

Appendix 2

Comparison between the closed meeting investigation powers under the *Municipal Act, 2001* and the *Ombudsman Act*

	Investigator (<i>Municipal Act, 2001</i>)	Ontario Ombudsman (<i>Ombudsman Act</i>)
Authority	Investigators can conduct closed meeting investigations pursuant to s. 239.1(a) of the <i>Municipal Act, 2001</i> .	The Ombudsman can conduct closed meeting investigations pursuant to: <ul style="list-style-type: none"> - <i>Municipal Act, 2001</i>, s. 239.1(b) - <i>Ombudsman Act</i>, s. 14.1(3)(a).
Powers and Duties	Investigators can exercise powers, and perform duties, as assigned by the municipality (s. 239.2(3) of the <i>Municipal Act, 2001</i>).	The Ombudsman has the power to investigate actions and decisions of public bodies, including municipalities (s. 14(1) of the <i>Ombudsman Act</i>). The Ombudsman is not limited to investigating complaints made to it. The Ombudsman can initiate investigations on its own accord (s. 14(2) of the <i>Ombudsman Act</i>).
Delegation of Authority	An investigator can, in writing, delegate its powers and duties to anyone other than a member of council (s. 239.2(6) of the <i>Municipal Act, 2001</i>).	The Ombudsman can, in writing, delegate its powers to those in its office, with the exception of the power to make a report (s. 26(1) of the <i>Ombudsman Act</i>).
Privacy of Investigation	Closed meeting investigations conducted by investigators are private (ss. 239.2(9); 223.14(1) of the <i>Municipal Act, 2001</i>).	Closed meeting investigations conducted by the Ombudsman are private (s. 18(2) of the <i>Ombudsman Act</i>).
Obtaining Information	An investigator can make inquiries and obtain information as it deems necessary throughout an investigation (ss. 239.2(9); 223.14(2) of the <i>Municipal Act, 2001</i>). An investigator does not need to hold hearings or give anyone an opportunity to make representations throughout an investigation. However, if the investigator anticipates making a report or recommendation that	The Ombudsman can make inquiries and obtain information as it deems necessary throughout an investigation (s. 18(3) of the <i>Ombudsman Act</i>). The Ombudsman does not need to hold hearings or give anyone an opportunity to make representations throughout an investigation. However, if the Ombudsman anticipates making a report or

	could adversely affect a municipality, the municipality has the right to make representations on those matters (ss. 239.2(9); 223.14(2) of the <i>Municipal Act, 2001</i>).	recommendation that could adversely affect a municipality, the municipality has the right to make representations on those matters (s. 18(3) of the <i>Ombudsman Act</i>).
Collecting Evidence	An investigator can require officers, employees, or members of a municipality to provide information and documents related to the investigation (ss. 239.2(9); 223.14(3) of the <i>Municipal Act, 2001</i> ; s. 19(1) of the <i>Ombudsman Act</i>).	The Ombudsman can require officers, employees, or members of a municipality to provide information and documents related to the investigation (s. 19(1) of the <i>Ombudsman Act</i>).
Conducting Examinations under Oath	An investigator can summon and examine anyone who may have relevant information about the investigation under oath, including the complainant and officers, employees, or members of the municipality (ss. 239.2(9); 223.14(3) of the <i>Municipal Act, 2001</i> ; s. 19(2) of the <i>Ombudsman Act</i>).	The Ombudsman can summon and examine anyone who may have relevant information about the investigation under oath, including the complainant and officers, employees, or members of the municipality (s. 19(2) of the <i>Ombudsman Act</i>).
Powers of Disclosure	Although an investigator must keep information that it obtains through a closed meeting investigation private, an investigator can disclose such information in a report if it thinks that the information ought to be disclosed to establish grounds for the investigator's conclusions and recommendations (ss. 239.2(9); 223.15(1); 223.15(2) of the <i>Municipal Act, 2001</i>).	Although the Ombudsman must generally keep any information received through a closed meeting investigation private, the Ombudsman can disclose such information in a report if it thinks that the information ought to be disclosed to establish grounds for the Ombudsman's conclusions and recommendations (ss. 7.3(1), 7.3(3) of the <i>Ombudsman Act</i>).
Finality of Decisions	Investigations by an investigator can only be challenged for lack of jurisdiction. Decisions made by the investigator are final (ss. 239.2(9); 223.16 of the <i>Municipal Act, 2001</i>).	Investigations by the Ombudsman can only be challenged for lack of jurisdiction. Decisions made by the Ombudsman are final (s. 23 of the <i>Ombudsman Act</i>).
Immunity from Compelled Testimony	An investigator cannot be compelled to testify about information obtained through a closed meeting investigation in any court or judicial proceeding (ss. 239.2(9); 223.17(1) of the <i>Municipal Act, 2001</i>).	The Ombudsman cannot be compelled to testify about information obtained through a closed meeting investigation in any court or judicial proceeding (s. 24(2) of the <i>Ombudsman Act</i>).

	Information supplied, or documentation produced, during a closed meeting investigation is privileged (ss. 239.2(9); 223.17(2) of the <i>Municipal Act, 2001</i>).	Information supplied, or documentation produced, during a closed meeting investigation is privileged (s. 24(3) of the <i>Ombudsman Act</i>).
Report and Recommendation Power	<p>If an investigator determines that a municipality held a closed meeting unlawfully, the investigator must report its opinion and reasons, and can make recommendations for the municipality (s. 239.2(10) of the <i>Municipal Act, 2001</i>).</p> <p>An investigator's report must be made public (s. 239.2(11) of the <i>Municipal Act, 2001</i>).</p> <p>Upon receiving a report from an investigator, a municipality must pass a resolution stating how it intends to address the report (s. 239.2(12) of the <i>Municipal Act, 2001</i>).</p>	<p>If the Ombudsman determines that a municipality held a closed meeting unlawfully, the Ombudsman must report its opinion and reasons, and can make recommendations for the municipality (s. 14.1(7) of the <i>Ombudsman Act</i>).</p> <p>Reports must be made public and the municipality must ensure the same (s. 14.1(8) of the <i>Ombudsman Act</i>).</p> <p>The Ombudsman may also publish its report (s. 14.1(9) of the <i>Ombudsman Act</i>).</p> <p>Upon receiving a report from the Ombudsman, a municipality must pass a resolution stating how it intends to address the report (s. 239.2(12) of the <i>Municipal Act, 2001</i>).</p>
Authority to Refuse to Investigate	N/A	The Ombudsman may refuse to investigate closed meeting complaints for a variety of reasons, including if the complaint is trivial or frivolous, vexatious, or not made in good faith (ss. 17(1); 17(2) of the <i>Ombudsman Act</i>).
Power to Refer Breaches of Duty/ Misconduct	N/A	The Ombudsman can alert the appropriate authority if, during its investigation, it uncovers misconduct on the part any officer or employee of a municipality (s. 18(6) of the <i>Ombudsman Act</i>).
Power of Entry	N/A	The Ombudsman can enter onto and inspect a premises occupied by a municipality as part of its investigation (s. 25(1) of the <i>Ombudsman Act</i>).

		<p>However, before entering onto and inspecting a premises occupied by a municipality, the Ombudsman must:</p> <ul style="list-style-type: none"> - notify the head of the municipality; and - provide the head of the municipality a reasonable opportunity to explain why entering onto the premises is inappropriate (s. 25(2) of the <i>Ombudsman Act</i>).
Statutory Penalties	N/A	<p>Everyone is guilty of an offence who, throughout the Ombudsman's investigation:</p> <ul style="list-style-type: none"> - wilfully obstructs, hinders or resists the Ombudsman; - refuses or wilfully fails to comply with a lawful demand of the Ombudsman; or - wilfully makes false statements, misleads, or attempts to mislead the Ombudsman <p>Those found guilty of an offence are liable to a fine of up to \$500, a term of imprisonment up to 3 months, or both (s. 27 of the <i>Ombudsman Act</i>).</p>

