



## MUNICIPAL CLOSED MEETING INVESTIGATION POLICY

<b>Initially Issued:</b> September 8, 2008 (Resolution No. 2008-592)	<b>Amendments Issued:</b> June 16, 2020 (Resolution No. 2020-186)	<b>Revision Date:</b> January 2023
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### 1. Purpose

- 1.1 As of January 1, 2008 any person or corporation can request that an investigation be undertaken respecting whether a municipality has complied with closed meeting rules outlined in the *Municipal Act, 2001*, as amended (the “Act”) or the applicable procedure by-law.
- 1.2 The purpose of this policy is to provide for a procedure for conducting investigations upon receipt of a complaint related to closed meetings held pursuant to the Act and the Municipal Procedure By-law.

### 2. Policy Statement

- 2.1 The Council of the City of North Bay acknowledges that it is responsible to adhere to closed meeting requirements as set out in section 239 of the Act.
- 2.2 The City of North Bay shall ensure that requests for investigations submitted under section 239 of Act are dealt with in a fair, open and expeditious manner.
- 2.3 The City of North Bay shall provide the Municipal Closed Meeting Investigator (the “Investigator”) with the information, written or through interviews, to assist the Investigator in his/her investigations.
- 2.4 The City of North Bay shall ensure any report received from the Investigator, related to an investigation under the Act, is placed on an agenda for consideration during an open session of Council. Council shall ensure that any such report is made available to the public.
- 2.5 This policy and complaint form shall be posted on the municipality’s website and shall be available from the City Clerk’s Office.

### 3. Definitions

- 3.1 “**City**” shall mean The Corporation of the City of North Bay.
- 3.2 “**City Clerk**” shall mean shall mean the City Clerk or the Deputy City Clerk of the Corporation.
- 3.3 “**Closed Meetings**” (also known as “closed session” and “in-camera meeting”) shall mean any Meeting or portion of the Meeting of Council or Committee not open to the public and held in accordance with the Municipal Act, S.O. 2001, c. 25, as amended and any successor legislation thereto as amended.
- 3.4 “**Corporation**” shall mean The Corporation of the City of North Bay.
- 3.5 “**LAS**” shall mean Local Authority Services created by the Association of Municipalities of Ontario (AMO) as a co-operative business services provider for Ontario municipalities and the broader public sector.
- 3.6 “**MFIPPA**” shall mean the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, C. M.56
- 3.7 “**the Act**” shall mean the *Municipal Act*, S.O. 2001, c. 25, as amended and any successor legislation thereto.

### 4. Background

- 4.1 Section 239.1 of the Act grants municipalities the jurisdiction to appoint an Investigator.
- 4.2 Through Local Authority Services Ltd. the City of North Bay has engaged the services of Aird & Berlis LLP as the Municipality’s Closed Meeting Investigator.
- 4.3 Aird & Berlis, LLP are authorized to conduct investigations upon receipt of a complaint in respect of meetings or part of meetings that are closed to the public. The Investigator will determine compliance with the Act and with the Municipal Procedural By-law with respect to closed meetings and will report on the results of such investigations.

### 5. Closed Meetings

- 5.1 Municipal councils, local boards and their committees must meet behind closed doors to deal with some matters. For example, if a municipality is being sued or if council is considering purchasing a piece of land, then it is appropriate that it be able to do so in a closed meeting. The purpose of the closed meeting is to receive information or give direction.

- 5.2 Local government in Ontario must be transparent and accountable. To this end, the Province has set rules for a council, local board or a committee to go into a closed meeting. These rules are found in section 239 of the Act. They must be strictly followed.
- 5.3 The permitted reasons for going into a closed meeting are noted in s.239 (2)(3) of the *Municipal Act* and summarized below:
- The security of property of the municipality or local board;
  - Personal matters about an identifiable individual, including employees;
  - A proposed or pending acquisition or disposition of land;
  - Labour relations or employee negotiations;
  - Litigation or potential litigation;
  - Advice that is subject to solicitor-client privilege;
  - A matter authorized by another provincial statute;
  - A matter about trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to a municipality or local board which could reasonably expect to prejudice the competitive position significantly, or interfere with contractual negotiations, and/or that may have, or potentially have, monetary value;
  - A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on behalf of the municipality or local board;
  - If the subject matter relates to a request under the *Municipal Freedom of Information and Protection of Privacy Act*, and
  - If the matter is held for educating and training and no member discusses or deals with a matter in a way that materially advances the business decision-making of the council or local board.

## 6. Complaints Process

- 6.1 Members of the public, including corporations, may submit complaints to the Investigator relating to compliance with the Act or Municipal Procedural By-law for meetings or part of meetings that are **closed** to the public. All complaints will be treated as confidential at all times, unless authorization is given by the complainant to release his or her identity.
- 6.2 Complaints must be for a meeting that took place on or after January 1, 2008. Section 239 of the Act is not retroactive to meetings that took place in place in 2007 or earlier.

- 6.3 Complaints must be submitted on the established Complaint Form. The Complaint Form may be downloaded from the City of North Bay's website or obtained from the City Clerk's Office.
- 6.4 All complaints **MUST** contain the following information:
- a) Name of municipality.
  - b) Complainant's name, mailing address, telephone number and e-mail address (if applicable).
  - c) Date of Closed Meeting under consideration.
  - d) Nature and background of the particular occurrence.
  - e) Any activities undertaken (if any) to resolve the concern.
  - f) Any other relevant information.
  - g) Original signature. Anonymous or unsigned complaints will not be accepted.
- 6.5 All complaints shall be submitted as follows:
- a) By personal delivery, mail-post, or courier service to the Municipal City Clerk in a sealed envelope clearly marked "**Personal and Confidential**" and identified as a "**Complaint under Section 239 of the *Municipal Act***"; or
  - b) via E-mail to: [Karen.Mclsaac@northbay.ca](mailto:Karen.Mclsaac@northbay.ca) with the following subject line: "**Personal and Confidential - Complaint under Section 239 of the *Municipal Act***"; or
  - c) Through electronic submission as identified on the City's website.
- 6.6 Failure to submit the required information will delay the process. A complaint form which is not considered by the City Clerk to be complete, in accordance with the above, will not be accepted.
- 6.7 Upon receipt of a written complaint, the City Clerk, or designate, shall complete any required submission form and forward the complaint directly to Aird & Berlis LLP, via first class mail.
- 6.8 Complainants will be notified by the City Clerk or designate within fourteen business days of the receipt of their complaint.

- 6.9 For all complaints the municipality shall supply as soon as practical, the following or any other information or documentation requested by the Investigator related to a complaint:
- a) Certified copy of Notice of Meeting (where applicable).
  - b) Certified copy of Agenda.
  - c) Certified copy of the Minutes of the Meeting.
  - d) Relevant Resolutions (if any).
  - e) Other relevant information as required.

## **7. Responsibility**

- 7.1 The City Clerk and Deputy City Clerk are responsible for ensuring compliance with this policy.

## **8. Related Documents**

- Municipal Closed Meeting Investigation Complaint Form
- LAS' Investigator Program Brochure
- LAS' Investigation Request Process Flow Chart
- Aird & Berlis LLP's Request for Closed Meeting Investigation Form

### Procedure By-law

The *Municipal Act, 2001* provides that every municipality and local board in Ontario is mandated to enact a by-law to govern the calling, location and proceedings of their meetings under s.238.

### Open Meeting Rule

All municipal council meetings, a local board, or a committee of either of them must be held in an open public session unless an exception applies pursuant to s.239(1).

### Exceptions for Closed Meetings

The *Municipal Act, 2001* sets out a number of exceptions to the open meeting rule based on the subject matter of the item that the council, local board, or committee is considering (ss.239(2), (3) and (3.1)). Council, local board, or committee must follow certain procedural requirements prior to convening into a closed session.

### Investigations

Since 2008, s.239.1(1) of the *Municipal Act, 2001* has allowed any person to request that an investigation be conducted to determine whether a municipality or local board has complied with s.239, or a procedure by-law passed under s.238.

### Investigator

Municipalities are authorized to appoint an independent investigator to conduct what has become known as a "closed meeting investigation" under s.239.2. In appointing an investigator, the municipality is to consider the following matters:

- the investigator's independence and impartiality
- confidentiality with respect to the investigator's activities
- the credibility of the investigative process

If a municipality does not appoint an investigator, the default investigator is the Ontario Ombudsman.

### Investigator's Powers

An investigator is given significant powers to carry out its investigation, including the powers set out in s.19 of the *Ombudsman Act* which include the authority to summons any person and examine them under oath, and to require any

officer, employee or member of a municipality to provide such information and to produce such documents or things that the investigator requires.

The investigator operates under a duty of confidentiality but is entitled to disclose such matters as they consider appropriate in any report.

### No Challenge

The investigator's powers are paramount and its proceedings cannot be challenged, except for lack of jurisdiction, and no decision or report from the investigator can be challenged, reviewed, quashed or called into question in any court.

### Reports

If the investigator determines that there has been a contravention of the procedure by-law or s.239 of the *Municipal Act, 2001*, a report will be provided to the municipality or local board and the council or the local board are required to pass a resolution stating how they intend to address the report. The report is required to be made publicly available.

### Why Appoint LAS as Investigator?

LAS offers closed meeting investigation services as it complements our programming. This service will assist municipalities in demonstrating they are responsible and accountable orders of government, capable of managing their own business and affairs.

As part of the program, LAS will provide an educational component to help municipalities in the understanding of the opening meeting rule, its exceptions, and the investigative process.

### The LAS Program will ensure:

- municipal transparency and accountability
- independent, impartial and credible investigations and reports

### Benefits to Participating Municipalities:

- experienced, knowledgeable and qualified investigators
- access to all completed reports via a secure website
- availability of on-going education/information
- no review by provincial Ombudsman



## LAS INVESTIGATOR PROGRAM

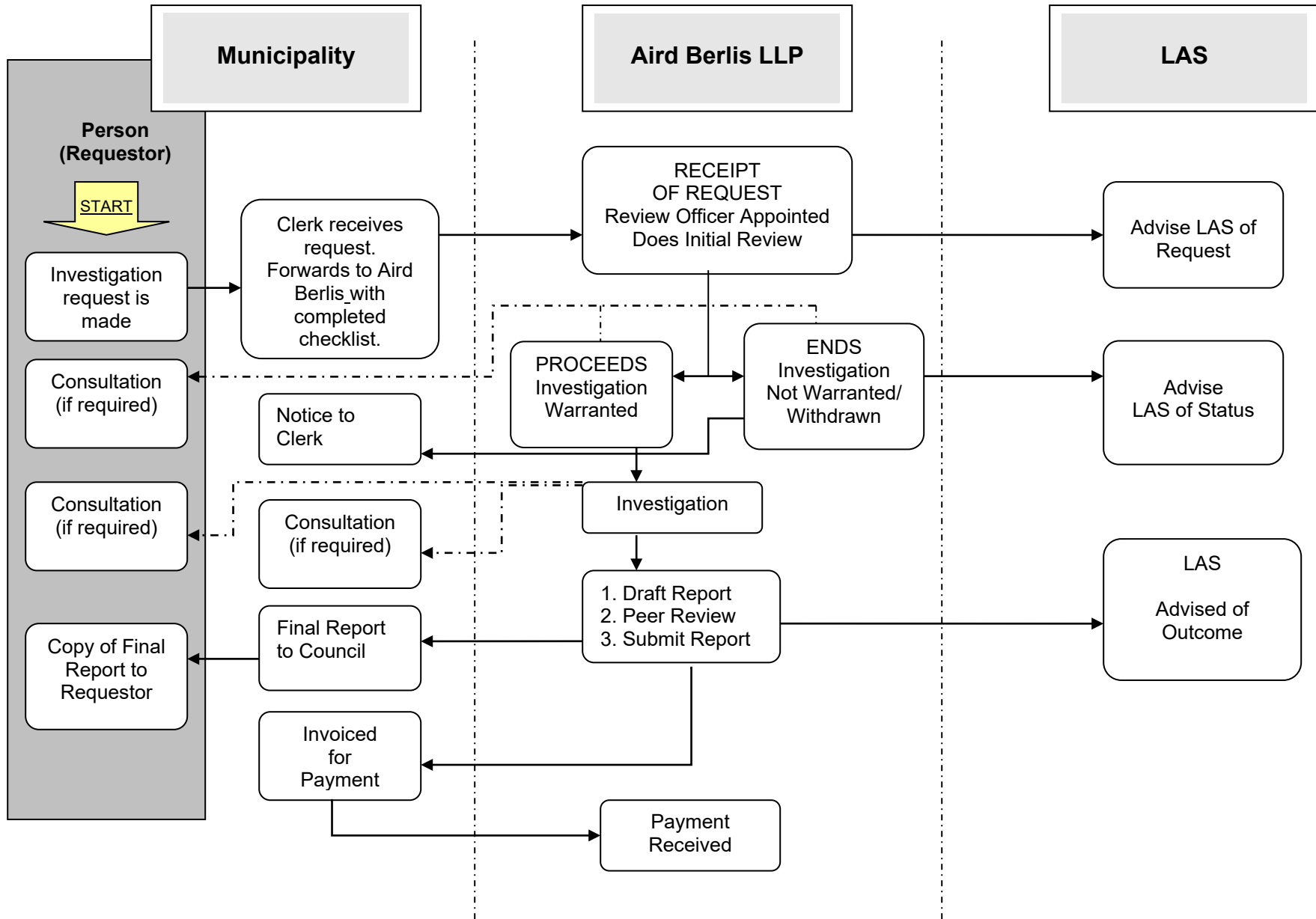
## Helping Municipalities Deal with Closed Meeting Investigations

For more information, please  
contact:

**Eleonore Schneider**  
**LAS Program Manager**  
**Local Authority Services**  
Tel: 416-971-9856 ext. 320  
Toll Free: 1-877-426-6527  
Email: [eschneider@amo.on.ca](mailto:eschneider@amo.on.ca)



# INVESTIGATION REQUEST PROCESS







**ACTION** Note any activities you have taken to try to resolve the matter.


**ADDITIONAL COMMENTS** Provide additional details here.


\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Signature of Complainant

**OFFICE USE ONLY**

Date received \_\_\_\_\_

Date deemed complete \_\_\_\_\_

Signature \_\_\_\_\_