



STAFF REPORT ACTION REQUIRED

18.

Deferred Ombudsman Motion and Bill 8

Date:	June 22, 2015
To:	Toronto Public Library Board
From:	City Librarian

SUMMARY

This report is in response to a Toronto Public Library Board request for information regarding the feasibility of bringing the Toronto Public Library under the jurisdiction of the Toronto Ombudsman. The report identifies that in order to bring the Library under the jurisdiction of the Ombudsman, an amendment to the City of Toronto Act (COTA) is required. In addition, the Province of Ontario has now launched its required five-year review of COTA. The report also provides information regarding the implementation of the Public Sector and MPP Accountability and Transparency Act. The Act expands the powers of the Ontario Ombudsman to include various municipalities, universities, schools and hospitals; however, public library boards will be made exempt through regulation. Information is also provided about the mandate, functions and powers of the Ombudsman, and the Library's customer response process.

The report requests that the Library Board consider asking the City of Toronto to include a recommendation to the Province of Ontario to amend the City of Toronto Act (COTA) so that the Library is brought under the jurisdiction of the Toronto Ombudsman.

RECOMMENDATIONS

The City Librarian recommends that the Toronto Public Library Board:

1. recommends requesting that the City Manager include in the five-year City of Toronto Act Review an amendment to Part V of the City of Toronto Act, 2006 in order to ensure that the Toronto Public Library is within the jurisdiction of the Toronto Ombudsman.

FINANCIAL IMPACT

There is no financial impact on the 2015 operating budget. Currently, investigations conducted by the Ombudsman are funded through the Ombudsman's annual operating budget provided by the City of Toronto.

Future year impacts on the Library's operating budget would occur if the City of Toronto required the Toronto Public Library to pay for any investigations into library operations that the Ombudsman carried out.

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

DECISION HISTORY

On September 8, 2014, the Toronto Public Library Board approved a motion authorizing staff to investigate the feasibility of creating a Toronto Public Library ombudsman, including the option to bring the Library under the jurisdiction of the Toronto Ombudsman.

<http://www.torontopubliclibrary.ca/content/about-the-library/pdfs/board/meetings/2014/sep08/16.pdf>

The related motions approved by the Board are as follows:

1. *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. *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, that staff 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;*
3. *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.*

The Board report prepared by staff confirmed that, without a change to the *City of Toronto Act, 2006* (COTA), the Toronto Ombudsman does not have jurisdiction over the Toronto Public Library.

On December 11, 2014, the *Public Sector and MPP Accountability and Transparency Act, 2014* received royal assent. Schedule 9 of this Act gives the Ontario Ombudsman jurisdiction over various local boards in municipalities across the province, including the Toronto Public Library. Recently the province announced that the Act will come into force on January 1, 2016 and will include a regulation exempting local boards, including the Toronto Public Library Board, from the jurisdiction of the Ontario Ombudsman.

ISSUE BACKGROUND

The Toronto Ombudsman

In conducting background research for this report, staff contacted the Toronto Ombudsman in order to obtain information about the Ombudsman's powers, responsibilities, activities and investigations.

The Toronto Ombudsman works to ensure that the City treats the public fairly, and that services are provided in a fair and equitable manner for all. The Ombudsman is responsible for addressing concerns about City services and investigating complaints about administrative unfairness related to City divisions, most City agencies and City corporations. The Toronto Public Library does not currently fall under the jurisdiction of the Toronto Ombudsman.

The Ombudsman's office assists the public by examining decisions made by local government and helps to mediate the relationship between members of the public and bureaucracies. While the Ombudsman can act when she receives a complaint, she may also initiate an investigation without a complaint. The office also conducts systemic investigations when there are indications of a larger problem within an organization.

The authority of the Toronto Ombudsman is outlined in COTA and includes the power to inspect government premises and documents, and to summon witnesses. All municipal government organizations under the Ombudsman's jurisdiction must co-operate with the Ombudsman's investigations.

Dispute Resolution and Investigations

Members of the public can file a complaint with the Ombudsman's office in person, by fax or telephone, email or by completing a web form. Anonymous complaints are not accepted. Once a complaint is received, a file is opened and the complaint is dealt with by an in-take officer. The officer will contact both the organization that is subject to the complaint and the complainant for background information, and to seek an explanation of the matter or, if necessary, to get further information or clarification. Approximately 85% of all complaints are resolved at this stage in the process. If the issue is deemed to require a policy review, is complex, or involves conflicting information, it will be assigned to an investigator. Investigations of this nature can be resolved quickly – approximately six to eight weeks – or take several months.

As mentioned above, the Ombudsman has statutory powers that include the ability to inspect the workplace, subpoena documents and summon witnesses to testify during an investigation. These powers include the right to interview any staff member.

Value of the Ombudsman

Organizations can benefit from Ombudsman oversight in a number of ways:

- Accountability – Public accountability is increased because the office is neutral and independent;
- Trust – Public trust is increased because investigations of organizations' conduct are conducted by a third party that is independent of the organization;

- Dispute resolution – Because the complaint is heard by someone outside the organization, the complainant is more likely to accept the resolution even if it is not in their favour.
- Service improvements – Investigations into complaints can lead to improved service outcomes if flaws in policy or procedure are identified.

Accountability Offices Review

On April 1, 2014, Toronto City Council approved a motion authorizing City staff to conduct an external review of the four accountability offices identified in COTA: Auditor General, Ombudsman, Integrity Commissioner, and Lobbyist Registrar. The review is to focus on legal, technical and process implications of appointing officers in combined roles and will include recommendations on various options regarding the officers' structure and function, including combining functions. The report is expected later this year.

The Public Sector and MPP Accountability and Transparency Act, 2014,

The Public Sector and MPP Accountability and Transparency Act, 2014, is an omnibus Act that amended various pieces of legislation governing accountability and transparency offices, including the *Ombudsman Act*. Specifically, Schedule 9 of the Act expands the Ontario Ombudsman's jurisdiction over municipalities, universities, schools and hospitals, including municipal library boards. While the Act received royal assent in December 2014, Schedule 9 has not yet been brought into force.

The province has announced that local boards, including the Toronto Public Library will be exempt from the jurisdiction of the Ontario Ombudsman once the Act is in force as of January 1, 2016.

Toronto Public Library Complaint Process

As a large public service organization that has the mandate to provide equitable service to the entire city, the Library receives various comments and complaints. The Library values customer feedback and welcomes all comments from the public. Staff are trained to provide quality service that is courteous, competent, timely, and helps to resolve issues and concerns. In order to deal promptly and effectively with customer feedback, the Library has developed a responsive process and procedure that is governed by the Public Consultation Policy. The feedback process is very transparent and is described on the website at <http://www.torontopubliclibrary.ca/about-the-library/customer-care> (Attachment 1) on the Customer Feedback Standards and Practices web page. Customers have a number of options when they wish to comment about the Library: they can speak to branch staff or Answerline directly; they can contact a manager; they can discuss the matter with senior management staff; or they can submit a written comment on a customer feedback form. All branch and management contact information is listed on the Library's website at: <https://www.torontopubliclibrary.ca/contact/management-staff.jsp>.

When customers submit a customer feedback form or submit an email, staff will respond within two business days. A telephone message will be returned in one business day. In many cases email and telephone messages are responded to the same day. The Library is committed to responding to customers promptly and involving as few library staff as possible.

When a customer speaks directly with staff about a complaint, it is generally resolved on the spot, either through an explanation of the policy or procedure or through a corrective action. For instance, a customer might complain about the length of time allowed for an item on loan. Staff would deal with this by explaining the rationale for the policy and offer options that the customer might not be aware of, such as item renewals. The vast majority of complaints are dealt with immediately through a conversation with front-line staff. If front-line staff are unable to resolve the problem, it is referred to a supervisor. Through a dialogue with the supervisor, further attempts are made to resolve the problem. In a small number of instances unresolved problems are referred to a manager. At all steps in the process, attempts are made to resolve the issue to the customer's satisfaction while adhering to policy and procedure.

While it is true that the Library does not have an external oversight authority such as an Ombudsman, customers have the option of making presentations to the Library Board in order to discuss issues and concerns. While not independent of the Library, the Board has oversight over library operations and can hear public complaints through the presentation process. The Board can then ask staff to investigate and report back on the issue or problem.

Written feedback is responded to either by front-line staff or a supervisor. If required, a complaint is escalated to a manager. The Library tracks all written feedback forms. In 2013, the Library received 3,875 negative feedback forms. When compared with the total number of library uses of 96.9 million, the amount of negative feedback is very small.

COMMENTS

Legal requirements and process

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 COTA, the provincial government would have to amend the legislation to formally include the Board as a local board within the Ombudsman's jurisdiction.

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.

While the Board has the authority to create an ombudsman-like position to review complaints, this approach is not recommended for various reasons. As noted above, such a position would not have statutory investigative powers outside of those authorized by the Board and, therefore, would be limited in its effectiveness. Since such a position would be created by the Board it would not necessarily be seen to be independent of the Library. The potential lack of trust in the office might diminish its ability to successfully resolve disputes. Creating an ombudsman position would require funding. While staff have not investigated the cost

required to operate such a service, allocating resources to it will require the Library to reduce expenditures elsewhere. If the Board decides that it would be worthwhile for the Library to have an independent authority to investigate complaints, given the limited authority such a Board-appointed position would have and the associated costs, it is recommended that this responsibility be carried out by the Toronto Ombudsman.

As part of the investigation into the feasibility of bringing the Library under the jurisdiction of the Toronto Ombudsman, Library staff met with staff from the City Manager's office to discuss the possibility of extending the authority of the Ombudsman. At that meeting it was confirmed that the changes to COTA could be recommended to the province as part of a general review of the Act. Under the terms of the legislation, the provincial government must undertake a formal review of COTA every five years, with the next review due to begin in 2015.

On June 5, 2015, the province officially announced the review of the City of Toronto Act, along with a review of the Municipal Act, and the Municipal Conflict of Interest Act. If the Toronto Public Library Board recommends that the Toronto Ombudsman is given jurisdiction over the Library, the City Manager will be advised so that this request is included in recommendations for changes to COTA that will be reviewed and approved by City Council.

CONTACT

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SIGNATURE

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ATTACHMENT

Attachment 1: Customer Feedback Standards