

January 28, 2016

**JOINT OFFICE OF THE CAO & CORPORATE SERVICES – LEGISLATIVE SERVICES REPORT
2016-02**

TO: Mayor Van Bynen and Members of Council

SUBJECT: Appointment of Municipal Ombudsman

ORIGIN: Andrew Brouwer, Director of Legislative Services/ Town Clerk

RECOMMENDATIONS

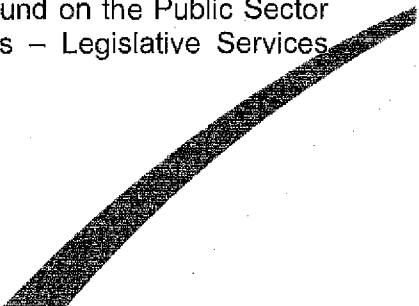
THAT Joint Office of the CAO and Corporate Services Report – Legislative Services 2016-02 dated January 28, 2016 regarding “Appointment of Municipal Ombudsman” be received and the following recommendations be adopted:

- 1. THAT Council appoint ADR Chambers, Inc. as municipal ombudsman for the Town of Newmarket and applicable local boards and Newmarket-Tay Power Distribution Limited for the period of March 1, 2016 through December 31, 2021;**
- 2. AND THAT a by-law be brought forward to Council appointing ADR Chambers, Inc. as municipal ombudsman for the Town of Newmarket and applicable local boards and Newmarket-Tay Power Distribution Limited for the period of March 1, 2016 through December 31, 2021 in accordance with Section 223.13 (1) of the Municipal Act, 2001;**
- 3. AND THAT the Mayor and Clerk be authorized to execute an agreement with ADR Chambers Incorporated to provide Ombudsman Services on a fee for service basis for the period March 1, 2016 to December 31, 2021;**
- 4. AND THAT the Clerk provide Ms. Barbara Finlay, Acting Provincial Ombudsman and Mr. Paul Ferguson, President, Newmarket-Tay Power Distribution Limited and the York Region municipalities with a copy of Council’s resolution on this matter for their information.**

COMMENTS

Background

In July, 2014 Bill 8 (the proposed Public Sector and MPP Accountability and Transparency Act, 2014) was introduced to the Legislature and in December, 2014 the legislation received Royal Assent. The legislation amends several existing statutes, including the Municipal Act, 2001; the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA); and the Ombudsman Act. For background on the Public Sector and MPP Accountability and Transparency Act, 2014, see Corporate Services – Legislative Services Information Report 2015-18, attached as Appendix A.



The Public Sector and MPP Accountability and Transparency Act, 2014 expanded the jurisdiction of the Provincial Ombudsman to include municipalities, public library boards and municipal service corporations under their jurisdiction.

The Provincial Ombudsman's jurisdiction exists by default, unless the Town appoints a municipal ombudsman who would have jurisdiction over the municipality, local boards (excludes the Newmarket Public Library Board) and any municipal service corporations under their jurisdiction (Newmarket-Tay Power Distribution, Limited).

A municipal or the Provincial Ombudsman will:

- Independently receive, review and investigate complaints that are the result of an act, decision or recommendation done or omitted in the course of the administration of the Town;
- Maintain the confidentiality of complainants and the matters relating to an investigation unless such matters should be disclosed to establish grounds for their conclusions and recommendations;
- Act at arm's length from the Town and Council but will provide an annual report on its activities and periodic reports that are the result of an investigation.

A municipal or the Provincial Ombudsman cannot investigate any decision, recommendation, act or omissions:

- 1) Where there is a right of appeal or objection, or right to apply for a hearing or review by a tribunal or court until this right has been exercised; and
- 2) Of any legal adviser or person acting as legal counsel to the public sector body.

This means that municipal services governed by other legislation with established appeal and tribunal processes would require the complainant to exercise and exhaust all rights established in the complaints process before an ombudsman may be engaged. In addition, an ombudsman will direct complainants to follow any complainant policies and protocols established by the municipality first, before becoming involved as an "office of last resort".

The Provincial Ombudsman has stated: "we strongly encourage municipalities to put local complaint mechanisms in place, because it is in the public interest to ensure citizens can get help with local issues in their communities. Our Office does not replace any local integrity commissioner, ombudsman, or other office that deals with complaints, but we can review decisions of those bodies to ensure the appropriate policies and procedures were followed" (<https://ombudsman.on.ca/About-Us/Who-We-Oversee/Municipalities.aspx>).

York Region issued a Request for Proposal (RFP) for Ombudsman Services on October 29th, 2015. This closed on November 19th, 2015. Included in this RFP was a cooperative purchasing arrangement under which the local municipalities may choose to appoint the selected proponent, within the term of the contract, for the same terms and conditions, including price, under a separate agreement.

Participation in the cooperative purchasing arrangement gives the Town the option to appoint the Region's selected proponent, appoint a different local Ombudsman, or choose to rely upon the Provincial Ombudsman for service. Appointment of the same municipal ombudsman in York Region ensures complaints are coordinated between York Region, the Town and Newmarket-Tay Power Distribution, Limited. A municipal ombudsman will have the capacity to understand how local services are organized and delivered and form recommendations which take into consideration the local context.

Two proposals were evaluated by a panel composed of York Region staff and two representatives from the local municipalities. Three firms submitted proposals. One firm was disqualified for being non-compliant with the terms of the RFP. The RFP addressed a broad range of considerations including complaint

management and confidentiality, resources, customer service standards, scalability of services and costs among other things.

ADR Chambers, Inc. was the successful proponent. The firm has over 20 years of experience providing mediation, arbitration and investigation services for both the public and private sectors in Canada and internationally. Since 2008, ADR Chambers Inc. has been the bank ombudsman for the Royal Bank of Canada, TD Bank and DirectCash Bank and has been providing similar Ombudsman services to the Financial Services Commission of Ontario. They are also certified by the Government of Canada as only one of two approved external complaint bodies for the financial service sector in Canada. In addition, ADR Chambers, Inc. serves as Integrity Commissioner for the City of Markham.

ADR Chambers, Inc. addresses approximately 20,000 mediations and over 5,000 arbitrations annually. Currently, ADR Chambers, Inc. employs 50 persons and engages 40 consultants.

At its meeting on December 17th, 2015, the York Region Council approved the appointment of ADR Chambers, Inc. as the municipal ombudsman for the Region of York and authorized entering into an agreement with ADR Chambers, Inc. for the provision of municipal ombudsman services from January 1st, 2016, to December 31st, 2021. While the initial term of the appointment is five years, Newmarket Council has the discretion to renew the contract for one (1) additional five (5) year term. ADR Chambers, Inc. is prepared to commence municipal ombudsman services immediately.

Under the terms of the contract, York Region and the Town of Newmarket both retain the right to terminate the contract for unsatisfactory performance at any time, or without cause upon giving at least 30 days written notice. Performance may be reviewed throughout the duration of the contract.

The Town of Newmarket may choose to enter into an agreement with ADR Chambers, Inc. for the provision of municipal ombudsman services under the same terms and conditions as York Region.

Staff recommend that Council appoint ADR Chambers, Inc. as the municipal ombudsman for the Town and applicable local boards. Town staff will work with other municipalities contracting with ADR Chambers, Inc. and the municipal ombudsman to develop required policies and administrative protocols.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

The initiative relates to the Well-equipped and managed link of the Town's Community Vision-implementing policy and processes that reflect sound and accountable governance.

CONSULTATION

The Office of the CAO and the Human Resources, Legal Services and Procurement Services departments as well as the President of Newmarket-Tay Power Distribution, Limited were consulted in the preparation of this report.

Staff also consulted with legal services and municipal clerks staff in York Region and its lower tier municipalities as well as staff from of the office of the Ombudsman for the City of Toronto and the Provincial Ombudsman's office.

HUMAN RESOURCES IMPACT

As a new regime, there will be additional staff time required to support the statutory duties of a municipal ombudsman. Existing ombudsman offices have indicated that the majority of complaints considered by their offices are resolved informally through an early resolutions process, with limited municipal staff

involvement. More extensive investigations will involve more staff time, in particular the affected business units. The Legislative Services Department will act as a liaison between the municipal ombudsman, staff and Council, in addition to providing the necessary tracking, coordination and training related this new statutory regime. Staff impacts will be monitored and evaluated as the new regime unfolds.

BUDGET IMPACT (CURRENT AND FUTURE)

Should Council approve ADR Chambers, Inc. as its municipal ombudsman for a five (5) year contract, York Region has agreed to cover the cost of a \$12,000 annual retainer. The Town would be responsible for a \$250 hourly service fee should it receive a complaint about Town or local board services. Newmarket-Tay Power Distribution, Limited would be responsible for a \$250 hourly service fee should it receive a complaint about local hydro services. If there are no complaints made to or investigated by ADR Chambers Inc., there will be no costs incurred. As such, potential costs can be reduced by ensuring clear and effective complaint management protocols and policies to resolve complainants before escalation to the municipal ombudsman.

The Town may also optionally request ADR Chambers Inc. to produce an annual report summarizing their activities for the year, at a rate of \$4,000 for each annual report requested by the Town. It is not a requirement to produce an annual report, the necessity of which will be determined based on the number of investigations in the year.

The CAO contingency budget would cover municipal ombudsman costs for 2016. Once 2016 budget impact is assessed, a new budget account would be created for future years.

Should Council chose to default to the Provincial Ombudsman, costs would be allocated to the Provincial Budget.

CONTACT

For more information on this report, please contact Andrew Brouwer, Director of Legislative Services/Town Clerk at abrouwer@newmarket.ca or at 905-953-5300, ext. 2211.



Andrew Brouwer, Director of Legislative Services/Town Clerk



Anita Moore, Commissioner of Corporate Services



Bob Shelton, Chief Administrative Officer



Town of Newmarket
395 Mulock Drive
P.O. Box 328, STN Main
Newmarket, ON L3Y 4X7

www.newmarket.ca
info@newmarket.ca
T: 905 895.5193
F: 905 953 5100

December 14, 2015

CORPORATE SERVICES INFORMATION REPORT- LEGISLATIVE SERVICES #2015-18

TO: Mayor Van Bynen and Members of Council

SUBJECT: Public Sector & MPP Accountability & Transparency Act, 2014 Implementation ("Bill 8")

ORIGIN: Legislative Services

COMMENTS

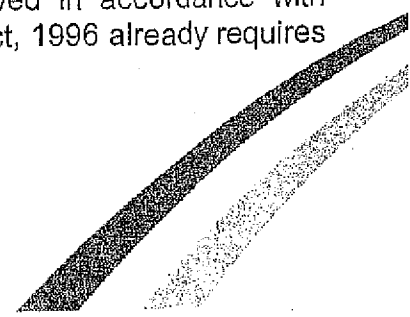
This Information Report outlines the implications of the Public Sector and MPP Accountability and Transparency Act, 2014 ("Bill 8") for the Town and activities staff have been undertaking to support the introduction of this legislation. A report will come forward in early 2016 to address the option of appointing a municipal ombudsman and a corporate policy and/or protocols related to managing customer complaints (subject to approval by senior leadership).

In accordance with the Procedure By-law, any Member of Council may request that this Information Report be placed on an upcoming Committee of the Whole or Council agenda for discussion.

Background

In July, 2014 Bill 8 was introduced to the Legislature and in December, 2014 the legislation received Royal Assent. The legislation amends several existing statutes, including the Municipal Act, the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) and the Ombudsman Act.

Two aspects of Bill 8 are most relevant to the Town, both of which come into effect on January 1, 2016:

- Preservation and retention of corporate records. Bill 8 amends MFIPPA to require that the Clerk take reasonable measures to ensure records are preserved in accordance with records retention requirements, rules or policies. The Municipal Act, 1996 already requires that the Town establish a records retention by-law.
- 

In addition, Bill 8 establishes an offence should the Town alter, conceal or destroy a record, or cause any other person to do so with the intention of denying a right under MFIPPA to access the record or the information contained in the record (maximum fine of \$5,000). There is a two-year limitation period to pursue prosecution of this offence.

The intent of the Bill 8 MFIPPA amendments is to reinforce transparency and to establish a high standard of accountability for municipal records preservation, retention and access responsibilities.

- **Ombudsman.** Prior to Bill 8, the Municipal Act, 1996 established that a municipality may appoint a municipal ombudsman, a lobbyist registrar, an auditor general and an integrity commissioner and shall either appoint a closed meeting investigator of its own or default to the having the Provincial Ombudsman fulfil this role. These accountability officers were introduced through Bill 130 amendments to the Municipal Act, 1996 in 2001 to balance new municipal authority (including natural persons' powers) with a public accountability framework. In addition to the required closed meeting investigator, the Town has appointed an integrity commissioner.

Effective January 1, 2016 Bill 8 expands the Provincial Ombudsman's jurisdiction to the municipal sector (and includes municipalities, local boards and municipally-controlled corporations). The Provincial Ombudsman's jurisdiction to the municipal sector exists by default, unless a municipality appoints its own ombudsman. A municipality may appoint a municipal ombudsman even after the default jurisdiction of the Provincial Ombudsman comes into effect on January 1, 2016. Bill 8 does not affect the Town's appointment of its closed meeting investigator.

The Provincial Ombudsman (and similarly, a municipal ombudsman) have a broad mandate to **"investigate any decision, recommendation, act or omission in the course of administration of (the Town) and affecting any person or body of persons in his/her or its personal capacity"**.

The Provincial Ombudsman or a municipal ombudsman may not investigate any decision, recommendation, act or omission (1) where there is already a right of appeal or objection; (2) where there is a right to apply for a hearing or a review by any tribunal or court until such rights has been exercised; and (3) of any legal advisor or person acting as legal counsel to the Town.

Where a municipal ombudsman is appointed, the Provincial Ombudsman may only intervene if a municipal ombudsman has refused to investigate or conducted and concluded an investigation or an applicable time limit has concluded. Similarly, the Provincial Ombudsman may only investigate the actions of an integrity commissioner (and other municipally-appointed accountability officers) if an integrity commissioner has refused to investigate or conducted and concluded an investigation or an applicable time limit has concluded. The Provincial Ombudsman may investigate systemic issues and on his or her own motion.

Prior to conducting an investigation, the Provincial Ombudsman must inform the Mayor and give the Town an opportunity to make representations if the Provincial Ombudsman has grounds to make a report or recommendations that may adversely affect the Town.

Council is required to close a meeting to the public if the matter relates to an ongoing investigation by a municipal or the Provincial Ombudsman. The outcome of the Provincial or municipal ombudsman's investigations and any recommendations will be outlined in a public report. The recommendations of a municipal or the Provincial Ombudsman are not binding on a municipality.

Not all complaints brought to the attention of the Provincial or a municipal ombudsman result in an investigation. Many complaints are dealt with through an early resolutions process.

Town activities in support of Bill 8

The Town has established policies in support of records management and MFIPPA best practices, including a Protection of Personal Information Policy, Records Retention Policy and most recently, a Routine Disclosure of Records Policy. Ongoing staff training and education support compliance with policies and best practices.

Legislative Services has recently launched a web site where select records requested under MFIPPA can be accessed.

To ensure the Town's protocols for managing customer complaints are transparent and applied consistently throughout the Town, a staff working group was formed to develop a complaints management policy and/or protocols.

Next Steps

York Region recently issued a request for proposals for municipal ombudsman services, which the Town could also take advantage of through a "piggy back" clause. Public reporting to York Region Council will not occur until late December, 2015. Once public, staff will assess the Region's approach and make a recommendation on appointing a municipal ombudsman or defaulting to the Provincial Ombudsman through a report to Council in early 2016. The report will also address a corporate policy and/or protocols related to managing customer complaints.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

The initiative relates to the Well-equipped and managed link of the Town's Community Vision- implementing policy and processes that reflect sound and accountable governance.

CONSULTATION

The Legal Services Department was consulted in the preparation of this report.

BUDGET IMPACT (CURRENT AND FUTURE)

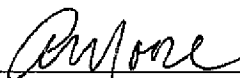
There are no budget impacts associated with this Information Report.

CONTACT

For more information on this report, please contact Andrew Brouwer, Director of Legislative Services/Town Clerk at abrouwer@newmarket.ca or at 905-953-5300, ext. 2211.



Andrew Brouwer, Director of Legislative
Services/Town Clerk



Anita Moore, Commissioner of Corporate
Services