



THE CORPORATION OF THE CITY OF BRAMPTON

BY-LAW

Number 405-2007

A By-law to amend Procedure By-law 160-2004,
as amended

WHEREAS By-law 160-2004 provides rules governing the order and proceedings of the council and committees of the council of The Corporation of the City of Brampton;

AND WHEREAS, pursuant to City Council ^{recommendation} Resolution CW551-2007 approved by City Council on December 12, 2007, it is deemed appropriate to amend By-law 160-2004;

NOW THEREFORE the Council of The Corporation of the City of Brampton ENACTS as follows:


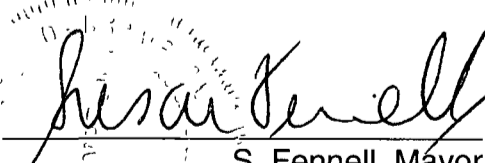
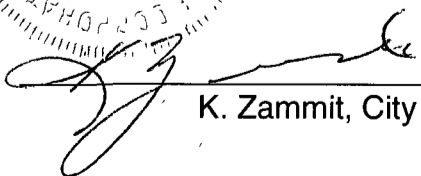
That By-law 160-2004 is hereby amended as follows:

1. To amend Section 2.9 Closed Session, to add the following:
 - (16) Any request from a person for an investigation, under the Municipal Act, of whether a Council or Committee meeting or part of a meeting, that was closed to the public, has complied with the relevant provisions of the Municipal Act or this procedure by-law, shall be referred by the Clerk to the Investigator appointed by Council for that purpose

Read a first, second and third time passed this 12th day of December, 2007.


 Approved as to content
 K. Zammit, Director
 Council and Administrative Services
 Management and Administrative Services Department

Approved as to form.
 07/12/12
 WCC



 S. Fennell, Mayor

 K. Zammit, City Clerk



Corporate Services Department

Date: January 30, 2008

To: Kathy Zammit

From: Susan Doyle

Subject: **Agreement Re: Municipal Investigator**

Please find attached an original fully executed copy of the Agreement Re: Municipal Investigator for your records.

A handwritten signature in black ink, appearing to read 'Susan Doyle'.

Susan Doyle
Legal Assistant
Corporate Services Department
(Ext. 2685)
Attachment

*ack
original to
Mary Carr.*

AGREEMENT RE: MUNICIPAL INVESTIGATOR

DATED January 10 , 2008

BETWEEN:

THE CORPORATION OF THE CITY OF BRAMPTON
(hereinafter referred to as the "Municipality")

-and-

ANDREW SANCTON
(hereinafter called the "Independent Contractor")

WHEREAS:

- (A) section 239.2 of the *Municipal Act, 2001*, S.O. 2001, c.25 (the "Act"), when proclaimed in force, authorizes the Municipality to appoint an investigator to investigate in an independent manner any complaint as to whether the Municipality or a local board of the Municipality has complied with the Act or a procedure by-law in respect of a meeting or part of a meeting that was closed to the public and to report on the investigation;
- (B) in appointing an investigator and in assigning powers and duties to him, 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;
 - c. the creditability of the investigator's investigative process;
- (C) the Municipality is satisfied that the Independent Contractor has the skills and ability to meet the foregoing criteria;

NOW THEREFORE the parties agree as follows:

1. Services - The Municipality hereby retains and appoints the Independent Contractor as an investigator for the purposes of Section 239.2 (1) of the *Act* and the Independent Contractor agrees to provide such services for the Municipality and its local boards and accepts such appointment.
2. Duties - The duties of the Independent Contractor shall be:
 - (i) to conduct investigations from time to time upon receipt of a complaint (a "Complaint") in respect of meetings or part of meetings that are closed to the public to determine compliance with the Act or a procedure by-law and to report on the results of such investigations;
 - (ii) in conducting such investigations, to have regard to the importance of the matters listed above in recital (B);

- (iii) to proceed without undue delay and with due diligence to investigate a Complaint;
- (iv) to conduct each investigation in private;
- (v) to hear or obtain information from such persons as the Independent Contractor thinks fit and to make such inquiries as he thinks fit;
- (vi) to provide an opportunity to the Municipality or any person that may be adversely affected by a proposed report of the Independent Contractor, the opportunity to make representations respecting such report or recommendation;
- (vii) to preserve confidentiality and secrecy with respect to all matters that come to his knowledge in the course of performing duties hereunder, save and except disclosure of such matters as in the Independent Contractor's opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations;
- (viii) after making an investigation, the Independent Contractor shall render his findings and opinion as to whether or not 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 the Act or procedure by-law and, in either case, the Investigator shall report his findings and opinion and the reasons for it to the Municipality or local board and shall make such recommendations as he thinks fit.

In performing such duties, the Independent Contractor shall have the powers set out in Subsection 223.13 (6) and Sections 223.14 to 223.18 of the Act, copies of which are attached hereto as Schedule "A".

3. Fees

- (a) Annual Retainer – The Municipality shall pay to the Independent Contractor on or before the commencement date SIX HUNDRED DOLLARS (\$600.00) plus applicable taxes as a retainer.
- (b) Investigation Fee - In addition, the Independent Contractor shall be paid a daily investigation fee of ONE THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$1,250.00) plus applicable taxes during such time the Independent Contractor is performing his duties hereunder. The daily investigation fee is based on a working day of eight hours. The Independent Contractor agrees such rate shall be charged only for such time that the Independent Contractor is actively investigating a Complaint and preparing and presenting his report with respect thereto. The Independent Contractor agrees to bill daily investigation fees in hourly increments where appropriate. The Independent Contractor is entitled to be reimbursed for other reasonable receipted expenses related to his duties, including, but not limited to any costs associated with transportation expenses, meals, report preparation including translation costs where appropriate, and out-of-pocket administrative costs.

(c) The Independent Contractor shall invoice the Municipality upon completion of his report.

4. Term - The term of this Agreement (the "Term") is for a fixed one (1) year term commencing the effective date of the proclamation by the Lieutenant Governor amending the Act by adding Sections 239.1 and 239.2 (the "commencement date") and ending on the first anniversary date thereof unless renewed and/or extended by agreement of all the parties. The Independent Contractor shall give at least 30 days written notice prior to the end of the Term of his intent not to renew this Agreement if such renewal were to be available. This agreement may be terminated by either party on 90 days written notice to the other.
5. Taxes - All amounts payable to the Independent Contractor shall be paid without deduction. The Independent Contractor 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 enrol), pension with respect to any amounts paid to the Independent Contractor. The Municipality assumes no obligation or liability as between the parties to this Agreement to deduct or remit any statutory or government remittances.
6. Independent Contractor - The Independent Contractor is a contractor independent of the Municipality. Nothing herein shall be interpreted to create a relationship of employer/employee, partnership, franchise, agency or joint venture or other like arrangement.
7. Delegation
 - (a) In the event more than one Complaint is made at any one time requiring more than one investigation, and the Independent Contractor determines it to be necessary to delegate some or all of his powers and duties, then he may do so in writing to any person other than a member of council, provided that the person to whom such delegation is made agrees in writing to be governed by the same duties of secrecy as the Independent Contractor and to abide by the terms and conditions of this Agreement. Such person shall always be under the supervision and direction of the Independent Contractor. Such delegation shall not be to a member of council of any Municipality and shall not result in any additional costs or fees to the Municipality. In the event that the Independent Contractor is not available to carry out an investigation for any reason and proposes to delegate all of his powers and duties with respect to that investigation, the delegation shall be to one of the persons listed in clause 7(b). Invoices shall be rendered by the Independent Contractor and payments made to the Independent Contractor and the Independent Contractor shall otherwise be responsible for the fees and disbursements of any his delegates.

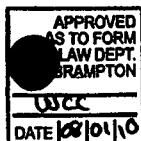
(b) Notwithstanding clause (a) of this paragraph, where the Independent Contractor is advised that the subject matter that was considered at a closed meeting is advice that is subject to solicitor-client privilege, including communications for that purpose. The Independent Contractor agrees to delegate the investigation to one of the following solicitors:

- Bruce Banting, Barrister & Solicitor, 20 Henrietta Street, St. Catharines ON L2S 2M6
- Kelly Yerxa, O'Connor MacLeod Hanna LLP, 700 Kerr Street, Oakville ON L6K 3W5

(c) The Independent Contractor shall advise the Municipal Clerk of the name of the delegate and the Municipality shall be responsible for the fees and disbursements of the delegate.

8. Complaint Intake and Investigation Process – The complaint intake and investigation process is set out in Schedule B to this agreement.
9. Binding - This Agreement shall ensure to the benefit of and bind the parties and their respective heirs, successors and permitted assigns.
10. Indemnification - Each Party to this Agreement agrees to indemnify and save harmless the other (hereinafter referred to as the "Innocent Party") from and against all liabilities, losses, suits, claims, demands, damages, expenses, costs (including all legal costs), fines and actions of any kind or nature whatsoever or which may be incurred, sustained or paid by the Innocent Party in consequence of the defaulting Party's (or their Delegate's) wilful misconduct, negligence, bad faith, non-performance or breach of any of the terms, conditions, representations, warranties, covenants or any provision under this agreement, provided that the Innocent Party shall give prompt written notice of any such liabilities, losses, suits, claims, demands, damages, expenses, costs (including all legal costs), fines and actions of any kind or nature, to the defaulting Party.
10. Entire Agreement - This Agreement contains the entire agreement between the parties and supersedes all previous negotiations, understandings and agreements, verbal or written with respect to any matters referred to in this agreement.

IN WITNESS HEREOF each of the parties hereto have set its hand and seal as of this 10th day of January, 2008.

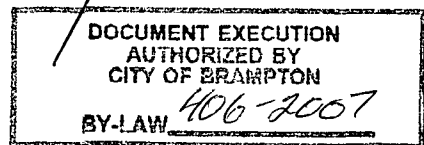


SIGNED, SEALED & DELIVERED

THE CORPORATION OF THE CITY OF BRAMPTON


By: *Susan Fennell*
SUSAN FENNELL Mayor

By: *K. Zammit*
K. ZAMMIT Clerk




The Independent Contractor hereby accepts and agrees to the terms and conditions herein contained.

DATED: January 28, 2008



WITNESS



ANDREW SANCTON

SCHEDULE "A"

To

Agreement re Municipal Investigator

239.2 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. 2006, c. 32, Sched. A, s. 104.

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. 2006, c. 32, Sched. A, s. 104.

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). 2006, c. 32, Sched. A, s. 104.

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). 2006, c. 32, Sched. A, s. 104.

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. 2006, c. 32, Sched. A, s. 104.

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. 2006, c. 32, Sched. A, s. 104.

Same

(7) An investigator may continue to exercise the delegated powers and duties, despite the delegation. 2006, c. 32, Sched. A, s. 104.

Status

(8) An investigator is not required to be a municipal employee. 2006, c. 32, Sched. A, s. 104.

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. 2006, c. 32, Sched. A, s. 104.

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. 2006, c. 32, Sched. A, s. 104.

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. 2006, c. 32, Sched. A, s. 104.

See: 2006, c. 32, Sched. A, ss. 104, 192 (2).

Section 223.13

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. 2006, c. 32, Sched. A, s. 98.

Investigation

223.14 (1) Every investigation by the Ombudsman shall be conducted in private. 2006, c. 32, Sched. A, s. 98.

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. 2006, c. 32, Sched. A, s. 98.

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. 2006, c. 32, Sched. A, s. 98.

Same

(4) 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. 2006, c. 32, Sched. A, s. 98; 2006, c. 35, Sched. C, s. 134 (3).

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. 2006, c. 32, Sched. A, s. 98.

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. 2006, c. 32, Sched. A, s. 98.

Section prevails

(3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*. 2006, c. 32, Sched. A, s. 98.

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. 2006, c. 32, Sched. A, s. 98.

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. 2006, c. 32, Sched. A, s. 98.

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. 2006, c. 32, Sched. A, s. 98.

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. 2006, c. 32, Sched. A, s. 98.

SCHEDULE "B"
To
Agreement re Municipal Investigator

Complaint Intake and Investigation Process

- | | |
|---|---|
| Role of the Investigator | 1. The role of the Investigator is to enhance the openness, transparency and accountability of City Council and local boards and its committees. Any uncertainty or ambiguity in the process outlined in this protocol is to be resolved in a way that will advance this role. |
| Review Request | 2. An individual, who has grounds to believe that a meeting or part of a meeting of Council or local board, or its committees has not been conducted in accordance with the <i>Municipal Act, 2001</i> or the applicable procedure by-law, may request an investigation. |
| Investigation Request | <p>3. The investigation request must be in writing and must set out the grounds for why the person believes the meeting has not been conducted in accordance with the <i>Municipal Act, 2001</i> or the applicable procedure by-law.</p> <p>4. A complaint shall include the date of the meeting, disputed grounds on which a closed meeting was called and the circumstances of the request.</p> <p>5. All requests must be signed by an identifiable individual (which includes the authorized signing officer of an organization) and include the name, mailing address, and a contact telephone number for the individual.</p> <p>6. The request shall be accompanied by the appropriate fee, payable by cheque to the City of Brampton, or by credit card or debit if filed in person.</p> |
| File with City Clerk | 7. The request must be filed with the City Clerk who will record the receipt of the request in a log and forward the request to the Investigator. |
| Jurisdiction | <p>8. Where appropriate, the Investigator will determine if the request is within the Investigator's scope of authority.</p> <p>9. The Investigator will advise the individual if a request is not within the Investigator's scope of authority.</p> |
| When the Investigator will not Conduct an Investigation | 10. If the Investigator is of the opinion that the investigation request is outside the scope of the Investigator's authority, or that there are insufficient grounds for an investigation, or the matter that forms the basis of the request has already been the subject of an investigation, or the investigator has reasonable grounds to believe that the request is of a frivolous or vexatious nature, the Investigator will not conduct an investigation. Where any |

of the above becomes apparent in the course of an investigation, the Investigator will terminate an investigation.

11. The Investigator will report to Council or the local board on matters where an investigation was not carried out or terminated before completion setting out his opinion and the reasons for it.

Investigation

12. The Investigator will investigate all requests in an independent manner.

13. Every investigation will be conducted in a fashion sensitive to confidentiality concerns where appropriate.

14. Upon receipt of the request, the Investigator will proceed as follows:

- Request the meeting record for the closed meeting at which the relevant matter was considered from the City Clerk. The meeting record shall consist of a copy of the resolution moving into closed session, a copy of the closed meeting agenda, a copy of any report on the matter considered at the closed meeting, unless the report is subject to solicitor-client privilege, and a copy of the minutes of the closed meeting.
- Review the meeting record, to determine if the closed meeting was justified based on the reasons for a closed meeting set out in the Act and the procedure by-law.
- Interview, as necessary, meeting participants to clarify or elaborate on the meeting record, or to obtain any other relevant information. The Investigator will liaise with the City Clerk to set up appointments for interviews, which may be in person or by telephone at the discretion of the Investigator.
- The Investigator may gather information from such persons as he or she thinks fit, and may make such *inquiries as he or she thinks fit*.
- If the Investigator receives two or more requests for an investigation into the same subject matter, the Investigator shall consolidate the requests into one investigation.

Investigator Powers

15. It is not necessary for the Investigator to hold any hearing and no person is entitled as of right to be heard by the Investigator.

Report and Recommendations

16. The Investigator shall report his or her response to the request for investigation and the reasons for it to City Council and/or the local board within a reasonable time,

and may make such recommendations as he or she thinks fit, including any corrective action. Where the circumstances warrant, the Investigator may divide his or her report and provide a response to the request for investigation with reasons within a reasonable time and provide recommendations in a subsequent report within 30 days of the first report being submitted.

17. The Investigator may address in his or her report any instances of interference or obstruction encountered during the investigation.
18. All reports made by the Investigator will be available to the public through the City Clerk's Office.
19. The City Clerk or local board shall provide a copy of the report to the person making the investigation request.
20. Anything said or any information supplied or any document or thing produced by any person in the course of any investigation by the Investigator is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

Privilege



*1 X for KZ
original to
MaryCMM*

Date: February 15, 2008

To: Kathy Zammit

From: Susan Doyle

Subject: Delegation Agreement – Municipal Investigator

Please find attached one originally signed copy of the Delegation Agreement between the City and Kelly Yerxa for your records.

A handwritten signature in black ink, appearing to read 'Susan Doyle'.

Susan Doyle
Legal Assistant
Corporate Services Department
(Ext. 2685)
Attachment

THIS AGREEMENT dated the 4th day of February, 2008

BETWEEN

THE CORPORATION OF THE CITY OF BRAMPTON
(hereinafter referred to as the "Municipality")

and

KELLY YERXA
(hereinafter referred to as the "Delegate")

WHEREAS the Municipality has appointed Andrew Sancton as its closed meetings investigator for the purposes of section 239.2 of the *Municipal Act, 2001*.

AND WHEREAS pursuant to the agreement between the Municipality and Andrew Sancton, a copy of which is attached as Appendix "A" to this agreement, Sancton has agreed to delegate the investigation to a solicitor when the subject matter that was considered at a closed meeting is advice that is subject to solicitor-client privilege, including communications for that purpose;

AND WHEREAS the Delegate has agreed to carryout the investigation in the circumstances set out above;

NOW THEREFORE this agreement **WITNESSES AS FOLLOWS:**

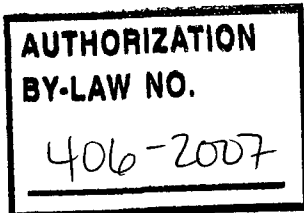
1. The Delegate agrees to conduct closed meeting investigations for the Municipality in accordance with the provisions of section 239.2 of the *Municipal Act, 2001* when requested by the Municipality's closed meeting investigator.
2. The provisions of the agreement between the Municipality and Andrew Sancton attached as Appendix "A" to this agreement shall apply with

necessary modifications to any investigation conducted by the Delegate; except that the Delegate will not receive the Annual Retainer described in Clause 3(a) of the said agreement.

3. The Parties acknowledge that privileged information, including solicitor/client privileged legal advice and opinion and litigation privileged information may be disclosed amongst the Parties during the performance of this agreement ("Privileged Information"). The Parties agree that the Privileged Information is disclosed for the sole purpose of conducting an investigation pursuant to sections 239.1 and 239.2 of the *Municipal Act, 2001* and is not disclosed with the intent to extend such waiver of privilege for any other purpose. The Delegate will cooperate with the Municipality to prevent the disclosure of the Privileged Information.

IN WITNESS WHEREOF the Parties have executed this agreement.

THE CORPORATION OF THE CITY OF BRAMPTON

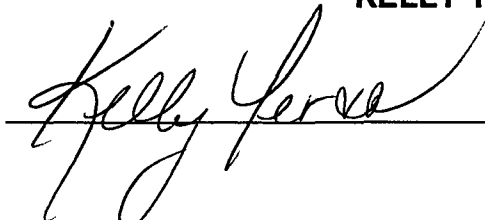



SUSAN FENNELL MAYOR


K. ZAMMIT CLERK

Peter Fay, Deputy City Clerk

KELLY YERXA



AGREEMENT RE: MUNICIPAL INVESTIGATOR

DATED January 10 , 2008

BETWEEN:

THE CORPORATION OF THE CITY OF BRAMPTON
(hereinafter referred to as the "Municipality")

-and-

ANDREW SANCTON
(hereinafter called the "Independent Contractor")

WHEREAS:

- (A) section 239.2 of the *Municipal Act, 2001*, S.O. 2001, c.25 (the "Act"), when proclaimed in force, authorizes the Municipality to appoint an investigator to investigate in an independent manner any complaint as to whether the Municipality or a local board of the Municipality has complied with the Act or a procedure by-law in respect of a meeting or part of a meeting that was closed to the public and to report on the investigation;
- (B) in appointing an investigator and in assigning powers and duties to him, 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;
 - c. the creditability of the investigator's investigative process;
- (C) the Municipality is satisfied that the Independent Contractor has the skills and ability to meet the foregoing criteria;

NOW THEREFORE the parties agree as follows:

- 1. Services - The Municipality hereby retains and appoints the Independent Contractor as an investigator for the purposes of Section 239.2 (1) of the *Act* and the Independent Contractor agrees to provide such services for the Municipality and its local boards and accepts such appointment.
- 2. Duties - The duties of the Independent Contractor shall be:
 - (i) to conduct investigations from time to time upon receipt of a complaint (a "Complaint") in respect of meetings or part of meetings that are closed to the public to determine compliance with the Act or a procedure by-law and to report on the results of such investigations;
 - (ii) in conducting such investigations, to have regard to the importance of the matters listed above in recital (B);

- (iii) to proceed without undue delay and with due diligence to investigate a Complaint;
- (iv) to conduct each investigation in private;
- (v) to hear or obtain information from such persons as the Independent Contractor thinks fit and to make such inquiries as he thinks fit;
- (vi) to provide an opportunity to the Municipality or any person that may be adversely affected by a proposed report of the Independent Contractor, the opportunity to make representations respecting such report or recommendation;
- (vii) to preserve confidentiality and secrecy with respect to all matters that come to his knowledge in the course of performing duties hereunder, save and except disclosure of such matters as in the Independent Contractor's opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations;
- (viii) after making an investigation, the Independent Contractor shall render his findings and opinion as to whether or not 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 the Act or procedure by-law and, in either case, the Investigator shall report his findings and opinion and the reasons for it to the Municipality or local board and shall make such recommendations as he thinks fit.

In performing such duties, the Independent Contractor shall have the powers set out in Subsection 223.13 (6) and Sections 223.14 to 223.18 of the Act, copies of which are attached hereto as Schedule "A".

3. Fees

- (a) Annual Retainer – The Municipality shall pay to the Independent Contractor on or before the commencement date SIX HUNDRED DOLLARS (\$600.00) plus applicable taxes as a retainer.
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- (c) The Independent Contractor shall invoice the Municipality upon completion of his report.
4. Term - The term of this Agreement (the "Term") is for a fixed one (1) year term commencing the effective date of the proclamation by the Lieutenant Governor amending the Act by adding Sections 239.1 and 239.2 (the "commencement date") and ending on the first anniversary date thereof unless renewed and/or extended by agreement of all the parties. The Independent Contractor shall give at least 30 days written notice prior to the end of the Term of his intent not to renew this Agreement if such renewal were to be available. This agreement may be terminated by either party on 90 days written notice to the other.
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 6. Independent Contractor - The Independent Contractor is a contractor independent of the Municipality. Nothing herein shall be interpreted to create a relationship of employer/employee, partnership, franchise, agency or joint venture or other like arrangement.
 7. Delegation
 - (a) In the event more than one Complaint is made at any one time requiring more than one investigation, and the Independent Contractor determines it to be necessary to delegate some or all of his powers and duties, then he may do so in writing to any person other than a member of council, provided that the person to whom such delegation is made agrees in writing to be governed by the same duties of secrecy as the Independent Contractor and to abide by the terms and conditions of this Agreement. Such person shall always be under the supervision and direction of the Independent Contractor. Such delegation shall not be to a member of council of any Municipality and shall not result in any additional costs or fees to the Municipality. In the event that the Independent Contractor is not available to carry out an investigation for any reason and proposes to delegate all of his powers and duties with respect to that investigation, the delegation shall be to one of the persons listed in clause 7(b). Invoices shall be rendered by the Independent Contractor and payments made to the Independent Contractor and the Independent Contractor shall otherwise be responsible for the fees and disbursements of any his delegates.

(b) Notwithstanding clause (a) of this paragraph, where the Independent Contractor is advised that the subject matter that was considered at a closed meeting is advice that is subject to solicitor-client privilege, including communications for that purpose. The Independent Contractor agrees to delegate the investigation to one of the following solicitors:

- Bruce Banting, Barrister & Solicitor, 20 Henrietta Street, St. Catharines ON L2S 2M6
- Kelly Yerxa, O'Connor MacLeod Hanna LLP, 700 Kerr Street, Oakville ON L6K 3W5

(c) The Independent Contractor shall advise the Municipal Clerk of the name of the delegate and the Municipality shall be responsible for the fees and disbursements of the delegate.

8. Complaint Intake and Investigation Process – The complaint intake and investigation process is set out in Schedule B to this agreement.

9. Binding - This Agreement shall ensure to the benefit of and bind the parties and their respective heirs, successors and permitted assigns.

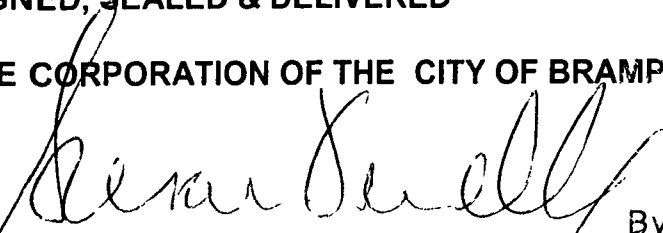
10. Indemnification - Each Party to this Agreement agrees to indemnify and save harmless the other (hereinafter referred to as the "Innocent Party") from and against all liabilities, losses, suits, claims, demands, damages, expenses, costs (including all legal costs), fines and actions of any kind or nature whatsoever or which may be incurred, sustained or paid by the Innocent Party in consequence of the defaulting Party's (or their Delegate's) wilful misconduct, negligence, bad faith, non-performance or breach of any of the terms, conditions, representations, warranties, covenants or any provision under this agreement, provided that the Innocent Party shall give prompt written notice of any such liabilities, losses, suits, claims, demands, damages, expenses, costs (including all legal costs), fines and actions of any kind or nature, to the defaulting Party.

10. Entire Agreement - This Agreement contains the entire agreement between the parties and supersedes all previous negotiations, understandings and agreements, verbal or written with respect to any matters referred to in this agreement.

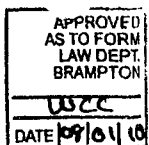
IN WITNESS HEREOF each of the parties hereto have set its hand and seal as of this 10th day of January, 2008.

SIGNED, SEALED & DELIVERED

THE CORPORATION OF THE CITY OF BRAMPTON


By: 
SUSAN FENNELL Mayor

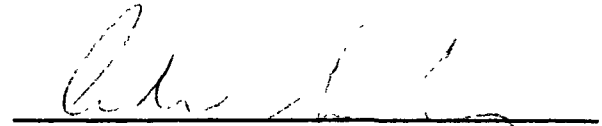
By: 
K. ZAMMIT Clerk



The Independent Contractor hereby accepts and agrees to the terms and conditions herein contained.

DATED: January 24th, 2008


WITNESS


ANDREW SANCTON

SCHEDULE "A"

To

Agreement re Municipal Investigator

239.2 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. 2006, c. 32, Sched. A, s. 104.

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. 2006, c. 32, Sched. A, s. 104.

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). 2006, c. 32, Sched. A, s. 104.

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). 2006, c. 32, Sched. A, s. 104.

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. 2006, c. 32, Sched. A, s. 104.

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. 2006, c. 32, Sched. A, s. 104.

Same

(7) An investigator may continue to exercise the delegated powers and duties, despite the delegation. 2006, c. 32, Sched. A, s. 104.

Status

(8) An investigator is not required to be a municipal employee. 2006, c. 32, Sched. A, s. 104.

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. 2006, c. 32, Sched. A, s. 104.

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. 2006, c. 32, Sched. A, s. 104.

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. 2006, c. 32, Sched. A, s. 104.

See: 2006, c. 32, Sched. A, ss. 104, 192 (2).

Section 223.13

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. 2006, c. 32, Sched. A, s. 98.

Investigation

223.14 (1) Every investigation by the Ombudsman shall be conducted in private. 2006, c. 32, Sched. A, s. 98.

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. 2006, c. 32, Sched. A, s. 98.

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. 2006, c. 32, Sched. A, s. 98.

Same

(4) 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. 2006, c. 32, Sched. A, s. 98; 2006, c. 35, Sched. C, s. 134 (3).

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. 2006, c. 32, Sched. A, s. 98.

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. 2006, c. 32, Sched. A, s. 98.

Section prevails

(3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*. 2006, c. 32, Sched. A, s. 98.

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. 2006, c. 32, Sched. A, s. 98.

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. 2006, c. 32, Sched. A, s. 98.

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. 2006, c. 32, Sched. A, s. 98.

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. 2006, c. 32, Sched. A, s. 98.

SCHEDULE "B"
To
Agreement re Municipal Investigator

Complaint Intake and Investigation Process

- | | |
|---|--|
| Role of the Investigator | 1. The role of the Investigator is to enhance the openness, transparency and accountability of City Council and local boards and its committees. Any uncertainty or ambiguity in the process outlined in this protocol is to be resolved in a way that will advance this role. |
| Review Request | 2. An individual, who has grounds to believe that a meeting or part of a meeting of Council or local board, or its committees has not been conducted in accordance with the <i>Municipal Act, 2001</i> or the applicable procedure by-law, may request an investigation. |
| Investigation Request | 3. The investigation request must be in writing and must set out the grounds for why the person believes the meeting has not been conducted in accordance with the <i>Municipal Act, 2001</i> or the applicable procedure by-law.
4. A complaint shall include the date of the meeting, disputed grounds on which a closed meeting was called and the circumstances of the request.
5. All requests must be signed by an identifiable individual (which includes the authorized signing officer of an organization) and include the name, mailing address, and a contact telephone number for the individual.
6. The request shall be accompanied by the appropriate fee, payable by cheque to the City of Brampton, or by credit card or debit if filed in person. |
| File with City Clerk | 7. The request must be filed with the City Clerk who will record the receipt of the request in a log and forward the request to the Investigator. |
| Jurisdiction | 8. Where appropriate, the Investigator will determine if the request is within the Investigator's scope of authority.
9. The Investigator will advise the individual if a request is not within the Investigator's scope of authority. |
| When the Investigator will not Conduct an Investigation | 10. If the Investigator is of the opinion that the investigation request is outside the scope of the Investigator's authority, or that there are insufficient grounds for an investigation, or the matter that forms the basis of the request has already been the subject of an investigation, or the investigator has reasonable grounds to believe that the request is of a frivolous or vexatious nature, the Investigator will not conduct an investigation. Where any |

of the above becomes apparent in the course of an investigation, the Investigator will terminate an investigation.

11. The Investigator will report to Council or the local board on matters where an investigation was not carried out or terminated before completion setting out his opinion and the reasons for it.

Investigation

12. The Investigator will investigate all requests in an independent manner.

13. Every investigation will be conducted in a fashion sensitive to confidentiality concerns where appropriate.

14. Upon receipt of the request, the Investigator will proceed as follows:

- Request the meeting record for the closed meeting at which the relevant matter was considered from the City Clerk. The meeting record shall consist of a copy of the resolution moving into closed session, a copy of the closed meeting agenda, a copy of any report on the matter considered at the closed meeting, unless the report is subject to solicitor-client privilege, and a copy of the minutes of the closed meeting.
- Review the meeting record, to determine if the closed meeting was justified based on the reasons for a closed meeting set out in the Act and the procedure by-law.
- Interview, as necessary, meeting participants to clarify or elaborate on the meeting record, or to obtain any other relevant information. The Investigator will liaise with the City Clerk to set up appointments for interviews, which may be in person or by telephone at the discretion of the Investigator.
- The Investigator may gather information from such persons as he or she thinks fit, and may make such inquiries as he or she thinks fit.
- If the Investigator receives two or more requests for an investigation into the same subject matter, the Investigator shall consolidate the requests into one investigation.

Investigator Powers

15. It is not necessary for the Investigator to hold any hearing and no person is entitled as of right to be heard by the Investigator.

Report and Recommendations

16. The Investigator shall report his or her response to the request for investigation and the reasons for it to City Council and/or the local board within a reasonable time.

and may make such recommendations as he or she thinks fit, including any corrective action. Where the circumstances warrant, the Investigator may divide his or her report and provide a response to the request for investigation with reasons within a reasonable time and provide recommendations in a subsequent report within 30 days of the first report being submitted.

17. The Investigator may address in his or her report any instances of interference or obstruction encountered during the investigation.
18. All reports made by the Investigator will be available to the public through the City Clerk's Office.
19. The City Clerk or local board shall provide a copy of the report to the person making the investigation request.

Privilege

20. Anything said or any information supplied or any document or thing produced by any person in the course of any investigation by the Investigator is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.