

Enhancing Policing Accountability through a Memorandum of Understanding with Ombudsman Toronto

Date: March 30, 2021

To: City Council

From: City Manager

Wards: All

SUMMARY

This report responds to direction from City Council to consult and report on the resources needed to carry out work outlined in submissions from the Canadian Civil Liberties Association and Ombudsman Toronto for new independent accountability mechanisms for policing in Toronto. The report recommends that City Council request the Toronto Police Services Board, and as appropriate, the Toronto Police Service, to negotiate a Memorandum of Understanding with Ombudsman Toronto to independently conduct policy and program reviews.

RECOMMENDATIONS

The City Manager recommends that:

1. City Council request the Toronto Police Services Board, and as appropriate, the Toronto Police Service, to negotiate a Memorandum of Understanding (MOU) with Ombudsman Toronto to independently conduct policy and program reviews and that the MOU include ongoing engagement with external stakeholders and a scheduled review period and process.
2. City Council authorize an in-year budget increase to the 2021 Ombudsman Toronto Approved Operating Budget of \$200,000, and increase the 2021 Approved Complement for Ombudsman Toronto by 3.0 Full Time Equivalents, as described in the Ombudsman's recommendation in Attachment 1, with the cost to be fully funded through the Innovation Reserve Fund (XR1713).

FINANCIAL IMPACT

Ombudsman Toronto has estimated that the resources required to continue to scope and begin to carry out the responsibilities under an MOU are \$200,000 in 2021, for salary and benefits for three new positions. Details are provided in the letter from the Ombudsman included as Attachment 1.

This report recommends the cost be fully funded through the Innovation Reserve Fund (XR1713).

Ombudsman Toronto will bring forward recommendations to Council for the operational resources needed to undertake the MOU in the 2022 and future budget processes.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

City Council, at its meeting of November 25 and 26, 2020, directed the City Manager to consult with the Toronto Police Services Board, the Canadian Civil Liberties Association (CCLA), and the City of Toronto Ombudsman on the resources needed to carry out the work outlined in submissions from the CCLA and Ombudsman, and to report with recommendations to the April 7 and 8, 2021 meeting of City Council.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.CC26.2>

COMMENTS

Background

In November 2020, the City Manager and City Solicitor reported on input from stakeholders on police accountability. Two attachments (2 and 6) to the report proposed new initiatives to enhance oversight and accountability in policing. The Canadian Civil Liberties Association (CCLA) supported a standing, independent audit body that would be able to conduct ongoing audits of multiple police practices focused on respect for individuals' constitutional and human rights. The submission stated that this type of independent auditing and investigation should not be left to periodic special investigations and inquiries, but rather should be ongoing and a core part of police oversight processes

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.CC26.2>).

Ombudsman Toronto's letter of October 28, 2020 described a new role for that office to "identify on its own initiative Toronto Police Service administrative policies and programs to review from an administrative fairness perspective, based on their systemic implications for Toronto's communities" and recommend improvements where necessary.

Ombudsman Toronto has noted that although ideally this role would be enabled by a legislative change, the Office currently recommends the undertaking of a Memorandum of Understanding (MOU) following an invitation from the Toronto Police Service (TPS) and Toronto Police Services Board (TPSB). Under the City of Toronto Act, 2006 (COTA), the TPSB is not included in the jurisdiction of the Ombudsman.

The importance of considering additional independent and impartial oversight mechanisms was also communicated in other submissions attached to the November report, including from the Criminal Lawyers' Association and the Black Legal Action Centre. Submissions also highlighted the disproportionate impacts that the lack of effective oversight has on Black Torontonians, Indigenous persons, and others with disproportionate amounts of police contact.

Consultation

In February and March 2021, the City Manager's Office and Legal Services met with the CCLA, Ombudsman Toronto and staff of the TPSB, followed by a joint meeting with all parties.

While the proposals from the CCLA and Ombudsman Toronto are not identical, the consultation identified shared interests including that oversight mechanisms should:

- be systemic rather than complaints-based;
- promote transparency through independent public reporting and recommendations; and
- identify measures to monitor the progress of any new accountability function.

There was also agreement that Ombudsman Toronto could meet the objectives of the proposals through an MOU with the TPSB and, as appropriate, the TPS. Staff from the TPSB have indicated support for an MOU with the Ombudsman.

City staff also met with the Ontario Human Rights Commission (OHRC) to learn more about models of oversight and the Commission's work in establishing an MOU with the Peel Region Police Service and Police Services Board. This discussion and the expertise of the OHRC could inform future phases of this work in Toronto. Additionally, this discussion highlighted the importance of ongoing engagement with stakeholders, focusing on outcomes with clear indicators of success, and an approach that can be modified over time to reflect any future changes, roles or structures related to policing oversight.

Considerations

This report recommends that City Council support the negotiation of an MOU between Ombudsman Toronto, the TPSB and, as appropriate, the TPS as a new accountability mechanism for policing in Toronto. The MOU would help to address some gaps in current oversight mechanisms without restricting the existing authorities or obligations of Ombudsman Toronto, the TPSB or the TPS, and without compromising the Ombudsman's independence, which is critical to her role.

A letter dated March 23, 2021 from the Ombudsman on the proposed role, areas that could potentially benefit from review, reporting, and resource needs is included as Attachment 1.

The proposed MOU between the Ombudsman, the TPSB and, as appropriate, the TPS is one initiative among many. Several initiatives related to accountability in policing are underway, many of which have been recently created. These include:

- the establishment of the new Inspector General of Policing and Community Safety and Policing Act (CSPA). The Inspectorate will monitor, advise and conduct inspections on the provision of policing and compliance with the CSPA and its regulations and will investigate complaints related to board member misconduct, the provision of policing and failure to comply with the CSPA or regulations, including a systemic failure. The CSPA is expected to come into force in 2022, at which point the Inspector General will be required to meet its legislative duties;
- the Memorandum of Understanding with the City of Toronto Auditor General for the Auditor General to develop and carry out a work plan of independent audits of the Service on behalf of the Board, approved by the TPSB in January 2021;
- the current Ontario Human Rights Commission inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service; and
- the Toronto Police Services Board's recommendations from the Chair's August 2020 report, *Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety*.

As work and outcomes noted above are implemented, it will be important to review the MOU discussed in this report, and adjust as necessary. Any oversight role should not duplicate existing functions or preclude future changes. Any MOU should respond to input from stakeholders, legislative changes, and progress against clear indicators that identify ways to strengthen oversight and the MOU in the future.

Consequently, the MOU between Ombudsman Toronto, the TPSB and, as appropriate, the TPS should include a review mechanism that assesses how well the arrangement is working for each of the parties involved and public interests, and recommend changes where necessary. A review should provide opportunities for input from stakeholders, updated assessments on resource requirements, and public reporting on the implementation of the MOU. It could consider whether an amendment to COTA to establish an oversight role for the Ombudsman with the TPS is warranted. A review would also afford an opportunity for the next City of Toronto Ombudsman, whose appointment is expected to be recommended to City Council in the coming months, to assess and inform the arrangement.

Resources

Ombudsman Toronto has indicated that three staff would be required, with estimated salary and benefit costs of \$200,000 in 2021 to continue scoping and to start this work. This report transmits the Ombudsman's recommendation to increase her office's 2021 operating budget by \$200,000 gross and net, and recommends that the cost be funded

through the Innovation Reserve Fund (XR1713). Additional details are provided in a letter from the Ombudsman in Attachment 1.

It is important for the independence of the Ombudsman that the resources be transferred to that office and not held elsewhere.

Ombudsman Toronto will provide information to Council of the operational resources needed to undertake the MOU in the 2022 and future budget cycles, once the work has been fully scoped and is underway. Following the term of the MOU and review process, requests for future resources would be also brought forward by the Ombudsman through a future budget process.

CONTACT

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SIGNATURE

Chris Murray
City Manager

ATTACHMENTS

Attachment 1: Ombudsman Letter to the City Manager on Police Oversight Resource Needs, March 23, 2021

Attachment 2: Letter from the Canadian Civil Liberties Association, March 23 2021