



Briefing Note

Corporate Services Commission

BILL 8 - PUBLIC SECTOR AND MPP ACCOUNTABILITY AND TRANSPARENCY ACT, 2014

PURPOSE/BACKGROUND

The purpose of this Briefing Note is to provide Markham City Council with information on Bill 8, the Public Sector and MPP Accountability and Transparency Act, 2014 (the "Bill").

On December 11, 2014 the Ontario Legislature gave Royal Assent to the Bill (see **Attachment "A"** for a copy of Bill 8). There are 11 schedules in the Bill which amend various Acts governing the public sector. Schedules 6 and 9 amend the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), the Ombudsman Act and the Municipal Act, and will come into effect on **January 1, 2016**.

The Provincial Government has stated that the intent of Bill 8 is not to undermine the important work municipalities have undertaken to increase accountability and transparency or to replace local accountability offices.¹ Rather, the legislation builds upon local accountability frameworks already in place at the local level (see **Appendix "B"** - letter from Minister of Municipal Affairs and Housing, The Honourable Ted McMeekin). In fact, the Acting Provincial Ombudsman (Barbara Finlay) has been actively encouraging Ontario municipalities to develop their own local complaints resolution mechanisms (including appointing their own Accountability Officers) and has made it clear that her Office is an "Office of last resort" only (see **Appendix "C"**).

THE CITY OF MARKHAM'S CURRENT POSITION

Over the past several months, municipal staff across Ontario have been assessing the implications of Bill 8 in terms of local government administration. Most recently (on December 15, 2015) Markham City staff participated in an information session facilitated by the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO) regarding Bill 8. It is clear from this information session and from staff's discussions with peers from all over the Province, that there are many outstanding questions regarding the impact of Bill 8.

In response to Bill 8 and the expanded jurisdiction of the Provincial Ombudsman, the City of Markham, like many other Ontario municipalities is currently undertaking a review of its complaints resolution processes and assessing the benefits of appointing a Municipal Ombudsman. At present, in Markham, residents can submit a complaint and track their "service request" online or using the mobile Access Markham app.

Benefits of a Municipal Ombudsman

One of the benefits of a Municipal Ombudsman is that he/she could focus on local issues and address them within the context of the municipality. In a situation where a Municipal Ombudsman has been appointed and a resident has exhausted all avenues for resolution at the local level, the Provincial

¹ [2014-2015 Open Meeting Law Enforcement Team Annual Report](#), Office of the Ontario Ombudsman, December 2015, 8.

Ombudsman will act as a “sober second thought” (similar to the appeal process in the judicial system). The Ombudsman’s Office has publicly stated that it is an office of last resort; this means that residents will always be encouraged to contact their municipality *before* complaining to the Provincial Ombudsman’s Office.

Given that residents complaining directly to the Provincial Ombudsman will be asked to access any complaint mechanisms or appeals at the local level, it is suggested that Markham City Council give consideration to appointing a Municipal Ombudsman. To this end, all York Region municipalities have participated in a Request for Proposal process with York Region for joint ombudsman services. On December 17, 2015 Regional Council approved the appointment of ADR Chambers Incorporated as its Ombudsman for the period of January 1, 2016 to December 31, 2021. The City of Markham is under no obligation to appoint the Region’s successful candidate; however, **staff will report to Markham Council in early 2016 with a proposal to appoint the Regional Ombudsman to provide Ombudsman services for the City of Markham.**

DISCUSSION

Effective January 1, 2016, the following amendments will impact the municipal sector:

- **MFIPPA**

- 1) MFIPPA is amended by schedule 6 of Bill 8 to increase the responsibility of the “head” of an institution (i.e. the City Clerk in Markham) to ensure corporate records are maintained in accordance with applicable recordkeeping or records retention requirements, rules or policies.
- 2) Individuals who handle records regulated by MFIPPA can now be found personally liable for the willful concealment, alteration or destruction of corporate records. The prosecution of such an offence can be initiated up to 2 years after the offence is discovered and carries a maximum penalty of \$5,000.

- **OMBUDSMAN ACT**

- 1) The Ombudsman Act is amended by schedule 9 of Bill 8 to expand the Provincial Ombudsman’s jurisdiction to include the municipal sector - including any local boards and municipally-controlled corporations, such as, Markham District Energy Incorporated or Markham Enterprises Corporation.
- 2) The Provincial Ombudsman will now have the authority to investigate matters under the jurisdiction of a Municipal Ombudsman, Integrity Commissioner, Lobbyist Registrar or Auditor General. An investigation by the Provincial Ombudsman can only be initiated in the following circumstances: (a) if one of the aforementioned Accountability Officers refuses to investigate a matter; (b) if an investigation by a municipal Accountability Officers has concluded; or (c) if the deadline for bringing a complaint to a municipal Accountability Officer has expired.

- 3) The Provincial Ombudsman will become the default ombudsman for municipalities that do not appoint a Municipal Ombudsman.
- 4) The Provincial Ombudsman will remain the default Closed Meeting Investigator for municipalities that do not appoint their own Closed Meeting Investigator. As a reminder, Markham City Council appointed Local Authority Services Limited (LAS) - Amberley Gavel Limited to act as the City's Closed Meeting Investigator. To date, there have been 3 closed meeting investigations in Markham.
- 5) The Provincial Ombudsman is not empowered to investigate decisions, recommendations, acts or omissions of any legal adviser or person acting as legal counsel to a municipality (i.e. the City Solicitor) or 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 or expired. This means that municipal services governed by other legislation with established appeal and tribunal processes would require the complainant to exercise and *exhaust* all established processes before the Provincial Ombudsman may be engaged.

- **MUNICIPAL ACT**

- 1) The Municipal Act is amended by schedule 9 of Bill 8 to revise the definition of “public sector body” to include municipalities.
- 2) The mandatory closed meeting exceptions contained in the Municipal Act have been amended to include a new subsection 239(3)(b), which requires a municipal council to hold a closed meeting if the council is discussing a matter related to an ongoing investigation by a Municipal Ombudsman, Provincial Ombudsman or Closed Meeting Investigator.

NEXT STEPS

In addition to the report to Council in early 2016, Staff will also report back on proposed amendments to the City's Records Retention By-law 2001-101 and any other required changes to by-laws, internal policies and/or procedures as a result of Bill 8 in the first quarter of 2016.

FREQUENTLY ASKED QUESTIONS

Question: Did the Provincial Ombudsman's jurisdiction include *any* part of municipal administration prior to Bill 8?

Answer: Prior to the Bill, the Provincial Ombudsman's authority to review, question or investigate the affairs of any municipality was limited to considering whether the councils may have contravened the open meeting provision of the Municipal Act.

Question: Is every municipality now required to appoint a Municipal Ombudsman?
Answer: No, the Bill does not require every municipality to appoint their own Ombudsman, nor does it prohibit municipalities from appointing one in the future. For municipalities that do not appoint an ombudsman, the Provincial Ombudsman will become their default Municipal Ombudsman.

Question: The Ombudsman Act was amended to include the municipal sector including any local boards and municipally-controlled corporations. Are there any exemptions?
Answer: Yes, there are exemptions to the Provincial Ombudsman’s oversight and they are: children’s aid societies, boards of health, committees of management established under the Long-Term Care Homes Act, police services boards and public library boards.

Question: Who are Markham’s accountability officers?
Answer: Markham has appointed ADR Chambers Incorporated as the City’s **Integrity Commissioner** to investigate complaints about the conduct of Members of Council and determine if there has been a violation of the Code of Conduct.

Amberley Gavel Limited is the City’s **Closed Meeting Investigator** and conducts investigations accordingly.

MNP LLP has recently been selected to provide **Auditor General** services for the City.

Question: What actions must the Provincial Ombudsman take prior to conducting an investigation into a matter under a Municipal Ombudsman’s jurisdiction?
Answer: The Provincial Ombudsman must inform the head of the municipality prior to starting the investigation and provide the municipality an opportunity to make representations to the Provincial Ombudsman if the report or recommendations may adversely affect the municipality.

ATTACHMENTS

[Attachment “A” - Bill 8 - Public Sector and MPP Accountability and Transparency Act, 2014](#)

Attachment “B” - Letter from Honourable Ted McMeekin, Minister of Municipal Affairs and Housing

Attachment “C” - November 30, 2015 letter from Ontario Ombudsman’s Office

Distributed To:	Members of Markham City Council
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Date Prepared:	December 17, 2015
Approved By:	Andy Taylor, Chief Administrative Officer

Ministry of
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Office of the Minister

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MIN15-66568

Dear Head of Council,

As you know, the *Public Sector and MPP Accountability and Transparency Act, 2014* (the Act) received Royal Assent on December 11, 2014. I am writing to inform you that the amendments in the Act for the municipal sector will come into force on January 1, 2016.

Once proclaimed, the Ontario Ombudsman's role will be expanded to include municipalities. The amendments will provide the authority for the Ontario Ombudsman to investigate complaints respecting municipal matters.

Our government respects municipalities and respects the work of municipal councils and their relationships with their constituents. This is about making sure that every person in every municipality across Ontario has access to an ombudsman. This legislation builds on the current local integrity framework in the *Municipal Act, 2001*, which gives municipalities the powers to develop local integrity frameworks based on local needs and capacity.

The Ontario Ombudsman's role is to conduct investigations and make recommendations. It will be up to the Ontario Ombudsman to determine whether to investigate a municipal matter brought to his or her office's attention. While the Ombudsman could not compel municipalities to take action, the Ombudsman could make recommendations to council and the municipality as part of his or her report. As is the case now for the province, it would be up to a municipality to determine how to proceed after an Ombudsman report.

There will be no change to the current meeting investigator role. Municipalities will still have the power to appoint an investigator to independently investigate whether a municipality or local board has complied with closed meeting requirements of the *Municipal Act, 2001* or the local procedure by-law. The Ontario Ombudsman would not be able to investigate a closed meeting complaint if a local meeting investigator is appointed. As is currently the case, if a municipality does not appoint an investigator, the Ontario Ombudsman acts as the meeting investigator.

This is new legislation, and I recognize there may be some concerns about how the amendments might impact municipalities. I would like to clarify four key points:

1. **The new legislation will not require municipalities to appoint an ombudsman.** Only the City of Toronto must have a locally-appointed ombudsman, as already set out in the City of Toronto

Act. All other municipalities could continue to appoint their own ombudsman if they choose. If a municipality other than Toronto has appointed an ombudsman, the Ontario Ombudsman could still conduct an investigation into a complaint to the local ombudsman in that municipality, but only after local ombudsman processes are completed. The Ontario Ombudsman could also include one or more municipalities, including Toronto, in a systemic, broad ranging investigation.

2. **The amendments are not designed to increase costs for municipalities, and costs would not automatically increase for municipalities because of the Ontario Ombudsman's new role.** There may be administrative costs to those municipalities that are responding to the Ombudsman but there would be no other new costs because of the Ombudsman's new role. The Office of the Ontario Ombudsman is funded by the Province of Ontario, and the level of funding is determined by the Legislature. The Ontario Ombudsman does not currently charge a fee -- either annually or by investigation -- and there is no proposal to change that.
3. **The Ontario Ombudsman's office determines how to prioritize matters brought to its attention through complaints.** The amendments will also allow the Ombudsman to examine broad systemic issues that impact a wide range of municipalities and Ontarians.
4. **The amendments will not replace the important work that Ontario municipalities are already doing with regard to accountability and transparency.** Our government understands the importance and value of locally-appointed integrity officers. The amendments ensure that everyone has access to an ombudsman. The Ontario Ombudsman could investigate complaints made to local integrity officers, but only after their complaint processes are completed.

A regulation under the amended *Ombudsman Act* will exempt certain local boards in the municipal sector from the Ontario Ombudsman's oversight. This regulation will come into force January 1, 2016. The amendments to the *Ombudsman Act* will come into force at the same time.

The proposed exemptions are similar to the municipal ombudsman framework in the *Municipal Act, 2001* and the *City of Toronto Act, 2006*. The regulation would recognize that oversight systems already exist for some entities by exempting from Ombudsman oversight: children's aid societies, boards of health, committees of management established under the *Long-Term Care Homes Act*, police services boards, and public library boards.

For more information about municipal accountability and transparency in Ontario, including required municipal policies, integrity officers and codes of conduct, please refer to the Municipal Councillors' Guide at <http://www.mah.gov.on.ca/Page5030.aspx>. The Ministry of Municipal Affairs and Housing will be updating the Guide to provide greater detail on the *Public Sector and MPP Accountability and Transparency Act, 2014*. Please see the enclosed for this information in advance of the Ministry posting the updated guide.

Please accept my best wishes.

Yours sincerely,

Ted McMeekin
Minister

Update to Municipal Councillors' Guide

Public Sector and MPP Accountability and Transparency Act, 2014

The Public Sector and MPP Accountability and Transparency Act, 2014 received Royal Assent on December 11, 2014. The amendments in the Act for the municipal sector will come into force on January 1, 2016.

This legislation builds on the current local integrity framework in the *Municipal Act, 2001* and the *City of Toronto Act, 2006* (described above), which gives municipalities the powers to develop local integrity frameworks based on local needs and capacity. The amendments will provide the people of Ontario with access to stronger accountability processes by making sure that everyone has access to an ombudsman.

The Ontario Ombudsman plays a crucial role in enhancing transparency in government. It is important to remember that the Ombudsman is there to help serve our citizens better, and to help get government right at all levels.

The amendments will provide the authority for the Ontario Ombudsman to investigate municipal matters. While the Ombudsman could not compel municipalities to take action, the Ombudsman could make recommendations to council and the municipality as part of his or her report. It is up to the municipality whether and how to address any recommendations made by the Ombudsman.

The Ontario Ombudsman's office determines how to prioritize matters brought to its attention through complaints. These changes will allow the Ombudsman to examine broad systemic issues that impact a wide range of municipalities and Ontarians.

The amendments will not require municipalities to appoint an ombudsman. Only the City of Toronto is required to have a locally-appointed ombudsman, as set out in the *City of Toronto Act*. All other municipalities could continue to appoint their own ombudsman if they choose. If a municipality has appointed an ombudsman, the Ontario Ombudsman could still conduct an investigation into a complaint to the local ombudsman in that municipality, but only after local ombudsman processes are completed.

The amendments will work together with local tools to ensure that everyone has access to an ombudsman. Locally-appointed integrity officers and municipal codes of conduct are an important part of Ontario's local accountability framework. The Ontario Ombudsman could investigate complaints made to local integrity officers but only after their complaint processes are completed. The Ontario Ombudsman could also include one or more municipalities, including Toronto, in a systemic, broad ranging investigation.

A regulation under the amended Ombudsman Act will exempt certain local boards in the municipal sector from the Ontario Ombudsman's oversight. This regulation will come into force at the same time as the amendments, January 1, 2016. This regulation recognizes that oversight systems already exist for these entities.

The exemptions are similar to the municipal ombudsman framework in the *Municipal Act, 2001* and the *City of Toronto Act, 2006* and will exclude the following from Ontario Ombudsman oversight:

- children's aid societies;
- boards of health;
- committees of management established under the Long-Term Care Homes Act;
- police services boards; and
- public library boards.



November 30, 2015

Greetings,

With the New Year fast approaching, our Office would like to provide you with information about the expansion of the Ombudsman's jurisdiction to municipalities. As of January 1, 2016, the Ombudsman can begin accepting, resolving and investigating complaints about municipalities under the *Public Sector and MPP Accountability and Transparency Act, 2014*. The Ombudsman's jurisdiction will extend to municipalities, local boards and municipally-controlled corporations, with some exceptions as set out in regulation.

The Ontario Ombudsman is an independent officer appointed by the Legislative Assembly of Ontario to conduct impartial investigations into individual and systemic issues relating to the administrative conduct of public bodies. The Ombudsman's services are available to anyone free of charge.

As we do with the tens of thousands of provincial complaints we handle every year, we will work to resolve complaints about municipalities wherever possible. We resolve most complaints without the need for an investigation or report.

We are an office of last resort, meaning individuals should exhaust any available appeal mechanisms (such as the Ontario Municipal Board) before complaining to the Ombudsman. The Ombudsman also strongly encourages municipalities to resolve local issues at the local level, and to create their own complaint resolution mechanisms, which may include appointing accountability officers such as integrity commissioners, ombudsman and auditors general.

If internal complaint mechanisms are unable to resolve the problem and the Ombudsman determines that an investigation is warranted (either into an individual complaint issue or a broader systemic one), relevant municipal sector entities will be notified by our Office and required to co-operate with our investigation. The Ombudsman may report findings and recommendations publicly. However, the Ombudsman cannot overturn any decisions of a municipal sector entity, and recommendations are not binding.

The Ombudsman's Office has 40 years of experience in resolving and investigating administrative problems throughout the provincial government. We handle more than 23,000 complaints each year by applying alternate dispute resolution strategies – resolving over half of all cases in less than two weeks.

At the same time, almost all of the Ombudsman's recommendations for systemic change have been accepted by the government in the past 10 years, resulting in administrative improvements that have positively affected millions of Ontarians (e.g., expansion of newborn screening, a more secure lottery system, better monitoring of unlicensed daycares). We have always received excellent co-operation from the public bodies we oversee.

We have recently reached out to the Association of Municipalities of Ontario, the Association of Municipal Managers, Clerks and Treasurers of Ontario and other stakeholders to share information about our Office's role. Today, we are also inviting you to complete a brief online survey (information attached) that will help us in responding to any complaints we may receive about your municipality. Please note

that we are seeking contact information for officials who have direct responsibility for areas related to complaint resolution, as opposed to protocol officers or communications staff. Although we are happy to deal with these officials for communications-related matters, when we make inquiries about complaints, we communicate directly with staff who have the most relevant information about the matter at issue.

For more information about how we work and our new mandate with respect to municipalities, you might wish to review our Frequently Asked Questions at <https://ombudsman.on.ca/About-Us/MUS-FAQ.aspx> and our new brochure, *Complaints about Municipalities*, at <http://www.ombudsman.on.ca/Resources/Brochure.aspx>.

We also have an Open Meeting Law Enforcement Team which deals with complaints that municipal meetings have been improperly closed to the public under the *Municipal Act*. For more information on the activities of the Open Meeting Law Enforcement Team, please see our OMLET Annual Report here: <https://ombudsman.on.ca/Investigations/Municipal-Meetings/Municipal-Annual-Reports.aspx>.

Our latest Annual Report, published in July for the 2014-2015 fiscal year, also provides a good overview of our work. It can be found online here: <https://ombudsman.on.ca/Resources/Reports/2014-2015-Annual-Report.aspx?lang=en-CA>. You can also receive information about our office monthly by subscribing to our e-newsletter at <https://ombudsman.on.ca/Newsroom/E-Newsletter.aspx>.

My team and I would be happy to answer questions, provide copies of our publications, or connect you with our colleagues who will be working on municipal cases. Please contact us by emailing thewatchdog@ombudsman.on.ca, or call our Communications Officers: Laura Nadeau (416-586-3402) or Cynthia McQueen (416-586-3525).

Sincerely,



Linda Williamson
Director of Communications, Office of the Ombudsman of Ontario

Encl.



MUNICIPALITY CONTACT SURVEY

As noted in our letter, in anticipation of the Ontario Ombudsman's new jurisdiction over municipalities as of January 1, 2016, our Office would appreciate receiving some information about your municipality to assist us in responding to any complaints we may receive.

We kindly ask that you complete the online, confidential survey here:
<https://www.surveymonkey.com/r/XQCMLTS>

The information gathered will be used by our staff to inquire about relevant processes and, where necessary, to provide referrals to complainants.

After January 1, 2016, should any complaints remain unresolved after relevant processes have been exhausted within your municipality, you may refer individuals to the Ombudsman's office at <https://ombudsman.on.ca/Make-A-Complaint.aspx>.

Should you have any questions about the survey, our Office, or anything else relating to our work and new role relating to municipalities, please email our Communications team at thewatchdog@ombudsman.on.ca and we will be happy to assist you. Our Communications Officers would also be happy to answer your questions, or refer you to someone who can: Laura Nadeau (416-586-3402) or Cynthia McQueen (416-586-3525).