

THE CORPORATION OF THE COUNTY OF PERTH

BY-LAW NUMBER 3216-2010

Being a By-Law to authorize the Execution of an Agreement to Appoint a Municipal Investigator Between the Corporation of the County of Perth, And Gregory Stewart of the firm Donnelly & Murphy

Recitals

1. Section 239.2 of the Municipal Act S.O. 2001, c.25 as amended, authorizes municipalities to appoint an investigator who, based on receipt of a complaint, has the function to investigate in an independent manner whether a municipality or local board has complied with Section 239 or a procedure by-law enacted pursuant to subsection 238(2) with respect to a meeting or part of a meeting that was closed to the public, and to report on the investigation.
2. The County of Perth entered into a three year Agreement commencing January 1, 2008 with Gregory Stewart, Solicitor, with the law firm Donnelly & Murphy and now wishes to enter into a new Agreement appointing Gregory Stewart as Municipal Investigator for an additional 3 year period commencing January 1, 2011.
3. The Council of the Corporation of the County of Perth deems it desirable that all requests for an investigation be undertaken in the public interest by an independent and impartial investigator.

Articles

The Council of the Corporation of the County of Perth enacts as follows:

1. THAT the Warden and the Clerk are hereby authorized to sign and enact the Agreement to Appoint a Municipal Investigator between the Corporation of the County of Perth and Gregory Stewart, attached hereto as Schedule 'A' and forming a part of this By-law; and
2. THAT this By-law will come into force and take effect on the date of final passing thereof.

Read a first and second time this 18th day of November 2010

Read a third and final time 18th day of November, 2010

“Julie Behrn”

Julie Behrns, Warden

“R. William Arthur”

R. William Arthur, Clerk

Municipal Meeting Investigator Agreement

Dated this 18th day of November, 2010.

Between:

The Corporation of the County of Perth

(*hereinafter referred to as the "Municipality"*)

- and -

Gregory Stewart

(*hereinafter called the "Independent Investigator"*)

Whereas section 239.2 of the *Municipal Act, S.O. 2001, c.25* (the 'Act') authorizes a Municipality to appoint an investigator to investigate in an independent manner any complaint as to whether the Municipality has complied with the Act, or a Municipal procedural by-law in respect of a meeting (or part of a meeting) that was closed to the public;

And whereas the investigation of the relevant municipality or local board must be undertaken by an Investigator appointed by the municipality pursuant to Sections 9, 10, 11 and 239.2 of the Act, or by an Ombudsman appointed pursuant to the *Ombudsman Act* of the municipality has not appointed an Investigator under the Act;

And whereas the Municipality deems it desirable to appoint Gregory Stewart as the Investigator to investigate all requests received by the Municipality after January 1, 2011 pursuant to the Act respecting any meeting of the Municipality's Council, a local board, or a committee of either of them;

And whereas the Independent Investigator has the skills and ability, and is interested in acting as the Investigator for the Municipality on the terms and conditions set out in this Agreement;

Now therefore, the parties agree as follows:

1.0 Appointment

- 1.1 Pursuant to the Act, the Municipality hereby appoints Gregory Stewart to provide the Investigator services in accordance with the Act, for all requests for an investigation of the Council and Committees of the Municipality and the Local Boards and/or their Committees. For the purposes of this Agreement, "committee" and "local board" shall have the meaning as defined Section 238 of the Act.
- 1.2 The Municipality hereby grants to the Independent Investigator those powers and duties outline in Section 239.2 of the Act, and as set out in Schedule 1 to this Agreement.

- 1.3 The Municipality acknowledges and agrees that the Independent Investigator may delegate all of its powers and duties as Investigator to a third party (the “Delegate”) should the Investigator deem it necessary to do so. Any and all rights and obligations of the Investigator under this Agreement shall also be assigned to the Delegate accordingly. The Independent Investigator shall immediately notify the Municipality, should it be necessary to appoint a Delegate. A Delegate shall agree in writing to the delegation, and shall act under the supervision and direction of the Independent Investigator.
- 1.4 The Municipality shall provide to the Independent Investigator the following documents for the Municipality and for the Local Boards, where applicable:
 - 1.4.1 A certified copy of the municipal procedure by-law;
 - 1.4.2 A certified copy of the municipal notice by-law, and;
 - 1.4.3 A listing of the applicable Boards and Committees subject to this agreement.

2.0 Services and Process

- 2.1 Every request for an investigation by a person shall include all of the following:
 - 2.1.1 Be directed to the Clerk of the Municipality;
 - 2.1.2 Be in writing;
 - 2.1.3 Include the reasons for the request;
 - 2.1.4 Be signed, and
 - 2.1.5 Include an address and telephone number of the person making the request.
- 2.2 Upon receipt of a request for an investigation regarding a Meeting, it is agreed that the Clerk of the Municipality shall forthwith forward the following documents to the Independent Investigator, or the Delegate, as appropriate:
 - 2.2.1 The original request for an investigation;
 - 2.2.2 A certified copy of the agenda with all relevant attachments relating to the Meeting;
 - 2.2.3 A certified copy of the notice given for the Meeting;
 - 2.2.4 A certified copy of the minutes of the Meeting;
 - 2.2.5 A contact list for all members of the Council/Board/Committee for which the request is made and for all persons present at the Meeting;
 - 2.2.6 Such other information or documentation that the Clerk of the Municipality deems relevant; and
 - 2.2.7 Such other information or documentation that the Independent Investigator or Delegate may from time to time deem relevant to the investigation.
- 2.3 Duties of the Independent Investigator, or Delegate shall be:
 - 2.3.1 To conduct investigations from time to time as requested by the Municipality, upon receipt of a complaint in respect of meetings or part of meetings that are closed to the public to determine compliance with the Act;
 - 2.3.2 To report in writing on such investigations to the Council of the Municipality;
 - 2.3.3 To proceed without undue delay and with due diligence to investigate a complaint, and to consider time to be of the essence with any and all investigations;
 - 2.3.4 To proceed to investigate a complaint independently of the Municipality, and impartially;

- 2.3.5 To hear or obtain information from such persons as the Independent Investigator sees fit;
- 2.3.6 To preserve the confidentiality of all matters of the investigation that require secrecy save and except disclosure of such matters as in the Independent Investigator's opinion ought to be disclosed in order to establish grounds for report conclusions and/or recommendations;
- 2.3.7 If at any time during the course of an investigation it appears to the Investigator or the Delegate that there may be sufficient grounds for a report or recommendation that may adversely affect the municipality, a local board or any other individual person, the Investigator shall give him or her an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel;
- 2.3.8 To include in the written report whether the meeting (or portion thereof) in question was closed to the public contrary to the Act or Municipal Procedure by-law, and to make appropriate recommendations to the Municipality in this regard, and;
- 2.3.9 To dismiss a complaint deemed to be vexatious, and prepare a report to this affect;
- 2.4 Upon receipt by the Municipal Council/Committee/Local Board, the report of the Independent Investigator shall be a public record.

3.0 Fees

- 3.1 The Municipality agrees to pay fees and expenses of the Independent Investigator, or Delegate at a rate of \$250.00 per hour plus applicable taxes, during such time as the Independent Investigator is performing the duties as described in this Agreement. The Independent Investigator agrees such rate shall be charged only for such time that the Investigator is actively investigating a complaint and preparing and presenting the report with respect hereto.
- 3.2 The Independent Investigator shall be entitled to be reimbursed for other reasonable receipts expenses related to these duties.

4.0 Term of Agreement

- 4.1 The term of this Agreement is for a fixed three (3) year term, commencing the first day of January, 2011 and ending on the anniversary date thereof, and be renewable.
- 4.2 The Independent Investigator shall provide the Municipality with a minimum of thirty (30) days notice prior to the end of the Agreement if the Investigator does not agree to renew the Agreement, if such renewal were to be available.

5.0 Termination

- 5.1 This Agreement may be terminated by either Party on ninety (90) days written notice to the other Party, provided that any investigations commenced prior to the termination date shall be completed pursuant to this Agreement and the appointing by-law, and all related fees shall be paid as set out in the Agreement.

6.0 Dispute Resolution

- 6.1 Any controversy, dispute, difference, question or claim arising between a Municipality and the Independent Investigator (or Delegate) in connection with this Agreement that cannot be resolved by a manager from each Party, shall be settled in accordance with the following:

- 6.1.1 The aggrieved Party shall send the other Party written notice, identifying the matter of dispute, its position on the matter, and the remedy sought.
- 6.1.2 Upon receipt of such written notice, a senior officer of the other Party shall enter into good faith negotiations with a senior officer of the aggrieved Party to resolve the matter;
- 6.1.3 If the matter of dispute is not resolved within thirty (30) days after such written notice has been given, either Party may avail itself of any process or means legally available to resolve the matter.

In witness hereof, each of the parties hereto have set its hand and seal as of this 18th day of November, 2010.

The Corporation of the County of Perth

Warden, Julie Behrns

Chief Administrative Officer, R. William Arthur

Donnelly & Murphy, Lawyers

Gregory Stewart

Schedule 1

Municipal Meeting Investigator Agreement

The following are the relevant statutory authorities enacted at the time of execution of this Agreement.

Municipal Act, 2001, as amended

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. 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).