

## Municipal Primer on the Alberta Ombudsman

With the passage of Bill 21, the mandate of the Alberta Ombudsman has been expanded to include municipalities. At the most recent AAMDC Spring Convention, the AAMDC hosted Peter Hourihan, Alberta's Ombudsman, and Joe Loran, Alberta's Deputy Ombudsman. In their breakout session, they provided clarity to their expanded role and how they believed it would operate with municipalities.

The following Q and A has been developed by the Alberta Ombudsman and has been adopted verbatim from the Alberta Ombudsman website [here](#) and aims to provide additional clarity to this newly expanded mandate.

For more information on the Alberta Ombudsman, click [here](#).

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### What types of complaints will the Ombudsman review?

- The Ombudsman will investigate complaints from people who feel they have been unfairly treated by a municipality.
- The Ombudsman is an option of last resort; complainants must go through any relevant appeal or review processes before the Ombudsman can investigate.

### What will the Ombudsman's office do when they receive a complaint involving a municipality?

- The process for complaints about a municipality will be the similar to the process the Ombudsman's office currently uses for dealing with complaints regarding a provincial government department or other authority. The complaint must be in writing and the individual(s) must be personally affected.
- The Ombudsman is an impartial and neutral organization, and does not advocate for either the government or a complainant.
- A formal investigation begins with a written complaint.
- If the complaint is within the Ombudsman's jurisdiction (in the municipal context, the matter would be related to a municipal administrative process or decision) and the complainant has exhausted all relevant reviews or appeals (or the time limit for requesting a review or appeal has expired), the Ombudsman may accept the complaint.
- If the issues in the complaint are straightforward and a less formal resolution is appropriate, and if both the complainant and the municipality agree, the Ombudsman would facilitate a less formal complaint resolution process by clarifying the issues with the complainant and discussing the possible avenues of resolution with the municipal administration, generally over the telephone.
  - If the matter is successfully resolved, the file is closed.

- If the informal process is unsuccessful, the matter is considered for formal investigation.
- If the Ombudsman chooses to proceed with a formal investigation, the complainant and the chief administrative officer of the municipality will be notified in writing with the issue(s) for investigation identified.
  - The investigation may include interviews with both the complainant and the appropriate staff of the municipality, as well as any other relevant individuals. Relevant documents also may be reviewed.
  - The Ombudsman may review relevant legislation, bylaws, and administrative policies to understand the process and determine if it was fairly applied to the complainant.
  - If no administrative unfairness is identified, the Ombudsman will report his findings to the complainant and the municipal administration.
  - If administrative unfairness is identified, the Ombudsman will share the findings and recommendations by letter with the municipal administration, and the administration will have the opportunity to respond.
  - The Ombudsman must report findings to the administrative head, the appropriate Minister and the complainant. In most cases, no public report is prepared as the result of an investigation. However, the Ombudsman has discretion to make a public report on any investigation. Should the Ombudsman make a public report that contains an adverse comment or opinion, an opportunity for representation to the Ombudsman regarding the comment or opinion will be provided to the municipality.
  - The municipal administration may suggest alternative options for resolution of the complaint and the Ombudsman may agree. However, the Ombudsman has the final authority to determine the recommendation.
  - Once any discussions with the municipal administration are concluded, the recommendation may be shared with the complainant.
  - Anonymous complaints are not acted upon.

### **What authority does the Ombudsman have?**

- When the Ombudsman makes a recommendation following an investigation, he relies on the power of persuasion or publicity, as he does not have the authority to require an action.
- Most recommendations for resolution result in an action that directly impacts the complainant.
- Other recommendations may correct a systemic issue that affects more than one person and will improve the process or system within the municipality.

- If no agreement is reached between the Ombudsman and the municipal administration, the Ombudsman has the power to report to the Minister, the Lieutenant Governor in Council, and ultimately to the Legislative Assembly of Alberta.

### **Will the Minister of Municipal Affairs be notified when the Ombudsman investigates a municipality?**

- The Minister of Municipal Affairs will be notified of any recommendations made by the Ombudsman in relation to an investigation involving a municipality.
- If no agreement is reached between the Ombudsman and a municipality after we provide a recommendation, the Ombudsman may report the matter to the Minister of Municipal Affairs.
- The Ombudsman will periodically update the Minister of Municipal Affairs on the number of complaints received by his office related to municipalities, and a statistical summary of the status of those complaints.
- Under the proposed legislation, the Minister of Municipal Affairs will have authority to issue directives as a result of an investigation by the Ombudsman if the Minister considers a municipality is managed in an irregular, improper or improvident manner.

### **Will the Ombudsman save the province and individuals money by resolving complaints before they are taken to court?**

- Not necessarily, and government has stated this is not the aim of this new expanded jurisdiction.
- However, our 50 years of collaborative experience with provincial authorities has led to improved service and program delivery, and addressed administrative problems or shortcomings. We plan to take the same approach with municipalities.
- As an option of last resort, the Ombudsman will not accept a complaint where the matter is before the courts.
- Where legislation prescribes a court application as a remedy, the Ombudsman will not accept a complaint until the period for the court application has expired.

### **Will the Ombudsman compromise local municipal autonomy?**

- The Ombudsman does not have the power to change any policies enacted or decisions made by the municipality.
- The Ombudsman is a neutral and independent office that seeks to work collaboratively with authorities under its jurisdiction to work to address complaints.
- As an office of last resort, municipalities will normally not be surprised about the complaints brought to our attention. For example, the *Municipal Government Act* enables elected councils to set policy, including tax rates for citizens/businesses, so a person or business cannot ask the Ombudsman to investigate a council decision to set a tax rate they do not like. However, a person or business could turn to the Ombudsman if they believed the tax rate was administratively applied to them in an unfair manner.

- Local councils will continue to have the necessary authority to fulfill their responsibilities.

### **Will individuals and organizations have other options if they are not satisfied with the result of the Ombudsman's complaint process?**

- The proceedings or decisions of the Ombudsman cannot be challenged in any court. They could attempt to pursue their concerns with their elected council in the manner provided by the municipality.
- There may be other legal avenues open to them.
- Where a significant number of citizens share a concern about the management, administration or operation of a municipality, they could submit a sufficient petition to the Minister of Municipal Affairs to conduct a Municipal Inspection.

### **Will the Ombudsman's work be impacted by the increased scope of responsibility for municipal complaints?**

- The Ombudsman reports annually to the Legislative Assembly of Alberta on the number and types of complaints received, and the statistical outcomes of their reviews and investigations.
- It is expected the Ombudsman will initially receive a significant number of complaints due to the newly acquired jurisdiction over municipalities. It is also anticipated many initial complaints may be based on events that preceded the effective date of the Ombudsman's responsibility for municipal complaints.
- The Ombudsman will not accept complaints that relate to events occurring before the change in legislation, unless the complaint relates to a systemic issue of ongoing significance.
- Although the Ombudsman does not have jurisdiction over municipalities at present, our office does receive complaints about municipalities.
- The Ombudsperson for British Columbia has had jurisdiction over municipalities since 1995. In 2015-2016, 504 files were opened related to complaints about municipalities and regional districts.
- Despite the fact the Ontario Ombudsman did not have general jurisdiction over municipalities in 2015, their annual report indicates that 1,656 non-jurisdictional complaints were received regarding Ontario's 203 municipalities. In January 2016, the Ontario Ombudsman's role was expanded to include administrative conduct of local government bodies (school boards, universities, municipalities, local public funded boards, and municipally controlled corporations).

### **Does the ombudsman in other provinces have jurisdiction which includes municipal governments?**

- There are seven provinces/territories in Canada where the Ombudsman has jurisdiction over municipalities: Nova Scotia, Manitoba, British Columbia, New Brunswick, Saskatchewan and Ontario. Yukon's ombudsman can investigate municipalities, but at their request only.

- Alberta is one of the last provinces to place municipalities under the Ombudsman's jurisdiction.

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