

Report CCR-CS-02-16

To: Chair and Members of the Corporate Services Committee
From: Sharon Vokes
Meeting Date: January 12, 2016
Subject: **Update on Bill 8 – Public Sector and MPP Accountability and Transparency Act, 2014**
Status: Recommendation adopted by Committee per Resolution CS12-16;
Endorsed by County Council February 2, 2016 per Resolution CC24-16;

Recommendation(s)

THAT Report CCR-CS-02-16 regarding an update on Bill 8, the Public Sector and MPP Accountability and Transparency Act, 2014 be received;

AND THAT Grey County utilize the services of the Ontario Ombudsman for investigating concerns about the municipality.

Background

The purpose of this report is to provide an update on Bill 8, its implications related to municipal government, and steps being undertaken to meet the requirements of the legislation.

Bill 8 received Royal Assent on December 11, 2014 and the Bill and its associated regulations came into force on January 1, 2016. The Bill covers a number of Acts and its intent is to improve accountability and transparency for governments, including municipal governments and the broader public sector (e.g. school boards, universities and hospitals). The legislation that has been amended by this Act which is of specific interest to municipalities are Excellent Care for All Act, 2010, the Municipal Freedom of Information and Protection of Privacy Act and the Ombudsman Act.

AMO has provided a concise listing of key changes that municipalities need to be aware of:

- The Ontario Ombudsman will become the default ombudsman for municipal governments that do not appoint a municipal ombudsman, except in the City of Toronto.
- The Ontario Ombudsman will have “final oversight” of individual complaints where a municipal ombudsman has been appointed, except in the City of Toronto.
- The Ontario Ombudsman will have oversight of municipal auditors general and integrity commissioners. The government has not provided clarification on the scope of the Ontario Ombudsman’s powers in these areas.
- The Ontario Ombudsman will be able to conduct “systemic” investigations of all municipal governments, excluding the City of Toronto.
- The existing closed meeting investigation regime will be maintained. The Ontario Ombudsman will continue to be the default closed meeting investigator where a municipality has not appointed a closed meeting investigator. The definition of “meeting” will fall to the Municipal Act review.
- By regulation, boards of health, library boards, long term care homes and police services boards are to be excluded from an Ombudsman’s oversight.
- The new Patient Ombudsman will have oversight of long term care homes.

The change to be noted with respect to the Municipal Freedom of Information and Protection of Privacy Act is the addition of a duty for heads (Clerk) to ensure that measures are in place to preserve the records of their institution in accordance with applicable laws, rules and practices as well as the creation of offences. The primary changes relate to:

- Requirements to ensure that there are proper procedures to ensure the collection, storage and destruction of records;
- Makes it an offence to alter, conceal or destroy records when there is intent to deny an access request.

It should be noted that Bill 8 does not allow the Ontario Ombudsman to investigate or overrule any decision made by a closed meeting investigator. The one thing related to closed meetings that is impacted by Bill 8 is the addition of a new reason to go into closed session. Beginning January 1, 2016 a municipal meeting will be required to be closed if the subject matter being considered is an ongoing investigation respecting the municipality by the Ontario Ombudsman in the role as both meeting investigator if applicable and as the Municipal Ombudsman.

It is 2016, Now What?

Ombudsman

As can be seen from the above synopsis, the Ontario Ombudsman now has significant powers with respect to municipalities. One option available for municipalities is the ability to appoint its own Ombudsman. It must be remembered that the Ontario Ombudsman still has the ability to investigate in situations where the Municipal Ombudsman refuses to investigate or once the Municipal Ombudsman's investigation is complete. It's also staff's understanding that investigations won't be retroactive, but will relate to matters of concern beginning January 1, 2016.

After review of the legislation and participating in seminars and group discussions it is the recommendation of staff that the County utilize the services of the Ontario Ombudsman rather than appointing its own. This recommendation is based on the premise that a number of areas that staff sees as potential requests to the Ombudsman are based more in Provincial policy. Examples are problems with Ontario Works that relate to the implementation of the Provincial program SAMS, or payments for Ontario Works which are based on provincial legislation and land use decisions related to aggregates or wind turbines.

The County's Long Term Care Homes will fall under the Patient Ombudsman. Currently complaints of a certain level of severity for long term care are reported to the Ministry of Health and Long Term Care. It is unclear at this time how the dual complaint reporting will work.

Complaint Process

It's often said that the best offence is a good defense. In the case of complaints to the Ontario Ombudsman it has been recommended that municipalities develop policies and processes related to complaints. The Provincial Ombudsman's Office has advised that the first step in an investigation will be to find out if the individual/organization has gone through the municipality and whether there was a process to follow.

A number of departments within the County have well developed procedures for managing complaints. A cross departmental team project is currently underway to examine best practices and determine if there is a way of creating a one window approach and automating the process through the support of the Information Technology Department. The technical solution will be based on open source free software.

Very quickly the solution is evolving from being a complaints' process to being more positive in that it will be a web page to find answers to commonly asked questions and provide feedback, both good and bad.

The solution that staff is working on will be something that can be shared with the County's member municipalities. In a best case scenario there may even be the possibility of having it seamless to the end user. An example would be a road's related concern which would automatically be sent to the right jurisdiction without the person needing to know if it is a local or county road.

Records Management

The County is well served with a robust records retention by-law which is regularly reviewed and updated. In fact, a review is currently underway and a revised by-law will be before Council in 2016. The County's electronic records are managed within an electronic records management system (GreyDocs) which aligns with the County's record retention schedule. Many departments have implemented The Ontario Municipal Records Management System (TOMRMS), the County's approved classification schedule, for their paper documents. Other departments are in the process of doing so.

Council Code of Conduct

While Bill 8 touches a number of pieces of legislation, the theme of the legislation is really covered in its title of accountability and transparency. A way of demonstrating accountability and transparency is through a Council Code of Conduct. The County has had a Council Code of Conduct since 2008. Like all policies, a periodic review is appropriate.

In discussions of Bill 8 by the local clerks it has been noted that there would be a benefit in having common codes between the County and its member municipalities. This would be particularly beneficial for mayors and deputy mayors who would only have one code to work under. The Clerks have been reviewing best practices in codes of conduct and are working on a Code of Conduct that will be values based and easy to understand. This will be brought forward in 2016 for the Committee's consideration.

Financial/Staffing/Legal/Information Technology (IT)

Considerations

The financial and staffing costs will be absorbed within the affected departments. As noted above, some departments already have robust procedures for managing

complaints. The recommendation to utilize the Provincial Ombudsman eliminates additional costs to the local tax base. It is staff's understanding that investigations by the Ombudsman can be very labour intensive for municipal staff. If the County is ever subject to an investigation, workload priorities will need to be shifted to accommodate the needs of the Ombudsman.

An automated process through the IT Department will be absorbed within its annual work program. Several municipalities have approached the IT Department to develop an automated complaint process. The knowledge gained from developing a County process will likely reduce the amount of time and therefore the cost charged to the local municipality.

Link to Strategic Goals/Priorities

Processes currently in place or currently under review with respect to the implementation of Bill 8 support the overarching pillar in the strategic plan of Goal 6 which is to achieve excellence in governance and service.

Attachments: None

Respectfully submitted by,

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