

October 3, 2012

To: City Council

From: City Clerk

Re: Background Materials on the Role of the Ombudsman

At the request of the Speaker I am attaching the following background materials that describe the role of the Ombudsman.

1. Excerpt from the 2010-2014 Council Briefing book headed "Accountability Officers".
2. Chapter 3 of the Toronto Municipal Code headed "Accountability Officers".
3. Sections 170-176 of the *City of Toronto Act, 2006* headed "Ombudsman", together with Section 19 of the *Ombudsman Act* referenced in COTA section 172.

The Ombudsman's report, item CC26.5 has been submitted to City Council in accordance with s. 3-7 of the Toronto Municipal Code.

CITY CLERK

Accountability Officers

Background

As an early sign of its commitment to accountable and transparent government, City Council established an Auditor General in 2002 and an Integrity Commissioner in 2004 and requested authority from the Province to establish empowered Integrity Commissioner, Lobbyist Registrar and Ombudsman functions.

The Province of Ontario subsequently included a requirement in the *City of Toronto Act, 2006*, to establish an Auditor General, an Integrity Commissioner, an Ombudsman, a Lobbyist Registry and authority to appoint a Lobbyist Registrar (collectively the "Accountability Officers").

To meet its statutory obligations and round out the City's accountability system, City Council established a lobbyist registry and appointed a Lobbyist Registrar in 2007 and an Ombudsman in 2008.

Mandate of the Accountability Officers

As in other jurisdictions, it is the Accountability Officers' role to be objective and independent checks on the City's activities and hold the City administration and legislative arm of the City government accountable. Each Officer has a specific mandate and role to play in advancing transparency and accountability at the City. Accountability Officers can only intervene or investigate on matters and organizations within their individual mandates.

Part V of the *City of Toronto Act, 2006*, provides broad powers and protections to each Accountability Officer to carry out their respective mandate, including the power to gather evidence, compel disclosure of information, summon and examine witnesses under oath, and ability to conduct their work in private as required. The *Act* also establishes a duty of confidentiality on the part of the Accountability Officers and persons working under their instructions which prevail over the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*.

The **Auditor General** is responsible for assisting City Council in holding itself and its administration accountable for public funds and for the achievement of value for money in City operations including all City divisions, agencies, and the offices of the Mayor and Members of Council. The Auditor General also manages the City's Fraud and Waste Hotline.

The **Integrity Commissioner** is responsible for providing advice, complaint resolution and education to elected officials (the Mayor and Councillors) and appointees of local boards on the application of their respective Code of Conduct, and other by-laws, policies and legislation governing ethical behavior. Applicable Codes of Conduct, include:

- Code of Conduct for Members of Council
- Code of Conduct for Members of Local Boards
- Code of Conduct for Members of Adjudicative Boards

The Integrity Commissioner also plays a role in investigating complaints (formal or informal) about the conduct of Members of Council, Members of Local Boards and Adjudicative Boards and in determining whether or not there has been a violation of the City Codes of Conduct.

The **Lobbyist Registrar** promotes and enhances the transparency and integrity of City government decision making through public disclosure of lobbying activities and regulation of lobbyists' conduct. The Lobbyist Registrar's responsibilities include overseeing the lobbyist registration system, providing advice on Chapter 140, Lobbying, of the Toronto Municipal Code, investigating and enforcing compliance with the Chapter 140 and advising City Council on lobbying matters.

The **Ombudsman** ensures that the City treats the public fairly, and works to ensure that services are provided in a fair and equitable manner for all. The Ombudsman is responsible for addressing concerns about City services and investigating complaints about administrative unfairness related to all City divisions, most City agencies (including the Toronto Transit Commission), and the Toronto Community Housing Corporation. City Council and its legislative Committees do not fall within the Ombudsman's purview.

Balancing Independence and Accountability

The City's Accountability Offices were established with clear principles of independence, balanced with direct accountability to City Council. In April 2009, City Council adopted a comprehensive policy framework for the City's Accountability Officers, codified in the Toronto Municipal Code, which reinforces both their arm-length relationship to the City administration and their independent status within the City's governance system.

The Officers' report to and are directly accountable to City Council for the management of their offices, the administration of the services they provide, their performance in fulfilling their mandates and their use of public funds.

There are a number of mechanisms through which the Officers accountability to City Council is achieved, including:

- Annual report transmitted directly to City Council, except for the Auditor General's report which is transmitted to Council through the Audit Committee.
- Annual Attest Audit as part of the City's annual attest audit.
- Annual Compliance Audit transmitted directly to City Council, except for the Auditor General's compliance audit which is transmitted to Council through the Audit Committee.
- An External Peer Review of the Auditor General's Office every three years to ensure compliance with Government Auditing Standards. The results of the review are reported to City Council through the Audit Committee.
- Annual review and approval of the Officers' budget requests through Council's budget process.
- Investigation reports transmitted directly to City Council.
- Policy-related reports reported to Council through Executive Committee.

Independence Features of the Accountability Officers

Independence is essential to the effectiveness and credibility of these offices, and to the ability of the Accountability Officers to fulfill their statutory duties. Independence for the City's Accountability Officers is achieved through a number of provisions contained in the Toronto Municipal Code, including:

- Appointment and removal of the Accountability Officers by a 2/3 vote of all Members of City Council.
- Removal for cause only which provides security of tenure throughout the term of office.
- Direct reporting relationship to City Council, not through the City's administration.
- Fixed term of office.
- Defined and transparent appointment, renewal and removal process.
- Responsibility and authority to manage and staff their own offices.
- Annual budgets submitted directly through the Council process for consideration and approval.

Chapter 3

ACCOUNTABILITY OFFICERS

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§ 3-36. Investigation criteria.

**§ 3-37. Procedures after an
investigation.**

[HISTORY: Adopted by the Council of the City of Toronto 2009-10-27 by By-law No. 1098-2009.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Council procedures — See Ch. 27.
Financial control — See Ch. 71.
Lobbying — See Ch. 140.
City officials — See Ch. 169.

Purchasing — See Ch. 195.
Corporate records (City) — See Ch. 217.
Signing Authority — See Ch. 257.

¹ Editor's Note: This by-law was passed under the authority of Part V of the *City of Toronto Act, 2006*, S.O. 2006, c. 11. This by-law also provided that in the event of a conflict between a provision of Chapter 3 respecting an accountability officer's fixed-term appointment, renewal of appointment, removal from office, termination or remuneration and a provision in a contract with an accountability officer appointed before April 30, 2009, the provision in the contract prevails to the extent of the conflict.

ARTICLE I
General

§ 3-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ACCOUNTABILITY OFFICER — The Auditor General, Integrity Commissioner, Lobbyist Registrar or Ombudsman appointed by Council under Part V, Accountability and Transparency, of the *City of Toronto Act, 2006*.²

ACT — The *City of Toronto Act, 2006*.³

CITY CONTROLLED CORPORATION — The same meaning as in section 156 of the Act.

CODE OF CONDUCT:

- A. The Code of Conduct for Members of Council.
- B. The Code of Conduct for Members of Local Boards (Restricted Definition).
- C. The Code of Conduct for Members of Adjudicative Boards.

COMPLAINT PROTOCOL:

- A. The Code of Conduct Complaint Protocol for Members of Council.
- B. The Code of Conduct Complaint Protocol for Members of Local Boards (Restricted Definition) including Adjudicative Boards.

LOCAL BOARD (RESTRICTED DEFINITION) — The same meaning as in section 156 of the Act.

§ 3-2. Independence and accountability.

- A. An accountability officer carries out in an independent manner the duties and responsibilities of his or her office as set out in Part V of the Act, this chapter and, in the case of the Lobbyist Registrar, Chapter 140, Lobbying, of the Municipal Code.
- B. An accountability officer is accountable to Council.

² Editor's Note: See S.O. 2006, c. 11.

³ Editor's Note: See S.O. 2006, c. 11.

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§ 3-3. Appointment, removal and resignation.

- A. A two-thirds vote of all Council members (30 members) is required for the appointment, reappointment, extension of term, removal from office or termination for cause of an accountability officer.
- B. An accountability officer shall be appointed for a fixed term of office.
- C. The term of office for an accountability officer may be extended by Council in exceptional circumstances.
- D. An accountability officer may be removed from office or terminated for cause, before the expiry of the term of office, in accordance with the procedures established by the City.
- E. An accountability officer may resign from office at any time by giving 90 days' written notice to the Mayor, unless the notice requirement is waived by both parties.

§ 3-4. Selection process.

- A. The selection process for an accountability officer shall be conducted by an external recruitment firm.
- B. Appointment of an accountability officer shall be recommended to Council by a selection panel, appointed by the Mayor and chaired by the Mayor or the Mayor's designate.

§ 3-5. Reappointment.

- A. If an accountability officer may be reappointed for a second term, the accountability officer shall notify the Mayor in writing, at least 180 days before the end of his or her first term of office, that the accountability officer wishes to be considered for reappointment to an additional term.
- B. The Mayor shall transmit the officer's notification to Council for consideration of reappointment.

§ 3-6. Remuneration.

- A. An accountability officer shall not receive performance progression increases but shall receive the cost-of-living escalators approved by Council for senior managers.
- B. The remuneration for accountability officers shall be reviewed periodically.
- C. Remuneration for an accountability officer will be recommended to the City through an independent external review.

§ 3-7. Reports.

- A. An accountability officer shall report annually to Council on the activities of his or her office and the discharge of his or her duties.
- B. An accountability officer reports directly to Council on investigations and inquiries conducted by the accountability officer.
- C. Despite Subsection B, the Integrity Commissioner may report directly to a local board (restricted definition) on investigations and inquiries respecting a member of the local board (restricted definition) and, if applicable, as provided in the complaint protocol.
- D. An accountability officer shall submit policy-related reports to Council through the Executive Committee.
- E. The Auditor General shall submit all audit-related reports to Council through the Audit Committee, including the annual report required under Subsection A that shall also include the savings achieved.

§ 3-8. External audit.

- A. The operations of the office of an accountability officer shall be included in the scope of the annual attest audit of the City, which is conducted by an external auditor appointed by and reporting to Council.
- B. An accountability officer's office shall undergo an annual compliance audit by an external auditor appointed by and reporting to Council.

§ 3-9. Mandate review.

- A. Council may periodically review the mandate of an accountability officer to adjust the mandate to changing circumstances.
- B. A periodic review of a mandate shall include consultation with the incumbent appointee to the accountability office, in order to reflect the accountability officer's experience, advice and input.

§ 3-10. Office.

- A. An accountability officer is independent of the City administration, subject to the requirements of this chapter.
- B. An accountability officer has full carriage and control of, and is fully responsible for, the conduct and accountability of his or her office and shall manage his or her office in compliance with applicable laws.

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- C. An accountability officer is responsible for submitting an annual budget request to the Budget Committee for consideration and recommendation to Council.
- D. An accountability officer's budget request shall generally follow the corporate budget submission process as it relates to the level of information provided, and the formats used.
- E. An accountability officer is not required to submit his or her budget request to the City Manager or Deputy City Manager and Chief Financial Officer for review, approval or recommendation.
- F. An accountability officer is responsible for the application to his or her office of:
 - (1) Chapter 71, Financial Control;
 - (2) Chapter 195, Purchasing;
 - (3) Chapter 217, Records, Corporate (City);
 - (4) Other City by-laws and policies related to material and financial resources; and
 - (5) Other City by-laws and policies as specified by Council, as this section and § 3-11 do not exempt an accountability officer or the accountability officer's staff from complying with City policies of general application that do not interfere with the accountability officer's performing, in an independent manner, the functions assigned by the Act or Council.

§ 3-11. Office staff.

- A. An accountability officer is responsible for the application of the City's employment-related policies to his or her staff with necessary modifications to reflect the independent nature of these functions.
- B. An accountability officer shall work with the City Manager, Human Resources staff and the City Solicitor in areas where there is a staffing issue involving corporate responsibility or liability.
- C. An accountability officer may appoint, promote, demote, suspend and dismiss all employees of his or her office, subject to the provisions of any City employment-related policies applicable to employees of the City.
- D. Subject to Subsections A and B, an accountability officer may authorize the creation of positions and compensation levels in his or her office, within the office's approved budget and generally within the City's salary structure, having regard for comparable compensation levels across the Toronto Public Service for purposes of internal equity.

§ 3-12. Two-thirds vote required for changes.

[Amended 2010-08-27 by By-law No. 1016-2010]

To pass a motion to amend or repeal this chapter requires a two-thirds vote of all Council members (30 members).

ARTICLE II
Auditor General

§ 3-13. Term.

The Auditor General shall be appointed for a seven-year non-renewable term of office.

§ 3-14. Powers, duties and limitations under Part V.

When carrying out his or her duties under Part V of the Act, the Auditor General has the general powers and duties and is subject to the limitations set out in sections 178 to 182 of the Act.

§ 3-15. Responsibilities.

- A. The Auditor General is responsible for carrying out financial (excluding attest), compliance and performance audits of all programs, activities and functions of all City departments, the offices of the Mayor and members of Council, local boards (restricted definition) and City-controlled corporations.
- B. Despite Subsection A, the Auditor General may undertake financial (excluding attest), compliance and performance audits and provide recommendations to the board, upon request by the following boards:
 - (1) Toronto Police Services Board.
 - (2) Toronto Public Library Board.
 - (3) Toronto Board of Health.
- C. The Auditor General shall only undertake an audit of the Toronto Hydro Corporation and its subsidiaries upon specific direction from Council in relation to a perceived breach by Toronto Hydro Corporation of the shareholder direction.
- D. Despite § 3-7, the Auditor General shall report on audits of City-controlled corporations as follows:
 - (1) To the Executive Committee for recommendations regarding shareholder issues.

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- (2) To the City-controlled corporation's board of directors for recommendations regarding operations or other responsibilities of the board, with a copy to the City Manager.

§ 3-16. Annual audit plan.

- A. The Auditor General shall submit an annual audit plan to Council.
- B. No deletions or amendments to the annual audit plan shall be made except by the Auditor General.
- C. Despite Subsection B, Council may add to the annual audit plan by a two-thirds vote of all Council members (30 members).

§ 3-17. Additional powers, duties and responsibilities.

- A. The Auditor General shall perform such other duties respecting audit matters as assigned by Council.
- B. The Auditor General shall disclose to Council any attempts at interference with the work of the Auditor General's office.

§ 3-18. Peer review.

- A. The Auditor General shall undergo an external peer review once every three years to ensure compliance with government auditing standards.
- B. The results of the external peer review shall be reported to Council through the Audit Committee.

§ 3-19. Office budget.

The Auditor General shall submit his or her annual budget request to the Audit Committee for consideration and recommendation to Council.

ARTICLE III
Integrity Commissioner

§ 3-20. Term.

The Integrity Commissioner shall be appointed for a five-year non-renewable term of office.

§ 3-21. Powers, duties and limitations under Part V.

When carrying out his or her duties as assigned by Council under Part V of the Act, the Integrity Commissioner has the general powers and duties and is subject to the limitations set out in sections 159 to 164 of the Act.

§ 3-22. Responsibilities.

The duties of the Integrity Commissioner are as follows:

- A. To provide advice on the application of a code of conduct and other City or local board by-laws, policies, and protocols to a member's conduct, and general advice with respect to a member's obligations under the *Municipal Conflict of Interest Act*⁴ to:
 - (1) Council and local boards (restricted definition).
 - (2) A member of Council or a local board (restricted definition) subject to a code of conduct on his or her own situation, and includes a member of Council's staff when he or she is acting as the member's agent.
- B. To conduct inquiries under the Act on whether a member of Council or a local board (restricted definition) has contravened a code of conduct.
- C. To provide opinions on policy matters and make other reports to Council or a local board (restricted definition) on issues of ethics and integrity.
- D. To provide educational programs to members of Council, local boards (restricted definition), and their staff on issues of ethics and integrity.

§ 3-23. Additional powers, duties and responsibilities.

The Integrity Commissioner shall perform such other duties respecting ethical matters as assigned by Council.

⁴ Editor's Note: See R.S.O. 1990, c. M.50.

ARTICLE IV
Lobbyist Registrar

§ 3-24. Term.

The Lobbyist Registrar shall be appointed for a five-year term that may be renewed once for an additional term of five years.

§ 3-25. Powers, duties and limitations under Part V.

When carrying out his or her duties as assigned by Council under Part V of the Act, the Lobbyist Registrar has the general powers and duties and is subject to the limitations set out in sections 168 and 169 of the Act.

§ 3-26. Responsibilities.

The Lobbyist Registrar has the powers and duties with respect to the lobbyist registry and registration system as set out in Chapter 140, Lobbying, of the Municipal Code and sections 168 and 169 of the Act.

§ 3-27. Additional powers, duties and responsibilities.

The Lobbyist Registrar shall perform such other duties respecting the lobbyist registry and registration system as may be assigned by Council.

ARTICLE V
Ombudsman

§ 3-28. Term.

The Ombudsman shall be appointed for a five-year term that may be renewed once for an additional term of five years.

§ 3-29. Powers, duties and limitations under Part V.

When carrying out his or her duties under Part V of the Act, the Ombudsman has the general powers and duties and is subject to the limitations set out in sections 171 to 176 of the Act.

§ 3-30. Responsibilities.

The Ombudsman is responsible for:

- A. Determining procedures related to the function.

- B. Investigating public complaints about decisions, actions or recommendations made or omitted in the course of implementing City policies and administering City services.

§ 3-31. Additional powers, duties and responsibilities.

The Ombudsman shall perform such other duties respecting the Ombudsman's function as assigned by Council.

§ 3-32. Jurisdiction; limitation.

- A. The Ombudsman may investigate any matter where the Ombudsman believes on reasonable grounds that a person or body of persons has been adversely affected in his, her or its personal capacity by a decision, recommendation, act or omission made in the course of implementing City policies and administering City services by:
 - (1) A City division.
 - (2) A contracted service provider.
 - (3) A local board (restricted definition).
 - (4) A City-controlled corporation identified by Council.
- B. Despite Subsection A, the Ombudsman's jurisdiction does not include Council and Council Committees, as defined in Chapter 27, Council Procedures, of the Municipal Code.

§ 3-33. Complaint initiation.

The Ombudsman may investigate:

- A. In accordance with this article.
- B. At the request of Council.
- C. On the Ombudsman's initiative.

§ 3-34. Right to refuse.

- A. The Ombudsman may refuse to investigate a complaint or to continue an investigation of a complaint when the Ombudsman believes on reasonable grounds that:
 - (1) The complainant has not availed himself or herself of other adequate remedies under the law or existing administrative practices.

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- (2) The subject matter of the complaint is trivial.
 - (3) The complaint is frivolous, vexatious or not made in good faith.
 - (4) The complainant cannot demonstrate sufficient personal interest in the subject matter of the complaint.
 - (5) Having regard to all of the circumstances of the case, no further investigation is necessary.
 - (6) More than one year has elapsed since the complainant learned of the facts on which the complaint is based, unless the complainant establishes exceptional circumstances that justify the delay to the satisfaction of the Ombudsman.
- B. If the Ombudsman determines not to investigate, or to discontinue an investigation, the Ombudsman shall inform the complainant in writing of the decision and the reasons for the decision.

§ 3-35. Notification of complaint.

Before commencing an investigation the Ombudsman shall:

- A. Notify the affected parties.
- B. Allow the affected parties to be heard.
- C. Provide the affected parties with an opportunity to rectify.

§ 3-36. Investigation criteria.

In undertaking an investigation, the Ombudsman shall have regard to whether the decision, recommendation, act or omission in question may have been:

- A. Contrary to law;
- B. Unreasonable, unjust, oppressive or improperly discriminatory;
- C. Based wholly or partly on a mistake of law or fact;
- D. Based on the improper exercise of a discretionary power; or
- E. Wrong.

§ 3-37. Procedures after an investigation.

Upon completion of an investigation the Ombudsman shall:

- A. Inform the complainant in writing of the results of the investigation.

- B. Inform the other affected parties in writing of the results of the investigation.
- C. Recommend any measures the Ombudsman deems necessary to rectify the matter.

OMBUDSMAN

Appointment of Ombudsman

170. (1) The City shall appoint an Ombudsman. 2006, c. 11, Sched. A, s. 170 (1).

Reporting relationship

(2) The Ombudsman reports to city council. 2006, c. 11, Sched. A, s. 170 (2).

Status

(3) The Ombudsman is not required to be a city employee. 2006, c. 11, Sched. A, s. 170 (3).

Function

171. (1) The function of the Ombudsman is to investigate in an independent manner any decision or recommendation made or any act done or omitted in the course of the administration of the City, its local boards (restricted definition) and such city-controlled corporations as city council may specify and affecting any person or body of persons in his, her or its personal capacity. 2006, c. 11, Sched. A, s. 171 (1); 2009, c. 33, Sched. 21, s. 4 (10).

Powers and duties

(2) Subject to this Part, in carrying out this function the Ombudsman may exercise the powers and shall perform the duties assigned to him or her by city council. 2006, c. 11, Sched. A, s. 171 (2).

Powers paramount

(3) 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 thereof, 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. 11, Sched. A, s. 171 (3).

Decisions not reviewable

(4) 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 City, a local board (restricted definition) or a city-controlled corporation or acting as counsel to any of them in relation to any proceedings. 2006, c. 11, Sched. A, s. 171 (4).

Delegation

(5) The Ombudsman may delegate in writing to any person, other than a member of city council, any of the Ombudsman's powers and duties under this Part. 2006, c. 11, Sched. A, s. 171 (5).

Same

(6) The Ombudsman may continue to exercise the delegated powers and duties, despite the delegation. 2006, c. 11, Sched. A, s. 171 (6).

Investigation

172. (1) Every investigation by the Ombudsman shall be conducted in private. 2006, c. 11, Sched. A, s. 172 (1).

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 City, a local board (restricted definition), a city-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. 11, Sched. A, s. 172 (2).

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. 11, Sched. A, s. 172 (3).

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 City, a local board (restricted definition) or a city-controlled corporation”, “the *Municipal Freedom of Information and Protection of Privacy Act*” and “this Act”, respectively. 2006, c. 11, Sched. A, s. 172 (4); 2006, c. 35, Sched. C, s. 15 (1).

Duty of confidentiality

173. (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. 11, Sched. A, s. 173 (1).

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. 11, Sched. A, s. 173 (2).

Municipal Freedom of Information and Protection of Privacy Act

(3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*. 2006, c. 11, Sched. A, s. 173 (3).

No review, etc.

174. 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. 11, Sched. A, s. 174.

Testimony

175. (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. 11, Sched. A, s. 175 (1).

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. 11, Sched. A, s. 175 (2).

Effect on other rights, etc.

176. The rights, remedies, powers, duties and procedures established under sections 170 to 175 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. 11, Sched. A, s. 176.

19. (1) The Ombudsman may from time to time require any officer, employee or member of any governmental organization 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. R.S.O. 1990, c. O.6, s. 19 (1).

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 governmental organization 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. R.S.O. 1990, c. O.6, s. 19 (2).

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*, 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. R.S.O. 1990, c. O.6, s. 19 (3); 2006, c. 35, Sched. C, s. 94 (3).

Providing personal information despite privacy Acts

(3.1) A person who is subject to the *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). 2004, c. 3, Sched. A, s. 94.

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. R.S.O. 1990, c. O.6, s. 19 (4).

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. R.S.O. 1990, c. O.6, s. 19 (5).

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. R.S.O. 1990, c. O.6, s. 19 (6).

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*. R.S.O. 1990, c. O.6, s. 19 (7).

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. R.S.O. 1990, c. O.6, s. 19 (8).

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. R.S.O. 1990, c. O.6, s. 19 (9); 2006, c. 19, Sched. C, s. 1 (1).