

Clause 13 in Report No. 8 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on April 23, 2015.

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Bill 8 - *Accountability and Transparency Act*
(Amendments to *MFIPPA* and the *Ombudsman Act*)

Committee of the Whole recommends:

1. Receipt of the presentation by Joy Hulton, Regional Solicitor.
2. Adoption of the following recommendations contained in the report dated April 2, 2015 from the Regional Solicitor, as amended:
 1. Staff be directed to report back to Council in the fall of 2015 on the feasibility of appointing a municipal ombudsman, including options for an appointment jointly with other municipalities.
 2. The Regional Clerk circulate this report to the local Clerks.
1. Recommendation

It is recommended that:

1. Staff be directed to report back to Council on the feasibility of appointing a municipal ombudsman, including options for an appointment jointly with other municipalities.
2. Purpose

This report provides information on Bill 8, *the Public Sector and MPP Accountability and Transparency Act, 2014* ("Bill 8") which introduces amendments to the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"), the *Ombudsman Act* and the *Excellent Care for All Act* and how these amendments will affect the Region. It also recommends steps that can be taken to prepare for the implementation of this legislation.

3. Background

The intent of Bill 8 is to strengthen political accountability and make government more transparent

Bill 8 was introduced in July 2014 with the purpose of increasing the accountability and transparency of government and its elected representatives. It also provides Officers of the Legislature with more responsibility in their roles.

There are 11 Schedules included in Bill 8, which amend various acts that govern the legislature and the public sector. Schedules 6 and 9 are applicable to all municipalities as these two schedules amend *MFIPPA* and the *Ombudsman Act* both of which have a direct effect on the overall business of the Region and Schedule 5 amends the *Excellent Care for All Act* which will affect the Region's health services including long-term care.

When the *Municipal Act* was amended in 2006 (Bill 130) it introduced enhanced accountability powers for municipalities, including the authority to establish codes of conduct and to appoint accountability officers such as an Integrity Commissioner, Auditor General and Ombudsman. Regional Council has used this authority to establish a Code of Conduct for employees, to establish an Audit Committee and appoint a municipal Auditor. Accountability and transparency are also enhanced through a number of Regional policies and procedures.

4. Analysis and Options

THE CHANGES AND IMPACT OF BILL 8

MFIPPA

MFIPPA is amended to create specific obligations for the head of a municipality and individuals handling records

Two specific additions have been made to *MFIPPA* increasing the responsibility of the head of an institution and setting out consequences for individuals for the maintenance and management of corporate records.

Bill 8 - *Accountability and Transparency Act*
(Amendments to *MFIPPA* and the *Ombudsman Act*)

The head of the institution must ensure records are properly maintained

Bill 8 amends *MFIPPA* by adding a specific obligation for the head of the institution to ensure corporate records are maintained according to statute, bylaws and policies. The Chair as the head of the Region has delegated the day-to-day responsibility for managing *MFIPPA* to the Regional Clerk, but will have the specific statutory obligation to ensure there are measures in place for the maintenance of corporate records and there is compliance with these measures across the organization.

Individuals can be found personally liable for records related offences

Prior to Bill 8, only an organization could be held liable for offences under the Act. The amendments in Bill 8 expand this liability to include any individual who handles records regulated by *MFIPPA*. Individuals who are responsible for managing records can be found personally liable for offences related to the willful concealment, alteration or destruction of corporate records.

Bill 8 also allows for the prosecution of such offences to be initiated up to 2 years after the offence has been discovered and carries a maximum fine of \$5,000.00 for an offence by an individual.

The Region has Records Retention Bylaw 2014-52 and a number of policies governing records and information management

Regional staff are accountable for managing records and information in accordance with these policies. The Region's policy framework is augmented by various in-class and electronic training opportunities to build awareness and educate staff on the management of the Region's records and information assets.

In response to the *MFIPPA* amendments, the Region's information management framework will be reviewed to ensure the Region's ongoing compliance with information management requirements. Any necessary updates will be incorporated into staff training, policies, guidelines and procedures.

Ombudsman Act

The *Ombudsman Act* has been amended to expand the Provincial Ombudsman's jurisdiction to include the municipal sector

Under Bill 8 the *Ombudsman Act* has been amended to expand the jurisdiction of the Provincial Ombudsman to include municipalities, municipal boards and their agencies. The amendments also clarify how the Provincial Ombudsman may exercise its powers where a municipality has its own ombudsman. The function of the Ombudsman is to "investigate any decision or recommendation made by or an act done or omitted in the course of the administration of a public sector body."

The amendments in Bill 8 do not change the provisions of section 239 of the *Municipal Act* regarding closed meetings

The Provincial Ombudsman remains the default closed meeting investigator if a municipality does not have its own investigator and he maintains the ability to investigate matters if a complaint is brought directly to his office or on his own motion.

Established appeal and tribunal processes are not directly affected by the amendments to *the Ombudsman Act*

The Provincial Ombudsman is not empowered to investigate decisions, recommendations, acts 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 Provincial Ombudsman may be engaged.

The *Municipal Act* provides municipal councils with the authority to appoint a municipal ombudsman

Section 223.13 of the *Municipal Act* 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.

Bill 8 - *Accountability and Transparency Act*
(Amendments to *MFIPPA* and the *Ombudsman Act*)

Given that Bill 8 extends the jurisdiction of the Provincial Ombudsman to include the municipal sector, the Provincial Ombudsman will by default become the ombudsman for municipalities if they do not appoint their own municipal ombudsman.

The amendments allow the Provincial Ombudsman to conduct an investigation into a matter under the jurisdiction of a municipal ombudsman

The amendments in Bill 8 set out specific circumstances under which the Provincial Ombudsman may conduct an investigation where there is a municipal ombudsman. The Provincial Ombudsman may consider the merits of conducting an investigation if: (1) a complaint was made to the municipal ombudsman and he/she refused to investigate or has conducted and concluded an investigation; or (2) the time for bringing a complaint to the municipal ombudsman has expired.

If a municipal ombudsman has taken the necessary steps to resolve a complaint and has concluded an investigation, a complainant may decide to take a matter to the Provincial Ombudsman who may review the matter and decide whether or not to conduct an investigation.

The amendments in Bill 8 outlines the steps the Provincial Ombudsman must take to conduct an investigation

If the Provincial Ombudsman decides to conduct an investigation into a matter under a municipal ombudsman's jurisdiction, he/she must inform the head of the institution before starting the investigation, and provide the institution an opportunity to make representations to the Ombudsman if the report or recommendations may adversely affect the institution. Section 14(5) of the amendments will allow any person to make an application to the Divisional Court if there is a question as to whether or not the Provincial Ombudsman has the jurisdiction to investigate a matter. Prior to Bill 8, only the Ombudsman could make such an application.

Council should give consideration to appointing a municipal ombudsman

Toronto is the only municipality in Ontario to appoint a municipal ombudsman. Most municipalities rely on existing processes and procedures for handling a variety of matters that might otherwise be investigated by an ombudsman.

In light of Bill 8, Council should consider exercising its authority to appoint a municipal ombudsman. While the mandate of the Provincial Ombudsman is quite broad, a municipal ombudsman could focus on local issues and address them within the local context of the Region and its residents. Alternatively, Council

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could consider taking part in a shared resource arrangement with other municipalities, including its local municipalities, to jointly appoint a municipal ombudsman.

Excellent Care for All Act

The amendments to the *Ombudsman Act* do not directly affect health sector services

Schedule 5 of Bill 8 amends the *Excellent Care of All Act* to create a Patient Ombudsman within the health care sector. This legislation applies to long-term care facilities, hospitals and other health care organizations as prescribed in the regulation. The Patient Ombudsman will be authorized to receive and respond to complaints from patients and former patients of a health sector organization, facilitate a resolution, undertake investigations on complaints or his/her own initiative and to make recommendations to the health sector organization on conclusion of an investigation. The Patient Ombudsman is to work with the patient and the health sector organization to facilitate a resolution. Currently, only the Region's Long-Term Care facilities will be subject to this legislation. Other health care programs could be prescribed by regulation in the future.

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. Preparing for the amendments to the *Ombudsman Act* will support this priority area.

5. Financial Implications

There are no financial impacts directly associated with this report. Any financial impact of Bill 8 would depend on whether Council chooses to appoint a municipal Ombudsman, either independently or in conjunction with other municipalities.

6. Local Municipal Impact

There is no local municipal impact associated with this report however the local municipalities are also subject to the amendments to *MFIPAA* and the *Ombudsman Act*.

7. Conclusion

Bill 8 received Royal Assent on December 11, 2014, however it is unknown when the schedules enacting the amendments to *MFIPPA*, the *Ombudsman Act* and the *Excellent Care Act* will come into force. It is possible that the various schedules could be proclaimed into effect on different dates and at any time.

The steps outlined in this report are recommended as preparation in advance of the amendments coming into force to ensure the Region's policies and processes are in line with the expectations for public sector bodies as a result of these amendments.

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

The Senior Management Group has reviewed this report.

April 2, 2015

Attachments (0)

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Accessible formats or communication supports are available upon request

Bill 8 – *Accountability and Transparency Act* (Amendments to *MFIPPA* and the *Ombudsman Act*)

Presentation to
Committee of the Whole

Joy Hulton

April 16, 2015



Overview

- *Bill 8 – Accountability and Transparency Act*
- *MFIPPA (Municipal Freedom of Information and Protection of Privacy Act)*
- *Ombudsman Act*
- *ECAA (Excellent Care for All Act)*
- **Next Steps**

Bill 8 – *Public Sector and MPP Accountability & Transparency Act*

- Introduced July 2014 and received Royal Assent on December 11, 2014
- Enacts the *Broader Public Sector Executive Compensation Act, 2014*
- Amends 11 Acts including *MFIPPA* and the *Ombudsman Act* which apply to municipalities and the *ECAA* which applies to health services providers

Background – *Municipal Act*

- The *Municipal Act* empowers municipalities to establish codes of conduct and appoint accountability officers
- Council's accountability and transparency measures include:
 - Code of conduct for employees
 - Audit Committee
 - Auditor
 - Accountability and Transparency Policy applicable to Council and staff

Amendments - *MFIPPA*

Two specific additions to MFIPPA:

- 1) The “head” of the institution is obligated to ensure records are maintained according to statute, bylaws and policies
 - The Chair, as the head of the Region, is tasked with ensuring there are measures in place for the maintenance of corporate records and there is compliance with these measures

The Chair is the “head” of the Region.
The Chair has delegated the “day to day” duties to the Regional Clerk

Amendments – *MFIPPA*

- 2) Individuals can be found personally liable for offences related to the willful concealment, alteration or destruction of corporate records
- Prosecution can be initiated up to 2 yrs after an offence is discovered
 - Maximum fine for such offences is \$5,000.00

Individuals can be found personally liable for records related offences

Amendments - *Ombudsman Act*

- Extends the jurisdiction of the Ombudsman to municipalities, including municipal boards and agencies
- No change to the closed meeting investigator provisions of the *Municipal Act*
- Sets out the role of the Ombudsman as it applies to the municipal sector

Ombudsman's jurisdiction extends to the Region, its boards & agencies

Ombudsman - Function

- The Ombudsman's function is to “*investigate any decision or recommendation made by or an act done or omitted in the course of the administration of a public sector body*”

Amendments - *Ombudsman Act*

- Not empowered to investigate decisions, recommendations, acts or omissions:
 - If 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 public sector body

Review and Appeal Processes

- Statutory review and appeal processes apply to the following municipal service areas:
 - Freedom of Information
 - Development: charges, land use planning
 - Housing: eligibility and waitlist priority
 - Long-Term Care: complaints
 - Mobility Plus: eligibility
 - Ontario Works: eligibility
- The Ombudsman is currently not empowered to review these decisions

Amendments - *Ombudsman Act*

- If a municipality has an ombudsman the Provincial Ombudsman may conduct an investigation if:
 - A complaint was made to the municipal ombudsman and s/he refused to investigate or has conducted and concluded an investigation; or
 - The time for bringing a complaint to a municipal ombudsman has expired.

May conduct an investigation under certain conditions if there is a municipal ombudsman

Amendments - *Ombudsman Act*

- Prior to conducting an investigation the Ombudsman must inform the head of the institution
- The Ombudsman must give the institution an opportunity to make representations if he has grounds to make a report or recommendations that may adversely affect the institution
- The outcome of an investigation is a public report that includes the Ombudsman's decision and any recommendations

The Provincial Ombudsman must give notice to the head of the institution before conducting an investigation

Closed Meeting Investigations

- Bill 8 does not affect a municipality's right to appoint or retain its own closed meeting investigator
- The Provincial Ombudsman may only investigate if a municipality does not have a closed meeting investigator
- The Region has retained a closed meeting investigator to handle complaints

Amendments – *Excellent Care for All Act*

- Applies to health sector organizations including long-term care facilities
- Creates a Patient Ombudsman
 - To receive and respond to patient complaints
 - Undertake investigations
 - Facilitate a resolution
 - Make recommendations on conclusion of an investigation

Amendments – *Excellent Care for All Act*

- The Patient Ombudsman's powers are similar to the Provincial Ombudsman but the role is specific to the health sector
- Current complaints processes remain the same until the amendments to the *ECAA* or the *Ombudsman Act* are put into force
- The amendments would provide an ombudsman as a last resort appeal body

Implementation

- AMO requested a 1 year transition period to allow municipalities time to respond to the changes in the Ombudsman's jurisdiction
- Bill 8 is likely to be proclaimed in phases
- No date for the proclamation of Schedules 6 or 9

Next Steps - *MFIPPA*

- Review information management framework, policies and bylaws to ensure ongoing compliance
- Updates will be incorporated into staff training, policies, guidelines and procedures

Next Steps - *Ombudsman Act*

- Council should consider appointing a municipal ombudsman
- A municipal ombudsman could focus on and address issues within the local context of the Region
- Council could explore options for a jointly appointed municipal ombudsman
- Staff report back to Council in Fall 2015

The Region has the power to appoint a municipal ombudsman

Thank you

