

Councillor Request Inquiry

13-2019

2019

April 9, 2019 Information Request:

Please provide information on the Modernized Municipal Government Act changes related to the provincial ombudsman and explain what powers that office has to investigate decisions and actions of a municipality. Please brief Council on the new powers and expected impacts to County governance as well as impacts and opportunities for residents.

Dear Members of Council,

In response to the Information Request made on April 9, 2019 regarding the Modernized Municipal Government Act changes related to the provincial ombudsman and powers that office has to investigate decisions and actions of a municipality, please see the following:

Background:

- The Ombudsman is an independent Officer of the Legislative Assembly of Alberta, a role brought into force in 1967 when the *Ombudsman Act* was proclaimed by the Alberta government – creating the first Ombudsman office in North America.
- The Ombudsman is impartial, operating independently from the Alberta government, political parties, and individual elected officials.
- The Ombudsman responds to complaints of unfair treatment by departments or agencies within the Ombudsman's jurisdiction.
- After April 1, 2018 the role of the Ombudsman was expanded to include provincial and municipal government departments, self-regulated health professions, the Patient Concerns Resolution Process of Alberta Health Services and designated professional organizations.
- In terms of the expanded municipal jurisdiction, the Ombudsman may now act on complaints about municipalities and if warranted, initiate investigations into unfair treatment about municipal decisions and decision-making processes.

Municipal Role:

- The Ombudsman has the authority to investigate complaints from individuals who feel they have been treated unfairly by a municipality; however, the Ombudsman is intended to be the office of last resort.
- Complainants must go through any relevant appeal or review process before the Ombudsman can investigate; however, it is also important to note that the Ombudsman may choose to investigate a complaint in situations where an appeal process was not pursued and the time period for appeals has elapsed.
- Also worth noting is that the Alberta Ombudsman's public website states that their office will not investigate any complaints from prior to April 1, 2018.
- While originally understood that the Ombudsman would not investigate matters that were council decisions, the Ombudsman's office has noted that it looks at the character of the decision rather than the character of the decision-maker: investigations focus on processes for decision making.

Some Examples:

- The Ombudsman would not investigate a legislative decision of the municipality such as the decision to approve a bylaw that changes land use, but the Ombudsman may investigate the process for a public hearing on said bylaw if there are allegations that the process was unfair.
- The Ombudsman would not likely investigate a decision issued by a tribunal such as the SDAB or ARB. Decisions issued by a tribunal are quasi-judicial in nature and an appeal process is defined in provincial law and must go through the courts. However, we cannot be sure that the Ombudsman would not choose to look into such a complaint regardless of the limits on their authority (NB: the Ombudsman's office is still figuring out the boundaries of their office).
- If an individual requests the municipality to cancel, reduce or defer taxes (MGA s. 347) but is not given a fair hearing or timely response, then the person may seek a resolution through the Ombudsman's office (once they have exhausted any other remedies, or if their time to do so has expired).

Powers of the Ombudsman:

- Since this change in jurisdiction is still new, the Office of the Ombudsman is still in the process of preparing for their expanded role and it seems likely that the role will evolve over time.
- The Ombudsman has limited powers. For example, the Ombudsman cannot overturn a decision of a municipality, but the Office may, upon concluding that there was a breach of fair process, make recommendations to a municipality on addressing a complaint.
- The Office could also make recommendations to the Minister of Municipal Affairs under s 574 of the MGA. The Deputy advised that this procedure might be followed in a case such as refusal to follow the legislation regarding meetings that are closed to the public (closed session).

What happens if a Complaint is made:

- Once an investigation is launched and staff members from the Ombudsman's office have conducted an initial interview with the complainant, the municipal office in question may be contacted.
- Through the course of the investigation, the Ombudsman will work with both the complainant and municipal department in an objective and neutral way.
- At the conclusion of the investigation, recommendations are made to the administrative head of the municipality and the complainant is notified.
- The Ombudsman may choose to notify the Minister of Municipal Affairs of recommendations in relation to an investigation involving a municipality.

You may also wish to review the Alberta Ombudsman FAQs on its Municipal Role:

<https://www.ombudsman.ab.ca/faqs/>

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