

We would first bring your attention to the report submitted to Committee by our City Clerk CL-09-17 and the recommendation to receive and file the Annual Report from ADR Chambers Ombudsman for the City of Burlington on today's COW agenda. Under purpose the Clerk rightly identifies the Council's intention in the appointment of ADR Chambers has the purpose of promoting Burlington as an Engaging City striving for Good Governance, which our delegations before this Council have always supported.

Under the heading Background and Discussion in the Clerk's report CL-09-17, the first three sentences see the Clerk claiming "The *Municipal Act* (Section 223.13 (1) – our inserted reference) allows a municipality to appoint an Ombudsman to have the same responsibility for conducting investigations with respect to administrative acts of the municipality as has the Provincial Ombudsman ." What this summarization by the Clerk of the *Municipal Act* fails to say is the Provincial Ombudsman has oversight of this entire process, and there are legislated (Section 223.13 (2), (3) (4) and (5)) conditions to council's appointment of such Ombudsman that the Provincial Ombudsman has responsibility as the first resort for overseeing when a City does not have a Code of Conduct and Integrity Commissioner in place, as is the case in Burlington.

One of these legislated conditions is that the City (Council) shall have regard to the credibility of the appointed Ombudsman's investigative process. The credibility of any city investigative process must include when and how the investigative process is authorized to begin (i.e. when and how the proposed appointee obtain jurisdiction for such investigative process) being placed on the public record with an opportunity for public engagement on the process prior to the approval of such an investigative process being financed by city resources.

Those who have any corporate administrative management experience know the details of how and when and by what means a corporate investigative process that affects the rights of thousands of Burlington citizens and every city employee needs to be carved in stone in something like a Corporate Policy, approved by Council before an appointment under Section 223.13 (1) of the *Municipal Act* is made. For Council to fail to take this legislated step, as they did, prior to appointing the Ombudsman leaves the city and its employees at risk and opens the door to investigation by the Ontario Ombudsman, given Burlington still does not have an Integrity Commissioner.

As we understand it from city documents, ADR Chambers have an impeccable reputation in terms of their expertise in serving municipalities in the resolution of issues that arise between citizens and the administrative sector of a municipality. Their report shows,, we believe, they can be depended upon to only take up their appointment when and where they have the jurisdiction to do so. Their annual report makes it very clear on page 7, that they do not have the jurisdiction to investigate the conduct of City Councillors if and when they make a decision where the public record demonstrates they failed to fulfill their legislated responsibilities pertaining to this decision.

The Clerk also states in Report CL-09-17 that is before this Committee "In January 2016, Council appointed ADR Chambers as the Ombudsman for the City of Burlington." The public record, Minutes of the December 16, 2015 Council meeting which considered the recommendation of the December 8, 2015 Community and Corporate Services Committee whose accuracy is the responsibility of the Clerk and Council when they confirm the minutes as accurate clearly identify that:

1. The City, through Council, approved on December 16, 2015 the appointment of ADR Chambers as the Burlington Ombudsman under Section 223.13 (1) of the *Municipal Act*.
2. The City, through Council, approved the by-law appointing ADR Chambers as the Burlington Ombudsman on the recommendation of the CC&S Committee at the December 16, 2015 Council. (Note The By-law approved on the recommendation of the Community and Corporate Services Committee is not numbered and is not dated).
3. The City, through Council, then enacted this by-law described in 2. above that appeared on the same agenda. numbered and dated as per the normal procedure for **council approved** by-laws. (i.e. the by-law appeared on the agenda for approval without a number or date and then for enactment with a number and date of enactment prior to approval of the by-law). . Council then enacted this by-law (approved at the same meeting) and it was then executed and signed into being by the Mayor and Clerk, in 2015, committing the City to a \$24,000 minimum cost and the associated risks to citizens and employees without any opportunity for public scrutiny as a by-law up for enactment. .

RECOMMENDATION TO COW:

That the Committee defer consideration of the recommendation contained in Report CL-09-17 until its May meeting and, invite the author(s) of the ADR Chambers Report to be present and publicly confirm whether the appointment of the Burlington Ombudsman under Section 223.13 (1) would if concerned citizens wish to make a complaint comes under the category of complaints ADR have set out on page 7 of their report as:

A. being within their jurisdiction as the City has made a decision that has not followed the appropriate (legislated) procedures for making such a decision incurring a minimum \$24,000 cost to the city to date.

Or

B. outside of their jurisdiction as City Council failed to address the legislated conditions of the ADR Chambers appointment and, therefore, any complaint about this decision being outside the legislated framework of the *Municipal Act* is the responsibility of the Provincial Ombudsman given the City does not have an appointed Integrity Commissioner

An e-mail received from Angela Morgan after consultation with Committee Chair Marianne Meedward requests that the issues raised with all members of Council prior to this meeting be discussed directly with the Ombudsman but fails to identify whether she is referencing the Burlington Ombudsman appointed by Council December 16, 2015 or the Provincial Ombudsman. The Burlington Ombudsman has we believe the expertise to point citizens who have concerns about the appointment being non-compliant with the legislated conditions of such appointment in the right direction.

Respectfully submitted to Committee of the Whole, April 3, 2017 by Anne and Dave Marsden, Community Health Safety and Access Advocates, 308-1425 Ghent Avenue, Burlington, Ontario, L7S1X5



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**SUBJECT: Annual Report from Burlington Ombudsman**

**TO: Committee of the Whole**

**FROM: Clerks Department**

Report Number: CL-09-17

Wards Affected: Not applicable

File Numbers: 110-03

Date to Committee: April 3, 2017

Date to Council: April 18, 2017

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**Recommendation:**

Receive and file clerks department report CL-09-17 providing the annual report from ADR Chambers, Ombudsman for the City of Burlington.

**Purpose:**

An Engaging City

- Good Governance

The purpose of this report is to transmit the 2016 annual report from ADR Chambers, Ombudsman for the City of Burlington.

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**Background and Discussion:**

The *Public Sector and MPP Accountability and Transparency Act* came into force on January 1, 2016. This legislation expanded the function of the provincial Ombudsman to include investigation of decisions or recommendations with respect to the administrative acts of a municipality. The Municipal Act allows a municipality to appoint an Ombudsman to have the same responsibility for conducting investigations with respect to these administrative acts of the municipality. In January 2016, Council appointed ADR Chambers as the Ombudsman for the City of Burlington. As part of the agreement with ADR Chambers they are required to submit an annual report to Council. The 2016 annual report is attached as Appendix A.

WHAT WE DO

ADR Chambers Ombuds Office reviews complaints brought by members of the public about the City of Burlington. If a complainant is dissatisfied with the provision of services, a decision or recommendation made by the City in the administration of municipal services, and the complainant has gone through the City's internal complaint system and is not satisfied with the outcome, they may escalate their complaint to the ADR Chambers Ombuds Office. People may contact our office by phone, online and through the mail.

We investigate complaints with a view to resolving them either by agreement among the parties, or by issuing a report with analysis and conclusions, including any recommendations.

Investigations are conducted in private and are confidential as between the parties. ADR Chambers Ombuds Office ensures all investigations are conducted in a fair, neutral, independent and confidential manner while respecting the rights and time constraints of the individuals involved.

Types of Complaints

The types of complaints that may be submitted by complainants are varied, including complaints about the denial of services or the failure to provide a proper quality of service; complaints that the City has made a decision that is not within their legal power to make; complaints that the City has not followed the appropriate procedures in reaching a decision; and complaints that the City has failed to take a certain action that it is required to take under its rules, procedures or by-laws.

Process

Upon receiving a complaint, ADR Chambers Ombuds Office first considers whether it has the jurisdiction to investigate the complaint.

Situations where ADR Chambers Ombuds Office Will Not Investigate

There are certain matters that are not within our mandate to investigate. These include:

- Matters that are not within the jurisdiction of the City of Burlington
- Complaints regarding the conduct of City Councillors and closed meetings of City Council

## **Ombudsman**

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223.13 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Ombudsman who reports to council and whose function is to investigate in an independent manner any decision or recommendation made or act done or omitted in the course of the administration of the municipality, its local boards and such municipally-controlled corporations as the municipality may specify and affecting any person or body of persons in his, her or its personal capacity. 2006, c. 32, Sched. A, s. 98.

## **Powers and duties**

(2) Subject to this Part, in carrying out the functions under subsection (1), the Ombudsman may exercise the powers and shall perform the duties assigned to him or her by the municipality. 2006, c. 32, Sched. A, s. 98.

## **Matters to which municipality is to have regard**

(3) In appointing the Ombudsman and in assigning powers and duties to him or her, the municipality shall have regard to, among other matters, the importance of the matters listed in subsection (5). 2006, c. 32, Sched. A, s. 98.

## **Same, Ombudsman**

(4) In carrying out his or her functions under subsection (1), the Ombudsman shall have regard to, among other matters, the importance of the matters listed in subsection (5). 2006, c. 32, Sched. A, s. 98.

## **Same**

(5) The matters referred to in subsections (3) and (4) are,

(a) the Ombudsman's independence and impartiality;

(b) confidentiality with respect to the Ombudsman's activities; and

(c) the credibility of the Ombudsman's investigative process. 2006, c. 32, Sched. A, s. 98.

6.

APPROVAL OF THE APPOINTMENT OF AN OMBUDSMAN FOR THE CITY OF  
BURLINGTON

**Moved By Councillor Shaman**

Appoint ADR Chambers Inc. ("ADR Chambers") as Ombudsman for the City of Burlington and its local boards pursuant to section 223.13(1) of the *Municipal Act, 2001* for a two-year term commencing January 1, 2016 to December 31, 2017; and

Authorize the Mayor and Clerk to execute a service agreement and any ancillary documents between the City of Burlington and ADR Chambers regarding the appointment of ADR Chambers as Ombudsman, subject to the satisfaction of the City Solicitor; and

Allocate \$10,000 in the Contingency Reserve Account to pay for any costs with respect to investigations which will be reported on by the City Solicitor as part of the Quarterly Litigation Report; and

Approve the by-law, attached as appendix A to report L-31-15, appointing ADR Chambers as the Ombudsman for the City of Burlington and its local boards. (L-31-15)

**CARRIED**

APPROVAL OF THE COMMUNITY INVESTMENT POLICY

**Moved By Mayor Goldring**

Approve the Community Investment Policy as detailed in appendix A of report PR-12-15; and

Approve a by-law, attached as appendix B to report PR-12-15, to create a Community Investment Reserve Fund. (PR-12-15)

**CARRIED**

APPROVAL OF INVESTIGATION INTO POSSIBLE IMPLEMENTATION OF  
EIPENS IN CITY FACILITIES

**Moved By Councillor Lancaster**

- Correspondence from John Krpan, Evergreen Community (Burlington) Ltd. regarding the report recommending the Evergreen secondary plan be reactivated. (PB-83-15)

**Community & Corporate Services Committee meeting of December 8, 2015**

**APPROVAL OF THE 2016 INTERIM TAX LEVY BY-LAW**

Approve the, by-law attached as appendix A to report F-44-15, which provides for the levy of the 2016 interim taxes. (F-44-15)

CARRIED

**APPROVAL OF THE TEMPORARY BORROWING BY-LAW**

Approve the by-law, attached as appendix A to report F-45-15, to authorize the temporary borrowings of monies from the Royal Bank of Canada to meet the ordinary expenditures of the Corporation for the 2016 fiscal year; and

Authorize the Mayor and Clerk to execute the Security Agreement, subject to the satisfaction of the City Solicitor. (F-45-15)

CARRIED

**APPROVAL OF The APPOINTMENT OF AN OMBUDSMAN FOR THE CITY OF BURLINGTON**

Appoint ADR Chambers Inc. ("ADR Chambers") as Ombudsman for the City of Burlington and its local boards pursuant to section 223.13(1) of the *Municipal Act, 2001* for a two-year term commencing January 1, 2016 to December 31, 2017; and

Authorize the Mayor and Clerk to execute a service agreement and any ancillary documents between the City of Burlington and ADR Chambers regarding the appointment of ADR Chambers as Ombudsman, subject to the satisfaction of the City Solicitor; and

Allocate \$10,000 in the Contingency Reserve Account to pay for any costs with respect to investigations which will be reported on by the City Solicitor as part of the Quarterly Litigation Report; and

Approve the by-law, attached as appendix A to report L-31-15, appointing ADR Chambers as the Ombudsman for the City of Burlington and its local boards. (L-31-15)

CARRIED



## City of Burlington

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### Regular Meeting of Council No. 20-15

**Date:** December 16, 2015  
**Time:** 6:30 PM  
**Location:** Council Chambers Level 2, City Hall

### Agenda

**Call to Order:**

**National Anthem:**

**Regrets:**

**Proclamations:**

- Crime Stoppers Month in Burlington January 2016

**Confirmation of Minutes:**

Confirm the minutes of the following meeting of Council:

Regular meeting of Council No. 19-15 held November 23, 2015

**Declarations of Interest:**

**Delegations:**

In order to speak at a Council meeting, individuals must register as a delegation no later than 12:00 noon on the day of the meeting. To register, complete the online application at [www.burlington.ca/delegation](http://www.burlington.ca/delegation), email [cityclerks@burlington.ca](mailto:cityclerks@burlington.ca) or phone 905-335-7600 ext. 7805.

**Correspondence:**

- Email from Ward 2 resident regarding tree removal. (CW-71-15)

**Consideration of Recommendations from Standing Committees:**

Development and Infrastructure  
meeting of December 7, 2015

Report No. 11-15

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Pages 3 to 6

Community and Corporate Services  
meeting of December 8, 2015

Report No. 13-15

Pages 7 to 14

Audit Committee  
meeting of December 9, 2015

Report No. 5-15

Pages 15 to 18

Community and Corporate Services - Budget  
meeting of December 10, 2015

Report No. 7-15

Pages 19 to 22

**Reports of the Standing Committees:**

**Motion to Adopt Standing Committee Minutes:**

Adopt the following reports:

Development and Infrastructure  
meeting of December 7, 2015

Report No. 11-15

As amended/presented

Community and Corporate Services  
meeting of December 8, 2015

Report No. 13-15

As amended/presented

Audit Committee  
meeting of December 9, 2015

Report No. 5-15

As amended/presented

Community and Corporate Services - Budget  
meeting of December 10, 2015

Report No. 7-15

As amended/presented

**Reports of Municipal Officers:**

- APPROVAL OF THE APPOINTMENTS TO BURLINGTON'S CITIZEN COMMITTEES

Approve the appointments to Burlington's citizen committees as outlined in Confidential Appendix A of clerk's department report CL-29-15 and make public the names of successful candidates following Council approval; and

Confidential Appendix A of clerk's department report CL-29-15 to be distributed under separate cover on Monday, December 14, 2015.

Pages 23 to 26

### **Motion to Receive and File Council Information Packages:**

Receive and file the following Information Packages, having been prepared and distributed to Council:

December 4, 11, 2015

### **Motion to Receive and File Items Received by Council:**

Receive and file the following items, having been considered by Council:

Items received at Council

### **Consideration of By-Laws:**

Enact and pass the following by-laws which are now introduced, entitled and numbered as indicated below:

- 97-2015     A By-law to authorize the execution of the Dedicated Gas Tax Funds for Public Transportation Program Agreements with the Ministry of Transportation
- 98-2015     A by-law to designate 1018 Greenwood Drive as a heritage property
- 99-2015     A by-law to designate 2085 Caroline Street as a heritage property
- 100-2015    A by-law to designate 6201 Walker's Line as a heritage property
- 101-2015    A by-law to designate 1375 Ontario Street as a heritage property
- 102-2015    A by-law to designate 1172 (1040) Britannia Road as a heritage property

- 12.
- 103-2015 A by-law to amend traffic by-law 86-2007 to allow for the installation of an all-way stop at Brock Avenue and Elgin Street and for the installation of 40 Km speed limits on various streets
- 104-2015 A debenture by-law for award of request for proposals, consulting services for revitalization of Central and Skyway Arenas
- 105-2015 A by-law to establish a forestry reserve fund for invasive species
- 106-2015 A by-law to establish a policy initiatives reserve fund
- 107-2015 A by-law to establish a culture initiatives reserve fund
- 108-2015 A by-law to establish an energy initiatives reserve fund
- 109-2015 A by-law to establish an information technology renewal reserve fund
- 110-2015 A by-law to amend business By-law 42-2008 to expand the licensing of Food Trucks in the City of Burlington
- 111-2015 A by-law to amend By-Law 35-1976, as amended, being a by-law to regulate public parks in the City of Burlington
- 113-2015 A by-law to authorize the temporary borrowings of monies from the Royal Bank of Canada
- 114-2015 A by-law to appoint ADR Chambers Inc. as Ombudsman for the City of Burlington
- 115-2015 A by-law to establish a Community Investment Reserve Fund

**Statements by Members (non-debatable):**

**Motion to Confirm Proceedings of the Council Meeting:**

Enact and pass By-law Number 116-2015, being a by-law to confirm the proceedings of Council at its meeting held Wednesday, December 16, 2015, being read a first, second and third time.

**Motion to Adjourn:**

Adjourn this Council now to meet again at the call of the Mayor.