

Right to Housing

in Toronto

Briefing Note

Toronto's Housing Commissioner Office

July 2020

Background and Establishment of the Office

The establishment of the Office of the Housing Commissioner is a key component of implementing the progressive realization of the right to housing in Toronto. Toronto's commitment to a rights-based approach is modeled on the National Housing Strategy, with the Commissioner and External Advisory modeled on the Federal Housing Advocate and National Housing Council. The City of Toronto's HousingTO 2020-30 Action Plan laid the groundwork for this new office stating that:

“[The] Housing Commissioner of Toronto will work with City divisions, agencies, boards and commissions to review housing programs and policies to ensure that they align with and advance the principles expressed in the Toronto Housing Charter and support their implementation over the next decade. Additionally, the Housing Commissioner of Toronto will monitor the progress in consultation with groups vulnerable to housing

insecurity and report annually to City Council regarding systemic issues related to the City's compliance with the Toronto Housing Charter."¹

On December 17, 2019 Toronto City Council directed the City Manager to establish the role or function of Housing Commissioner in 2020 in consultation with human rights experts. At that time, City Council requested that the City Manager report back to City Council by the third quarter of 2020. The City of Toronto conducted community consultations in 2019 where community members and tenants provided recommendations on oversight mechanisms for the HousingTO 2020-30 Action Plan. Notably, at these consultations the community recommended that a human rights rapporteur or housing ombudsperson be established. Community members emphasized that oversight should be shared by NGOs, neighbourhood-based scrutiny committees linked to legal clinics or wards, and that online feedback mechanisms should be available to community members to comment on the state of adequate housing.

At these consultations, the community also identified the need for publicly transparent and evidence-based monitoring, and diverse representation among leadership to ensure accountability for municipal decision-making around housing. It was recommended that there be multiple parties monitoring progress on the achievement of housing goals and that this accountability system include the public, lived experts and City staff.²

Toronto's Accountability Officers

The Office of the Housing Commissioner's role, powers, and place within the City's organizational structure should be determined by reference to the City's existing accountability officers, as well as other similar offices established by other governments in Canada and abroad.

The City of Toronto describes its existing accountability officers as follows:

"The City of Toronto has four accountability officers that help ensure your local government remains open and transparent. The City's accountability offices were instituted over a number of years, starting with the Auditor General in 2002, followed by the Integrity Commissioner in 2004. After the Province of Ontario granted further oversight authority, the City put in place the final elements of its accountability framework with the establishment of the Lobbyist Registrar in 2007 and the Ombudsman in 2008."³

¹ "HousingTO 2020-30 Action Plan" (December 2019), online (pdf): *City of Toronto* <www.toronto.ca/wp-content/uploads/2020/04/94f0-housing-to-2020-2030-action-plan-housing-secretariat.pdf> at 20.

² "HousingTO 2020-2030 Action Plan: Consultation Summary Report" (August 2019), online (pdf): *City of Toronto: LURA Consulting for the City of Toronto Housing Secretariat* <www.toronto.ca/legdocs/mmis/2019/ph/bgrd/backgroundfile-140634.pdf>.

³ "Accountability Officers" (2019), online: *City of Toronto* <www.toronto.ca/city-government/accountability-operations-customer-service/accountability-officers/>.

The duties of these city accountability officers, as well as their place within the municipality's structure, are set out in Part V of the *City of Toronto Act, 2006* and Chapter 3 of the Toronto's *Municipal Code*.⁴

Reporting Relationship

The Housing Commissioner should report directly to City Council. This would mirror the reporting relationship of the city's other accountability officers: Sections 158(2), 170(2), 177(2) of the *City of Toronto Act, 2006* state that the Integrity Commissioner, the Ombudsman, and the Auditor General report directly to City Council.⁵

This kind of reporting relationship is an important requirement for true independence. Ontario's ombudsman, Paul Dube, has highlighted how "being responsible to a legislative body, as opposed to reporting to an individual minister, is important to independence and effectiveness."⁶

Accountability officers dependent on other executive agencies are more vulnerable to bureaucratic retaliation and thus less effective at keeping those agencies accountable. The case of former Canadian Forces Ombudsman Gary Walbourne illustrates this danger. Walbourne's office was allegedly "stripped of most of its financial and human resources... after Walbourne had issued several scathing reports and pushed the Liberal government hard before parliamentary committees" and ultimately resigned last year after a review process by the defence department that he claims was "flawed and politically-motivated."⁷ Even if the allegations are untrue, his office's dependency on the defence department creates the appearance of a conflict of interest which ultimately undermined public accountability.

Importance of Institutional Independence

Despite reporting to City Council, the Housing Commissioner should operate independently. The need for institutional independence on the part of any accountability officer is self-evident – a lack of independence could create a conflict of interest (or the appearance of one) and run contrary to the basic objective of public institutional accountability officers, which is to scrutinize the operation of government and associated bodies.

The independent nature of the Commissioner's operations should be made explicit in its mandate. Again, this would mirror the mandate of the city's other accountability officers:

⁴ *City of Toronto Act, 2006*, SO 2006, c 11, sched A, part V.

⁵ *Ibid*, ss 158(2), 170(2), 177(2).

⁶ Murray Brewster, "Ontario ombudsman says government watchdogs need more independence in wake of Walbourne departure", *CBC News* (23 September 2019), online: <www.cbc.ca/news/politics/military-ombudsman-vendetta-1.5294586>.

⁷ *Ibid*.

- S.159 states that “the Commissioner is responsible for performing *in an independent manner* the functions assigned by City Council.”⁸
- S. 168(1) states that the city is authorized “to appoint a registrar who is responsible for performing *in an independent manner* the functions assigned by City Council.”⁹
- S. 171 states that “the function of the Ombudsman is to investigate *in an independent manner* any decision or recommendation made or any act done or omitted in the course of the administration of the City.”¹⁰

Structure of the Housing Commissioner’s Office

The Office of the Housing Commissioner should be structured in a way that allows for investigations into systemic barriers to the right to housing arising from private complaints, City Council requests, or the Commissioner’s own initiative.

The structure of the city’s Ombudsman, who has a similar investigative mandate under Article 3-6.6 of the Municipal Code, provides a useful base model.¹¹

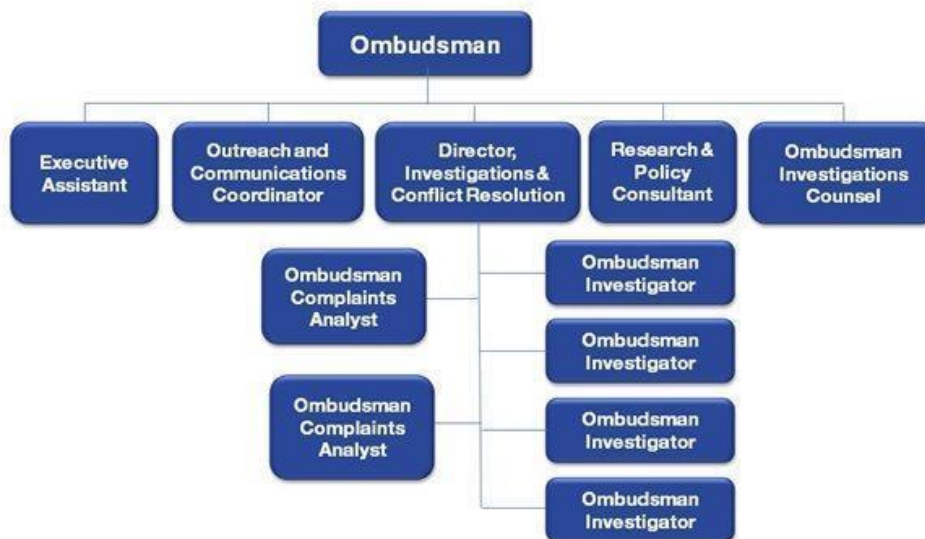


Figure 1 - Ombudsman Toronto's Organizational Structure¹²

⁸ *City of Toronto Act*, supra note 4, s 159.

⁹ *Ibid*, s 168(1).

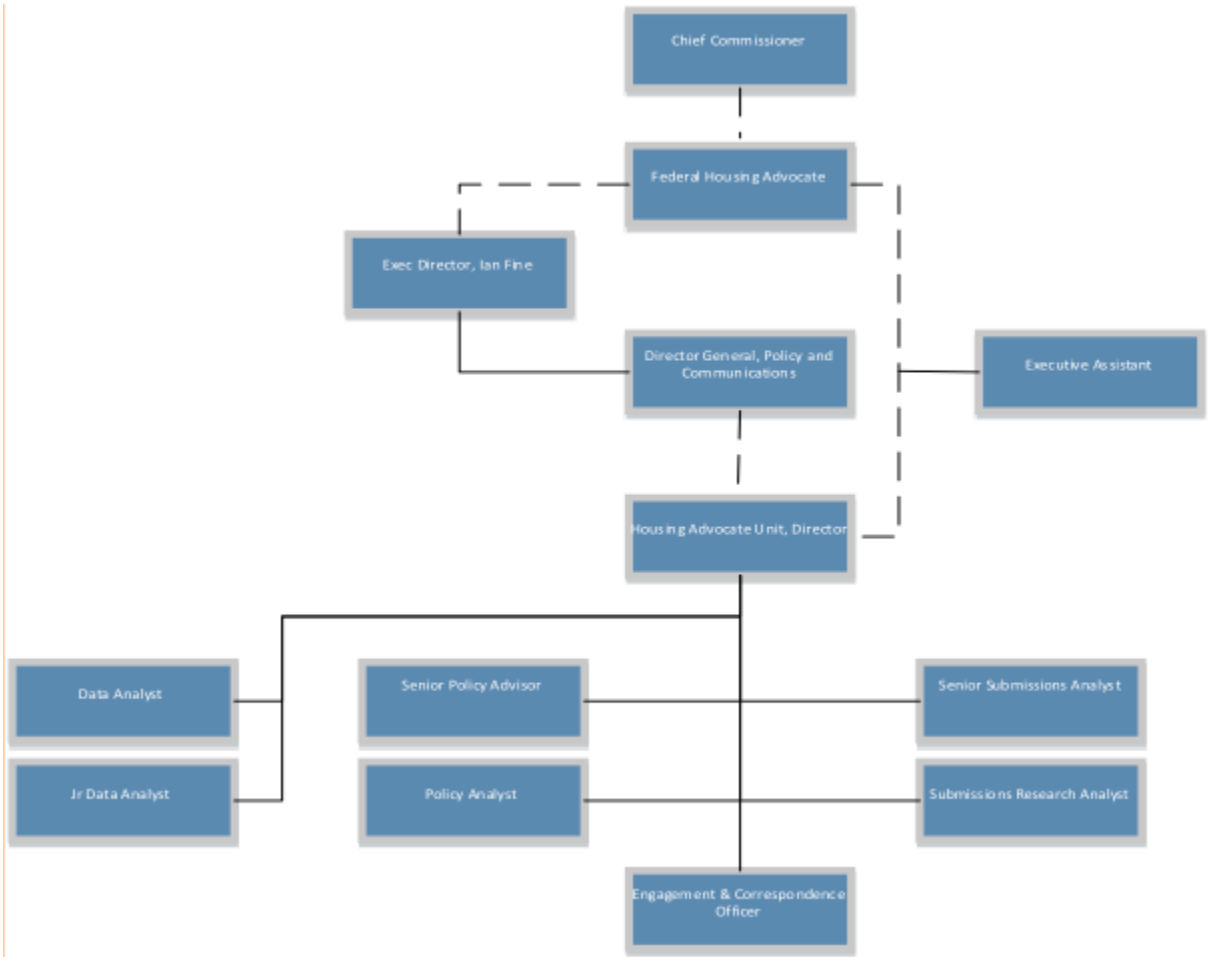
¹⁰ *Ibid*, s 171.

¹¹ *City of Toronto, Toronto Municipal Code* (3 October 2019), c 3, articles 3-6.6.

¹² “About us” (July 2020), online: *Ombudsman Toronto* <www.ombudsmantoronto.ca/About-Us/Team>.

While the Office of the Housing Commissioner may not have a mandate for complaint resolution at the individual level, it should nonetheless be able to receive individual complaints in order to ground its work in the lived experience of tenants and ensure its ability to stay current on housing trends in real time. However, like the Ombudsman’s office, the structure of the Office of the Housing Commissioner should respond to the different needs of its mandate beyond complaint investigation. In particular, the office should conduct policy research to complement and inform its investigations and recommendations. In addition, it should also dedicate resources to engage in community outreach and public education efforts to increase awareness of, and access to, its services.

The Office of the Federal Housing Advocate provides another useful model for the structure and functions of Toronto’s Housing Commissioner. The Office of the Advocate is housed within the Canadian Human Rights Commission. Like Toronto’s Ombudsman Office, it is staffed to support analysis of individual submissions, as well as research, policy analysis, and engagement.



As set out in the National Housing Strategy Act (2019), the Federal Housing Advocate’s responsibilities include:

- Monitoring the implementation of the progressive realization of the right to adequate housing through federal policies and programs, including the National Housing Strategy;
- Assessing impacts on persons who are members of vulnerable groups, and those experiencing housing need or homelessness;
- Conducting research and analysis on systemic housing issues, including barriers faced by vulnerable groups, in areas of federal jurisdiction;
- Engaging, consulting with, and receiving submissions from, persons affected by homelessness and housing disadvantage, members of affected groups, and civil society organizations;
- Conducting reviews of systemic housing issues, and issuing reports and recommendations to the Minister; and
- In the case of major systemic issues, initiating a Review Panel to conduct a public hearing and issue a report;

The Advocate delivers an annual report to the Minister, with a summary of submissions, consultations, research, and analysis, and presenting recommended measures within federal purview to address systemic issues.

The Advocate also sits as an ex-officio member of the National Housing Council, an advisory body with approximately 15 members drawn from a range of stakeholder groups, including persons with lived expertise of homelessness and housing need, members of affected groups, and human rights experts. Similar to the External Advisory Committee established in the HousingTO Action Plan, the National Housing Council monitors housing policy and provides advice to the Minister. The Council meets quarterly; the Advocate provides updates to the Council at these meetings. A Review Panel established by the Advocate is made up of three members of the National Housing Council, and must include at least one member with lived expertise.

During the 2019 community consultations, stakeholders emphasized the importance of ensuring regular evidence-based monitoring, and that real-time data on progress be publicly available and suggested using existing mechanisms such as Street Needs Assessments and creating a centralized database tracking progress that is available to community organizations. Participating community members felt that there is currently a lack of transparency surrounding City data and the need for setting clear targets from the beginning. As such, there was an emphasis in the comments on establishing a consistent, uniform and transparent monitoring system.¹³

Alignment with and distinction from other accountability officers

The Housing Commissioner is a human rights-focused accountability officer. The responsibilities of the Housing Commissioner are related to but distinct from the City's Human Rights and

¹³ "HousingTO 2020-2030 Action Plan: Consultation Summary Report", *supra* note 2.

Equity Division, which focuses on addressing human rights complaints experienced by City employees and service or facilities users.

Specifically, its mandate should be to monitor, claim, and enforce the right to adequate housing in Toronto. Here, the role of a Housing Commissioner should be similar to that of the newly created federal housing advocate, in that it should allow “vulnerable groups, low-income Canadians, and people with lived experience of housing need [to] have the opportunity to raise systemic issues or barriers they face in accessing adequate housing.” Based on this community feedback and its own research, the Commissioner should identify and recommend “potential corrective actions to these systemic barriers” to council and executive agencies such as Toronto Community Housing.¹⁴

This approach would also be in line with the role of similar offices in foreign jurisdictions that have adopted a right-based approach to housing. For example, the national housing strategy of Portugal, in Article 16-5(a), calls for:

“periodic survey and dissemination of the existing housing situation in the country, identifying the main quantitative and qualitative needs, broken down, where appropriate, by gender and age, and any failures or dysfunctions in the housing.”¹⁵

Similarly, Toronto’s Housing Commissioner should, in addition to receiving input from community members, conduct its own periodic surveys and release periodic reports that assess the city’s compliance with its international human rights obligations and its alignment with the rights-based approach in both the City’s 10-year housing plan and the National Housing Strategy. It should consolidate information on the annual public allocations for housing policy at the municipal level and on the implementation rates of the previous year, as well as proposals and recommendations for the future.¹⁶ Furthermore, the recommendations should be sensitive to the unique needs of communities who experience disadvantage with respect to housing.

This is a clearly distinct role from the more specific accountability officers at the City of Toronto, namely the Integrity Commissioner, which “oversees the conduct and ethical behaviour of City Councillors and Members of local boards,” and the Lobbyist Registrar, which “ensures the public disclosure of lobbying activities and oversees the regulation of lobbyists’ conduct.”¹⁷

The functions of the Housing Commissioner could, however, align with and relate to the functions of the Auditor General or the Ombudsman, both of which have broader mandates. For example, the Auditor General has previously denounced the lack of oversight in

¹⁴ “Canada’s National Housing Strategy: A place to call home” (2020), online (pdf): *Government of Canada* <www.placetocallhome.ca/-/media/sf/project/placetocallhome/pdfs/canada-national-housing-strategy.pdf>.

¹⁵ The Republic of Portugal, *Housing Basic Law*, law no 83/2019 of September 3, 2019, article 16-5(a).

¹⁶ *Ibid*, article 18-2.

¹⁷ “Accountability Officers”, *supra* note 3.

determining and verifying the eligibility of rent subsidy applicants and recipients.¹⁸ The Ombudsman has reported on gaps in the provision of social housing, such as the eviction of at-risk groups from social housing¹⁹ and the unavailability of health and safety-motivated transfers within social housing complexes.²⁰

The potential overlap between some of the functions of these accountability officers and the Housing Commissioner should not, however, detract from the importance of establishing a discrete, rights-based accountability office for housing rights advocacy for monitoring the City's progressive realization of the right to adequate housing. The Auditor General's mandate is limited to public fund use, and thus does not encompass critical housing issues relating to private relationships (e.g. private landlord regulation). The Ombudsman's investigation criteria, found in Article 3-6.9 of the *Municipal Code*, focus on illegality and discrimination, and thus its operation falls short of a comprehensive rights-based approach that promotes the realization of housing as a discrete, positive socio-economic right.²¹

In alignment with feedback from the 2019 community consultations, a main priority of the Commissioner should be to ensure that housing priorities are a concern across all relevant City divisions. Community stakeholders identified that there appears to be a lack of coordination between divisions and that fragmentation is a barrier for tenants, service providers, and developers. Intergovernmental commitment should be part of the Commissioner's mandate, and the Commissioner should work closely with its counterparts cross-divisionally, and have open channels of communication both within the city and externally.²²

Coordinating between accountability officers

In order to coordinate and cooperate with other accountability officers efficiently, the Housing Commissioner could be included in the 2015 Memorandum of Understanding between the city's existing accountability officers, which acknowledges the possibility of potential overlap between them and agree to collaborate and share information to promote fairness and consistency.²³

¹⁸ David Rider, "Toronto's auditor says the city doesn't know if people getting rent subsidies are actually eligible", *The Star* (18 October 2019), online: <www.thestar.com/news/city_hall/2019/10/18/toronto-auditor-general-issues-new-warning-on-cybersecurity.html>.

¹⁹ "Housing at Risk: An Investigation into the Toronto Community Housing Corporation's Eviction of Seniors on the Basis of Rent Arrears" (March 2014), online (pdf): *Office of the Ombudsman, City of Toronto* <www.ombudsmantoronto.ca/OmbudsmanToronto/media/Documents/Investigative%20Report/Ombudsman-Report-Housing-at-Risk-March-2014.pdf?ext=.pdf>.

²⁰ "City Ombudsman says Toronto Community Housing Priority Transfer Process Giving Tenants False Hope" (26 January 2018), online: *Ombudsman Toronto* <www.ombudsmantoronto.ca/Publications/News-Releases/News-Folder/City-Ombudsman-says-Toronto-Community-Housing-Pri>.

²¹ *Toronto Municipal Code*, *supra* note 11, articles 3-6.9.

²² "HousingTO 2020-2030 Action Plan: Consultation Summary Report", *supra* note 2.

²³ "Memorandum of Understanding: Four Accountability Offices" (17 June 2020), online: *City of Toronto* <www.toronto.ca/city-government/accountability-operations-customer-service/accountability-officers/memorandum-of-understanding-four-accountability-offices-2/>.

