

Report No. 1 of the Regional Solicitor was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on December 17, 2015.

## Appointment of an Ombudsman (2016-2021)

### 1. Recommendations

It is recommended that:

1. Regional Council appoint ADR Chambers Inc. as the Ombudsman for the Region for the period January 1, 2016 – December 31, 2021.
2. Regional Council authorize a retainer agreement with ADR Chambers Inc. to provide Ombudsman Services on a fee for service basis for the period January 1, 2016 to December 31, 2021.
3. The Regional Clerk circulate this report to the Clerks of the local municipalities.

### 2. Purpose

This report provides Council with the outcome of the RFP for Ombudsman Services and recommends the appointment of ADR Chambers Inc. as the Ombudsman for the Region.

### 3. Background

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 the Ombudsman.

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This expanded jurisdiction means, effective January 1, 2016, the Ontario Ombudsman's office may conduct investigations into municipal matters based on complaints received directly from the public. 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.

Staff reported to Council in November 2015 the feasibility of appointing an Ombudsman

On April 23, 2015 Council received a report outlining the changes to Ontario's *Ombudsman Act*. Council directed staff to report back in the Fall of 2015 on the feasibility of appointing an ombudsman including options for appointment jointly with the other municipalities.

Based on consultation with the Clerks of the local municipalities and information collected through a Request For Information, staff found that it is feasible to locally appoint an ombudsman who would be better positioned to address complaints within the local context of York Region. Staff also confirmed that an appointment could be done jointly through a shared model that would provide each of the local municipalities the choice to appoint the same ombudsman with the flexibility that accounts for the unique needs and resources of each municipality.

A request for proposal was issued for Ombudsman Services and staff advised Council that they would report back following the completion of the RFP process.

The ombudsman is an office of last resort for members of the public to bring forward unresolved complaints when all other complaint processes have been exhausted

The ombudsman will:

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- 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 Region and any municipally controlled corporation that may be under the ombudsman's jurisdiction;
- Maintain the confidentiality of complainants and the matters relating to an investigation unless such matters should be disclosed to establish grounds for the ombudsman's conclusions and recommendations;
- Act at arm's length from the Region and Council but will provide an annual report on its activities and periodic reports that are the result of an investigation.

The 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 such as Ontario Works, would require the complainant to exercise and exhaust all rights established in the complaints process before the ombudsman may be engaged.

Staff have prepared an inventory of complaints processes across the Region which will be shared with the Region's Ombudsman

In advance of the January 1, 2016 deadline, staff have coordinated the collection of departmental complaint processes which may be reviewed by an ombudsman in the event there is a complaint resulting in an investigation.

This inventory provides a comprehensive overview of the Region's current complaint processes and covers all regional departments and many specific areas of business.

Sharing this information with an ombudsman will aid in the Region's efforts to continuously improve customer service and complaints processes for the Region's customers and residents and will be an opportunity to identify areas that require improvements or can be streamlined and made consistent across common business areas.

#### 4. Analysis and Options

A Request for Proposal ("RFP") for an Ombudsman was issued by the Region with the option for local municipalities to appoint the

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selected proponent at a later date under a co-operative purchasing arrangement

The RFP was issued by the Region on October 29, 2015 and closed on November 19, 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 co-operative purchasing arrangement allows the local municipalities the option to appoint the selected proponent, appoint their own local ombudsman or choose to rely upon the Ontario Ombudsman for service.

Two proposals were evaluated, by a panel composed of regional staff and two representatives from the local municipalities, using a three stage two envelope system

Three firms submitted a proposal. One firm was disqualified for being non-compliant with the terms of the RFP. Two proposals were evaluated using a three stage, two envelope system.

Proponents were required to achieve a minimum technical score of 36 out of a possible 60 points on the proposal and a minimum score of 12 out of a possible 20 points at the interview stage in order to qualify for their financial proposal to be evaluated.

The lowest financial proposal was awarded 20 out of a possible 20 points and the other financial proposal was scored proportionately to establish the highest scoring proponent.

Based on the scoring criteria, the results of the RFP were:

ADR Chambers Inc.	77.40
Med-Arb Solutions	63.40

ADR Chambers Inc. is being recommended for appointment as the Ombudsman for the Region

ADR Chambers Inc. has over twenty years of experience providing mediation, arbitration and investigation services for both the public and private sectors in Canada and internationally. ADR Chambers Inc. has administered the Office of the Integrity Commissioner for the City of Brampton and currently does so for the City of Markham.

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Since 2008 ADR Chambers Inc. has been the banking ombudsman for the Royal Bank of Canada, TD Bank and DirectCash Bank and has been providing similar services to the Financial Services Commission of Ontario and is certified by the federal government as only one of two approved external complaint bodies for the financial service sector in Canada

The ombudsman will be appointed for a term of five years

The initial term of the appointment will be five years commencing January 1, 2016 and ending December 31, 2021. At the discretion of Council the contract may be renewed for one (1) additional five (5) year term.

ADR Chambers Inc. is prepared to commence Ombudsman Services on January 1, 2016.

Under the terms of the contract the Region retains the right to terminate the contract for unsatisfactory performance at any time, or without cause upon giving at least thirty (30) days' written notice.

All proponents were advised that in undertaking assignments for the Region, their performance may be reviewed throughout the duration of the contract.

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. The appointment of a municipal ombudsman will support this priority area.

### 5. Financial Implications

During the initial five year term, the Region will pay a fixed annual retainer fee of \$12,000.00 to ADR Chambers Inc. to provide Ombudsman Services to the Region and the local municipalities that choose to participate in the cooperative purchasing arrangement by appointing ADR Chambers Inc. as their ombudsman.

A fee of \$250.00 per hour will be incurred for complaints made to ADR Chambers Inc. and \$4,000.00 will be paid for each annual ombudsman report from ADR Chambers Inc.

By entering into a retainer agreement with ADR Chambers Inc., the Region will achieve savings by utilizing the existing infrastructure, resources and staff ADR Chambers Inc. has established acting as an Ombudsman for the banking sector and in administering the role of an accountability officer in the municipal sector.

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The actual costs that would be incurred as a result of complaints made to ADR Chambers Inc. is unknown as the volume of calls cannot be predicted at this time.

### 6. Local Municipal Impact

The impact on local municipalities will depend on whether each municipality chooses to appoint its own ombudsman or participate in the co-operative purchasing arrangement by appointing ADR Chambers Inc.

During the initial five year term the Region will pay the retainer fee for the Region and each participating municipality that chooses to appoint ADR Chambers Inc. Each participating municipality will then pay the service fees of \$250.00 per hour associated with calls for service from any person wishing to file a complaint which applies the participating municipality.

### 7. Conclusion

The amendments to the *Ombudsman Act* will come into force on January 1, 2016. This date is not a deadline as the provisions of the *Municipal Act* allow for a municipal council to appoint an Ombudsman at any time.

The appointment of the recommended proponent would ensure the Region has its own ombudsman ready to serve the residents and customers of York Region.

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

The Senior Management Group has reviewed this report. December 10, 2015

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