



STAFF REPORT ACTION REQUIRED

Establishing the Toronto Ombudsperson

Date:	June 8, 2007
To:	Executive Committee
From:	City Manager
Wards:	City-wide
Reference Number:	

SUMMARY

This report sets out the powers, jurisdiction and an operating framework for an independent Ombudsperson, as part of Toronto's accountability framework and as required by the *City of Toronto Act, 2006*, Part V.

This report recommends an independent Ombudsperson reporting directly to City Council. Toronto's Ombudsperson will have a broad scope and will be established in accordance with the *City of Toronto Act's* provisions regarding jurisdiction and powers of investigation. When all other resolution processes have been exhausted, the Ombudsperson will be an objective investigator of people's grievances and complaints about actions and decisions made in the course of the administration of the City and the implementation of government policies. The Toronto Ombudsperson's model will be based on the principles of independence, confidentiality, impartiality and credibility.

The recommendations in this report provide a start-up structure for the Ombudsperson. Once hired, the Ombudsperson will report to Council as required with further operational and financial requirements to ensure the independent and unfettered implementation of the function.

RECOMMENDATIONS

The City Manager recommends that:

1. City Council approve the Ombudsperson model in this report, including the jurisdiction as summarized in Attachment 1 and the operating framework discussed in section 6 and summarized in Attachment 2.

2. City Council authorize the City Solicitor to prepare and introduce in Council any bills required to enact the Ombudsperson function.
3. City Council authorize the City Manager to begin recruiting the Ombudsperson using an external recruitment firm.
4. A list of candidates be presented to a selection panel composed of the Mayor, as chair, and four members of Council appointed by the Mayor.
5. The selection panel recommend to Council the appointment of the Ombudsperson, as soon as possible, and the recommendation be ratified by an absolute 2/3 majority vote of Council.
6. The 2007 Operating Budget for the Office of the Ombudsperson of \$200,000 gross and net be approved.
7. Funding in the amount of \$200,000 be transferred from the 2007 Approved Non-Program Budget to the 2007 Operating Budget for the Office of the Ombudsperson.
8. The Ombudsperson report to Council as required with further operational and financial requirements to ensure the function is implemented effectively.

Financial Impact

Funds in the amount of \$200,000 are required in the 2007 Operating Budget for the Office of the Ombudsperson. This is for part-year funding for an Ombudsperson, an administrative assistant and other start-up costs. Provision was made in the Non-Program Budget for funding requirements in 2007. It is recommended that this funding be transferred from the Non-Program Budget to the Office of the Ombudsperson's 2007 Operating Budget.

It is anticipated that the 2008 operating budget requirements will be approximately \$1.1 million and will be submitted to the 2008 budget process on behalf of the Ombudsperson. Once hired, the Ombudsperson may identify and report on specific requirements.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial information.

Equity Impact Statement

The establishment of the Ombudsperson function presents an opportunity for all Toronto residents. This function will be a final avenue for recourse and resolution for people who feel they have been treated unfairly by the City or have an unresolved complaint about services and programs. The Ombudsperson's mandate is to achieve fairness and equity in government activity, and to achieve change through problem resolution. The services will

be free and accessible to all members of the public. The Ombudsperson will undertake extensive outreach to diverse communities and populations to publicize the function and provide educational materials and information about how to access the service. The recruitment process for the Ombudsperson will strive to ensure an applicant pool which reflects the diversity of this City.

DECISION HISTORY

Toronto is establishing an Ombudsperson as part of its accountability framework and in compliance with the requirements of the *City of Toronto Act, 2006* (“the Act”).

ISSUE BACKGROUND

Toronto will be the third major city in Canada, after Montreal and Quebec City, to establish an Ombudsperson to respond to and investigate citizen complaints.

Internationally, and in Canada, the two most common Ombudsperson models are the legislative model and the executive model. In the former, the function is established by statute and the Ombudsperson reports findings and recommendations directly to the legislature, as does the Ontario Ombudsman. In the latter, the Ombudsperson reports to the head of the organization that they investigate, such as a government department or Crown Corporation, as does the CBC Ombudsman. Legislative models are seen to have more independence than those that report within an organization.

This report recommends a legislative, independent model similar to the Ontario Ombudsman’s Office. The proposed framework builds on the *City of Toronto Act* requirements which provide the foundation for establishing the function. Background research included a review of six Canadian models (Montreal, Alberta, British Columbia, Manitoba, Ontario, and the Workplace Safety and Insurance Board’s Fair Practices Commission) and four international models (New York, Portland, London, and New Zealand). This research, along with in-depth discussions with the Ontario Ombudsman and the Montreal Ombudsman provided valuable guidance in determining the recommended model for the City of Toronto.

COMMENTS

1. The Ombudsperson will report directly to Council

In accordance with the Act, the Ombudsperson will report to City Council. A direct and exclusive reporting relationship with Council will ensure independence and impartiality.

The Ombudsperson will be an officer of Council, comparable to an officer of Parliament, a key feature of which is independence from the administration. This arrangement safeguards their ability to act in an independent manner.

2. The Ombudsperson will be the objective investigator of Torontonians' grievances when other resolution systems fail

The Ombudsperson will be an objective investigator of grievances and complaints about decisions, actions or recommendations made or omitted in the course of implementing government policies and administering city services. The Ombudsperson will receive and investigate complaints from directly affected individuals or groups of individuals, and will work to ensure that they are treated fairly and justly in their dealings with the City.

The City has many complaint-handling processes, procedures, and appeal mechanisms in place. These processes vary across services and range from dedicated customer service functions to systems which escalate complaints through the chain of command. Most complaints are related to service delivery, access and delays, the application of policies and procedures, and employee conduct. The majority of public complaints are resolved through these processes.

The Ombudsperson will investigate only when all internal and external systems have failed to provide resolution to perceived unjust treatment (i.e., as a last resort). This means that all available complaint and appeal procedures must be exhausted before the Ombudsperson becomes involved.

In addition to investigating public complaints, the Ombudsperson will have the authority to conduct investigations on their own initiative on issues within their authority and jurisdiction. Research has shown that the vast majority of investigations begin with a complaint from the public.

3. The Ombudsperson will have the power to investigate

The Ombudsperson's primary goal is to facilitate resolution to complaints. As a first step, they will assess whether a complaint is within their jurisdiction and that all other avenues of resolution have been exhausted. This is followed by trying to resolve the situation through mediation, negotiation, and consultation. The experience of other jurisdictions reveals that about 70% of complaints are resolved quickly and without the need for a formal investigation.

If required, the Ombudsperson will then investigate, still with the goal of achieving resolution. The Act provides the Ombudsperson with broad investigative powers and protections including the power to gather evidence, compel disclosure of information, and to summons and examine witnesses under oath. Any person who is an officer, employee, or member of a City organization, and who in the opinion of the Ombudsperson, is able to provide information relating to an investigation will have a duty to comply and cooperate. Cooperation and access to records are important to effective and credible review.

Generally, when the Ombudsperson decides to intervene or investigate, the affected person or organization is informed and given the opportunity to resolve the complaint. If resolution is not achieved an investigation is undertaken. Once the investigation is completed both parties are notified of the outcome and recommendations. It is important to note that the Ombudsperson will not have the power to overturn decisions or force compliance with a recommendation. If desired, the Ombudsperson may address any unresolved matters directly with City Council. The experience of other jurisdictions indicates that it is seldom necessary to take this step.

The Ombudsperson will conduct their work in private. Maintaining and ensuring confidentiality is critical to the investigative process. Confidentiality fosters accessibility, creates trust in the process, and makes the Ombudsperson a safe place to turn for resolution. In addition to exempting the Ombudsperson's records from the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"), the Act requires that every investigation be conducted in private and that the Ombudsperson and their staff preserve confidentiality in carrying out their duties. However, the Act also provides the Ombudsperson with the discretion to disclose matters as they deem necessary to establish grounds for their conclusions or recommendations.

The Ombudsperson's proceedings and decisions cannot be challenged, reviewed, quashed or called into question in any court except on the grounds of lack of jurisdiction. The Ombudsperson, or anyone working on their behalf, cannot be called to give evidence in court or any other judicial proceedings, relating to anything coming to their knowledge in the exercise of the function.

4. The Ombudsperson's jurisdiction will be broad

The recommended jurisdiction (summarized in Attachment 1) is in keeping with the Act's provisions, including those matters that Council has the ability to decide. The Ombudsperson will report to Council with any jurisdictional issues or changes they may identify as the function is implemented.

The public will have an unfettered ability to make a complaint to the Ombudsperson. Upon receiving a complaint the Ombudsperson will determine whether it is within their jurisdiction, and ensure that all avenues of appeal have been exhausted.

- **All City divisions and operations**

As set out in the Act, the Ombudsperson will be able to investigate actions by all City divisions and operations, including contracted services.

- **Local boards**

Most local boards and their staff are included. The Toronto Police Services Board and the Toronto Library Board, and their respective staff, are excluded under the Act's restricted definition of a local board. The Toronto Board of Health (the board) is also

exempt under this definition; however Public Health staff will be included because they are City staff.

Pension Bodies

Pension bodies such as the Metro Toronto Pension Plan and Toronto Civic Employees Pension and Benefit Fund are not included in jurisdiction because they are not local boards for the purposes of the Act. They exist to supervise the operations of retirement funds and are unrelated to the “affairs or purpose” of the city. The City staff that support these boards fall under the Ombudsperson’s jurisdiction.

• Corporations

The Act provides that Council can specify whether City controlled corporations should be included in the Ombudsperson’s jurisdiction. It is recommended that Toronto Hydro and the Toronto Economic Development Corporation not be included given that they are independent, arm’s length entities operating in a commercial manner as established under the *Ontario Business Corporations Act*. Their respective Boards have full responsibility for operations and the City does not as a rule engage in operational issues of the corporations. Enwave Energy Corporation is also excluded since it is not a city-controlled corporation as defined in the Act, and because it is an arm’s length, commercial entity.

It is recommended that Toronto Community Housing Corporation (TCHC) be included in the Ombudsperson’s jurisdiction given the nature of its relationship to the City. The TCHC is home to about 164,000 low and moderate-income tenants in 58,000 household, including seniors, families, refugees, recent immigrants to Canada and people with special needs – some of the City’s most vulnerable people. The TCHC does have an extensive internal complaints handling and resolution process which will continue to be the avenue for recourse.

• City Council and its Legislative Committees

It is recommended that City Council and its legislative committees be excluded from the Ombudsperson’s jurisdiction since together they function as the City’s legislative body and policy-making body, similar to a parliament. Exclusion of the legislative body is a standard provision in the legislative ombudsman model. Ombudspersons generally do not have jurisdiction over the body that appoints them.

The *City of Toronto Act* recognizes Toronto as an order of government. The political nature of Council and the broad scope of legislative powers it exercises support the view of Council and its committees as the City’s ‘legislature’, and thus support exemption from the jurisdiction.

Legal Advisors to the City

The Act specifies that anyone acting as a legal advisor to the City or to an included local board or city controlled corporation is excluded from the jurisdiction. Accordingly, the Ombudsperson cannot investigate any decision, action, recommendation or omission of the City's solicitors or outside counsel retained by the City.

5. Four principles will guide the Ombudsperson's role

There are four essential and universally recognized principles of Ombudsperson oversight: independence, confidentiality, impartiality, and credibility. These principles will guide the work of the office.

Independence

Often referred to as the “hallmark” of ombudsmanship, independence is typically reflected in operational and financial independence. Independence is critical because the Ombudsperson needs to be free of pressure in order to make reasoned, impartial judgements about the cases and issues that they will be investigating. This ensures public confidence and credibility in the process. Elements that contribute to independence include security of tenure, adequate financial resources, reporting to the legislative body, neutral physical location, and being able to conduct business free from actual or perceived influence or interference.

Impartiality/Fairness

Impartiality flows from independence. The investigation and complaint resolution process must be fair and balanced, providing equal opportunity to both sides. The Ombudsperson is not an advocate for the complainant or for the government, but rather seeks fairness for both parties.

Confidentiality

The Ombudsperson and anyone acting under the instructions of the Ombudsperson are required to preserve secrecy with respect to all matters, they must not disclose and must not be required to disclose any matter provided in confidence. Confidentiality fosters accessibility, engenders trust in the process, and makes the office a safe place to turn to for resolution.

Credibility

Credibility is often linked to independence. An Ombudsperson's ability to achieve sound results will depend to a large extent on the personal credibility of the Ombudsperson and the credibility of their office. Complainants must see the Ombudsperson as an effective, accessible, impartial and responsive complaint resolution mechanism. Consistent and fair procedures must be in place for the investigation and resolution of complaints. Credibility will generate respect from the public, the administration and government.

6. The Ombudsperson's operating framework will ensure independence

The recommended operating framework is summarized in Attachment 2 (the "Operating Framework"). It reflects the guiding principles, promotes independence, and includes common provisions found in the statutes of legislative Ombudspersons such as the Ontario Ombudsman. This report recommends the enactment of a by-law that will establish the function, powers, and jurisdiction of the Ombudsperson as set out in the Operating Framework. The Ombudsperson may wish to report to Council recommending changes to various aspects of the Framework once they have had a period of operating experience.

- **Recruitment and Hiring**

To support genuine independence, the selection of the Ombudsperson will be conducted through an impartial search process, and ratified by an absolute 2/3 majority vote of Council in support of the nominee. This will ensure that the Ombudsperson has Council's confidence. For the initial hiring process, it is recommended that the selection panel be chaired by the Mayor with four additional members of Council appointed by the Mayor, to make a recommendation to Council as soon as possible.

- **Terms of employment**

A 5-year term of office, renewable once

A 5-year term, renewable for one additional 5 year term is recommended. A process will be established before the end of the first term to determine renewal.

Removal only for cause and by a super majority of City Council

Removal of the Ombudsperson will be for cause by an absolute 2/3 majority vote of City Council. The Ombudsperson needs to be secure in their position. Removal for cause, such as egregious or incompetent behaviour and, on a super majority, protects the Ombudsperson and ensures that he or she will not be removed for political reasons or because the result of an investigation is unfavourable.

Compensation

The Ombudsperson's compensation will be set through an independent, external review at arm's length from the City administration. The compensation should be reviewed periodically, and will be part of the employment contract to be negotiated with the Ombudsperson.

- **Budgeting and External Audit**

The Ombudsperson will have authority to develop their annual budget and administer their approved budget. This will create independence from the administration and affirms the role of the Ombudsperson as an independent officer of Council. The Ombudsperson will carry out this function within current City policies and processes as long as these policies and processes do not fetter their independence and authority of the

Ombudsperson. The Ombudsperson will report to Council on changes to this arrangement, as required.

As in other jurisdictions such as Ontario, an annual attest audit will be undertaken of the accounts and financial transactions of the Office.

- **The power to appoint and remove staff**

The Ombudsperson will have responsibility and authority to staff their office. This will create independence from the administration, affirm the role of the Ombudsperson as an independent officer of Council, and ensure that the Ombudsperson has the full confidence in their staff. In the start up phase this authority will be carried out within current City policies as long as they do not fetter independence and authority. The Ombudsperson will report to Council on changes to this arrangement, as required.

- **Office Organization**

The Ombudsperson will have responsibility and authority to manage the affairs of their office, including the establishment of office procedures and management of office records.

The City will do everything possible to support the Ombudsperson's independence and confidentiality through office procedures, including providing accessible, separate and secure office accommodation, records storage, and network and server access.

- **Reporting-out provisions**

The Ombudsperson will report annually directly to Council on the activities of the office, and will be able to report at any time as desired.

- **Investigation and resolution of complaints**

Complaint procedures and criteria to guide investigations will be included in the Toronto Ombudsperson's by-law, modelled on standard provisions in Canadian ombudsman legislation.

Complaint Procedures

Relevant legislation typically contains complaint procedures that outline how complaints will be received (e.g. in writing and/or in person), grounds for refusing to investigate a complaint, communications protocols with the complainant and the affected government body, and procedures to be followed after an investigation. These procedures ensure transparency and accessibility, and engender public trust and confidence in how complaints are handled. The City's Ombudsperson by-law will contain a complaint procedure mechanism modelled on the Ontario Ombudsman's Act and the Montreal Bylaw procedures.

Criteria to guide the Ombudsperson in the investigation and resolution of complaints

Relevant legislation typically provides criteria to assist in determining which complaints to investigate (i.e. actions contrary to the law, unfair, unreasonable, unjust, etc.) and recommendations for remedy (i.e. omissions should be rectified or a practice should be changed). These criteria provide a test against which to judge the actions once the facts and law are determined. The City's Ombudsperson by-law will set out criteria to guide the investigation and resolution of complaints. These criteria will be modelled on those set out in the Ontario Ombudsman's Act.

7. The Ombudsperson will work with Toronto's other accountability positions

All of the City's accountability officers – the Auditor General, Integrity Commissioner, Lobbyist Registrar and Ombudsperson - have a specific mandate and role to play in advancing transparency and accountability at the City. The Ombudsperson will concentrate on ensuring that Torontonians are treated fairly in their dealings with the City. The Auditor General's focus is on accountability for the stewardship of public funds and value for money in city operations. The Integrity Commissioner's focus is on the application of the Code of Conduct for Members of Council and complaints against elected officials and appointees regarding violations. The Lobbyist Registrar oversees and enforces the lobbyist registry and the lobbyists' code of conduct.

There will be instances when these mandates overlap or require clarification. The accountability officers will be required to work together to develop working protocols and procedures to address these circumstances.

CONCLUSION

The Ombudsperson will be a champion of fairness who is impartial, accessible, apolitical and independent of the administration. The creation of this function will:

- enhance public confidence through increased complaint resolution capacity
- provide another direct point of contact between the people and their City government
- help anticipate and resolve problems before they affect service delivery
- increase accountability and transparency
- complement and support elected officials in helping their constituents
- demonstrate leadership in promoting accountability and transparency in local government

CONTACT

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SIGNATURE

City Manager

ATTACHMENTS

Attachment 1: Summary of the Ombudsperson's Jurisdiction

Attachment 2: Summary of the Ombudsperson's Operating Framework

Attachment 1: Summary of the Ombudsperson's Jurisdiction

INCLUDED	EXCLUDED
<p>All City divisions and operations, including contracted services and Toronto Public Health staff.</p> <p>Service and Program Operating Boards</p> <ul style="list-style-type: none"> • Arena Boards (8) • Association of Community Centres (10) • Business Improvement Areas (54) • Exhibition Place • Heritage Toronto • Hummingbird Centre for the Performing Arts • Toronto Centre for the Arts • Toronto Parking Authority • Toronto Transit Commission • Toronto Zoo • St. Lawrence Centre for the Arts • Yonge-Dundas Square <p>Corporations</p> <ul style="list-style-type: none"> • Toronto Community Housing Corporation • Other corporations as Council may specify. <p>Financial / Administrative Boards</p> <ul style="list-style-type: none"> • Sinking Fund Committee • Toronto Atmospheric Fund <p>Quasi-Judicial Boards</p> <ul style="list-style-type: none"> • Committee of Adjustment • Committee of Revision • Property Standards Committee / Fence Viewers • Rooming House Licensing Commissioner • Toronto Licensing Tribunal 	<p>City Council and its Legislative Committees, including:</p> <ul style="list-style-type: none"> • Executive Committee • Standing Committees • Community Councils • Special Committees (Affordable Housing, Audit, Budget, Civic Appointments, Employee and Labour Relations, Striking) <p>Corporations</p> <ul style="list-style-type: none"> • Enwave • Toronto Economic Development Corp. • Toronto Hydro Corporation <p>Local Boards</p> <ul style="list-style-type: none"> • Board of Health • Toronto Library Board and staff • Toronto Police Services Board and staff <p>Pension Bodies</p> <ul style="list-style-type: none"> • Metro Toronto Pension Plan • Metro Toronto Police Benefit Fund • Toronto Civic Employees Pension and Benefit Fund • Toronto Fire Department Superannuation and Benefit Fund • York Employees' Pension and Benefit Fund <p>Any one acting as a legal advisor to the City or to an included local board or city controlled corporation, including City solicitors or outside legal counsel retained by the City.</p>

Attachment 2: Summary of Ombudsperson's Operating Framework

Operating Component	Recommended Provision
Recruitment and Hiring	Selection through an impartial search process, and ratified by an absolute 2/3 majority of Council. The Council selection panel will include the Mayor (chair), and four additional members of Council appointed by the Mayor.
Term of Office	5 year fixed term, renewable for one additional 5 year term.
Removal from Office	For cause only, by an absolute 2/3 majority of Council.
Compensation	Compensation determined through an independent external review, reviewed periodically.
Budgeting	The Ombudsperson will have authority to develop their annual budget and administer their approved budget.
External Audit	Annual attest audit conducted by an external auditor.
Appointment and removal of staff	Responsibility and authority to hire and remove staff.
Office Organization	Responsibility and authority to manage office affairs, including procedures and records management.
Reporting out provisions	Annually, directly to Council, on the activities of the Office, and as determined by the Ombudsperson on a case by case basis.
Complaint Procedures	Complaint procedures modelled on the Ontario Ombudsman Act and the Montreal Bylaw.
Criteria to guide the Ombudsperson in the investigation and resolution of complaints	Criteria modelled on the Ontario Ombudsman Act.