



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

February 3, 2011

Malcolm White, City Clerk
The Corporation of the City of Sault Ste. Marie
99 Foster Drive, P.O. Box 580
Sault Ste. Marie, Ontario
P6A 5N1

Dear Mr. White:

Re. Our File No. 235791

I am writing further to our telephone conversation of February 3, 2011, regarding the results of the Ombudsman's preliminary review of a complaint received about a December 7, 2010 meeting of the Agenda Setting Review Committee (the "Agenda Committee"). As discussed on February 3, 2011 the complaint to our Office alleged that the December 7, 2010 meeting and all meetings of the Agenda Setting Review Committee are improperly closed to the public.

As part of our Office's review, we spoke with you and reviewed the City's Procedure By-law (99-100) and relevant sections of the Municipal Act, 2001.

According to the information provided to our Office, prior to the municipal elections last fall, a resident requested that the Agenda Committee membership be brought before council for discussion. You stated that the Agenda Committee decided that this issue was one better dealt with by the incoming council and that this item was not added to the agenda. On December 7, 2010, this same resident asked to attend the Agenda Committee meeting to request that the Committee membership be placed on the December 13, 2010 council agenda. You explained that this resident attended a portion of the Committee meeting on December 7 to present his request and left the meeting after his request was heard. You also stated that the Committee then decided not to place this matter on the December 13, 2010 agenda because staff had already commenced a review of its agenda-setting practices. You further stated that the Committee decided that the matter would be not be put before council until after this review was complete and council had full information to consider the matter.

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Article 35 of the Procedure By-law outlines the composition and role of the Agenda Committee. This section states:

An agenda committee composed of the Mayor, Chief Administrative Officer, City Clerk and two Councillors shall be charged with the responsibility of deciding the subject matters and items to appear on the Council agenda as well as any delegations to be heard by Council.

You explained that the two councillors serving as members of the Agenda Committee rotate according to article 39(2) of the Procedure By-law. This provision assigns Council members, on a monthly basis, to act as movers and seconders of motions at meetings of Council. You explained that the two councillors who will move and second motions at a particular meeting of council attend the preceding Agenda Committee meeting.

From the information you provided, we understand that the Agenda Committee meets on the Tuesday afternoon preceding the bimonthly council meeting. You stated that the Clerk gathers reports, correspondence, and requests to appear before council, and brings them forward to the Agenda Committee meeting. You explained that the Committee reviews the items to determine if any additional information is required before an item is put on the agenda.

You also stated that prior to our Office's review, the Agenda Committee never turned its mind to the idea of conducting open meetings since it has always considered itself as performing a strictly administrative function (i.e. setting council meeting agendas). You informed our Office that the City has now decided to review its agenda-setting practices and that as part of this review, you have been gathering information about how other municipalities set the agendas for their council and committee meetings.

The Municipal Act, 2001 provides that all meetings of council, local boards and committees shall be open to the public. For the purpose of the open meeting requirements, the Act defines a committee as "any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one of more councils or local boards (subsection 238(1)). Similarly, article 31 of the City's Procedure By-law states that meetings of the Council including meetings of the Council sitting in Committee of the Whole Council shall be open to the public and no person shall be excluded from a meeting except for improper conduct at the meeting. The by-law also states that no meeting or part of a meeting may be closed to the public unless the subject matter falls within the statutory exceptions to the open meeting requirements.

Three of the five members of the Agenda Committee are also members of council, and for this reason, the Agenda Committee technically meets the definition of a "committee" as defined in s. 238(1) of the Municipal Act, 2001.

Our Office also considered the mandate of the Agenda Committee, and particularly whether in the course of its duties, it exercises any power or authority of City Council. After considering the principles behind the open meeting law, as well as the relevant case law, the Ombudsman has developed the following working definition of a “meeting” to assist in determining whether a gathering is subject to the open meeting provisions. To come within the Municipal Act requirements:

Members of council (or a committee) must come together for the purpose of exercising the power or authority of the council (or committee), or for the purpose of doing the groundwork necessary to exercise that power or authority.

As discussed on February 3, it appears that the Agenda Committee has been granted considerable discretion to determine if and when certain issues appear on the meeting agenda. In this respect, the Committee’s activities appear to be laying the groundwork necessary in order for Council to make a decision.

For these reasons, the Agenda Committee appears to be a committee of Council as defined by the Act. Accordingly, our Office is of the opinion that the Committee is subject to the open meetings provisions of the Act and is required to follow the proper procedures when it holds meetings including providing notice of meetings to the public; providing the public with access to such meetings; keeping meeting minutes; and closing meetings only when the subject matter to be considered falls within the statutory exceptions to the open meeting requirements.

You indicated that you would make our Office’s recommendations available to the public and that you would consider this recommendation as part of the municipality’s review of its agenda-setting practices. We request that you inform our Office of the results of your review once it is completed. We would also like to be informed of council’s plans to ensure that future meetings of the Agenda Setting Committee conform with the open meeting requirements of the Municipal Act, should council decide to continue this practice for setting its agenda.

We will also be notifying the complainant of the results of our informal review.

I would like to take this opportunity to thank you for the cooperation our Office received during this review.

Sincerely,

Trish Coyle
Investigator