

Clause 10 in Report No. 18 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on November 19, 2015.

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Update on the Review of Options
for the Appointment of an Ombudsman

Committee of the Whole recommends adoption of the following recommendations contained in the report dated November 3, 2015 from the Regional Solicitor:

1. Recommendation

It is recommended that:

1. The Regional Clerk circulate this report to the Clerks of the local municipalities.

2. Purpose

This report provides an update on the review of options for appointing an Ombudsman including an appointment jointly with other municipalities.

3. Background

A report presented to Council in April 2015 highlighted changes to Ontario's *Ombudsman Act* and how such changes would affect the municipal sector

On April 23, 2015 the Council received a report on Bill 8 – *Accountability and Transparency Act* (Amendments to *MFIPPA* and the *Ombudsman Act*).

The report outlined changes to Ontario's *Ombudsman Act* which has expanded the jurisdiction of the Ontario Ombudsman to include the municipal sector. Council directed staff to report back in fall 2015 on the feasibility of appointing an Ombudsman, including options for an appointment jointly with other municipalities.

Effective January 1, 2016 the Ontario Ombudsman's jurisdiction will include the municipal sector, including municipal agencies and some municipal boards

The *Ombudsman Act* has been amended to expand the jurisdiction of the Ontario Ombudsman to include municipalities, municipal boards and their agencies. Boards of health and police services boards are excluded from the jurisdiction of an Ombudsman.

The expanded jurisdiction means the Ontario Ombudsman's office may conduct investigations into municipal matters based on complaints received directly from the public, but the amendments further clarify how the Ontario Ombudsman may exercise its powers where a municipality has appointed an Ombudsman.

Under the *Municipal Act, 2001* Council has the authority to appoint an Ombudsman

Section 223.13 of the *Municipal Act, 2001* gives municipalities the authority, to appoint an ombudsman who reports to council and whose function is to investigate in an independent manner any decision or recommendations made or act done or omitted in the course of the administration of the municipality, its local boards and such municipally-controlled corporations as specified by the municipality.

With the inclusion of the municipal sector under the jurisdiction of the Ontario Ombudsman, the Ontario Ombudsman by default becomes the ombudsman for a municipality that does not have an Ombudsman as of January 1, 2016.

4. Analysis and Options

Consultation with Local Municipalities

Regional staff met with Clerks from each of the local municipalities to discuss options for jointly appointing an Ombudsman

The Clerks of the local municipalities, the Regional Clerk's office and the Regional Solicitor met in June 2015 to discuss the possible options for the appointment of an Ombudsman.

This meeting drew upon the experiences local municipalities have had with the process of appointing accountability officers and was an opportunity to identify

gaps in understanding the function of an ombudsman and what is required to establish an effective ombudsman's office.

As a result of this meeting staff decided to issue a Request for Information ("RFI") to better understand what would be needed to establish a municipal Ombudsman including the administrative and operational supports an Ombudsman would need to effectively carry out its duties, and to survey the market to determine potential interest.

In addition staff:

- (a) confirmed the participation of the local municipalities in the RFI for Ombudsman Services;
- (b) identified a need for more information on the requirements to establish an ombudsman office; and
- (c) agreed that the Region would issue the RFI on behalf of the local municipalities.

Release and Results of the RFI

An RFI was issued to determine the merit and feasibility of appointing an Ombudsman, the skills and the operational and administrative supports necessary for the duties of an Ombudsman to be performed effectively

The RFI was issued on August 20, 2015 and closed on September 17, 2015. Fifteen organizations obtained the RFI, but staff received three responses outlining the array of services an ombudsman may provide, and the necessary administrative and operational supports to establish an Ombudsman service that would be capable of providing seamless service to address complaints brought forward by the public

The respondents were asked to identify the merits and benefits of engaging a local ombudsman

The responses confirmed that a locally appointed Ombudsman would be better positioned to address complaints by recommending a course of action applicable to the local context and/or provide a municipality with guidance to address issues that would improve both service delivery and the municipality's relationship with the public.

In order to jointly appoint an Ombudsman, the participating municipalities must first establish the appointment model for operational and administrative support

The respondents to the RFI confirmed that a joint appointment model is feasible and could be cost effective depending on the size of a municipality and the strength of its complaint systems. The respondents also provided examples of such models in other sectors and jurisdictions. However, a joint appointment requires that participants agree on:

- (a) the scope of the services to be provided by an Ombudsman;
- (b) the operational and administrative structure for the Ombudsman;
- (c) how complaints or calls for service are first handled by the municipality;
and
- (d) the cost structure for a jointly appointed Ombudsman.

In considering the three responses and the comments of the local municipalities in response to the RFI, staff found that a uniform model for the structure and scope of the work to be performed by an Ombudsman would need to provide more flexibility to accommodate the varying needs of each of the ten municipalities.

Request for Proposal

A Request for Proposal ("RFP") for an Ombudsman has been issued by the Region with the option for local municipalities to appoint the selected proponent at a later date under a co-operative purchasing arrangement

The RFP was released on October 29, 2015 and will close on November 19, 2015. The RFP is expected to attract a broader response to the call for an Ombudsman and the delivery of services through such an office.

In consultation with the local municipalities it was determined that allowing for a cooperative purchasing arrangement within the RFP would allow the local municipal councils more time to review the information and evaluate the costs of a joint appointment and each municipal council may then choose to appoint the same ombudsman, appoint their own local Ombudsman or choose to rely upon the Ontario Ombudsman for service.

Under the cooperative purchasing arrangement the Region will issue the RFP and evaluate proponents in consultation with local municipalities. Each local

municipality may choose to appoint the selected proponent within the term of the contract for the same costs under a separate agreement between the local municipality and the successful proponent.

Staff will report back to Council in December 2015 on the terms of appointment for an Ombudsman and proposed costs

Following the close of the RFP and completion of the evaluation phase staff will report back to Council in December to establish the terms of appointment for an Ombudsman, the proposed costs and a recommendation of a proponent for appointment. The initial term of the appointment will be five years.

Link to key Council-approved plans

The Region's 2015-2019 Strategic Plan includes as a Strategic Priority Area, to Provide Responsive and Efficient Public Service. A review of option for the appointment of a municipal ombudsman will support this priority area.

5. Financial Implications

There are no financial impacts directly associated with this report. Any financial impact of appointing an Ombudsman will be outlined in the report to Council in December 2015. The Region will pay the retainer fee for the initial five year term and each local municipality will pay for their service fees.

6. Local Municipal Impact

The impact on local municipalities will depend on whether each municipality chooses to appoint its own Ombudsman or participate in jointly appointing a Ombudsman.

7. Conclusion

The amendments to the *Ombudsman Act* will come into force on January 1, 2016.

The findings outlined in this report are intended to provide Council with an update on the review of options for appointing an Ombudsman. The January 1, 2016 date is not a deadline as the provisions of the *Municipal Act* allow for a municipal council to appoint an Ombudsman at any time.

Update on the Review of Options for the Appointment of an Ombudsman

For more information on this report, please contact Joy Hulton, Regional Solicitor at ext. 71417.

The Senior Management Group has reviewed this report.

November 3, 2015

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Accessible formats or communication supports are available upon request