

**Schedule "A"****Additional Rules & Duties: Municipal Ombudsman**  
(By Reference To Applicable Statutory Authorities)**Municipal Act, 2001, S.O. 2001, c.25, as amended****Same, Ombudsman**

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

**Same**

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

**Powers paramount**

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

**Decisions not reviewable**

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

**Delegation**

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

**Same**

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

**Investigation**

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

**Opportunity to make representations**

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

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

### **Application of Ombudsman Act**

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

(Secondary Statutory Reference Set Forth Immediately Below)

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

#### ***Evidence***

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

#### ***Examination under oath***

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

*and for that purpose may administer an oath.*

#### ***Secrecy***

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

### **Providing personal information despite privacy Acts**

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

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

### **Idem**

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

### **Privileges**

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

### **Protection**

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

### **Right to object to answer**

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

### **Prosecution**

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

### **Fees**

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

### **Duty of confidentiality**

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

### **Disclosure**

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

### **Section prevails**

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

### **No review, etc.**

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

### **Testimony**

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

### **Same**

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

### **Effect on other rights, etc.**

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