ACCOUNTABILITY AND TRANSPARENCY SUB-COMMITTEE
REPORT 07-001
Tuesday, November 6, 2007
4:30 p.m.
Room 206, Convention Centre
1 Summers Lane, Hamilton

Present:
Mayor Eisenberger
Vice-Chair B. Clark
Councillors:  S. Duvall, T. Whitehead
D. Broom, J. Chapman, T. Charuk, D. O’Connor

Also Present:
G. Peace – City Manager
J. Rinaldo – GM, Finance
P. Barkwell – City Solicitor
A. Pekaruk – Internal Auditor
K. Christenson – City Clerk
A. Rawlings – Co-ordinator, Office of the City Clerk

Absent with Regrets:
Councillor B. McHattie

The Accountability and Transparency Sub-Committee presents Report 07-001
and respectfully recommends:

1. That the City of Hamilton accept the services of the Ontario Ombudsman, as
   outlined in Appendix A to this Report, for the investigation of complaints
   respecting closed door meetings, and that this arrangement be reviewed by
   Council within two years of its inception, to consider the effectiveness and
   timeliness of the service and consideration of available alternatives.
FOR THE INFORMATION OF COMMITTEE:

(a) **CHANGES TO AGENDA (Item 2)**

The Committee Clerk advised that additional information was being provided to Committee at the meeting, as follows:

- Letter from Ontario Ombudsman respecting offer of investigative service respecting open meetings
- AMO release respecting the Ontario Ombudsman’s offer to municipalities to provide free investigative services respecting open meetings (Appendix C to this report)
- Information respecting Ethics Consulting Services (Appendix D to this report)
- Draft Terms of Reference for Integrity Commissioner (Appendix E to this report)
- Letter from Hayhurst Consulting

There were no other changes to the Agenda.

Committee approved the Agenda, as amended.

Vice-Chair Clark chaired the meeting.

(b) **DECLARATIONS OF INTEREST (Item 3)**

There were none declared.

(c) **APPROVAL OF MINUTES OF OCTOBER 2, 2007**

On a Motion (Chapman/Duvall), the Minutes were approved.

(d) **Appointment of Investigator for Closed Meetings-required to be in place by January 1, 2008 (Item 5.1)**

Committee considered the requirement for the appointment of an investigator for closed meetings, and the need to have this in place by January 1, 2008. Committee reviewed, in detail, the two principal options which had been put forward

- the service offered by the Ontario Ombudsman (information distributed at today’s meeting) (Attached to this Report as Appendix A).
Committee noted that the AMO/LAS service was based on a retainer plus fee for service, and that the Ombudsman was offering a free service to municipalities.

Peter Barkwell noted that several Ontario municipalities had already decided to use the AMO/LAS service, several more were proposing to use this service, and that the Town of Markham was appointing their own investigator. He explained that some northern Ontario communities had decided against the use of the AMO/LAS service, due to the high cost of travel expenses, and that several municipalities were looking at revising the AMO/LAS draft contract to incorporate their own requirements.

Glen Peace advised that a letter had just been received from AMO, commenting on the Ontario Ombudsman’s proposed free service, and that this letter would be distributed to Committee members.

Staff confirmed that most municipalities had either chosen or were preparing to choose the AMO/LAS service.

Peter Barkwell explained that in accepting AMO/LAS, the City could exercise some control relating to fees charged and the passage of our own by-law, whereas the acceptance of the Ontario Ombudsman’s service would not permit any local input or control.

Councillor Clark noted that the Ombudsman’s service was being offered at no charge, and asked why the City chose a service from AMO/LAS which charged fees?

Joanna Chapman noted her preference that the AMO/LAS service not be accepted, since AMO is the association which serves municipalities, and not citizens. She explained that as a citizen, she would have more faith in the Ombudsman, who serves the people, and preferred this approach.

Mayor Eisenberger suggested that the City could try the Ombudsman’s free service, and could change to AMO/LAS later, if we chose.

Committee then passed a Motion to recommend acceptance of the offer from the Ontario Ombudsman, and to re-visit the operation of the process within two years.
(e) Budget for Integrity Commissioner and associated positions  
-consideration of Recommendation to 2008 Budget Deliberations (Item 5.2)

Committee discussed the matter and had additional information supplied by staff.

Joe Rinaldo noted that Council has already referred the proposal for the Integrity Commissioner to the 2008 Budget process. He confirmed that the money for the Integrity Commissioner would be funded from the General Levy.

(f) Follow up from previous discussion items

(i) Council direction respecting LECG Report

Joanna Chapman noted that this matter was now in the past, and it was too late to review it.

(ii) Financial disclosure for politicians

Joe Rinaldo explained that the budgets for the individual Ward Councillors were made public, even though this is not required by the Municipal Act. He noted that the City discloses the remuneration and expenses for all Councillors, as required by the Act, in March each year.

Kevin Christenson noted that within the City’s Procedural By-law, the Code of Conduct encouraged the filing of a statement of financial disclosure by Councillors, but confirmed that this was optional.

Committee discussed the issues relating to financial disclosure, and Peter Barkwell confirmed that as there was no requirement for such disclosure in the Municipal Act, private legislation would be needed before it could legally be required.

Mayor Eisenberger and Councillor Duvall asked how Councillors were informed of the financial disclosure section of the Procedural By-law and Kevin Christenson explained that it was part of the Council Orientation sessions.

Kevin Christenson agreed to bring information to the next meeting respecting the number of Councillors who had filed this information.

Committee members continued to discuss the issue of financial disclosure by Councillors, and whether a requirement for such disclosure should be addressed by a request to the Provincial government to amend the Act.

On a Motion (Eisenberger/Duvall), the following direction was given:

That the City Solicitor report back on the matter of mandatory financial disclosure for Councillors, including the ways in which the private interests of the Councillors may be appropriately protected, and that the report consider the options presently available and identify what options may be needed.
(iii) Terms of Reference for Integrity Commissioner

Peter Barkwell distributed a draft Terms of Reference for this position, and Committee discussed the matter and raised questions respecting the authority of the Commissioner over staff.

Glen Peace explained that he deals with complaints regarding staff, except for complaints about the eight senior managers. These complaints are automatically handed over to an outside investigator. Mr. Peace continued that the City has numerous policies which control staff below the level of senior managers.

Committee discussed the matter of whether the Commissioner should have power to investigate staff, and had further information supplied by staff.

Peter Barkwell advised that the legislation was clearly drafted for elected officials, and did not give the Commissioner power over staff.

On a Motion (Eisenberger/Charuk), the following direction was approved:

(I) That the Committee accepts the Terms of Reference for the Integrity Commissioner, as drafted, and that the City Solicitor prepare a draft by-law for this position, for consideration by Committee.

(II) That staff consider the viability of the inclusion of the eight senior managers within the draft Terms of Reference, and report back to Committee.

Councillor Whitehead requested that his opposition to this Motion be recorded.

(iv) Lobbyist Register

Committee discussed the issue and the lack of a generally accepted definition of the word “lobbyist”. Questions raised included the following:

- the difference between “lobbyists” and “advocates”
- should unpaid lobbyists be included
- should unions be classified as lobbyists

Peter Barkwell agreed to collect information on the definitions used by other municipalities, their approach to the issue and any by-laws passed and that he would prepare a draft terms of reference for the position of Lobbyist Registrar.

Glen Peace confirmed that staff would gather information on this issue from other municipalities, and bring it back to Committee.
(v) Timing of Issues

Mayor Eisenberger advised that the Committee needed to establish critical time lines for the issues under discussion, now that the Recommendation for the appointment of the Investigator for Closed Meetings was in hand. Committee discussed the matter, and asked staff to come back with timelines for the process of establishing the position of the Integrity Commissioner, the Lobbyist Registry and the financial disclosure for politicians, including the appropriate public input.

(vi) York University – Ethics Consulting Services

Joanna Chapman noted that she would enquire what the fees for this service are, and bring this back to Committee.

(g) Future Meetings

Committee agreed with the suggestion by Glen Peace, that he would advise the Clerk when he had collected the information requested by Committee, and that the date for the next meeting would be arranged then.

(h) Adjournment

There being no further business, on a Motion (Duvall/Charuk), the Committee adjourned at 6:35 pm.

Respectfully submitted,

Vice-Chair Brad Clark

Alexandra Rawlings
Co-ordinator, City Clerk’s Department
October 22, 2007

Dear Clerk/Administrator/Council:

As of January 1, 2008, the provisions of the *City of Toronto Act, 2006* and the *Municipal Act, 2001* relating to investigation of closed meetings will come into effect. Under these new legislative provisions, the Office of the Ombudsman of Ontario will have the responsibility of investigating complaints about closed meetings if the municipality in question has not appointed an investigator.

I would like to take this opportunity to provide you with some general information regarding our Office’s processes and how it will be dealing with this new jurisdiction. Attached for your information and assistance is some additional information in the form of a "frequently asked questions" document. This information can also be found on the Ombudsman’s website at www.ombudsman.on.ca.

The Ombudsman’s Office will be maintaining information about closed meetings on its website and will be available to the public and municipalities as a resource. The Ombudsman’s services are free of charge. Our Office is independent from government and functions in an impartial and confidential manner, conducting thorough, objective and credible investigations.

The Ombudsman’s process has proven effective in resolving tens of thousands of cases on an annual basis. When we receive a complaint, our normal practice is to contact the parties involved and first attempt to resolve issues informally. If this is unsuccessful, a formal investigation may be launched. Prior to launching an investigation, notice is given in writing to the organization that is the subject of the complaint – in the case of complaints about closed meetings, notice would go to the relevant municipality or local board. Under the *Ombudsman Act*, the Ombudsman also has discretion to decline to investigate a complaint.

Given that the Ombudsman will have jurisdiction to investigate complaints about closed meetings in any case where a municipality has not appointed an investigator for this purpose, it is important that all Ontario municipalities provide our Office with up-to-date information regarding any investigator(s) they may appoint. This will also assist the Ombudsman’s Office in providing appropriate referral information to complainants in cases where municipalities have appointed investigators.

Bell Trinity Square
483 Bay Street, 10th Floor, South Tower, Toronto, ON M5G 2C9
483, rue Bay, 10e étage, Tour sud, Toronto (Ontario) M5G 2C9
416-586-3000
416-586-3485 1-866-411-4211
www.ombudsman.on.ca
We would appreciate it if you could notify our Office of any investigator(s) appointed by your municipality, including name and contact information. In addition, please provide us with any Council minutes confirming the investigator's appointment, and any relevant bylaw relating to the terms and conditions governing the investigator. This can be done by e-mail at info@ombudsman.on.ca or by mail, addressed to the attention of Sherrie Nicholson, Ombudsman Ontario, Bell Trinity Square, 483 Bay Street, 10th Floor, South Tower, Toronto, ON, M5G 2C9.

If you have any questions, please feel free to visit our website or contact us via e-mail at info@ombudsman.on.ca or by phone at 1-800-263-1830.

Yours truly,

Barbara Finlay
Deputy Ombudsman

Encl.
Investigating Closed Municipal Meetings: Frequently Asked Questions

Municipalities and local boards in Ontario are required to pass bylaws setting out the procedure for holding meetings. The law now requires that public notice be given that a meeting will be held. All meetings must be open to the public unless they come within limited exceptions.

As of January 1, 2008, the City of Toronto Act, 2006 and the Municipal Act, 2001 provide that any person may request an investigation into whether a municipality or local board has complied with the open meeting requirements or the procedural bylaw relating to any meeting or part of a meeting that was closed to the public.

If a municipality has not appointed an investigator, the Ombudsman of Ontario has authority to investigate complaints about closed meetings. The Ombudsman's investigations are conducted at no cost to those who complain or to municipalities or local boards. The Ombudsman's process respects the values of independence, impartiality, confidentiality and a credible investigative process and has been proven effective in resolving tens of thousands of cases per year in a timely manner.

Who must hold an open meeting?
All municipal and local boards — except conservation authorities, police services boards, school boards, and public library boards — are required to hold meetings that are open to the public, subject to some exemptions.

When can a meeting be closed to the public?
A municipal or local board meeting, or part of a meeting, may be closed if the subject matter being considered concerns:

- the security of the property of the municipality or local board;
- personal matters about an identifiable individual, including municipal or local board employees;
- a proposed or pending acquisition or disposition of land by the municipality or local board;
- labour relations or employee negotiations;
- litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
• advice that is subject to solicitor-client privilege, including communications
  necessary for that purpose;
• a matter in respect of which a council, board, committee or other body may hold a
  closed meeting under another Act.

A meeting may also be closed if it is held for the purpose of educating or training the
members, so long as no member discusses or otherwise deals with any matter during the
closed meeting in a way that materially advances the business or decision-making of the
council, local board or committee.

In addition, meetings must be closed if the subject matter relates to the consideration of a
request under the Municipal Freedom of Information and Protection of Privacy Act if the
council, board, commission or other body is the head of an institution for the purposes of
that Act.

Can members vote during a closed meeting?
Generally, meetings are not supposed to be closed to the public during the taking of a
vote. However, voting in a closed meeting is permitted if the closed meeting is otherwise
authorized and the vote is for a procedural matter or for giving directions or instructions
to officers, employees or agents of the City; to officers, employees or agents of a local
board or of a committee of either of them; or to persons retained by or under a contract
with the municipality or local board.

Does a municipal council or local board have to follow a specific procedure to close
a meeting?
Yes, in order to close a meeting a specific process must be followed:
The municipality, local board, or committee must state by resolution that a closed
meeting will be held and state the general nature of the matter to be considered at the
closed meeting. Public notice of a meeting is required even if the meeting is closed. In
the case of meetings for the purpose of educating or training members, the subsection of
the Municipal Act authorizing meeting closure for this purpose must also be cited.

Does a municipal body have to keep a record of a closed meeting?
A municipal council, local board or committee, must record without comment all
resolutions, decisions and other proceedings, whether the meeting is open or closed.

Who can ask for an investigation relating to a closed meeting?
Any person or corporation may ask for an investigation relating to a closed meeting.

What municipal bodies can be investigated for failing to hold an open meeting?
The investigation provisions cover municipalities and local boards, which include:
• municipal councils;
• municipal boards, including boards of health or planning boards;
• transportation commissions;
any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities.

Who investigates closed meeting complaints?
If a municipality has appointed an investigator, he or she will investigate complaints about closed meetings. If the municipality has not appointed an investigator, the Ontario Ombudsman may investigate. Once the Ontario Ombudsman has received a complaint, the Ombudsman will retain jurisdiction over a complaint even if an investigator is subsequently appointed by the municipality.

Complaints may be made to a municipality or local board or to the Ontario Ombudsman. If the Ombudsman receives a complaint about a municipality where an investigator has been appointed, the complaint will be referred to that investigator. Similarly, it is expected that municipalities and local boards will refer complaints to the Ontario Ombudsman when no investigator has been appointed.

How will the Ombudsman know if a local investigator has been appointed?
The Ontario Ombudsman is encouraging municipalities to notify his office if an investigator has been appointed, and to provide the investigator’s contact information. The Ombudsman’s Office will contact a municipality in cases where no notification has been received.

Does the Ombudsman have the ability to conduct investigations in both English and French?
Yes, the Ombudsman’s office can conduct investigations in either English or French.

Does the Ombudsman charge a fee to either the municipality or the person bringing the complaint?
No, there is no fee charged by the Ombudsman to either the municipality or the person bringing the complaint to our Office. In keeping with the tradition of ombudsman offices around the world, the Ombudsman’s services are free of charge in order to ensure they are fully accessible to everyone.

Will the Ombudsman notify the municipality or local board when a complaint is received?
The Ombudsman’s usual process is to document and confirm the details of a complaint, and then to contact the municipality or local board to advise them of the complaint and obtain information. If the complaint cannot be resolved informally, a formal investigation may be commenced. In the case of a formal investigation, the head of the municipality or local board will be notified.
Can closed meetings prior to January 1, 2008 be investigated?
The investigation provisions apply to meetings held on or after January 1, 2008. As a general rule, legislative provisions only apply on or after their commencement date.

What powers of investigation does the Ombudsman have with respect to closed meeting complaints?
The investigative powers set out in the Ombudsman Act – including the power to issue summonses, inspect premises and compel municipal officials and staff to provide information and documents – apply to investigations of closed meeting complaints.

Will the Ombudsman investigate every complaint received?
The Ombudsman’s Office will conduct an initial review of each complaint regarding open meetings. Not all complaints will necessarily result in a formal investigation. Some cases will be resolved informally, and there may also be circumstances when an investigation is otherwise considered unnecessary.

Will the Ombudsman establish time frames for the municipality or local board to respond to a complaint?
The time frame for responding to a complaint will depend on the nature of the circumstances. As a general rule, the Ombudsman expects timely responses so that complaints may be resolved without undue delay.

What happens to municipal documents after an Ombudsman investigation?
The Ombudsman’s practice is to return original documents. Copies of documents retained in the Ombudsman’s file are kept confidential. The Ombudsman is not subject to the Municipal Freedom of Information and Protection of Privacy Act or the Freedom of Information and Protection of Privacy Act.

What can the Ombudsman do if he finds a meeting was improperly closed or procedural requirements were contravened?
If the Ombudsman concludes, after an investigation, that there was a contravention of the procedural bylaw relating to a closed meeting, or that the closed meeting provisions were contravened, he may report his opinion and reasons to the municipality or local board, and make recommendations to address his concerns.

Will the Ombudsman’s reports about closed meetings be made public?
Yes, once an Ombudsman report is provided to the municipality or local board, that body is required to make it public. Copies of the reports may also be found on the Ombudsman’s website, www.ombudsman.on.ca.
August 29, 2007

Dear Clerk/Administrator/Council:

Enclosed please find information and sign-up materials related to the new LAS Investigator Program. This program has been developed to help municipalities proactively respond to forthcoming changes to the Municipal Act related to ‘Closed Meeting’ Investigations. The relevant changes to the Act are outlined in the presentation attached.

In an effort to ensure that this new LAS program is administered in an open and transparent manner we have provided a sample version of the Service Agreement between LAS and each municipality, as well as information related to how this program will operate – fees, sign-up process, etc. This information is proprietary so please use your professional discretion in the distribution of this material to those outside of staff and Council.

The operation of this program is quite simple – interested municipalities will appoint LAS as the municipality’s Investigator (as per the Act), and LAS will delegate authority to a third party company set up for this purpose; LAS’ chosen counter-party is Amberley Gavel Ltd. Each municipality will pay a small retainer fee to join the program as well as a daily investigation rate for any investigations that are requested. Details of the sign-up process, fees, and other program details are included in the enclosed presentation slides.

The benefits of this program are that program members will be provided with: ongoing educational information related to the ‘Closed Meeting’ provisions of the Municipal Act, access to all completed reports via a password protected website, access to a sizeable pool of trained and qualified Review Officers, and other resources designed to make the forthcoming changes easier for your municipality to manage.

Given the short time period before the ‘closed meeting’ provisions come into effect, we encourage all municipalities to promptly review this information to determine if this program is of interest to your municipality. Should you wish to join this program please contact LAS to request a personalized version of the Investigator Services Agreement.

The answers to the most common questions are provided in the enclosed FAQ document but should you have any additional questions, please contact Jason Hagan, LAS Program Coordinator, at ext. 320 or by email at jhagan@amo.on.ca.

Sincerely,

Nancy Plumridge
President
LAS Investigator Program
Closed Meeting Investigations Information

As of January 1, 2008 any person (this means anyone!) will be able to request that an investigation be undertaken respecting whether a municipality or local board, or a committee of either, has complied with the closed meeting rules contained within the Municipal Act. Municipalities will be able to appoint an Investigator for this purpose. If a municipality chooses not to appoint an Investigator, the Provincial Ombudsman will be able to assume the role.

What should be considered in appointing an Investigator?
A municipality could appoint any person, corporation or individual, including a member of municipal staff, to conduct investigations pursuant to Section 239.2 of the Act.

In making its selection, a municipal Council should consider the intent and wording of the Act. Sections 239.1 and 239.2 were enacted to enhance transparency and accountability. Council needs to consider if its choice achieves that goal.

As well, the Act specifically speaks to impartiality, credibility, confidentiality, and independence with respect to the investigation process. Council must consider these factors also.

Why appoint LAS as Investigator?
LAS decided to offer this service for several reasons. The first is that it is complementary to its existing program of providing services to municipalities where value can be enhanced through group procurement.

Secondly, LAS believes that this initiative will assist municipalities in demonstrating that they are mature and accountable orders of government, capable of managing their own affairs. The business model for the program ensures that all Investigators will possess extensive knowledge of and appreciation for the municipal environment.

Thirdly, through this joint initiative, LAS will include an educational component, to a degree not possible if municipalities act independently or in smaller cooperative groups. In the longer term, information and municipal education will ensure transparency and accountability, ultimately reducing the frequency of requests for close meeting investigations.

How Does a Municipality Appoint LAS as Investigator?
Prior to January 1, 2008, a municipality can appoint LAS to be its investigator, effective January 1, 2008. A municipality can also appoint LAS at any time after January 1, but LAS cannot act as Investigator for any requests made between January 1, 2008 and the date of appointment. The Provincial Ombudsman takes on this role.

To appoint LAS as Investigator a municipality must: execute a Service Agreement with LAS, pass an appointment by-law (and provide LAS with a copy), and pay a retainer fee. A suggested appointment by-law will be provided by LAS, which reflects the intention of LAS to delegate its authority to a third party company specifically set up for the purpose of providing an Investigator Service. This company will provide a panel of experienced and trained individuals who will conduct the investigations. This company has received delegated authority from LAS under an agreement that has been executed between the parties.
What are the Fees for Investigation Services?
There are two types of fees with respect to a municipality's agreement with LAS. The first is the annual retainer, and the second is the daily rate for actual investigations (if required), along with out of pocket expenses.

The purpose of the retainer is to cover the costs associated with training, developing educational material to be provided to municipalities, liability insurance and administrative overhead.

Daily fees and reasonable out of pocket expenses related to any Investigation will be charged directly to the municipality or local board by the third-party company. It is anticipated that a credible investigation process will require a minimum of a half day's time even if it is determined that the complaint does not merit a complete investigation or if the request ends up being withdrawn.

**LAS will enhance the program for all participating municipalities in a number of ways:**
- ✔ There will be a password protected website available to participating municipalities which will include a repository of all of the reports made to date and other relevant information
- ✔ LAS will provide information on the panel of Investigators and will ensure that the Investigators represent a broad cross-section of the province and that investigations are available in both English and French
- ✔ LAS will also provide information and suggestions on closed meetings as part of an ongoing educational program

**Your municipality will be receiving a comprehensive package from LAS in time for a September Council meeting, which will contain:**
- ✔ Agreement with LAS for Investigator Services
- ✔ Sample Appointment By-law
- ✔ Educational materials that will help you answer all your questions (i.e. which local boards are included and what is a committee, etc.)

**Next Steps:**
Practically speaking Council should decide on who its Investigator will be before the end of November 2007 and preferably before then so that staff can put the necessary procedures in place to deal with any requests that may be received after January 1, 2008.

Your municipality should promptly review the LAS materials and start the process of determining what your municipality plans to do to address the new closed meeting rules.

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For more information please contact:

**Jason Hagan**  
**LAS Program Coordinator**  
**Association of Municipalities of Ontario**  
Tel: 416-971-9856 ext. 320  
Toll Free: 1-877-426-6527  
Email: jhagan@amo.on.ca
LAS Investigator Program
Frequently Asked Questions

The closed meeting investigation process pursuant to Sections 239.1 and 239.2 of the Municipal Act, 2001 is new. These "frequently asked questions" reflect our best efforts to interpret the legislation and its intent, and demonstrate how the new LAS Investigator Program will operate.

What is the new Requirement?
As of January 1, 2008 any person (and this means anyone) will be able to request that an investigation be undertaken respecting whether a municipality or local board, or a committee of either, has complied with closed meeting rules. Municipalities will be able to appoint an Investigator for this purpose. If a municipality chooses not to appoint an Investigator, the Provincial Ombudsman will be able to assume the role.

What should be considered in appointing an Investigator?
A municipality can appoint any person, corporation or individual, including a member of municipal staff, to conduct investigations pursuant to Section 239.2.

In making its selection of an Investigator, a municipal Council should consider the intent and wording of the Act. Sections 239.1 and 239.2 were enacted to enhance transparency and accountability. Council needs to consider if its choice achieves that goal.

The Act specifically speaks to impartiality, credibility, confidentiality, and independence with respect to the investigation process. Council must consider these factors also.

Why appoint LAS as Investigator?
LAS decided to offer this service for several reasons. The first is that it is complementary to our existing suite of municipal programs and services whereby value can be enhanced through group procurement. The LAS program will also ensure a consistent standard of service to all participants.

Secondly, LAS believes that this initiative will assist municipalities in demonstrating that they are a mature and accountable order of government, capable of managing their own affairs. LAS will ensure that Review Officers have a knowledge of and appreciation for the municipal environment.

Thirdly, through this joint initiative, LAS believes it can add an educational component, to a degree not possible if municipalities act independently or in small groups, which will serve to enhance transparency and accountability, ultimately reducing the frequency of requests for closed meeting investigations.

About LAS - Created in 1992, LAS is a wholly owned subsidiary of AMO. LAS supports municipalities and the broader public sector by delivering programs and services that leverage economies-of-scale and co-operative procurement efforts. Examples of current LAS programs are our Electricity and Natural Gas Procurement Programs.
How Does a Municipality appoint LAS as Investigator?
Prior to January 1, 2008, a municipality can appoint LAS to be its Investigator, effective January 1, 2008. A municipality can also appoint LAS at any time after that date, but LAS would not be the Investigator for any requests that were made between January 1, 2008 and the date of the later appointment. The Provincial Ombudsman takes on this role.

A standard by-law is provided by LAS which incorporates an agreement between LAS and the municipality. It reflects the intention of LAS to delegate its authority to a third party company specifically set up for this purpose. This company will provide a panel of Review Officers who will conduct investigations. This company has received delegated authority from LAS under an agreement that has been executed between the parties and it will be this company that is the delegated Investigator.

What background will the Review Officers have?
The Review Officers will be persons who have extensive experience with municipal government and municipal processes. This experience might be gained as a staff person or as a previous elected official, or through a close working relationship with municipal government over an extended period of time.

Review Officers will be located geographically around the Province to minimize costs to participating municipalities, where possible. At least one Review Officer will be able to conduct investigations in French.

All Review Officers will be required to participate in training regarding municipal and local board meeting processes, as well as investigative processes. A list of all Review Officers will be available to program members.

Who appoints an Investigator for a Local Board?
The municipal Council does. It will automatically be the one who is appointed to deal with requests regarding Council meetings.

What is a “Local Board”?
The definition of a local board is derived from two sources for purposes of closed meeting investigations. The first is Section 1 of the Municipal Act 2001, which says:

“local board” means a municipal services board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any act with respect to the affairs or purposes of one or more municipalities excluding a school board and a conservation authority”.

But Section 238, further states: “local board” does not include police services boards or public library boards”.

In short, the closed meeting investigation process covers all Municipal Boards and Committees except: School Boards, Conservation Authorities, Police Services Boards, and Public Library Boards. These are the only exceptions - Business Improvement Area Boards, Arena Boards, Transit Commissions, and Boards of Health, for example, are all covered.

For a specific local situation, the municipality should review the establishing by-law and enabling legislation, and if necessary consult its solicitor.
What is a “Committee”?
Section 238 says that “committee means any advisory or other committee, subcommittee or similar entity of which at least 50% of the members are also members of one or more councils or local boards”.

What about Joint Boards and Committees?
Again, guidance should come from the by-laws and legislation creating the specific body.

What is a “Person”?
- A “Person” includes an individual,
- “person” includes a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law.” (Interpretation Act),
- “person” includes a municipality unless the context otherwise requires;” (Municipal Act, 2001)

What happens if an Investigator is not appointed before January 1, 2008?
Effective January 1, 2008, a person may request the Provincial Ombudsman to undertake an investigation of the compliance of a closed meeting with the Municipal Act 2001 or a procedure by-law.

Even if a request has gone to the Ombudsman, the municipality could still appoint an Investigator for subsequent requests. The Ombudsman would complete the work on the requests filed with him.

Can a request be retroactive?
Section 239.2 of the Municipal Act, 2001 has been proclaimed effective January 1, 2008. As a general rule, legislation is not retroactive unless it contains specific reference to retroactivity. This section contains no such reference; it is recommended that an investigation only be held for meetings that occur on or after January 1, 2008.

How does a person file a request and is there a required form for a request?
It appears that the municipality can decide upon the form for a request, but presumably the request should be signed by the person requesting the investigation, and should include contact information and sufficient detail to indicate the meeting that the request concerns, and a general indication of why the request has been made.

What are the requirements of an Investigation?
The investigation process is required to be credible, its activities confidential, and it is required to be conducted impartially and independently. Neither Council, nor a Local Board, nor any of its members should attempt to provide direction to the investigation process once a request has been made. Council or Board members could be interviewed as could any other person in attendance at the meeting that is the subject of the request.

What does the Municipality or Local Board do with a request for an Investigation?
The request should be directed to the Municipal Clerk who will have a checklist of material required for each investigation – this will be provided by LAS. This standardized checklist is designed to minimize investigation costs and ensure the credibility of the investigation process.
The checklist will include: the request made by the person, procedure by-law(s), contact list of attendees, evidence of notice for the meeting in question, agenda and attachments, minutes, and other relevant materials.

**What will the LAS investigation process be?**
- A person files a request for investigation with the Clerk
- The request and background documentation are sent to the Investigator
- Initial review by Investigator may result in withdrawal by the person filing, a decision not to proceed with reason, or a decision to proceed with the investigation
- In the case of withdrawal, or decision not to proceed, Investigator notifies the parties.
- If decision is to proceed, a Review Officer is assigned and investigation is performed
- Draft report filed with Investigator for review
- If circumstances warrant, municipality or local board given formal hearing opportunity (pursuant to Section 218 of the Ombudsman Act)
- Final report prepared and submitted to the Council, or Local Board and Council, and posted on Investigator website.

* A flowchart of the Investigation Request Process can be found on the LAS website at www.LAS.on.ca.

**Will all requests proceed to a full investigation?**
During the investigative process the person who filed the request may decide to withdraw the request. If that happens, the file will be closed and the action reported to the Council, or to the Council and Local Board.

In addition, some requests may be determined upon preliminary review to be frivolous or vexatious. Following such a determination the requestor will be notified of this decision by the Investigator as will the Council, or the Council and the Local Board.

The credibility of the Investigation process requires that both of the above circumstances be formally undertaken and documented.

**What are the fees for this LAS program?**
There are two types of fees with respect to a municipality's agreement with LAS. The first is the retainer fee, and the second is the daily rate for actual investigations, along with out of pocket expenses. Specific fee amounts are detailed in the Investigator Services Agreement.

The retainer is to allow for educational materials to be developed and provided to municipalities and local boards, and also for administrative overhead.

Daily fees and reasonable out of pocket expenses will be chargeable to the municipality or local board for each investigation. It is anticipated that a credible investigation process will require a minimum of a half day's time once referred to the Investigator, even if the request is withdrawn or determined not to merit a complete investigation.

**How is the investigation billed?**
Municipalities will be billed on a daily basis for investigations – billing will be on an hourly basis, where only part of a day is required. Members of the Review Officer panel will be located throughout Ontario which will help to reduce travel costs and time.
How long will an investigation take?
It is difficult to predict but it is anticipated that most investigations will take approximately two days. It will depend on the number of interviews required and the ability to coordinate these interviews. If a request can be satisfied without a full investigation then this would likely decrease the time required.

Can a municipality charge a fee for a request for an investigation?
Nothing in section 239 addresses the issue of the fee, however, any fee or charge would presumably be established by the municipality or local board pursuant to Part XII of the Municipal Act, 2001. A municipality may wish to obtain legal advice in establishing such a fee.

Does the Municipality have a choice of Review Officer from the panel?
The decision as to which Review Officer will be delegated the task of conducting the investigation will be made by LAS’ delegate. Factors such as geographic location, type of municipality and availability will be taken into account. A municipality may request a particular member of the panel and this will also be taken into consideration.

Who can see a request?
The Municipal Act, 2001 imposes a duty of confidentiality on every person involved with the Investigation. This duty prevails even over the Municipal Freedom of Information and Protection of Privacy Act.

Is the report of the Investigator available to the public?
Yes. The Act requires that it be available to the public.

If a municipality appoints LAS will it have access to all of the reports?
Yes. One of the advantages for a municipality in appointing LAS is that the municipality will have access to a password protected website that will include all reports issued.

How long does the appointment of LAS as Investigator last?
For appointments made effective January 1, 2008, the sample Appointing By-law and Services Agreement provide for a term of two years expiring on December 31, 2009. If the appointment is made after January 1, 2008, the appointment will still last until December 31, 2009.

The appointment will be automatically renewed unless terminated by the municipality or by LAS no later than 90 days before the expiry date of the current Services Agreement.

How will LAS help municipalities understand the closed meeting rules?
LAS will enhance the service provided to participating municipalities in a number of ways:
 ✓ There will be a password protected website for participating municipalities that will provide a variety of information resources including access to all reports made to date.
 ✓ LAS will provide information on the panel of Review Officers.
 ✓ LAS will also provide information and suggestions on closed meetings as part of an ongoing educational program.
TO THE IMMEDIATE ATTENTION OF HEAD OF COUNCIL AND HEAD OF ADMINISTRATION

Attached is (1) AMO release, as below:

- Open Meetings

If you have problems opening the attachment(s) please call AMO at (416) 971-9856.

PLEASE NOTE
In light of the media coverage of the Provincial Ombudsman's recent comments, AMO has been asked to provide some background and commentary for your use as councils consider the meeting investigator position or when dealing with local media.

DISCLAIMER
These are final versions of AMO documents. AMO assumes no responsibility for any discrepancies that may have been transmitted with the electronic version. The printed versions of the documents stand as the official record.
Open Meetings

The Ontario Government’s Ombudsman, André Marin, has made several comments recently in the media about the use of closed-door meetings by municipal governments. They are consistent with views that he presented in November 2006 during the Committee hearings stage of Municipal Act amendments.

Regrettably, the Ombudsman is making sweeping generalizations about municipalities on the basis of presumption.

AMO has made its own views known to the Ontario Government during committee hearings and in MOU discussions. AMO wants to share them again with you, as well as considerations related to the new meetings investigator position.

Key Messages:

- The Ontario Government and its Ombudsman do not have a monopoly on integrity:
  - If it is appropriate for the Provincial Ombudsman to be appointed and paid by the Provincial Government, it is appropriate for municipal councils to appoint and pay for a qualified individual to investigate the appropriateness of a decision to close a meeting for a matter.
  - If the Province can be trusted to respect the work of their Ombudsman, Ontario’s municipalities can be trusted to respect their municipal equivalent.

- We respect the Ombudsman’s interest in open and transparent government, however we have a much greater appreciation for the degree to which municipalities conduct their affairs in full view of the public.

- Municipal councils address a wide variety of business through Council meetings and a relatively small number of those circumstances provide for closed meetings under the Municipal Act. These include matters pertaining to labour relations or employee negotiations; litigation or potential litigation; solicitor-client privilege; security of property; personal matters about identifiable individuals, including employees; and proposed or pending acquisition or disposition of land.

- The vast majority of municipal debates and decisions occur in full view of the public, which is in sharp contrast to the Provincial and Federal Governments where most significant public policy decisions are made in closed Cabinet and caucus meetings, or in closed discussions between party representatives.

- AMO expects that it would be highly unlikely for a council to appoint a member of their municipal staff to this position, even though the legislation does permit it, and we have not heard of this happening.

- AMO is confident that municipal governments will consider the Act as it specifically speaks to impartiality, credibility, confidentiality, and independence with respect to the investigation process.

AMO
November 2, 2007

Contact: Pat Vanini, Executive Director, (416) 971-9856, ext. 316, e-mail: pvanini@amo.on.ca
Consulting
Ethics Audit
Counselling
Workshops
Training Ethics Practitioners

Ethics Consulting Services is a Division of the York University Centre for Practical Ethics, which specialize in consulting, ethics workshops and training ethics practitioners for business, government agencies, and other organizations. Our experts use their know-how in a variety of areas - public policy, public administration, business ethics, law, philosophy, politics and science - to conduct ethics audits, help your organization develop ethical practices, and teach your staff how to deal with current issues and ask the kinds of questions that will enable them to conduct audits effectively.
FIRST DRAFT
TERMS OF REFERENCE
INTEGRITY COMMISSIONER

EDUCATION

• Prepare written materials for distribution to members of Council regarding the role of the Integrity Commissioner and the ethical obligations and responsibilities of members of Council under the City’s Code of Conduct for Elected Representatives and any other applicable by-laws

• Prepare written materials and a “web presence” for distribution and use by members of the public to enable them to understand the role of the Integrity Commissioner and the ethical obligations and responsibilities of members of Council under the City’s Code of Conduct for Elected Representatives and any other applicable by-laws

• At least once each term of Council, deliver an oral presentation to members of Council regarding the role of the Integrity Commissioner and the ethical obligations and responsibilities of members of Council under the City’s Code of Conduct for Elected Representatives and any other applicable by-laws

ADVISORY

• Upon request, provide advice to individual members of Council regarding their ethical obligations and responsibilities under the City’s Code of Conduct for Elected Representatives and any other applicable by-laws

• Provide advice and recommendations to Council regarding amendments to the City’s Code of Conduct for Elected Representatives and any other applicable by-laws

INVESTIGATION

• Carry out investigations of complaints against members of Council regarding alleged violations of the City’s Code of Conduct for Elected Representatives in accordance with procedures established by by-law and the requirements of the Municipal Act

ADJUDICATION

• Following investigation of a complaint against a member of Council, determine whether that member has violated the City’s Code of Conduct for Elected Representatives or any other applicable by-law
• Where a member of Council is found to have violated the City’s Code of Conduct for Elected Representatives or any other applicable by-law, determine the appropriate penalty to be assessed against the member in accordance with the City’s by-law and the Municipal Act

CONFIDENTIALITY

• The Integrity Commission shall preserve and protect the secrecy and confidentiality of all confidential documents, materials or information, of the municipality which he or she may come into possession of, or knowledge of, during the execution of his or her duties.

REPORTING

• Report to Council the results from the investigation and adjudication of each individual complaint against a member of Council

• Report to Council annually with a summary of his or her activities for the calendar year