



Administrative Report

Office of the Director, Council Services/Clerk

To: Warden Tom Bain and Members of County Council

From: Mary Brennan
Director of Council Services/Clerk

Date: **November 4, 2015**

Subject: **Public Sector and MPP Accountability and Transparency Act, 2014 (Bill 8)**

Report #: **2015-R011-CS-1104-MB**

Purpose

To provide County Council information regarding the implications of the Public Sector and MPP Accountability and Transparency Act 2014 (Bill 8).

Background

In December 2014, the Ontario Legislature gave Royal Assent to the Public Sector and MPP Accountability and Transparency Act, 2014, (also referred to as Bill 8) however, the majority of the statute is not yet proclaimed. When the Act comes into force, it will amend a number of pieces of legislation with the goal of improving accountability and transparency for governments, including municipal governments, and the broader public sector (e.g. school boards, universities and hospitals).

Proclamation dates for the legislative amendments vary. For municipal governments the applicable sections will come into force on January 1, 2016. Once proclaimed, the legislation will provide for increased provincial oversight of municipalities by the Ontario Ombudsman. The majority of changes affecting municipalities are included as Schedules 6 and 9, and

make changes to the Ombudsman Act, which will allow the Ontario Ombudsman to investigate complaints about municipalities.

Discussion

Role of an Ombudsman

In general, the role of an ombudsman is to represent the public interest and promote fair administration. Amendments in 2007 to the Municipal Act, 2001, provided municipalities with enhanced accountability powers, such as the ability to appoint a number of integrity positions, including a municipal ombudsman who may conduct investigations with respect to administrative acts of a municipality.

Existing Powers of Ontario Ombudsman Related to Municipalities

At the time of this report, the Ontario Ombudsman has a minor role in municipal oversight, currently limited to determining whether rules related to municipal open meetings have been followed, and only if the municipality has not appointed its own meeting investigator.

New Powers

The expanded role provides the Ontario Ombudsman with the jurisdiction to investigate any decision, recommendation or act, done or not done, by a municipality. The understanding is that if a municipality has appointed a municipal ombudsman, the Ontario Ombudsman will have the ability to investigate the same matter if:

- the municipal ombudsman has refused to investigate a complaint;
- they have investigated and concluded the investigation of the complaint; or
- that the time to bring forward the complaint to the municipal ombudsman has expired.

The interpretation is that for municipalities that have not appointed a municipal ombudsman, the Ontario Ombudsman will become the default municipal ombudsman.

Similarly, if a matter falls under the jurisdiction of any other municipal integrity officer (integrity commissioner, lobbyist registrar, municipal

ombudsman, auditor general), the Ontario Ombudsman would only be able to investigate if a complaint is filed on a matter and it is not investigated, the investigation has concluded, or the time for bringing an investigation has expired. This would mean that the Ontario Ombudsman would be able to investigate and overrule any decision made by integrity officers, but only if such officials do not investigate, or they have concluded an investigation, or the time to bring forward a complaint has lapsed.

In addition, once Bill 8 has been proclaimed the Ontario Ombudsman will have the ability to conduct 'own motion' investigations.

Closed Meetings and Confidentiality

Bill 8 does not allow for the Ontario Ombudsman to investigate and/or overrule any decision made by a closed meeting investigator (the first and second readings of the Bill, did allow for such power, however it was removed at third reading).

However, on January 1, 2016, a municipal meeting will be required to be closed if the subject matter being considered is an ongoing investigation respecting a municipality, local board or municipally-owned corporation by the Ontario Ombudsman in the role as both meeting investigator (if the Ontario Ombudsman serves in that capacity) and as the municipal ombudsman.

Additionally, the legislative changes include amendments that disallow the disclosure, reproduction and retention of some documents provided by the Ontario Ombudsman to municipalities for comment during an investigation. The amendment provides that it will prevail over the Municipal Freedom of Information and Protection of Privacy Act. Also, there are secrecy provisions that will allow the Ontario Ombudsman to require that a person provide information in the course of an investigation by that office, even if they are bound by the Municipal Act, 2001 to maintain secrecy or non-disclosure.

Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

Bill 8 amendments to MFIPPA are in response to recommendations from the Office of the Information and Privacy Commissioner. They include requiring institutions subject to MFIPPA to ensure that reasonable measures to preserve records are developed, documented and put in place in accordance with record management rules and statutory obligations.

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The proposed legislative changes will also make it an offence to alter, conceal or destroy records when there is intent to deny an access request, with a penalty of up to \$5,000.

Associations

Below are samples of summaries from municipal associations:

AMO - <https://www.amo.on.ca/AMO-Content/Policy-Updates/2014/Bill-8,-Accountability-and-Transparency-Measures-U.aspx>

AMCTO -

http://www.amcto.com/imis15/content/GOVT_RELATIONS_ISSUES/Bill_8_Q_A.aspx

The upcoming legislative changes are an opportunity for staff to review the existing accountability and transparency framework for Essex County to ensure that policies and practices reflect the desired goals of the County.

Policies that will be reviewed include:

- Accountability and Transparency Policy
- Records Management
- Code of Conduct
- Notice Policy
- Communication Strategy (being developed)
- Delegation Policy
- Procurement Policy
- Hiring Policy
- Sale and Disposition of Land Policy
- Consideration of a System of Complaints

Once reviewed, staff may provide recommendations to County Council on whether policies or practices require the council's consideration for possible changes.

Recommendation

That Essex County Council receive the report on the Public Sector and MPP Accountability and Transparency Act, 2014; and

That staff be directed to review Essex County Council accountability and transparency framework and provide updates and recommendations to

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council on any potential improvements to policies or practices.

Respectfully Submitted

Concurred With,

Mary Brennan

Brian Gregg

Originally Signed by Mary Brennan
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