19017 Appointment of Committees/Boards 2018-2021 and list of Committees/Boards;
- the agendas and minutes for the regular meetings of Council referencing the Executive Committee; and
- such applicable secondary source materials, including other closed meeting investigation reports, that we believed to be pertinent to the issues at hand.

Additionally, we interviewed the Municipality's Clerk who was in attendance at the closed meeting on January 31, 2019 and who is familiar with the activities of the Executive Committee. We also interviewed the Mayor, Deputy Mayor, a Council member and three senior staff members.

The Municipality was fully cooperative with respect to the conduct of our investigation.

This is a report on the investigation of the Complaint made in accordance with subsection 239.2(10) of the *Municipal Act, 2001*.

APPLICABLE LAW

(a) *Municipal Act, 2001*²

Ontario's "open meeting rule" is set out in subsection 239(1) of the *Municipal Act, 2001*, which provides that all meetings of a municipal council are to be open to the public, unless excepted:

Meetings open to public

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

The term "meeting" is defined in subsection 238(2) of the *Municipal Act, 2001* as follows:

"meeting" means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

- (a) a quorum of members is present, and
- (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

In the Municipality, "quorum" means a majority of the members of Council or a majority of the members of a committee.³

Based on the above, all council or committee meetings, unless they deal with a subject matter falling within a specific exception, are required to be held in a public forum.

The exception that is relevant to this matter is set out in subsection 239(3.1) as follows:

Educational or training sessions

239 (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.

² A complete list of statutory provisions setting out the closed meeting requirements and the authority of a closed meeting investigator pursuant to the *Municipal Act, 2001* is provided in the Appendix to this report.

³ This meaning accords with how the term "quorum" is set out in s. 237(1) of the *Municipal Act, 2001*.

(b) Procedure By-law

Policy No. GG-003: Proceedings of Council and Committees is incorporated by reference into the Procedure By-law.

Section 3.0.0 of the Policy provides that “In-Camera shall refer to a Meeting of the Council of the Corporation of the Municipality of Wawa closed to the Public to discuss certain items and subject matters as set out in this policy.”

Section 12.0.0 of the Policy provides that “Meeting means any Regular, Special, Committee or other Meeting of Council, Committee, or Local Board.”

The following provisions of the Policy are relevant to the Complaint:

1.0.0 Council Meetings

1.1.0 Meetings of Council

1.1.1 Notice of all meetings shall be given through the availability of meeting agendas, this by-law, and the municipal website.

...

1.6.0 Regular Council Meeting Agenda

1.6.2 The Clerk shall make available electronically, an Agenda and a copy of all applicable reports, Motions or items on the Agenda to each Member at least three (3) days prior to the Meeting at which same are to be considered.

...

1.7.0 Quorum

1.7.1 A quorum of Council shall be a majority of the total Members (5) thereof that is three (3) Members, unless a two-thirds majority shall be required by statute or by-law.

1.7.2 A quorum of any of the Committees appointed by Council shall be a majority of its Members.

...

1.15.0 Open Meetings of Council

1.15.1 Except as provided in this section, all meetings shall be open to the public.

...

1.16.0 In-Camera (Closed) Portion of Meetings of Council

1.16.1 Any portion of a Council Meeting that proceeds to an “In-Camera” or Closed session shall be considered a separate meeting. “In-Camera” Meetings shall be held and conducted under the process as dictated in this policy and according to the *Municipal Act, 2001*.

1.16.2 The Minutes of an Open Meeting of the Council shall record the movement to an In-Camera session but not the deliberations.

...

1.20.0 **Account of Proceedings**

1.20.1 The Clerk shall keep a full and correct record of the proceedings of every Meeting and ensure that the Minutes when confirmed are signed by the Mayor or Presiding Member and the Clerk.

1.20.2 A separate Agenda and Minutes must be maintained for In-Camera meetings.

...

3.8.0 **Public Access to Committee Meetings**

3.8.1 Committees of the Corporation, as appointed through by-law, shall generally be governed by the contents and direction of this procedural bylaw. Such governance shall strictly include applicability to the sections respecting “open” and “closed” meetings.

...

3.9.1.1 **Committee Procedures**

...

3.9.14 All Committee Meetings of the Council shall be open to the public except as identified in Section 3.8.1.

FINDINGS

1. Was the meeting held on January 31, 2019 for the purposes of council orientation improperly held in closed session, in contravention of section 239 of the *Municipal Act, 2001* and/or the Municipality’s Procedure By-law?

On March 31, 2020, we provided notice of the commencement of this investigation to the Clerk of the Municipality. The notice set out the details of the Complaint and requested various documents.

On April 9, 2020, we received a response from the Clerk which included the requested documentation. The response also stated the following:

In the interest of transparency and efficiency, I advise that the meeting held on January 31, 2019, was a meeting of members of Council and staff for the purposes of receiving an orientation into the services of the Municipality and was not called properly nor in accordance with the Act. Although the meeting was listed on the public agenda of the Council Meeting held January 22, 2019, additional notice was not properly provided.

The meeting was closed and the requisite preliminary notice and resolution was not given. The Municipality has since learned that to do so was improper and going forward we will ensure that proper notice and required meeting procedures are followed. The business of the municipality was not advanced at the January 31st meeting, rather it was a session for the purpose of educating new Councillors on the operations of the Municipality. Nevertheless, we acknowledge that the meeting was not called in accordance with the Act.

2. Are the meetings of the Municipality's Executive Committee habitually held in closed session in contravention of section 239 of the *Municipal Act, 2001* and/or the Municipality's Procedure By-law?

As part of our investigation, we reviewed the Municipality's Resolution No. RC19017 appointing members of Council to various boards and committees for 2018-2022.⁴ The list of boards and committees attached to the resolution does not include an Executive Committee. In reviewing various minutes and reports from Council meetings for this term of Council, however, we noted a number of references to meetings and discussions with the Executive Committee.⁵

We note that the Municipality has had a formal Executive Committee in the past. On November 20, 2012 the Municipality established an Executive Committee through Resolution No. RC12255.⁶ As set out in the resolution, the Executive Committee was established in response to the resignation of the CAO/Clerk-Treasurer which was effective December 7, 2012. As set out in the resolution, the Executive Committee was to be made up of two members of Council. The primary role of the Executive Committee was to receive weekly updates and progress reports from the Municipal Management Team.

The Executive Committee was dissolved on June 3, 2014 by Resolution No. RC14144 following the hiring of a new CAO/Clerk-Treasurer.

We were unable to locate any agendas or minutes from meetings of the Executive Committee during its formal existence from November 20, 2012 to June 3, 2014. Activities of the Executive Committee are, however, referenced in minutes from meetings of Council and other committees. The Executive Committee also appears to have provided occasional reports to Council.⁷

From the interviews we conducted, we ascertained that "Executive Committee"⁸ is a term that is sometimes used in the Municipality during the current term of Council to refer to the group comprised of the Mayor, Deputy Mayor, CAO and sometimes the Clerk. It appears that the use of this term may be a holdover from when the Executive Committee formally existed. The "Executive Committee" met on a fairly regular basis starting in March 2019, following the hiring of the Municipality's new CAO. We understand that the purpose of these meetings was to provide orientation to the CAO regarding her new appointment. These meetings appear to have naturally decreased in frequency as the CAO's familiarity with the Municipality increased. No agendas or formal minutes were created as part of these meetings.

It is our further understanding that the Mayor and Deputy Mayor will occasionally meet with staff to discuss departmental initiatives and to review items for the Council agenda. These discussions are sometimes referred to as meetings with the "Executive Committee".

⁴ Municipality of Wawa, [Resolution No. RC19017](#)

⁵ See for example: [Special Council Meeting Minutes, June 25, 2019](#)
[Corporate Planning Committee Meeting Minutes, September 3, 2019](#)
[Corporate Planning Committee Meeting Minutes, September 17, 2019](#)

⁶ Municipality of Wawa, [Resolution No. RC12255](#)

⁷ See for example: Office of the Executive Committee, Monthly Report [EC 2013-001](#)

⁸ The term "Executive Committee" in quotations will be used in this report to refer to this group during the current term of Council.

We understand that the term “Executive Committee” was causing some confusion in the Municipality and is no longer used. This accords with our observation that there is no reference to the Executive Committee in any meeting minutes after September 17, 2019.

CONCLUSIONS

Issue 1 – Closed Meeting re Council Orientation

Based on the foregoing, we find that the Municipality:

1. did not state by resolution the fact of holding the closed meeting, the general nature of its subject matter and that it was to be closed under subsection 239(3.1) as required pursuant to clause 239(4)(a) of the *Municipal Act, 2001*;
2. did not record the proceedings of the meeting as required pursuant to subsections 239(7) and (8) of the *Municipal Act, 2001*; and
3. failed to comply with a number of provisions of its Procedure By-law including sections 1.1.1 (notice of meeting); 1.16.1 (conduct of in-camera meetings); 1.16.2 (minutes of in-camera meetings); 1.20.1 (record of proceedings); and 1.20.2 (agenda and minutes for in-camera meetings).

As such, the meeting of Council on January 31, 2019 was not held in accordance with the *Municipal Act, 2001* or the Procedure By-law.

As a technical observation, we note that the January 31, 2019 meeting was listed under the “Other Business” section in the minutes for the January 22, 2019 regular meeting of Council. According to section 1.13.1(d) of the Procedure By-law, however, notification to the public of upcoming meetings should have properly been listed under the “Announcement, Giving of Notice and Schedule of Meetings” section. In any event, notice of the meeting was not provided through the municipal website or a meeting agenda as required by the Procedure By-law.

Based on our review of the materials that were provided to Council at the January 31, 2019 meeting as well as our interviews with individuals who were in attendance at the meeting, we are satisfied that the meeting was held for the purpose of educating or training Council members. We have no reason to believe that during that meeting, any member of Council discussed or otherwise dealt with any matter in a way that materially advanced the business or decision-making of Council.

We acknowledge and appreciate the Clerk’s admission that the meeting held on January 31, 2019 was not conducted in accordance with the *Municipal Act, 2001* or the Procedure By-law.

Issue 2 – Meetings of “Executive Committee”

We also conclude that meetings of the “Executive Committee” during the current Council term did not violate the requirements of the *Municipal Act, 2001* or the Procedure By-law. In our opinion, it is unfortunate that the term “Executive Committee” has been used to describe the assemblage consisting of the Mayor, Deputy Mayor, CAO and sometimes the Clerk.

The “Executive Committee” had and has no official status as a formal “committee”. The group was not established by resolution of Council and its meetings appeared to be ad hoc and informal. Referring to this group as the “Executive Committee” clearly caused confusion within the Municipality especially in light of the fact that an officially constituted Executive Committee previously existed.

Based on our investigation, we are satisfied that:

1. no more than two (2) members of Council were ever present at any meetings of the “Executive Committee” and, therefore, a quorum of Council was never achieved; and
2. based on our finding that no quorum was achieved at meetings of the “Executive Committee”, it is not necessary for us to consider whether the “Executive Committee” discussed or dealt with matters in a way that materially advanced the business or decision-making of Council.

Based on the above, we have found that meetings of the “Executive Committee” would not satisfy the definition of “meeting” set out in subsection 238(1) of the *Municipal Act, 2001*. As a result, we are unable to find that meetings of the “Executive Committee” were in contravention of the statute.

It is our opinion, however, that meetings of the Executive Committee as it existed between November 20, 2012 to June 3, 2014 may not have been held in accordance with the *Municipal Act, 2001* and the Procedure By-law. As a formal committee, constituted by resolution of Council, the Executive Committee should have been subject to the requirements of the *Municipal Act, 2001* and the Procedure By-law as they relate to the holding of meetings.

Based on our investigation, it appears that the Executive Committee:

1. would have achieved quorum every time its two (2) members met; and
2. may have been regularly discussing or otherwise dealing with matters in a way that may have materially advanced the business or decision-making of the Executive Committee or Council.

The Executive Committee was made up of two (2) members of Council. Therefore, every time those Councillors met as the Executive Committee, a quorum of members of that committee would have been achieved. We have reviewed minutes from meetings of the Corporate Planning Committee which reference the activities of the Executive Committee.⁹ Based on our review of these minutes, it could be reasonably perceived that the Executive Committee was materially advancing the business or decision-making of Council.

⁹ See for example:

[Corporate Planning Committee Meeting Minutes, October 8, 2013, Item 6.2](#): “Chair Morrison-Smith reported that the intent at that time was for the Executive Committee to bring priorities back to council so a discussion can be continued; possibly by November 20, 2013 a report can be accepted as there are many challenges and decisions to be made”.

[Corporate Planning Committee Meeting Minutes, April 22, 2014, Item 7.2](#): “Executive Committee direct the Treasurer to increase tax levy 1% - 1.5% and reduce discretionary spending by 7.5%”.

[Corporate Planning Committee Meeting Minutes, May 14, 2013, Item 6.1](#): “The Executive Committee instructed staff to close the Marina boat launch and have a professional assess the site...”.

It does not appear to us that any of the meetings of the Executive Committee were open to the public and, as previously noted, there are no meeting minutes or agendas for those meetings.

Given the lack of meeting minutes and the passage of time since the Executive Committee existed, we are unable to conclude with absolute certainty that it contravened the requirements of the *Municipal Act, 2001* and the Procedure By-law but it appears to us to be more likely than not that it did contravene these requirements.

We recognize that the only substantive difference between the Executive Committee and the “Executive Committee” is that the latter lacks formal status. If it had been formally constituted, it would comprise a “committee” as defined by the *Municipal Act, 2001* and it would be subject to the open meeting rule. As long as a quorum of Council members is never achieved at meetings of the “Executive Committee”, its lack of formal committee status permits it to function without the need to comply with the open meeting requirements of the *Municipal Act, 2001* and the Procedure By-law. While we have determined that the “Executive Committee” is not in technical contravention of the open meeting rule, we would caution the Mayor and Deputy Mayor that continuing a once-formal committee as an informal or quasi-committee does not accord with the concept of accountability and transparency that is generally required of municipal government.

RECOMMENDATIONS

1. Based on the Clerk’s recognition that the Municipality did not comply with the requirements of the *Municipal Act, 2001* and the Procedure By-law with respect to the meeting of Council on January 31, 2019, we are satisfied that the Municipality now understands its obligations as they relate to public notice and the conduct of closed meetings. We recommend that the Clerk regularly consult the Procedure By-law to ensure these obligations remain top of mind and that Council is reminded of its legislative obligations thereunder.
2. In terms of meetings of the “Executive Committee”, we recommend that the Municipality ceases to use this term unless it passes a resolution to formally constitute a proper committee. The use of this term has clearly caused confusion within the Municipality as it raises questions regarding the role and function of the group and the need to comply with the requirements under the *Municipal Act, 2001* and the Procedure By-law with respect to meetings.
3. If the “Executive Committee” is ever formally constituted by resolution in the future, we remind the Municipality that its meetings are required to follow the Procedure By-law and the requirements set out in section 239 of the *Municipal Act, 2001*.
4. We would remind the Mayor and members of Council that only a quorum of Council is authorized to make decisions and materially advance the business of the Municipality and would request that they consider why perceptions regarding the activities and operation of the “Executive Committee” may have given rise to the Complaint.

We provided a draft of this final report to each of the Municipality and the Complainant. Certain revisions have been made to this final report to address some of the comments that were received.

This report has been prepared for and is forwarded to the Council of the Municipality.

Subsection 239.2(11) of the *Municipal Act, 2001* provides that this report is to be made public and subsection 239.1(12) provides that Council is to pass a resolution stating how it intends to address this report.

AIRD & BERLIS LLP

A handwritten signature in blue ink, appearing to read "Laura Dean". The signature is fluid and cursive, with a large initial "L" and a stylized "D".

Laura Dean

Closed Meeting Investigator for
The Corporation of the Municipality of Wawa

APPENDIX

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

Procedure by-law

Definitions

238 (1) In this section and in sections 239 to 239.2,

“committee” means any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards;

...

“meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

- (a) a quorum of members is present, and
- (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

Procedure by-laws respecting meetings

(2) Every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings

Notice

(2.1) The procedure by-law shall provide for public notice of meetings.

...

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). ;

Investigation

239.1 A person may request that an investigation of whether a municipality or 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 be undertaken,

- (a) by an investigator referred to in subsection 239.2 (1); or
- (b) by the Ombudsman appointed under the *Ombudsman Act*, if the municipality has not appointed an investigator referred to in subsection 239.2 (1).

Investigator

239.2 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an investigator who has the function to investigate in an independent manner, on a complaint made to him or her by any person, 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.

Powers and duties

(2) Subject to this section, in carrying out his or her functions under subsection (1), the investigator may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality.

Matters to which municipality is to have regard

(3) In appointing an investigator and in assigning powers and duties to him or her, the municipality shall have regard to, among other matters, the importance of the matters listed in subsection (5).

Same, investigator

(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.

Status

(8) An investigator is not required to be a municipal employee.

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.

Report and recommendations

(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.

Requirement to pass resolution re report

(12) If a municipality or a local board receives a report from a person referred to in clause 239.1 (a) or (b) reporting his or her opinion, and the reasons for it, that a meeting or part of a meeting that was the subject-matter of an investigation by that person appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the municipality or the local board, as the case may be, shall pass a resolution stating how it intends to address the report.

...

Powers paramount

223.13 (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.

...

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.”

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.

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