

**The Corporation of the Town of Erin**

**By-Law # 15-11**

**Being a By-law to appoint Mr. John Maddox, JGM Consulting as the Town of Erin Meeting Investigator pursuant to the agreement authorized under the County of Wellington By-law 5416-15, and to repeal By-law Number 11-48**

**WHEREAS** Section 239.2 of the Municipal Act, 2001, S.O. 2001, c.25 as amended authorizes municipalities to appoint an investigator who has the function to investigate a complaint made with respect to compliance of section 239 in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation;


**AND WHEREAS** Council deems it desirable to appoint John Maddox as the Investigator to investigate all requests on behalf of the Municipality and its Local Boards;

**NOW THEREFORE THE COUNCIL OF TOWN OF ERIN HEREBY ENACTS AS FOLLOWS:**

1. That Council hereby appoints John Maddox as the independent Investigator to investigate in accordance with the legislation all requests for an investigation of the Council and Committees of the Municipality and the Local Boards and their Committees of the Municipality pursuant to Section 239.2(1) of the Act;
2. The appointment shall be for an initial term of two years commencing the first day of January, 2015.
3. An Agreement between Wellington County and John Maddox for shared investigative services attached hereto is hereby adopted, as authorized by the County of Wellington By-law 5416-15;
4. By-law number 11-48 is hereby repealed.
5. This By-law comes into force and effect on the day of its passing.

Passed in open Council, on March 17<sup>th</sup>, 2015.

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Clerk

THE CORPORATION OF THE COUNTY OF WELLINGTON



BY-LAW NUMBER 5416-15

A By-law to appoint Mr. John Maddox, JGM Consulting as the County of Wellington Meeting Investigator and to authorize the Warden and the County Clerk to enter into an agreement for services and to repeal By-law Number 5225-11.

WHEREAS Section 239.2 of the Municipal Act, 2001, S.O. 2001 c.25 authorizes the municipality to appoint an investigator who has the function to investigate a complaint made with respect to compliance of section 239 in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation;

NOW THEREFORE the Council of the Corporation of the County of Wellington, enacts as follows:

1. THAT the Warden and County Clerk are hereby authorized to enter into an agreement for services with Mr. John Maddox, JGM Consulting; and,
2. THAT the term of Mr. Maddox's appointment be for the period of two years beginning January 1, 2015; and,
3. THAT By-law 5225-11 be repealed.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS JANUARY 29, 2015.



  
GEORGE BRIDGE, WARDEN

  
DONNA BRYCE, COUNTY CLERK

Ry-law 5416-15

THIS AGREEMENT dated January 29, 2015

BETWEEN:

**THE CORPORATION OF THE COUNTY OF WELLINGTON**  
(Hereinafter referred to collectively as the "Municipality")

- AND -

**JGM CONSULTING**  
(Hereinafter referred to as the "Independent Contractor")

**WHEREAS:**

- (A) Section 239.2 of the *Municipal Act, 2001, S.O. 2001, c.25* (the "Act"), authorizes Municipalities to appoint an investigator to investigate in an independent manner any complaint as to whether the Municipality has complied with the Act or a Municipal procedure by-law in respect of a meeting or part of a meeting that was closed to the public and to report on the investigation;
- (B) In appointing an investigator and in assigning powers and duties to him, a Municipality is to have regard to, among other things:
  - a. the investigator's independence and impartiality;
  - b. confidentiality with respect to the investigator's activities;
  - c. the credibility of the investigator's investigative process;
- (C) The Municipality is satisfied that the Independent Contractor has the skills and ability to meet the foregoing criteria;

**NOW THEREFORE, the parties agree as follows:**

- 1. Services: The Municipality hereby retains and appoints the Independent Contractor as an investigator for the purposes of Section 239.2(1) of the *Act* and the Independent Contractor agrees to provide such services for and at the request of the Municipality and accepts such appointment. The Independent Contractor confirms that services under this agreement will be carried out by John G. Maddox except as otherwise delegated by John G. Maddox.
- 2. Duties: The duties of the Independent Contractor shall be:
  - (i) to conduct investigations from time to time as requested by the Municipality upon receipt of a complaint (a "Complaint") in respect of meetings or part of meetings that are closed to the public to determine compliance with the *Act* or the respective municipal procedure by-law and to report on the results of such investigations;
  - (ii) In conducting such investigations, to have regard to the importance of the matters listed above in recital (B);
  - (iii) to proceed without undue delay and with due diligence to investigate a Complaint;
  - (iv) to conduct each investigation in private;

- (v) to hear or obtain information from such persons as the Independent Contractor thinks fit and to make such inquiries as he thinks fit;
- (vi) to provide an opportunity to the Municipality or any person that may be adversely affected by a proposed report of the Independent Contractor, the opportunity to make representations respecting such report or recommendation;
- (vii) to preserve confidentiality and secrecy with respect to all matters that come to his knowledge in the course of performing duties hereunder, save and except disclosure of such matters as in the Independent Contractor's opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations;
- (viii) after making an investigation to render his opinion as to whether or not the meeting or part of the meeting that was the subject matter of the investigation appears to have been closed to the public contrary to the *Act* or Municipal procedure by-law and, in either case, the Investigator shall report his opinion and the reasons for it to the Municipality and shall make such recommendations as he thinks fit.

In performing such duties; the Independent Contractor shall have the powers set out in Subsection 223.13(6) and Sections 223.14 to 223.18 of the *Act*, extracts of which are attached hereto as Schedule "A".

3. Joint Retainer: The Independent Contractor acknowledges that the Independent Contractor is appointed as an Investigator for the Municipality. In addition, the Independent Contractor agrees to also be the Investigator for the member municipalities of Wellington County as listed in Schedule "B" hereto attached, at the written request of the County of Wellington together with payment of the additional fee, defined below.
4. Fees:
  - (a) Annual Retainer: The County of Wellington shall pay to the Independent Contractor on or before the commencement date ONE THOUSAND DOLLARS (\$1,000.00) PLUS APPLICABLE TAXES. In order to add the participating member municipalities to the duties of Independent Contractor an additional fee of THREE HUNDRED DOLLARS (\$300.00) ("Additional Fee") for each additional member municipality shall be paid by the County of Wellington, as per the listing of participating municipalities on Schedule "B" attached hereto. Such fees to be paid on or before January 31<sup>st</sup> in each year of this Agreement plus applicable taxes.
  - (b) Hourly Rate: In addition, the Independent Contractor shall be paid a fee of ONE HUNDRED DOLLARS (\$100.00) per hour plus applicable taxes during such time as the Independent Contractor is performing his/her duties hereunder. The Independent Contractor agrees such rate shall be charged only for such time that the Independent Contractor is actively investigating a Complaint and preparing and presenting his report with respect thereto. The Independent Contractor would be entitled to be reimbursed other reasonable receipted expenses related to his duties, including food and hotel costs; car rental; kilometre rate at the respective municipal rate or railway tickets.
  - (c) Responsibility for Payment: The Independent Contractor further covenants and agrees that his hourly fee and related expenses hereunder shall be paid by the Municipality against whom the Complaint is made and which initiated the investigation. The Municipality agrees to be responsible for such fees and

expenses. The Independent Contractor shall invoice the Municipality upon completion of his report.

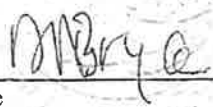
5. **Term:** The term of this Agreement (the "Term") is for a fixed two (2) year term commencing January 1<sup>st</sup>, 2015 and ending on the second anniversary date thereof unless renewed and/or extended by agreement of all the parties. The Independent Contractor or the Municipality shall give at least 30 days written notice prior to the end of the Term of their intent not to renew this Agreement if such renewal were to be available.
6. **Termination:** Either party, without liability, cost or penalty may terminate this Agreement for any reason and at any time without penalty upon giving (30) days written notice.
7. **Taxes:** All amounts payable to the Independent Contractor shall be paid without deduction. The Independent Contractor shall be responsible for any contributions imposed or required under employment insurance, health tax, social insurance, income tax laws, Worker's Compensation (if elected to enrol), pension with respect to any amounts paid to the Independent Contractor. The Municipality assumes no obligation or liability as between the parties to this Agreement to deduct or remit any statutory or government remittances.
8. **Independent Contractor:** The Independent Contractor is a contractor independent of the Municipality. Nothing herein shall be interpreted to create a relationship of employer / employee, partnership, franchise, agency or joint venture or other like arrangement.
9. **Delegation:** In the event more than one Complaint is made at any one time requiring more than one investigation, the Independent Contractor may determine that it is necessary to delegate some or all of his powers and duties, then he may do so in writing to any person other than a member of council, provided that the person to whom such delegation is made agrees in writing to be governed by the same duties of secrecy as the Independent Contractor and to abide by the terms and conditions of this Agreement. Such person shall always be under the supervision and direction of the Independent Contractor. Such delegation shall not be a member of council or staff of any Municipality and shall not result in any additional costs or fees to the Municipality. Invoices shall be rendered by the Independent Contractor and payments made to the Independent Contractor and the Independent Contractor shall otherwise be responsible for the fees and disbursements of any of his delegates.
10. **Binding:** This Agreement shall enure to the benefit of and bind the parties and their respective heirs, successors and permitted assigns.
11. **Indemnification:** The Municipality agrees to indemnify and save harmless the Independent Contractor, its agents and assigns, from and against any and all liabilities, losses, suits, claims, demands, damages, expenses, costs (including all legal costs), fines and actions of any kind or nature whatsoever arising out of or in connection with the Independent Contractor's provision of services and carrying out of its duties including, but not limited to, any alleged breach of this agreement, any procedural defect or other breach of relevant statutory provisions.

12. General: This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario.
13. Entire Agreement: This Agreement contains the entire agreement between the parties and supersedes all previous negotiations, understandings and agreements, verbal or written with respect to any matters referred to in this agreement.

IN WITNESS HEREOF each of the parties hereto have set its hand and seal as of this 29<sup>th</sup> day of January, 2015.


SIGNED, SEALED & DELIVERED  
THE CORPORATION OF THE COUNTY OF WELLINGTON.

  
George Bridge  
WARDEN, COUNTY OF WELLINGTON

  
Donna Bryce  
CLERK, COUNTY OF WELLINGTON

The Independent Contractor hereby accepts and agrees to the terms and conditions herein contained.

DATED: Jan. 29, 2015

  
WITNESS:

  
JOHN G. MADDOX for JGM CONSULTING



## **SCHEDULE "A"**

### **AGREEMENT BETWEEN THE CORPORATION OF THE COUNTY OF Wellington AND JGM CONSULTING**

#### **MUNICIPAL ACT, 2001 S.O. 2001, CHAPTER 25 EXTRACT**

#### **Procedure by-law**

##### **Definitions**

**238. (1)** In this section and in sections 239 to 239.2,

“committee” means any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards; (“comité”)

“local board” does not include police services boards or public library boards; (“conseil local”)

“meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them. (“réunion”) 2001, c. 25, s. 238 (1); 2006, c. 32, Sched. A, s. 102 (1, 2).

##### **Procedure by-laws respecting meetings**

(2) Every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings. 2001, c. 25, s. 238 (2).

##### **Notice**

(2.1) The procedure by-law shall provide for public notice of meetings. 2006, c. 32, Sched. A, s. 102 (3).

##### **Outside municipality**

(3) The procedure by-law may provide that meetings be held and public offices be kept at a place outside the municipality within an adjacent municipality. 2001, c. 25, s. 238 (3).

##### **Presiding officer**

(4) The procedure by-law may, with the consent of the head of council, designate a member of council, other than the head of council, to preside at meetings of council. 2006, c. 32, Sched. A, s. 102 (4).

##### **Secret ballot**

(5) A presiding officer may be designated by secret ballot. 2006, c. 32, Sched. A, s. 102 (4).



## MEETINGS

### Meetings open to public

**239 (1)** Except as provided in this section, all meetings shall be open to the public. 2001, c. 25, s. 239 (1).

### Exceptions

(2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

- (a) the security of the property of the municipality or local board;
- (b) personal matters about an identifiable individual, including municipal or local board employees;
- (c) a proposed or pending acquisition or disposition of land by the municipality or local board;
- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act. 2001, c. 25, s. 239 (2).

### Other criteria

(3) A meeting shall be closed to the public 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. 2001, c. 25, s. 239 (3).

### Educational or training sessions

(3.1) A meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:

1. The meeting is held for the purpose of educating or training the members.
2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee. 2006, c. 32, Sched. A, s. 103 (1).

### Resolution

(4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,

- (a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting; or

- (b) in the case of a meeting under subsection (3.1), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection. 2001, c. 25, s. 239 (4); 2006, c. 32, Sched. A, s. 103 (2).

**Open meeting**

(5) Subject to subsection (6), a meeting shall not be closed to the public during the taking of a vote. 2001, c. 25, s. 239 (5).

**Exception**

- (6) Despite section 244, a meeting may be closed to the public during a vote if,
  - (a) subsection (2) or (3) permits or requires the meeting to be closed to the public; and
  - (b) the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board. 2001, c. 25, s. 239 (6).

**Record of meeting**

(7) A municipality or local board or a committee of either of them shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not. 2006, c. 32, Sched. A, s. 103 (3).

**Same**

- (8) The record required by subsection (7) shall be made by,
  - (a) the clerk, in the case of a meeting of council; or
  - (b) the appropriate officer, in the case of a meeting of a local board or committee. 2006, c. 32, Sched. A, s. 103 (3).

**Record may be disclosed**

(9) Clause 6 (1) (b) of the *Municipal Freedom of Information and Protection of Privacy Act* does not apply to a record of a meeting closed under subsection (3.1). 2006, c. 32, Sched. A, s. 103 (3).

**Investigation**

**239.2** A person may request that an investigation of whether a municipality or local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public be undertaken,

- (a) by an investigator referred to in subsection 239.2 (1); or
- (b) by the Ombudsman appointed under the *Ombudsman Act*, if the municipality has not appointed an investigator referred to in subsection 239.2 (1). 2006, c. 32, Sched. A, s. 104.

## **Investigator**

239.2 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an investigator who has the function to investigate in an independent manner, on a complaint made to him or her by any person, whether the municipality or a local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation. 2006, c. 32, Sched. A, s. 104.

### **Powers and duties**

(2) Subject to this section, in carrying out his or her functions under subsection (1), the investigator may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality. 2006, c. 32, Sched. A, s. 104.

### **Matters to which municipality is to have regard**

(3) In appointing an investigator and in assigning powers and duties to him or her, the municipality shall have regard to, among other matters, the importance of the matters listed in subsection (5). 2006, c. 32, Sched. A, s. 104.

### **Same, investigator**

(4) In carrying out his or her functions under subsection (1), the investigator shall have regard to, among other matters, the importance of the matters listed in subsection (5). 2006, c. 32, Sched. A, s. 104.

### **Same**

- (5) The matters referred to in subsections (3) and (4) are,
- (a) the investigator's independence and impartiality;
  - (b) confidentiality with respect to the investigator's activities; and
  - (c) the credibility of the investigator's investigative process. 2006, c. 32, Sched. A, s. 104.

### **Delegation**

(6) An investigator may delegate in writing to any person, other than a member of council, any of the investigator's powers and duties under this Part. 2006, c. 32, Sched. A, s. 104.

### **Same**

(7) An investigator may continue to exercise the delegated powers and duties, despite the delegation. 2006, c. 32, Sched. A, s. 104.

### **Status**

(8) An investigator is not required to be a municipal employee. 2006, c. 32, Sched. A, s. 104.

**Application**

(9) Subsection 223.13 (6) and sections 223.14 to 223.18 apply with necessary modifications with respect to the exercise of functions described in this section. 2006, c. 32, Sched. A, s. 104.

**Report and recommendations**

(10) If, after making an investigation, the investigator is of the opinion that the meeting or part of the meeting that was the subject-matter of the investigation appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the investigator shall report his or her opinion and the reasons for it to the municipality or local board, as the case may be, and may make such recommendations as he or she thinks fit. 2006, c. 32, Sched. A, s. 104.

**Publication of reports**

(11) The municipality or local board shall ensure that reports received under subsection (10) by the municipality or local board, as the case may be, are made available to the public. 2006, c. 32, Sched. A, s. 104.

**Powers paramount**

223.13 (6) 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 of them, 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. 32, Sched. A, s. 98.

**Investigation**

223.14 (1) Every investigation by the Ombudsman shall be conducted in private. 2006, c. 32, Sched. A, s. 98.

**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 municipality, a local board, a municipally-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. 32, Sched. A, s. 98.

**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. 32, Sched. A, s. 98.

**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 municipality, a local board or a municipally-controlled corporation”, “the *Municipal Freedom of Information and Protection of Privacy Act*” and “this Act”, respectively. 2006, c. 32, Sched. A, s. 98; 2006, c. 35, Sched. C, s. 134 (3).

**Duty of confidentiality**

**223.15 (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. 32, Sched. A, s. 98.

**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. 32, Sched. A, s. 98.

**Section prevails**

(3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*. 2006, c. 32, Sched. A, s. 98.

**No review, etc.**

**223.16** 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. 32, Sched. A, s. 98.

**Testimony**

**223.17 (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. 32, Sched. A, s. 98.

**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. 32, Sched. A, s. 98.

**Effect on other rights, etc.**

**223.18** The rights, remedies, powers, duties and procedures established under sections 223.13 to 223.17 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. 32, Sched. A, s. 98.

**SCHEDULE "B"**

**AGREEMENT BETWEEN  
THE CORPORATION OF THE COUNTY OF Wellington  
AND  
JGM CONSULTING**

**List of Participating Municipalities - Closed Meeting Investigator Services:**

1. Township of Centre Wellington
2. Town of Erin
3. Township of Mapleton
4. Town of Minto
5. Township of Puslinch
6. Township of Wellington North