

Appointment of a Municipal Ombudsman

**Presentation to General Committee
February 16, 2016**

Kimberley Kitteringham, City Clerk
Carlie Turpin, Public Services & Records Coordinator
Kiran Saini, Legislative Coordinator

Agenda

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1. Purpose

- 1) To provide General Committee with the outcome of the Region of York's Request for Proposal (RFP) for Ombudsman Services; &
- 2) To recommend the appointment of ADR Chambers Inc. as the Municipal Ombudsman for the City of Markham in accordance with the cooperative purchasing agreement between the Region of York & ADR Chambers Inc.

2. Background

- Province introduced Bill 8 in 2014 & received Royal Assent on December 11, 2014
- The intent of Bill 8 is to strengthen & enhance public sector accountability & to expand the responsibilities & powers of certain accountability figures within the legislative framework
- Amendments to the municipal sector took effect on January 1, 2016

3. Impact of Bill 8 Changes

- The Bill expands the jurisdiction of the Provincial Ombudsman to include municipalities, local boards & agencies
- 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
- Section 223.13 of the Municipal Act authorizes municipalities to appoint their own Municipal Ombudsman with the same powers to investigate as the Provincial Ombudsman

4. Markham's Current Accountability Officers

- Markham currently has the following Accountability Officers:
 - ✓ **Auditor General** - to ensure stewardship over public funds
 - ✓ **Closed Meeting Investigator** - to investigate complaints regarding open meeting compliance
 - ✓ **Integrity Commissioner** - to investigate Code of Conduct complaints

* Roles & Responsibilities of each Accountability Officer has been included as Appendix "B" in the February 16, 2016 Staff Report

5. Municipal Ombudsman's Roles & Responsibilities

- Independently receive, review & investigate complaints that are the result of an act, decision or recommendation done or omitted in the course of the administration of the City & any municipally controlled corporation that may be under the ombudsman's jurisdiction
- Maintain the confidentiality of complainants & the matters relating to an investigation unless such matters should be disclosed to establish grounds for the ombudsman's conclusions & recommendations
- Act at arm's length from the City & Council; report on its recommendations resulting from an investigation.

5. Municipal Ombudsman's Roles & Responsibilities

- A Municipal or Provincial Ombudsman **cannot** investigate any decision, recommendation, act or omission:
 - 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
 - Of any legal adviser or person acting as legal counsel to the municipality

6. Benefits of Appointing a Municipal Ombudsman

- 1) The public views Accountability Officers as a hallmark of accountability & transparency
- 2) The Provincial Ombudsman's Office has clearly stated they are an "Office of last resort"
- 3) A joint Ombudsman with the Region would have contextual knowledge of both the municipality & Region
- 4) The Region will pay annual retainer fee of \$12,000 for the first 5 years & the City can cancel the contract at any time

6. Benefits of Appointing a Municipal Ombudsman

- 5) If no investigations are conducted, there will be no costs to the City
- 6) All investigations are conducted in private & complainants are not identified without consent
- 7) A Municipal Ombudsman will have a better appreciation & understanding of the mechanics & responsibilities of municipal level governments, as opposed to provincial level agencies
- 8) A Municipal Ombudsman will likely provide local residents with a quicker response system as opposed to the Provincial Ombudsman which will have a mandate that covers all 444 Ontario municipalities

6. Drawbacks of Appointing a Municipal Ombudsman

- 1) Costs associated with potential investigations
- 2) There may be a perceived conflict of interest because the City is paying the Ombudsman's investigation fee (in fact, this perception may be true for all of Markham's Accountability Officers)

7. Benefits & Drawbacks of Provincial Ombudsman

Benefits	Drawbacks
Currently, there is no fee for investigations conducted by the Provincial Ombudsman	Provincial Ombudsman has limited experience in Ombudsman Services at the Municipal level
May be a greater public perception of neutrality	There may not be extensive knowledge of the local context
Provincial Ombudsman's Office has experience investigating complaints at Provincial level	Concerns with respect to resources at the Provincial level & ability to provide timely responses to complaints
Complainants are not identified without consent	

8. York Region Request for Proposal (RFP)

- 2 proposals were evaluated by a panel composed of Region of York staff & 2 representatives from the local municipalities (1 was from Markham)
- ADR Chambers Inc. (Markham's current Integrity Commissioner) was the successful proponent
- ADR Chambers Inc. has over 20 years of experience providing mediation, arbitration & investigation services for both public & private sectors in Canada & worldwide
- Since 2008, ADR Chambers Inc. has been the Bank Ombudsman for RBC, TD Bank & DirectCash Bank & providing similar Ombudsman services to the Financial Services Commission of Ontario

8. York Region Request for Proposal (RFP)

- December 17th, 2015: York Region Council approved the appointment of ADR Chambers Inc. as the Ombudsman for the Region from January 1st, 2016, to December 31st, 2021
- Under the terms of the contract the Region & City of Markham both have the right to terminate the contract for unsatisfactory performance at any time, or without cause upon giving at least 30 days written notice

8. York Region Request for Proposal (RFP)

- Region of York will pay a fixed annual retainer fee of \$12,000 to ADR Chambers Inc. to provide Ombudsman Services to the Region & the local municipalities that choose to participate in the cooperative purchasing arrangement
- Investigation fee of \$250 per hour will be incurred by Markham for complaints received & investigated by ADR Chambers Inc.
- City may also request ADR Chambers Inc. to produce an annual report summarizing their activities for the year at a cost of \$4,000
- **If there are no complaints, there will be no costs incurred**

9. Conclusion

- Public trust is a shared value amongst all levels of government - good local government is best served when public trust is independently achieved
- The Provincial Ombudsman's Office has publicly stated that their Office is not meant to replace local Accountability Officers; they ensure that local mechanisms work & complaints should continue to be resolved at the local level
- The public has come to view the presence of Accountability Officers as the hallmark of local government transparency

“Ombudsman” is Swedish for “citizen’s representative”

10. Staff Recommendations

- 1) That Council appoint ADR Chambers as the Ombudsman for the Corporation of the City of Markham for the period March 1, 2016 to December 31, 2021; &
- 2) 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.

Questions?