



STAFF REPORT ACTION REQUIRED

16.

Deferred Ombudsman Motion and Bill 8

Date:	September 8, 2014
To:	Toronto Public Library Board
From:	Acting City Librarian

SUMMARY

The purpose of this report is to provide an update on the *Public Sector and MPP Accountability and Transparency Act, 2014* (Bill 8) and to reintroduce a motion, deferred by the Toronto Public Library Board at its meeting of June 23, 2014, regarding the feasibility of establishing a Library Ombudsman. The Board deferred consideration of the motion until such time as provincial legislation was re-introduced extending the Ontario Ombudsman's jurisdiction over public libraries.

The full text of the motion to be considered by the Board regarding the feasibility of establishing a Library Ombudsman is attached to this report.

As Bill 8 is currently written, public libraries would be included under the jurisdiction of the Ontario Ombudsman. However, provincial government staff have advised Library staff that public library boards will likely be excluded from the jurisdiction of the Ontario Ombudsman.

In preparing this report on Bill 8, Library staff were made aware of preliminary information regarding ombudsman services relating to the Library. These findings are provided to the Board for information.

RECOMMENDATIONS

The Acting City Librarian recommends that the Toronto Public Library Board:

1. considers the deferred Notice of Motion: Report Request – Creation of a Toronto Public Library Ombudsman; and
2. receives the update on Bill 8 and preliminary information relating to the ombudsman services at the Library for information.

FINANCIAL IMPACT

There is no financial impact on the 2014 operating budget.

The Director, Finance & Treasurer has reviewed this financial impact statement and is in agreement with it.

DECISION HISTORY

Prior to the provincial election last spring, the provincial government introduced Bill 179, the *Public Sector and MPP Accountability and Transparency Act, 2014*. If adopted in its original form, that Bill would have brought public libraries under the jurisdiction of the Ontario Ombudsman. That Bill did not move forward as a result of the provincial election call.

Subsequently, at its meeting held on June 23, 2014, the Board had before it the following motion:

1. *requests staff to report back as soon as possible on the feasibility of bringing the Toronto Public Library under the jurisdiction of the City of Toronto Ombudsman;*
2. *requests staff to report back on the feasibility of establishing a Toronto Public Library Ombudsman by Board resolution with similar powers and duties to those of the City of Toronto Ombudsman, under the authority of the Public Libraries Act, in the event that it is determined that the City of Toronto Act prohibits the jurisdiction of the City of Toronto Ombudsman from being expanded to include the Toronto Public Library; and*
3. *requests that any policy to establish a Toronto Public Library Ombudsman include a provision that if the City of Toronto Act is amended, or other provincial legislation is introduced, so that the Toronto Public Library is brought under the jurisdiction of another Ombudsman, that the need for a Toronto Public Library Ombudsman be reviewed by the Board.*

During discussion of this motion, the Board was advised that the new provincial government had indicated its intention to reintroduce legislation to extend the Ontario Ombudsman's jurisdiction over public libraries. The Board elected to defer consideration of the motion and passed an amendment stating:

That the Toronto Public Library Board:

1. *defers consideration of the Motion moved by M. Foderick and seconded by Councillor Robinson until such time as the Ontario government re-introduces legislation that extends the Ontario Ombudsman's jurisdiction over public libraries.*

At the same meeting, the Board defeated a motion requesting that the provincial government enact a regulation ensuring the continued exclusion of the Library from the Ontario Ombudsman's jurisdiction.

ISSUE BACKGROUND

Bill 8

On July 8, 2014, Bill 8, the *Public Sector and MPP Accountability and Transparency Act, 2014*, was introduced by the provincial government and passed first reading. The Bill was essentially the same as Bill 179 that had been introduced prior to the election call.

If adopted in its present form, Bill 8 would amend the *Ombudsman Act* to expand the Ontario Ombudsman's jurisdiction over municipalities, universities, schools and hospitals. Currently, the Ontario Ombudsman has limited jurisdiction over these broader public sector organizations. Bill 8, as it is currently written, would extend the Ontario Ombudsman's jurisdiction over public libraries, including the Toronto Public Library. Consequently, the Board's deferred motion has been brought back for further consideration.

In response to the reintroduction of the Bill, Library staff contacted provincial government staff to obtain details related to the Ombudsman provisions in the legislation. Staff at the provincial government advised the Library as follows:

(a)s with the current municipal ombudsman system, it is proposed that the Ontario Ombudsman would not be able to investigate some local boards, including children's aid societies, boards of health, boards of long term care homes, police services boards and library boards, and certain municipal corporations.

Subsection 1(5) of Bill 8's Schedule 9 permits the government to set out by regulation which local boards would not be subject to the Ontario Ombudsman's jurisdiction.

Thus, provincial government staff indicated that, despite the current content of the Bill, the current status quo could be maintained and public libraries would ultimately not be brought under the Ontario Ombudsman's jurisdiction, and suggested that this result might be achieved by regulation. As well, the provincial staff indicated that there was likely no intent to bring public libraries under the jurisdiction of any existing municipal Ombudsmen. As of the time of preparing this report, the Bill has not been changed and the provincial government has not made an official announcement regarding any changes or proposed regulations.

The Legislature began its summer break on July 24, 2014 and will not sit again until October 20, 2014. Library staff have been advised that the legislation will likely receive second reading in either November or possibly December. After second reading, the Bill will be referred to a Standing Committee. At that point the public and other stakeholders can comment on the legislation by appearing before the committee and/or by submitting a brief. Following the proceedings of the committee and amendments to the Bill, it will go back to the legislature for third and final reading.

Additional Information concerning ombudsman services at the Library

In the course of researching information on the Ontario Ombudsman and Bill 8, Library staff obtained preliminary information and advice regarding the jurisdiction and the authority relative to the Toronto Ombudsman as well as the Board's authority to create a Toronto Public Library Ombudsman. Consequently, Library staff is providing that information to the Board as part of this report. If the proposed motion is carried, it will be necessary for staff to conduct additional research into the process and costs associated with the proposal.

Staff in the City Legal Division advised that in order to bring the Library under the City Ombudsman's full legal jurisdiction as set out in *City of Toronto Act* (COTA), the provincial government would have to amend the legislation to formally include the Board as a local board within the Ombudsman's jurisdiction. That full legal jurisdiction includes certain investigatory powers that are conferred on the City Ombudsman.

Legal Division staff also advised that, as part of the Board's authority to oversee and manage the Library under the *Public Libraries Act* (PLA), the Board has the capacity to create a Library position to review complaints about library service and policies that would be similar to an ombudsman's functions. However, an ombudsman created and appointed by the Board would lack the statutory investigative powers that the City Ombudsman has under COTA. An ombudsman appointed by the Board would only have the authority to carry out the functions authorized by the Board, and Library staff would only be required to co-operate with the ombudsman pursuant to management direction to do so.

The Board could also request City Council to allow the City Ombudsman to act as a de facto ombudsman for the Library. Providing Council's approval is obtained and the City Ombudsman is willing to act in that role, a service agreement between the Board, the City and the Ombudsman would need to be arranged. There would likely be an ongoing cost for such ombudsman service. In carrying out this voluntary function, the City Ombudsman would have no greater authority than any other person appointed to that role by the Board. In particular, as noted above, this means that the statutory investigative powers would not be available to the person acting in that role.

Any de facto arrangement with the City Ombudsman or another person appointed to carry out the function of an ombudsman for the Library could be structured to ensure that the arrangement terminates if legislation is established to bring the Board and the Library under the legal jurisdiction of an ombudsman to avoid duplication.

CONTACT

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SIGNATURE

Anne Bailey
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ATTACHMENT

Attachment 1: Notice of Motion: Report Request – Creation of a Toronto Public Library Ombudsman