
Subject: Update on Recommendations from the Ontario Ombudsman Report
"Inside Job"

Report to: Regional Council

Report date: Thursday, June 25, 2020

Recommendations

1. That Report CAO 13-2020 **BE RECEIVED** and **CIRCULATED** to the Ontario Ombudsman for information.

Key Facts

- The purpose of this report is to provide an update respecting the recommendations provided by the Ontario Ombudsman in the report entitled "Inside Job".
- At its special meeting held on December 5, 2019, Regional Council provided direction to staff to prepare various policies and procedures related to the recommendations made by the Ombudsman.
- Recommendation 16 of the report "Inside Job" was for Niagara Region to report publicly, and to the Ombudsman Office, in six months' time on its progress implementing the recommendations and at six-month intervals thereafter until such time as the Ombudsman is satisfied that adequate steps have been taken to address the recommendations.

Financial Considerations

There are no financial considerations as the implementation of the recommendations require implementation of policies and procedures and process improvements.

Analysis

At its Special Council meeting held on December 5, 2019, Council passed the following resolution:

*That Report CAO 17-2019, dated December 5, 2019, respecting Recommendations from the Ontario Ombudsman Report "Inside Job" November 2019, **BE RECEIVED** and the following recommendations **BE APPROVED**:*

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1. That Regional Council **CONFIRMS** their agreement with the recommendations of the Ontario Ombudsman Report "Inside Job" (dated November 2019) respecting the investigation into matters relating to the Regional Municipality of Niagara's hiring of its Chief Administrative Officer, and its administration of his contract;
 2. That staff **BE DIRECTED** to prepare a policy respecting employee code of conduct or ethics that includes for the protection of confidential information, pursuant to Recommendation 1 of the Ombudsman's Report for the Corporate Services Committee meeting being held on February 12, 2020;
 3. That staff **BE DIRECTED** to include clauses in all employment contracts respecting the protection of confidential information pursuant to Recommendation 2 of the Ombudsman's Report and provide an update at the Corporate Services Committee meeting being held on February 12, 2020;
 4. That staff **BE DIRECTED** to ensure specific confidentiality agreements are signed at the start of a hiring process by all officials and staff with access to confidential hiring process information pursuant to Recommendation 3 of the Ombudsman's Report and provide an update at the Corporate Services Committee meeting being held on February 12, 2020;
 5. That staff **BE DIRECTED** to prepare a draft Terms of Reference for a Chief Administrative Officer Recruitment Committee taking into consideration Recommendation 4 of the Ombudsman's Report for the Regional Council meeting held on January 23, 2020;
 6. That staff **BE DIRECTED** to review and update the Employment and Staffing Policy (C-HR-010) to ensure it contains provisions to clarify that employees should not engage in any behaviour that provides an unfair advantage to a candidate during a hiring process including assisting candidates by providing inside information such as interview questions and suggested answers pursuant to Recommendation 6 of the Ombudsman's Report for the Corporate Services Committee meeting being held on February 12, 2020;
 7. That staff **BE DIRECTED** to prepare a policy respecting the hiring process for a Chief Administrative Officer including the appropriate roles of staff and their accountability to Council or a committee of Council charged with the hiring, pursuant to Recommendation 9 of the Ombudsman's Report for the Regional Council meeting held on January 23, 2020;
 8. That staff **BE DIRECTED** to prepare a by-law setting the parameters of the relationship between Council and the Chief Administrative Officer including the role of Council with respect to amending the Chief Administrative Officer's contract and salary, pursuant to Recommendation 11 of the Ombudsman's Report for the Regional Council meeting held on January 23, 2020;

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9. That staff **BE DIRECTED** to prepare a policy governing the process for Chief Administrative Officer performance appraisals pursuant to Recommendation 13 of the Ombudsman's Report for the Regional Council meeting held on January 23, 2020;
 10. That staff **BE DIRECTED** to report to Regional Council regarding the implementation of Recommendations 4 (as it relates to recruitment committees apart from the CAO) 5, 7, 8, 10, 12, 14 and 15 for the Regional Council meeting being held on February 20, 2020; and
 11. That staff **BE DIRECTED** to report to Regional Council in six months' time on progress in implementing the recommendations of the Ontario Ombudsman Report "Inside Job" in accordance with Recommendation 16 of the Ombudsman's Report.

The following are the Ombudsman Recommendations and action undertaken to implement the recommendation.

Recommendation 1: The Regional Municipality of Niagara should ensure it has an employee code of conduct or ethics that provides for the protection of confidential information.

Action Taken: Policy C-A-007 Code of Ethics – Conflict of Interest has been updated to include provisions related to disclosure of confidential or personal information. The updates include provisions that provide that employees may not use or disclose confidential, privileged, or personal information belonging to or in the custody or control of the Region except as necessary to perform their duties in accordance with the Region's policies and procedures. Further, any release of information must be done in accordance with the provisions of the Municipal Freedom of Information and Protection of Privacy Act and Personal Health Information Protection Act or as otherwise required by law.

Recommendation 2: The Regional Municipality of Niagara should ensure that the protection of confidential information is addressed in all employment contracts.

Action Taken: Staff have included clauses in all employment contracts respecting the protection of confidential information and sought advice from external legal counsel concerning the inclusion of this wording in all union and non-union contracts of employment.

Recommendation 3: The Regional Municipality of Niagara should require all officials and staff with access to confidential hiring process information to sign a specific confidentiality agreement at the outset of the process.

Action Taken: Policy C-HR-026 Chief Administrative Officer Recruitment, Selection, Offer of Employment, and Performance Management, and the associated procedures provide provisions related to requiring all officials and staff with access to confidential hiring process information to sign specific confidentiality agreements at the start of the process with respect to the CAO hiring process. In addition, Policy C-HR-010 Recruitment and Selection was improved with the enhancement of a provision requiring all staff involved in the recruitment and selection process to keep confidential all such related information, including the requirement for staff to sign specific confidentiality agreements at the start of the process with respect to senior positions at Niagara Region. Staff will be implementing procedures to compliment this Policy.

Recommendation 4: The Regional Municipality of Niagara should ensure that the terms of reference it establishes for a recruitment committee provide for a complete list of the staff and officials permitted to access confidential information.

Action Taken: The above recommendation, as it relates specifically to a CAO recruitment committee, has been addressed in Procedure C-HR-026-001 to the policy respecting Chief Administrative Officer Recruitment, Selection, Offer of Employment, and Performance Management. The procedure includes language providing that involvement of any staff not noted in the procedure requires approval prior to being engaged to provide any support to the Committee or be in attendance at meetings. It further provides that any staff engaged to support the recruitment committee shall hold in strict confidence all confidential information concerning matters dealt with by the Committee, including all such staff will be required to execute a confidentiality agreement prior to engaging in support of the Committee.

Staff are cognizant of the fact that a recruitment committee could be struck for a position other than that of the CAO. In order to ensure that the concerns brought forward by the Ombudsman are addressed, Human Resources staff have amended Policy C-HR-010 Recruitment and Selection to include enhanced confidentiality requirements including the requirement for a signed confidentiality agreement for those staff and officials engaged in the recruitment and selection of senior positions at Niagara Region. Further, the Policy addresses the responsibilities of those staff who are part of a selection committee which specifically outlines the requirement to engage in all

procedural elements at all selection activities, participation in attraction and selection consultations as required, and that they understand and adhere to policy and procedural requirements including confidentiality. Lastly, the Policy specifically states that failure or refusal to adhere to the terms of the policy may result in discipline up to and including dismissal.

Recommendation 5: The Regional Municipality of Niagara should ensure that all officials and employees with access to personal information understand their obligations under the Municipal Freedom of Information and Protection of Privacy Act.

Action Taken: Staff are undertaking work on two new policies that deal with access to personal information that is anticipated to be provided to Council for consideration in July. These new policies will provide additional direction to staff with respect to what they are required to do to remain in compliance with the legislation. Additionally, to ensure the understanding of these expectations, following approval of the policies, Clerk's Office staff will lead an education campaign to ensure all staff are aware of the policy changes and their individual obligations as defined therein. In addition, staff are considering the inclusion of the policies as part of the orientation/onboarding for all new staff.

Recommendation 6: The Regional Municipality of Niagara should adopt a policy clarifying that employees should not engage in any behaviour that provides an unfair advantage to a candidate during a hiring process, including assisting candidates by providing inside information such as interview questions and suggested answers.

Action Taken: The Employee and Staffing Policy was updated and renamed to Policy C-HR-010 Recruitment and Selection and was amended to include provisions related to favoritism and/or discrimination in any recruitment process. In addition, the policy includes that all persons involved in the recruitment and selection process shall keep confidential all related information, including a Confidentiality Acknowledgement or Commitment, where applicable, or as otherwise required by law. The policy is applicable to Members of Council, staff, external vendors and anyone else approved to be part of the recruitment process. The policy provides that no one shall engage in any behavior that provides an unfair advantage to a candidate during a recruitment process to assist any candidates by providing inside information, such as but not necessarily limited to, interview questions and suggested answers, presentation materials,

information about other candidates, or any information gathered in meetings, conversations, email or any other form of communication or discussion.

Recommendation 7: The Regional Municipality of Niagara should ensure that staff and officials act in accordance with the direction of council and committees of council.

Action Taken: Staff are committed to implementing best practices and providing educational opportunities that can be utilized to ensure that staff are aware of their role and the role of Council as well as the legal authority by which they are bound. Staff are considering the development of fact sheets and/or training tools on this topic that can be provided to all staff as part of orientation and shared on the Region's intranet. This will ensure that staff and officials act in accordance with the direction of council and committees. As a part of this, staff will reinforce policies in place that provide the framework to guide staff conduct, including the Code of Ethics policy, Accountability and Transparency and the Delegation of Powers and Duties.

Recommendation 8: The Regional Municipality of Niagara should ensure that staff in the Chair's office do not usurp or undermine the role of professional staff, especially when those roles have been set by council or a committee.

Action Taken: As this recommendation relates specifically to those staff in the Regional Chair's office, staff are committed to including standard language in future employment contracts that provide greater clarity and guidance regarding the role of the staff in the Chair's office, responsive to the Ombudsman recommendation in this regard.

Recommendation 9: The Regional Municipality of Niagara should adopt a policy setting out the process for hiring a Chief Administrative Officer, including the appropriate roles of staff and their accountability to council or a committee of council charged with the hiring.

Action Taken: Policy C-HR-026 Chief Administrative Officer Recruitment, Selection, Offer of Employment, and Performance Management, and the associated procedures, sets out the process for hiring a Chief Administrative Officer (CAO) and clearly outlines the roles of staff and their accountability to council or a committee of council charged with the hiring of a CAO. It further includes language providing for detailed, written updates to Regional Council throughout the CAO recruitment process.

Recommendation 10: The Regional Municipality of Niagara should ensure that all staff and officials receive training on the proper use of corporate email and retention of corporate documents.

Action Taken: Staff are currently working on options to provide education on the proper use of corporate email and retention of corporate documents for both new and current staff and are considering the inclusion of provisions regarding this in either new or existing policies/procedures. Training for new staff will be undertaken as part of the onboarding process. Staff are currently examining options to provide refresher training to current staff leveraging the Region's intranet.

Recommendation 11: The Regional Municipality of Niagara should adopt a by-law setting the parameters of the relationship between council and the CAO, including the role of council with respect to amending the CAO's contract and salary.

Action Taken: At its meeting held on February 20, 2020, Regional Council passed By-law 2020-09, being a by-law to provide for the roles and responsibilities of the Chief Administrative Officer. This by-law includes provisions related to the relationship between Council and the CAO and Council's role with respect to amending the CAO's contract and salary and specifically notes that any amendments to the terms and conditions of the employment of the CAO must receive Council approval.

Recommendation 12: Before making changes to a contract affecting its legal interests, the Regional Municipality of Niagara should require staff to consult legal and human resources staff to ensure the terms are lawful and consistent with the municipality's interests.

Action Taken: This recommendation has been addressed as part of Policy C-HR-026 Chief Administrative Officer Recruitment, Selection, Offer of Employment, and Performance Management, with respect to the CAO employment contract. Legal Services staff are currently in the process of reviewing the execution of documents by-law (that provides authority for staff to execute specified documents on behalf of the Region, subject to certain requirements) with proposed amendments to be brought forward to Council for approval in 2020 that will include proposed wording responsive to this recommendation.

13. The Regional Municipality of Niagara should adopt a policy governing the process for CAO performance appraisals.

Action Taken: This recommendation has been addressed in Procedure C-HR-026-002 to the policy respecting Chief Administrative Officer Recruitment, Selection, Offer of Employment, and Performance Management, which provides for an annual performance management process for the CAO. This process includes that Council provide feedback on the CAO's performance for a performance report to be prepared by the Regional Chair for consideration by Regional Council and approval of the performance rating.

14. The Regional Municipality of Niagara should ensure that it establishes comprehensive terms of reference when appointing a municipal ombudsman, including reference to requirements for: Scope of issues to be investigated; Evidence collection; Confidentiality, including of witnesses; and Preliminary reporting.

Action Taken: In order to ensure that any future appointments of a municipal ombudsman address the requirements noted by the Ombudsman, staff will begin researching best practices to implement a policy with standard terms of reference respecting the appointment of a municipal ombudsman. This policy is anticipated to be completed prior to year-end. The implementation of a policy will ensure that when a municipal ombudsman is hired there are specific requirements that must be considered including those identified by the Ombudsman.

Recommendation 15: Before appointing or retaining external investigators, the Regional Municipality of Niagara should obtain information about their skills, experience, and availability, so that council can make an informed decision about their qualifications for the position.

Action Taken: This recommendation of the Ombudsman should be addressed by the preparation and submission to Council of a staff report upon the receipt of direction from Council that an external investigator be retained, prior to the appointment of an investigator by Council. The need for a staff report in this regard may be directed by Council or identified by staff as necessary.

Alternatives Reviewed

As these recommendations were put forward by the Ontario Ombudsman there were no alternatives reviewed.

Relationship to Council Strategic Priorities

This report is based on the recommendations of the Ontario Ombudsman; however, the implementation of the policies and procedures noted aligns with Council's Strategic Priority of Sustainable and Engaging Government.

Other Pertinent Reports

CAO 17-2019	Recommendations from the Ontario Ombudsman Report "Inside Job"
HR 1-2020	Chief Administrative Officer (CAO) Recruitment, Selection, Offer of Employment and Performance Management Policy and Procedures
CLK 1-2020	Chief Administrative Officer Draft Roles and Responsibilities By-law
HR1-2020 REVISED	Chief Administrative Officer (CAO) Recruitment, Selection, Offer of Employment and Performance Management Policy and Procedures
CSC-C 4-2020	Update on Recommendations from Report CAO 17-2019 – Recommendations from the Ontario Ombudsman Report "Inside Job" November 2019
CL-C 4-2020	Chief Administrative Officer Roles and Responsibilities By-law
CL-C 5-2020	Report HR 01-2020 Revised - Amendments to Procedure - Chief Administrative Officer - Recruitment, Selection, and Offer of Employment
CAO 4-2020	Update on Outstanding Recommendations from the Ontario Ombudsman Report "Inside Job"

CLK 4-2020

Policy Update – Whistleblower Policy, Code of
Ethics/Conflict of Interest Policy and Recruitment and
Selection Policy

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This report was prepared in consultation with Donna Gibbs, Director, Legal and Court Services, and Franco Meffe, Director, Human Resources.

Appendices

None.