

Legal & Legislative Services Protocol #2:

Ombudsman Protocol

Effective Date: May 1, 2025

Last Updated: August 5, 2025

PREAMBLE:

- A. Pursuant to section 223.13(1) of *Municipal Act, 2001*, SO 2001, c 25, as amended or replaced (hereinafter referred to as the “**Municipal Act**”), Ontario municipalities are authorized to appoint a Municipal Ombudsman who reports to Council and whose function, subject to complainants first meeting the jurisdictional prerequisites under the *Municipal Act* and set out in this Protocol, is investigating in an independent manner, complaints concerning decisions, recommendations, acts or omissions made by municipal administration/operations in the course of implementing City policies and administering City services where the Ombudsman believes on reasonable grounds that a person or body of persons has adversely suffered harm in their personal capacity by a Department or Division of the municipality, a contracted service provider, a local board as defined in s. 223.1 of the *Municipal Act*, or by a City-controlled corporation (hereafter referred to as the “**Services**”);
- B. The Corporation of the City of Cornwall (hereinafter, the “**City**”), being an Ontario municipality, passed a resolution and by-law on May 12, 2025 appointing David Boghosian of Boghosian + Allen LLP as the City’s Municipal Ombudsman (hereinafter referred to as the “**Ombudsman**”) pursuant to sections 223.13-14 of the *Municipal Act*, effective May 1, 2025, to provide the Services for a period of two (2) years; and
- C. This Protocol operationally implements Council’s decision in accordance with section 227 of the *Municipal Act*, is administrative in nature, and its content has been approved by the Ombudsman.

PURPOSE

- 1. This Ombudsman Protocol sets out the responsibilities and mandate of the Ombudsman for the City and establishes the standard protocols that will be followed by the Ombudsman in the course of reviewing and investigating complaints.
- 2. David Boghosian from Boghosian + Allen LLP shall act as the City’s Ombudsman and provide the Services in accordance with the Protocol.
- 3. The specifics set out in the PREAMBLE above are true, form an integral part of the Protocol, and are hereby incorporated by reference into this Protocol.

DEFINITIONS

4. In addition to definitions provided for in the PREAMBLE, which apply throughout this Protocol, the following terms mean the following in this Protocol:

- **City-controlled corporation** means a corporation that has fifty percent (50%) or more of its issued and outstanding shares vested in the City or that has the appointment of a majority of its board of directors made or approved by the City, but does not include a local board;
- **Complainant:** means any member of the public who makes a Complaint to the Ombudsman about the City or one of its divisions, contracted service providers, local boards or City-controlled corporations;
- **Complaint:** means a written statement regarding any decision, recommendation, act or omission. Complaints are not deemed to be submitted until the Ombudsman has received a completed and signed Complaint Submission Form and Consent and Confidentiality Agreement;
- **Complaint Submission Form** means a form required to be filled out and signed by Complainants wishing to submit a Complaint to the Ombudsman wherein they describe the nature of their complaint;
- **Contracted service provider** means an individual or organization that enters into a contractual agreement to provide specific services to the City;
- **Consent and Confidentiality Agreement** means an agreement required to be signed by Complainants whereby they agree to certain confidentiality requirements and other conditions of the Complaints procedure;
- **Director of Legal and Legislative Services** means the Director of Legal and Legislative Services of the City of Cornwall, or their designate;
- **Early Resolution** means resolving a Complaint to the satisfaction of the Complainant through dialogue and mediation between the affected parties without issuing a formal report;
- **Initial Review Letter** means a letter sent to the Complainant when the Complaint is outside of the Ombudsman's mandate, as defined in this Protocol. An Initial Review Letter will provide the Complainant with the reasons for the determination that the Complaint is outside the Ombudsman's mandate; and

- **Ombudsman** means the individual duly appointed as such by the City, from time to time, and those designated by the Ombudsman to handle Complaints and to direct and coordinate Ombudsman activities in accordance with this Protocol;

PRINCIPLES

5. The role of the Ombudsman is founded on the general principles of independence, impartiality, confidentiality and accessibility.

POWERS, DUTIES AND LIMITATIONS

6. The Ombudsman has the general powers and duties and is subject to the limitations set out in sections 223.13 to 223.18 of the *Municipal Act*.
7. The Ombudsman will notify the Director of Legal & Legislative Services before conducting a formal investigation.
8. The Ombudsman shall maintain the confidentiality of complaints and the matters relating to an investigation unless such be disclosed to establish grounds for the Ombudsman's conclusions and recommendations.
9. Before a member of the public may have an administrative/operations complaint of personal harm (as differentiated from a political complaint) investigated as an Ombudsman matter, the individual must have first undertaken fulsome steps to resolve their respective administrative/operations complaint of harm using all existing complaint and resolution opportunities available at the City and exercise any and applicable appeal or objection rights for hearing or review at any court or tribunal. The Ombudsman cannot and shall not investigate under the circumstances set out in paragraphs 22 and 23 of this Protocol.
10. The Ombudsman shall act at arm's length from the City and its Council and provide an annual report on Ombudsman activities and periodic reports on results of investigations.
11. The Ombudsman shall provide annual reports and such other reports as may be required subsequent to the completion of any investigations, providing results and recommendations in accordance to this Protocol.
12. Should the Ombudsman conduct an investigation, it shall be conducted in accordance with the terms and conditions of this Protocol and shall adhere to all applicable laws, applicable statutes, and established City policies.

RESPONSIBILITIES

13. The Ombudsman's responsibilities are to:
 - a. Provide information to the public about the process for submitting Complaints;
 - b. Receive Complaints for assessment and determine whether they are within the Ombudsman's mandate, as set out in the within Protocol;

- c. Attempt Early Resolution of Complaints where appropriate;
 - d. If Early Resolution is not appropriate or possible, investigate Complaints and issue a report with analysis and recommendations;
 - e. Alert the City if it determines that a Complaint or series of Complaints raises a systemic issue;
 - f. Not provide legal representation or advice to a Complainant.
14. The Ombudsman must always act independently, impartially, and not advocate on behalf of the Complainant or the City.
15. The Ombudsman may delegate in writing to a person within the employ of Boghosian + Allen LLP any of the Ombudsman's powers or duties, including responsibilities in the investigation and processing of a Complaint.
16. The Ombudsman will act in compliance with all applicable legislation, privacy rules, and will preserve confidentiality, but may disclose information in accordance with applicable provisions of the *Municipal Act* or when required by law or by order of a tribunal with competent jurisdiction to do so, but shall not disclose more information than is required.

GENERAL

17. The administrative contact for the Ombudsman is the Director of Legal and Legislative Services.
18. The Ombudsman is directly responsible to Council of the City.
19. The Ombudsman will publish an annual report containing information of the number and type of complaints handled by the Ombudsman and identifying any general trends. The City will post the annual report on its website.
20. The Ombudsman will attend at a Municipal Council or Committee meeting (virtual attendance is acceptable) to discuss the annual report.

MANDATE

21. The Ombudsman reports to the Council of the City and investigates in an independent manner any matter where the Ombudsman believes on reasonable grounds that a person or body of persons has been adversely affected in their personal capacity by a decision, recommendation, act or omission made in the course of implementing City policies and administering City services by:
- a. A Department or Division of the Municipality;
 - b. A contracted service provider;

- c. A local board as defined in s. 223.1 of the *Municipal Act, 2001*; or
- d. A City-controlled corporation.

22. The Ombudsman will not investigate:

- a. Any municipal decision, recommendation, act or omission, 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 fully exercised in the particular case, or until after any time for the exercise of that right has expired (in accordance with section 223.13-14 of the *Municipal Act*).
- b. A Complaint if the Complainant has not fully exhausted all internal complaint and resolution opportunities available in the City. The City has an operational staff structure that includes front-line employees, Supervisors, Managers, Directors/General Managers, a Deputy Chief Administrative Officer, and the Chief Administrative Officer. The following internal complaint and resolution opportunities exist in the City:
 - i. to a front-line employee in the applicable Division of the City (as context requires) if the Complaint concerns the implementation of City policies and the administration of City services;
 - ii. to a different front-line employee of the applicable Division of the City (as context requires) than set out in paragraph 15 b. i. above, if the Complaint concerns the employee receiving the complaint in that paragraph;
 - iii. To a Supervisor of the applicable Division if the Complaint is not resolved by paragraph 15 b. i.-ii.;
 - iv. To a Manager of the applicable Division if the Complaint is not resolved by paragraph 15 b. i.-iii. or the Complaint concerns the Supervisor;
 - v. To the Director or General Manager of the applicable Department if the Complaint is not resolved by paragraph 15 b. i.-iv. or concerns a Manager;
 - vi. To the Deputy Chief Administrative Officer if the Complaint is not resolved by paragraph 15 b. i.-v. or concerns a Director or General Manager; and

- vii. To the Chief Administrative Officer if the Complaint is not resolved by paragraph 15 b. i.-vi. or concerns the Deputy Chief Administrative Officer.
 - c. Any decision, recommendation, act or omission of any person acting as a legal adviser to the City or acting as counsel to them in relation to any proceedings, including but not limited to the decisions made by the City's Integrity Commissioner.
 - d. Complaints regarding policing the conduct of the City's members of Council and closed meetings of the Municipality's Committees or Council.
- 23. The Ombudsman shall refuse to investigate a Complaint or to continue an investigation of a Complaint when the Ombudsman believes on reasonable grounds that:
 - a. The Complainant has not availed themselves of other adequate remedies under the law or the internal complaints procedure as set out in paragraph 22 b.;
 - b. The subject matter of the Complaint is trivial;
 - c. The Complaint is frivolous, vexatious or not made in good faith;
 - d. The Complainant cannot demonstrate sufficient personal interest in the subject matter of the Complaint;
 - e. Having regard to all of the circumstances of the case, no further investigation is necessary; or
 - f. At the time the Complaint is received, more than six months 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.
- 24. The Ombudsman may consider representations from the parties in determining if a Complaint falls within their mandate.
- 25. If the Ombudsman determines not to investigate, or to discontinue an investigation, the Ombudsman will inform the Complainant in writing of the decision and the reasons for the decision.

RECEIPT AND INITIAL REVIEW OF COMPLAINTS

- 26. The Ombudsman may investigate:
 - a. Upon receipt of a Complaint from a member of the public, in accordance with this Protocol; or

- b. At the request of Municipal Council.
27. The Ombudsman will not consider a Complaint from a member of the public until it has received a completed and signed Complaint Submission Form and a signed Consent and Confidentiality Agreement.
28. Upon receipt of a Complaint from a member of the public, the Ombudsman will inform the City through the Director of Legal and Legislative Services and conduct an initial review to determine if the Complaint is within the mandate of the Ombudsman to investigate.
29. If a Complaint is not within the Ombudsman's mandate to investigate:
- a. An Initial Review Letter will be sent to the Complainant advising them of the reason why the Ombudsman is unable to investigate the matter; and
 - b. The Ombudsman will inform the City through the Director of Legal and Legislative Services if the Ombudsman is unable to investigate the matter or if an investigation will be undertaken by the Ombudsman.
30. The Ombudsman may act as a liaison between members of the public and the City, serving as a communicator or informal conciliator if appropriate.
31. Before undertaking an investigation, the Ombudsman will attempt to mediate or otherwise facilitate the Early Resolution of a Complaint, if appropriate.

INVESTIGATIONS

32. If the decision is made to commence an investigation, the Ombudsman shall:
- a. Notify the affected parties;
 - b. Notify the board of a City-controlled corporation or local board if the investigation involves that corporation or local board;
 - c. Allow the affected parties to be heard;
 - d. Provide the affected parties with an opportunity to rectify the act or omission from which the Complaint arises.
33. Every investigation will be conducted in private.
34. The Ombudsman is not bound by the rules of evidence that would apply in a court of law and may use his or her judgment to evaluate the quality of the evidence, the relevance and weight applicable, and its effect on the final outcome of the investigation.
35. The Ombudsman may hear or obtain information from such persons 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. However, if at any time during the investigation it appears to the Ombudsman that there may be sufficient grounds for the Ombudsman to make any report or recommendation that may adversely affect the Municipality or any other person, the Ombudsman will give that person an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel.

36. The City will cooperate with and assist the Ombudsman in the investigation by providing all information in its possession/control as soon as is reasonably practical, unless it is demonstrated to the Ombudsman that disclosing this would likely place the City in breach of the law or its duty of confidentiality.
37. In undertaking an investigation, the Ombudsman will 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.

INVESTIGATION RESULTS

38. Where the Ombudsman undertakes an investigation, they will issue a written report with his or her findings, either rejecting the Complaint or making recommendations to the City through the Director of Legal and Legislative Services and containing reasons for its decision.
39. The Ombudsman may disclose in any report made by him or her, matters as in the Ombudsman's opinion ought to be disclosed in order to establish grounds for their conclusion and recommendations.
40. The Ombudsman will make a recommendation or reject a Complaint based on what is fair and reasonable in the circumstances. In determining this, the Ombudsman will take into account the law, any regulatory policies and any relevant code of practice or guidance applicable to the subject matter of the Complaint. Decisions must also be in accordance with accepted standards of fairness, independence, and competence, and tenets of procedural fairness will be followed.
41. Recommendations by the Ombudsman are not binding on the City or the Complainant.
42. Recommendations by the Ombudsman may include recommendations, where appropriate, for changes to the City's policies and procedures. Notwithstanding the

rejection of a Complaint, the Ombudsman may bring to the attention of the Municipality any policies, rules or procedures that may appear unclear, inequitable or unfair that have been the subject of a Complaint investigation. The Ombudsman may suggest changes to existing policies, rules or procedures, or offer advice on the development of new policies, rules or procedures.