

Council and the Ombudsman: Improving Communications

Qualifications and Purview

N.B. In this document, he = she; him = her, etc.

Of the following, there is no doubt: **A.** the Ombudsman (and his commissioners) must be credible, independent, impartial, and neutral; **B.** he is not a public defender; thus, his role is neither to plead a case nor sit in judgment; **C.** he exists to mediate, negotiate, and facilitate. Further, and of paramount importance, as Professor Caron underlined, at the Information Session, preparatory to this Public Consultation, the Ombudsman is there to **ensure that Justice be done.**

That is precisely the image the average citizen has of the Ombudsman: one whose responsibility it is to see that citizens, who feel they have been wronged, be heard and the merit of their grievance weighed, to be investigated if it has substance, dismissed if it doesn't.

In pursuit of that **Justice**, Council has established certain ground-rules pertaining to authority and process. **Article 1**, of the City's **Purview of the Bureau de l'Ombudsman**, gives the Ombudsman power to investigate whatever complaint he considers justified, but circumscribes it, somewhat, in **Article 3**, which states that the Ombudsman: "... may not investigate any decision of the Council, the Executive Committee, a committee or a municipal committee".

That the Ombudsman not have authority to question a decision reached by a majority of Council, in full possession of all the facts, is **as it should be**. The buck has to stop somewhere and that it be with our **elected** representatives, is the right place. But, does the **process** set out in the **Purview** betray the intent, which should be one of collegiality, in the service of fairness and equity?

Process and Collaboration

When he finishes his investigation, the Ombudsman must report to the Director General of the City, setting out his recommendations and giving a date by which he expects to have received a reply. If he doesn't receive a reply by the due-date, or if he doesn't consider that reply satisfactory, according to **Article 14**: "He may report, as the case may be, to the Council or the Executive Committee".

It is very rare that the Ombudsman has not succeeded, **with the guidance and understanding of City staff**, to solve the cases he investigates, to the satisfaction of complainants. So, there is little experience to go on, to determine what he may **report to Council**, if he is concerned about the response to his recommendations. Precisely what may he **report** that won't be considered as his **questioning** of a decision of Council?

Will it be acceptable for him to ask to meet with Council:

to ensure that he and Council were all working from the same set of facts, when they arrived at such different conclusions?

to learn if his report, and those of City staff, were considered by a Committee of Council, that then reported to the whole of Council?

to know if the City withheld from him information they were informed, by legal counsel, they had not the right to share with him?

to learn whether the Report he received from the Director General had been approved by a majority of City Councillors?

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Answers to such questions could well alleviate many of the Ombudsman's concerns and bring to the matter the type of closure he can support.

It is not to be forgotten that the Ombudsman and his commissioners are those very same people City Council will have chosen for their professionalism, neutrality, and independence. Simple courtesy would seem to indicate that they are owed the fullest of disclosure as to why their studied counsel is not being heeded. They are there to help with proper governance and to ensure that the structure and application of that governance does not, inadvertently, end up treating some citizen or group of citizens unfairly.

To make a face-to-face meeting an automatic last step, in a thorough process of investigation and consultation, would be a responsible course to follow, especially when the Ombudsman has serious concerns about the way in which Council proposes to bring the matter to a close and requests to be heard.

When Communication Breaks Down

In a case where **the Ombudsman considers** that he has not been granted the opportunity of a final and fulsome exchange, with all of Council, and that his differences with them are of such import as to warrant being brought to the public's attention, the Ombudsman will likely use **Article 15** of the **Purview** to comment publicly on the report he submitted and the less-than-satisfactory reply he received from the City.

The City's refusal will likely cast its position in a bad light and generate outcomes more detrimental than beneficial. If the Ombudsman is not satisfied with what Council proposes to do, it should come as no surprise that complainants, and the general public, will be suspicious and upset. Why would Council refuse to meet with the counsellor-in-good-governance **IT** so carefully selected?

Every effort should be made to avoid public disputes revealing strife between Council and the Ombudsman. They will impede the efficient and effective administration of the City, cast doubt on the aims of each party, tarnish their image, and diminish the respect citizens have for public servants.

Dangers Of Excessive Zeal

The City's legal department may assure Council that the City is in the right and that the complainant has a poor case that will fail in court. But, that the Ombudsman, through a professional and experienced lens, sees the matter quite differently, should give Council reason to pause and give him a hearing.

Who knows but that the the City's legal department, a lawyer's instinct-to-defend being what it is, may not have been so much convinced that the complaint would fail as that the complainant, if they made him jump through enough hoops, would, for lack of funds, eventually abandon his claim. Such instances of deep-pockets frustrating **Justice** are frequent, but Council should not stoop to using such bully-tactics.

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Other City staff may also be prone to enticing citizens into taking the City to court. That is a shabby ploy intended to provide shelter, allowing the City to avoid having to answer questions about certain cases, because they are "**before-the-court**". This simply prolongs the resolution of issues, to the point where people abandon their claims, again for lack of funds, or out of sheer frustration and disgust. It is not an edifying way for a City to deal with its citizens and Council should condemn it forcefully.

If ever the Ombudsman warns that a complaint is valid and that, if it ends up in court, plaintiff is likely to win, Council should know that it has received objective advice from people accustomed to the courts and familiar with the law. Refusing to accept that advice, could cost the City (read: **taxpayers**) huge sums of money and could well be viewed as irresponsible. Council should tread carefully.

RECOMMENDATIONS

1. With a view to making the process more transparent and all-encompassing, without, in any way, extending the purview of the Ombudsman, I submit that the second sentence of **Article 14 of the Purview of the Bureau de l'Ombudsman** should be amended to read: "If the response the Ombudsman receives from the Director General is late or constitutes a refusal of any of his recommendations, and if he so requests, he will be heard, forthwith, in a plenary session of Council, convened for the express purpose of dealing with his recommendations and the City's response".
2. In choosing the future Ombudsman and his commissioners, special care should be taken to ensure that there be among them, a former judge, if possible, and at least two other nonpracticing lawyers, **with litigation experience**.

The goal is to ensure that City Council, Staff, and the Ombudsman work closely together to provide the best in governance and **ensure that Justice be done**, at all times.

Ronald C. Lefebvre

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