



Report to: General Committee

Meeting Date: February 16, 2016

SUBJECT: Appointment of a Municipal Ombudsman

PREPARED BY: Kimberley Kitteringham, City Clerk, ext. 4729
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RECOMMENDATION

- 1) That the report entitled “Appointment of a Municipal Ombudsman” be received; and,
- 2) That Council appoint ADR Chambers Inc. as the Ombudsman for the Corporation of the City of Markham for the period March 1, 2016 to December 31, 2021; and,
- 3) That the Mayor and Clerk be authorized to execute an agreement with ADR Chambers Inc. to provide Ombudsman Services on a fee for service basis for the period March 1, 2016 to December 31, 2021; and further,
- 4) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE

The purpose of this report is to provide General Committee with the outcome of the Region of York’s Request for Proposal (RFP) for Ombudsman Services and to recommend the appointment of ADR Chambers Inc. as the Municipal Ombudsman for the City of Markham by opting into the cooperative purchasing arrangement between the Region of York and ADR Chambers Inc.

The recommendations contained in this report specifically relate to the Province’s expectations to enhance accountability and transparency in local government, and the public policy trend towards greater accountability for governments of all levels.

BACKGROUND

In 2014, the Government of Ontario introduced the Public Sector and MPP Accountability and Transparency Act, known as Bill 8. The intent of Bill 8 is to strengthen and enhance public sector accountability and to expand the responsibilities and powers of certain accountability figures within the legislative framework (see Bill 8 Briefing Note attached as **Appendix “A”**). The Bill received Royal Assent on December 11th, 2014.

Bill 8 amends the Ombudsman Act to expand the jurisdiction of the Provincial Ombudsman to include municipalities and their boards and agencies. These amendments came into force on **January 1, 2016**, allowing the Provincial Ombudsman’s office to conduct investigations into municipal matters based on

complaints received directly from the public. The Provincial Ombudsman's Office is intended to be a last resort for unresolved complaints that have been previously considered through existing local complaint resolution mechanisms. Under section 223.13 of the Municipal Act, 2001, municipalities are authorized to appoint their own Municipal Ombudsman with the same powers to investigate as the Provincial Ombudsman. To date, Staff are aware of three Regional municipalities (Durham, Halton and Waterloo) that have issued Request for Proposals (RFP) for joint Ombudsman Services in their respective municipalities.

The Municipal Act also contains options for municipalities to appoint other local Accountability Officers such as an Auditor General, Closed Meeting Investigator and Integrity Commissioner (refer to **Appendix "B"** for a list of Markham's current Accountability Officers). While it is presently an option to appoint an Ombudsman under the Municipal Act, the Bill 8 amendments ensure that all Ontario municipalities will fall under the jurisdiction of either a municipally appointed Ombudsman or the Provincial Ombudsman's Office.

In general, governments and corporations appreciate that appointing an Ombudsman improves the quality of performance of their respective institutions. An Ombudsman provides an effective way to redress complaints before they become larger issues and potentially lead to litigation. A well constructed and supported ombudsman's office solves problems, identifies inefficiencies and pre-empts poor judgment and mistakes before damage is done.

A Municipal or 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 City 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 City and Council but will provide an annual report on its activities and periodic reports that are the result of an investigation.

A Municipal or 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.

The Region of York 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 Markham the option to appoint the Region's selected proponent, appoint a different local Ombudsman, or choose to rely upon the Provincial Ombudsman for service.

DISCUSSION/OPTIONS

Two proposals were evaluated by a panel composed of Region of York staff and two representatives from the local municipalities (one of whom was from Markham). Three firms submitted proposals. One firm was disqualified for being non-compliant with the terms of the RFP.

ADR Chambers Inc. (Markham's current Integrity Commissioner) was the successful proponent. They have 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.

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

During the initial five year term, the Region of York will pay a fixed annual retainer fee of \$12,000 to ADR Chambers Inc. to provide Ombudsman Services to the Region and the local municipalities that choose to participate in the cooperative purchasing arrangement. The City of Markham is not required to pay any portion of the retainer fee. A fee of \$250 per hour will be incurred by Markham for complaints received and investigated by ADR Chambers Inc. This hourly fee is only incurred for time spent investigating complaints received by the Ombudsman – if there are no complaints, there will be no fee. The total costs

that will be incurred by the City as a result of complaints made to the Ombudsman will depend upon the volume and complexity of complaints received and investigated. The City 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 City. 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.

Under the terms of the contract the Region and City of Markham 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 Provincial Ombudsman's Office has encouraged municipalities to appoint their own Accountability Officers to address matters at the local level, and in so doing, allowing municipalities to design these systems and positions with their local needs and context in mind. The tables contained in **Appendix "C"** outline the benefits and drawbacks of appointing a Municipal Ombudsman versus relying on the Provincial Ombudsman.

The City of Markham may choose to enter into an agreement with ADR Chambers Inc. for the provision of Ombudsman services under the same terms and conditions as the Region of York. The appointment of a joint Ombudsman would result in a consistent service across the Region.

Alternatively, Markham Council can issue its own RFP for Ombudsman Services. If the City of Markham appoints a Municipal Ombudsman, it is proposed that complaints be submitted in accordance with the draft Ombudsman Complaint Submission Protocol included as **Appendix "D"**. This Protocol is based on the established Integrity Commissioner complaint submission process.

FINANCIAL CONSIDERATIONS

Costs attributable to the City of Markham will include \$4,000 for each annual report produced by ADR Chambers Inc., if specifically requested by the City, as well as \$250 per hour of investigation time resulting from complaints made to the Municipal Ombudsman's office.

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 that the City's existing complaint resolution policies and procedures are able to effectively achieve resolution for complainants before escalation to the Municipal Ombudsman's office.

Staff will attribute any costs for investigations in 2016 to Corporate Contingency account # 840-841-7899. Depending on the volume and complexity of investigations conducted in 2016, Staff will consider establishing a separate budget account for investigation-related costs in future years if necessary.

ALIGNMENT WITH STRATEGIC PRIORITIES

The Ombudsman Act, the Municipal Act and the Municipal Freedom of Information and Protection of Privacy Act are fundamental components of the legislative framework that support local democracy, accountability and transparency in municipal government.

BUSINESS UNITS CONSULTED AND AFFECTED

Legal Services

RECOMMENDED BY

05/02/2016

05/02/2016

X



Kimberley Kitteringham
City Clerk

X



Trinela Cane
Commissioner, Corporate Services

APPENDICES:

[Appendix "A" - Bill 8 Briefing Note](#)

[Appendix "B" - Markham's Current Accountability Officers](#)

[Appendix "C" - Table 1 - Potential Benefits and Drawbacks of appointing a Municipal Ombudsman](#)

[Table 2 - Benefits and Drawbacks of relying on the Provincial Ombudsman to provide Ombudsman Services](#)

[Appendix "D" - Proposed Ombudsman Complaint Submission Protocol](#)

