

Date: 2021-04-08

Subject: Analysis on Adopting Municipal Ombudsman Model (RM 8/202)

Contact: Peter Fay, City Clerk, 905-874-2172, Peter.Fay@brampton.ca

Report Number: Legislative Services-2021-463

Recommendations:

1. That the report titled: **Analysis of Adopting a Municipal Ombudsman Model (RM 8/2021)**, to the Committee of Council meeting of April 28, 2021, be received.

Overview:

- **Municipalities are required to have an Ombudsman as per the *Municipal Act, 2001*. A municipality can appoint a Municipal Ombudsman. In absence of that, the Ontario Ombudsman becomes the default Municipal Ombudsman.**
- **The Ontario Ombudsman functions as the City's Municipal Ombudsman since January 1, 2016.**
- **At the January 27, 2021 Council Meeting, Council requested staff to report back on the policies, governance, reporting structure, budget and independence of the Municipal Ombudsman and Auditor General, including comparison with other similar municipalities, and the various options for provision of the Ombudsman service, for Council's consideration. (Resolution C028-2021)**
- **This report addresses the Municipal Ombudsman portion of the Resolution C028-2021. A separate report has been prepared for the same Committee of Council meeting to address establishing an Auditor-General office.**
- **There are three Municipal Ombudsman models for Council's consideration:**

- **Rely on Ontario Ombudsman**
- **Contracted ombudsman service**
- **Standalone municipal ombudsman**

Background:

Amendments to the *Municipal Act, 2001* (the “MA”), effective in 2008, introduced specific accountability and transparency provisions for municipalities. Specifically, the MA established five mandatory and discretionary accountability and transparency officers:

- Integrity Commissioner
- Lobbyist Registrar
- Ombudsman
- Auditor General
- Closed Meeting Investigator

In 2014, the Province introduced and passed Bill 8, which amended several pieces of legislation effective January 1, 2016, including the MA and the *Ombudsman Act, 1990* (the “*Ombudsman Act*”). The *Ombudsman Act* was amended to expand jurisdiction of the Ontario Ombudsman to include municipalities, municipal boards and their agencies. 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 a specific Municipal Ombudsman as of January 1, 2016. The Ombudsman’s role, duties, and powers set out in the relevant sections of the *Municipal Act, 2001* and the *Ombudsman Act, 1990*, are provided in Appendices A and B to this report.

During the December 2015 budget deliberations, staff provided the report, [**Integrity Commissioner, Lobbyist Registrar, Ombudsman, Auditor General and Closed meeting Investigator Positions – An Update on Accountability and Transparency Officers Permitted Under the Municipal Act, 2001, as amended**](#), with budget implications to Budget Committee to consider establishing a Municipal Ombudsman position. Budget Committee discussed legislation relating to the Municipal and Provincial Ombudsman, appointment options and potential services with the Region of Peel. This budget request was referred to the Member Services Committee for further evaluation.

BC053-2015, clause 1

That the budget for the Brampton Ombudsman (\$100,000 plus \$25,000 office administration) from the Office of the Mayor and Council budget be referred for discussion and further evaluation and a report to the Member Services Committee.

At the March 9, 2016 Council meeting, Council approved Resolution MS010-2016 to not appoint a municipal ombudsman at that time.

MS010-2016

That a Municipal Ombudsman not be appointed at this time.

As a result, the Ontario Ombudsman has been the City's default Municipal Ombudsman since 2016.

In 2016, the Ontario Ombudsman initiated a systemic review of specific elements of the City's procurement process. The Ombudsman's final correspondence and report titled "[Procuring Progress](#)" – [Investigation into the City of Brampton's procurement practices, focusing on the administration of its purchasing by-laws, policies and procedures regarding noncompetitive procurements](#) was presented to City Council in March 2017.

At the January 27, 2021 Council Meeting, Council discussed options to establish additional discretionary accountability and transparency officers and passed a motion as follows:

C028-2021

Therefore Be It Resolved, that the City of Brampton Council request staff to investigate the formation of a City of Brampton's Office of the Municipal Ombudsman and Auditor General, reporting directly to Council; and

That staff report back to Council on the policies, governance, reporting structure, budget, and independence of the Municipal Ombudsman and Auditor General, including a comparison with other similar municipalities, and the various options for provision of the Ombudsman service, for Council's consideration;

That, should Council proceed with the formation of a City of Brampton Office of the Municipal Ombudsman, the hiring process to select the Municipal Ombudsman will include a selection committee comprised of all Members of Council and must be supported unanimously by this Council; and

That staff report back to Council as soon as possible.

This report addresses the specifics on the Municipal Ombudsman section of the Council's request. A separate report has been prepared for the same Committee of Council meeting to address establishing an Auditor-General office.

Current Situation:

The Ombudsman office is intended to be an office of last resort if *any decision or recommendation made or act done or omitted in the course of the administration of the municipality* is not resolved to the satisfaction of a person. Before engaging the Ombudsman, exhaustion of local complaint resolution processes is a first step in a typical Ombudsman complaint resolution process.

City of Brampton Complaint Process

Complaints regarding service delivery are generally filed with the responsible operating department or service and addressed by the department. There is currently no central tracking, monitoring or evaluation of complaints – formal or informal – filed and addressed across City operations. A public complaints resolution guideline was established in 2007 to address formal complaints regarding City staff (and by extension services and programs).

There is currently work being done by staff through a working group with many stakeholders (HR, IT, Audit, Clerks, Policy, Privacy, Legal and Organizational Performance) to consolidate all of the internal (employee) and external complaint (public) processes at the City to review, ensure alignment and identify any gaps. Once completed, a single resource document outlining these processes will be developed (one stop shop) and communicated. Guidance and recommendations received from the Ombudsman's office is being incorporated in the completion of this work.

Public Complaints Resolution Guideline

The City currently follows the procedures described in the [Public Complaints Resolution Guideline](#) (see Appendix C) to address public complaints regarding alleged misconduct by City employees. This guideline applies to full-time, part-time, temporary and contract staff. In appropriate circumstances, complaints relating to City volunteers and contractors may also be addressed under this guideline.

Any public complaint must be filed in writing, identifying the name and full contact information of the complainant, within 30 days in respect to the date of the event for which the complaint is being made. Anonymous complaints are not accepted.

When a written complaint is received, it will go through the following stage(s):

1. **Informal Resolution Stage** – Complaints about an employee's conduct may be resolved by way of an informal resolution. The complaint will be referred to the applicable manager of the employee. The complainant will be advised that a designated City official will contact them within five (5) business days. The designated City official will attempt to resolve the issue informally through discussion with the complainant and appropriate follow-up with the subject employee within ten (10) business days.

2. **Formal Resolution Stage** - If the matter is not resolved to the satisfaction of the complainant at the Informal Resolution Stage, the complainant will be advised to submit a complete written complaint within ten (10) business days of receiving the City's informal resolution response. When the formal complaint is received, it will be forwarded to the City Solicitor for tracking purposes.

In the event where the alleged misconduct is of a serious nature (not defined in the guideline), a third party may be retained by the City Solicitor's office to review the matter, to conduct an independent investigation, to prepare a written report and to make recommendations to City Council regarding the matter.

After the investigation is complete, a written response will be provided to the complainant and to the subject employee within 30 business days of receipt of the formal complaint request.

If a complaint is related to a very serious matter (i.e. involving a threat to health, safety or property), and is deemed to increase the possibility of imminent damage or injury if not addressed immediately, the complaint will be expedited and processed immediately by the Commissioner of the subject employee/service/program. The Commissioner will notify the Chief Administrative Officer of the matter, and where appropriate, to the subject employee, and the complainant. The City Solicitor will receive a copy of the notice of determination for tracking purposes.

Enhancing the Public Complaint Process

While the City has a public complaint process in place, the guideline is dated (endorsed by Council in 2007) and is due for a review and update. Recognizing the opportunities for improvement, staff are actively working to:

- Develop an enhanced public complaint policy;
- Update the public complaint resolution guidelines in accordance with the new policy;
- Create a public complaint web page to consolidate the various complaint pathways and mechanisms (a "one-stop shop") available to the public depending on the type of complaint; and
- Bring awareness to the community on the public complaint process, in collaboration with Strategic Communications.

The Ontario Ombudsman and Municipal Complaints:

If the complainant is still not satisfied with the final resolution, they can submit a complaint to the Ontario Ombudsman, who functions as the City's Municipal Ombudsman, for further review and/or investigation. The Ombudsman will not investigate during a period in which internal complaint resolution processes are underway.

In 2019-2020, the Ontario Ombudsman received 3,014 cases about 314 of Ontario's 444 municipalities and 35 shared corporations and local boards. Out of the 3,014 cases, 44 were identified regarding the City of Brampton. These cases consist of complaints, contacts, and inquiries. The Ontario Ombudsman did not initiate or conduct any formal investigation on these cases under the *Ombudsman Act* and have all been closed.

In response to an inquiry from City staff, the Ontario Ombudsman has advised the number and general subject areas of complaints and inquiries about the City of Brampton are as follows:

General Subject Area	Number of Cases
Council / Committees	7
Court administration	6
Employment / Labour Relations	6
By-law enforcement	5
Parking	4
Taxes / Fees	3
Staff conduct	3
Animal control	3
Public transit	2
Communications	1
Water/ sewer services	1
Permits / licensing	1
Private property matters	1
Other	1

Municipal Benchmarking re: Municipal Ombudsman Model

City staff undertook a benchmarking research of comparable Ontario municipalities to identify their Municipal Ombudsman model and financial implications. Details are provided in Appendix D.

A total of 30 municipalities were surveyed:

- Majority (16 out of 30) of the municipalities use the Ontario Ombudsman as their Municipal Ombudsman. There is no cost associated to this model.
- 13 municipalities currently retain contracted Municipal Ombudsman service from independent providers. The estimated annual cost is less than \$50,000.

- Toronto is the only municipality with a standalone Municipal Ombudsman Office. In 2021, Ombudsman Toronto has an operating budget of \$2.271 million with staff complement of 14 positions.

The following table shows the number of cases received by the Ontario Ombudsman in 2019-2020 grouped by Municipal Ombudsman model. The public can still make a complaint to the Ontario Ombudsman when there is a local Ombudsman in place.

Municipal Ombudsman Model	Municipality	Cases Received by Ontario Ombudsman in 2019-2020
Rely on Ontario Ombudsman	1. City of Ottawa	200
	2. City of Hamilton	154
	3. Region of Peel	98
	4. City of London	71
	5. City of Mississauga	65
	6. City of Windsor	50
	7. City of Brampton (for comparison purposes)	44
	8. Region of York	26
	9. City of Vaughan	20
	10. Town of Oakville	19
	11. City of Guelph	16
	12. City of Kitchener	15
	13. City of St. Catharines	15
	14. Wellington County	10
	15. Town of Caledon	9
	16. Town of Ajax	6
	17. City of Cambridge	5
Contracted Municipal Ombudsman Service	18. Region of Durham	45
	19. Region of Halton	23
	20. Region of Waterloo	22
	21. City of Burlington	15
	22. Town of Whitby	8
	23. City of Waterloo	6
	24. Municipality of Clarington	4
	25. Township of Woolwich	2
	26. Town of Brock	1
	27. Mun. of Southwest Middlesex	1
	28. Township of Wilmot	1
	29. County of Middlesex	0

Municipal Ombudsman Model	Municipality	Cases Received by Ontario Ombudsman in 2019-2020
	30. County of Elgin	0
Standalone Municipal Ombudsman	31. City of Toronto	404*

**The Ontario Ombudsman cannot investigate complaints within the jurisdiction of Ombudsman Toronto, therefore, cases were referred accordingly*

Municipal Ombudsman's Role and Function

Section 223.13(1) of the MA defines the Ombudsman as:

Ombudsman

223.13 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Ombudsman who reports to council and whose function is to investigate in an independent manner any decision or recommendation made or act done or omitted in the course of the administration of the municipality, its local boards and such municipally-controlled corporations as the municipality may specify and affecting any person or body of persons in his, her or its personal capacity. 2006, c. 32, Sched. A, s. 98.

A Municipal Ombudsman acts independently and reports to Council on investigation of “any decision or recommendation made or act done or omitted in the course of the administration of the municipality.”

The Ontario Ombudsman, acting in the role of the Municipal Ombudsman, addresses a variety of complaints regarding municipal affairs.

Types of complaints for a Municipal Ombudsman may include:

- Quality of service
- Council and Committees
- Conduct and conflict of interest
- Infrastructure
- Services
- Programs
- Administration of taxes and fees

Making a complaint to the Ontario Ombudsman is generally considered as the last resort. The public is encouraged to exhaust all available municipal complaint mechanisms before submitting a complaint to the Ombudsman.

Typically, the Ontario Ombudsman, functioning in a Municipal Ombudsman capacity, undertake the following steps in response to a complaint filed with its office:

- **Initial Review** – Each complaint will go through an initial review to determine if it falls within the Ombudsman’s jurisdiction.
- **Referrals** – If it is not within the Ombudsman’s jurisdiction, it will be referred accordingly.
- **Early Resolution** – When a complaint falls within the Ombudsman’s jurisdiction, the Ombudsman will attempt to resolve the complaints at the lowest level, including making informal inquiries and requests for information with the municipality in question.
- **Investigation** – If a resolution is not possible, the Ombudsman may decide to conduct an investigation. The Ombudsman will notify the municipality in question and may conduct interviews to gather information.
- **Findings and Report** – The investigator’s report contains the findings, either rejecting the complaint or making recommendation to the municipality and provides reasons for the decision.

Under section 223.13(7) of the MA, the Municipal Ombudsman does not have jurisdictions to investigate any decision, recommendation, act or omission:

- (a) when there is a right of appeal or objection to any court or tribunal, until that right of appeal or objection has been exercised, or the time for exercise of that right has expired; or
- (b) that is made by a legal advisor or counsel to the municipality.

Jurisdiction of the Ontario Ombudsman

Under sections 14(4.3) and 14(4.4) of the *Ombudsman Act*, the Ontario Ombudsman can also investigate a complaint if:

- (a) the matter was made to the municipal Ombudsman, or other accountability and transparency officer including the municipal-appointed Integrity Commissioner, Lobbyist Registrar and Auditor General, and he or she refused to investigate the matter, or conducted and concluded an investigation into the matter; or
- (b) the time, if any, for bringing a complaint respecting the matter to the municipal Ombudsman, or other municipal-appointed accountability and transparency officer, for investigation has expired.

Further, while the Ontario Ombudsman cannot redo or replace the investigation of municipal-appointed integrity commissioners or municipal ombudsmen, the Ontario Ombudsman can review the process they followed.

Municipal Ombudsman Models for Consideration

There are three Municipal Ombudsman models for Council’s consideration.

1. Rely on Ontario Ombudsman
2. Contracted Municipal Ombudsman Service
3. Standalone Municipal Ombudsman

The jurisdiction of the Municipal Ombudsman is legislated and governed by the MA and the *Ombudsman Act*, therefore, the model that Council decides to move forward does not change the duties and the nature of the position, or role of the Ontario Ombudsman regardless of the model followed.

The following table shows a high-level summary of the three Municipal Ombudsman models.

Municipal Ombudsman Model	Annual Cost	Appointment Process
1. Rely on Ontario Ombudsman	No cost	Default for municipalities that have not otherwise appointed or contracted a Municipal Ombudsman/Service
2. Contracted Municipal Ombudsman Service	Approximately less than \$50,000 per year (based on benchmarking research)	Request for Proposal (RFP)
3. Standalone Municipal Ombudsman	To be determined	Recruitment Process

Ontario Ombudsman functions as Municipal Ombudsman (Status Quo)

The Ontario Ombudsman functions as the City's Municipal Ombudsman since 2016 with no cost to the City. This model is adopted by a majority of the benchmarked municipalities, including Peel, York, Mississauga, Hamilton, Ottawa, and Caledon.

In an effort to enhance accountability and transparency of the administration, staff are actively working to improve and strengthen the current public complaints process, including the creation of an enhanced public complaint policy and a website revamp of the complaint process with a one-stop shop access to various complaint mechanisms.

Contracted Municipal Ombudsman Service

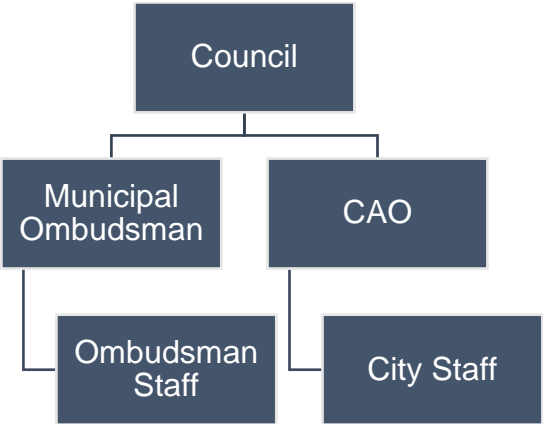
A municipality can obtain contracted municipal ombudsman services typically through an open Request for Proposal (RFP) process. A municipal ombudsman by-law is required to outline the duties of the municipal ombudsman, reporting structure, and other service contract-related details, such as the length of the contract. Based on the benchmarking research, Halton, Durham, Waterloo, Burlington, Whitby, Brock, and Clarington are some of the municipalities that use contracted ombudsman services. The estimated annual costs of this model would approximate be less than \$50,000, which covers a set administrative fee and additional costs associated to investigation(s), but would be entirely dependent on the volume of complaints which the contracted service received and processed.

Standalone Municipal Ombudsman Office

In a standalone ombudsman office model, Council would have the sole authority to appoint the Municipal Ombudsman through a recruitment process. The Municipal Ombudsman is an independent officer, accountable to Council as a whole. The ombudsman office would operate at arm's length from the City administration with full control over staffing and budget allocation. A municipal ombudsman by-law is required to outline the duties of the municipal ombudsman, reporting structure, and other related information.

City of Toronto is the only municipality that currently has a standalone ombudsman office (Ombudsman Toronto). This is a role created by the province as set out in the *City of Toronto Act, 2006*. In 2021, Ombudsman Toronto has an operating budget of \$2.271 million. The office has a staff complement of 14 positions, including the ombudsman, deputy ombudsman, team leads, investigators, outreach and communication coordinator, research consultant, analysts and administrative assistants.

For illustrative purposes, the reporting structure of a Municipal Ombudsman would look as follows:



The one-time set up cost and annual operating budget of a standalone Municipal Ombudsman model would depend on a number of factors, such as size of the team and office location.

Corporate Implications:

Financial Implications:

There are no current financial implications resulting from this report. Should Council decide to appoint a Municipal Ombudsman, staff will report back to Council regarding related financial implications based on the selected model.

Other Implications:

There are no other implications resulting from this report.

Term of Council Priorities:

This report achieves the Term of Council Priority of Brampton as a Well-Run City by providing information on the various Municipal Ombudsman models which falls within the realm of municipal accountability and transparency practices.

Conclusion:

Municipal Ombudsman is a discretionary position, who acts independently and reports to Council on investigation of “any decision or recommendation made or act done or omitted in the course of the administration of the municipality.” At the January 27, 2021 Council Meeting, Council requested staff to report back on the policies, governance, reporting structure, budget and independence of the Municipal Ombudsman for Council’s consideration. The Ontario Ombudsman currently functions as the City’s Municipal Ombudsman with no costs to the City. Council has the option to appoint a Municipal Ombudsman, either through a contracted service or by establishing a standalone Municipal Ombudsman office. Both options will have associated financial implications.

Authored by:

Reviewed by:

Esther Yan
Advisor, Special Projects

Peter Fay
City Clerk

Approved by:

Submitted by:

Paul Morrison
Acting Commissioner, Legislative Services

David Barrick
Chief Administrative Officer

Attachments:

- Appendix A – Extract from *Municipal Act, 2001*, Sections 223.13 to 223.18 Ombudsman
- Appendix B – Extract from *Ombudsman Act, 1990*, Section 14 Function of Ombudsman
- Appendix C – Public Complaints Resolution Guideline
- Appendix D – Municipal Benchmarking Research re: Municipal Ombudsman Model