



Ombudsman Report

**Investigation into whether the Recreation
Committee for the Town of Kirkland Lake
violated the *Municipal Act's* open meeting
requirements**

**Paul Dubé
Ombudsman of Ontario
November 2017**

Complaint

- 1 My Office received a complaint about the meeting practices of the Town of Kirkland Lake's Recreation Committee.
- 2 The complaint alleged that the committee should have been classified as a committee of council subject to the open meeting requirements under the *Municipal Act, 2001* (the "Act") and the town's procedure by-law.

Ombudsman jurisdiction

- 3 Under the *Municipal Act, 2001*, all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 4 As of January 1, 2008, the Act gives citizens the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public. Municipalities may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 5 The Ombudsman is the closed meeting investigator for the Town of Kirkland Lake.
- 6 When investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality's procedure by-law have been observed.

Investigative process

- 7 On September 6, 2017, we advised the Town of Kirkland Lake of our intent to investigate this complaint.
- 8 My Office's staff reviewed relevant portions of the town's procedure by-law and the Act, as well as the meeting agendas and minutes for several committee meetings. We interviewed the town's Clerk, the Director of Community Services, and three members of council.

- 9 My Office received full co-operation with our investigation.

Council procedure

- 10 Section 75 of the town's procedure by-law¹ provides that council and committee meetings must be open to the public, subject to the exceptions set out in section 239 of the *Municipal Act*.
- 11 According to section 1(d), a "committee means a regular, special or joint meeting of the committees, as well as full Council."² No further definition of committee is provided in the by-law.

Creation of the Recreation Committee

- 12 According to our interviews and the documents we reviewed, Kirkland Lake's Recreation Committee was created in 2010 by way of a directive from the mayor at the time. During the December 7, 2010 council meeting the mayor brought forward a motion to create the committee and amended the committee by-law (by-law 10-096 Schedule A), appointing three council members.³ Although not committee members, we were told that the Director of Community Services and Chief Administrative Officer (CAO) also typically attend committee meetings.
- 13 When asked why the committee was created, those we spoke with said it was formed in response to the planned construction of a new pool facility.

¹ Town of Kirkland Lake, by-law No 07-107, *Being a by-law to regulate the procedures of the Council of the Corporation of the Town of Kirkland Lake* (18 December 2007) at 9, online:

<<http://www.klonlineservices.com/index.php?id=33&fd=%259C2%25F1W%25D1%25FB%25B3%25ACo%25F3%2517%25CB%25D4%2510%250FjWUx%25EF%25FC%25FCS%25A5I%259C%2503%25BBx%25AF%25E8%25BE%2529%25E2%25DC>>.

² *Ibid* at 1.

³ The Corporation of the Town of Kirkland Lake by-law 10-096, online:

<http://www.klonlineservices.com/index.php?id=30&fd=%25D0%2511%257E6%2589%25AC%25ED%2512%25DA9E%25A4%25B6%2540%258Ca%25C5%251B%259B%25F3%252CD%250D%25D81%253A%259D%2512%25A1%2596H%2586x%255C%25E4%25E8K%25FA7%25E5%250C%25A9%2519%259D%25E1%2515%2521%251F%25F3%25F2%25CA%25FFRV%25CDOa>

Recreation Committee meetings

- 14 According to those we spoke with, the Recreation Committee has met on a number of occasions since its creation in 2010. We were told that these meetings were not regularly scheduled and that the committee would instead meet at the direction of the CAO or the Director of Community Services.
- 15 According to the documentation provided, the committee met three times from September 2016 to September 2017. Those we spoke with indicated that no public notice was provided for these or any other meetings of the Recreation Committee and the meetings were not open to the public.
- 16 Each of the individuals we interviewed indicated that over the years, the committee advised council on various recreation issues in the town such as a pool construction project, the town's sport tourism strategy, and a civic park project. We were told the committee received updates on these recreation initiatives, as well as others, and provided updates and recommendations to council. One councillor told us the committee did not have the authority to make decisions, and instead did the groundwork and research necessary for council to reach a decision.
- 17 We were told that staff from the Clerk's office did not attend committee meetings or take formal minutes. However, other staff members who attended the meetings provided the Clerk's office with their own notes, which were filed for internal reference but not made available to the public.
- 18 Some of those we spoke with said that they feel the Recreation Committee is a committee of council subject to the Act's and the by-law's open meeting requirements. They indicated that since a new CAO was hired in August 2017, there have been discussions between staff and councillors about whether to treat the Recreation Committee as a committee of council. They said there is a growing awareness that the committee must improve its meeting practices and suggested that guidance from our Office would be appreciated.

Analysis

- 19 To determine if the Recreation Committee's meeting practices violated the *Municipal Act's* open meeting requirements, it is necessary to determine if the Recreation Committee constitutes a "committee" under the *Municipal Act* or under the town's procedure by-law.

- 20** Section 238(1) of the *Municipal Act* defines “committee” as “any advisory or other committee, subcommittee or similar entity of which at least fifty percent of the members are also members of one or more councils or local boards.” The Recreation Committee consists of three council members and two staff who provide administrative support, thus satisfying the fifty percent threshold.
- 21** However, in previous reports, our Office has determined that the role and function of a group must also be examined in order to determine whether it functions as a committee, sub-committee, or similar entity.⁴ In several reports, our Office has found that when groups primarily exchange information or advance positions a municipality has already decided upon without laying the groundwork for decision-making by council, the body will not constitute a committee.⁵ However, if groups have their own authority to make decisions or provide recommendations to council, they may be functioning as a committee.
- 22** In this case, most individuals we spoke with said that the committee made decisions and recommendations to council regarding various recreation issues. One councillor, however, felt the committee had no decision-making power and instead did the groundwork and research necessary for council to make the final decision. In either case, the Recreation Committee was functioning as a committee because laying the groundwork for council decisions is sufficient to trigger the open meeting obligations under the Act.⁶
- 23** Consequently, the Recreation Committee is a committee of council under the *Municipal Act* and its meetings need to comply with the Act’s open meeting requirements.

⁴ Ombudsman of Ontario, *Investigation into whether Heads of Council in West Parry Sound have been holding illegal closed meetings including on February 19, 2015* (November 2015) at 33, online:

<<https://www.ombudsman.on.ca/Resources/Reports/Heads-of-Council-in-West-Parry-Sound.aspx>>

⁵ Ombudsman of Ontario, *Investigation into whether a Committee of Council for the City of Hamilton held an illegal meeting on July 25, 2014* (November 2014), online:

<<https://www.ombudsman.on.ca/Resources/Reports/City-of-Hamilton-November-2014.aspx>>; Ombudsman of Ontario, *Letter to the City of Clarence-Rockland, regarding meetings in November and December, 2010* (February 2012), online: <<https://www.ombudsman.on.ca/Files/sitemedia/Images/Reports/Sent-to-Clarence-Rockland---1.pdf>>

⁶ Ombudsman of Ontario, *Investigation into whether Council for the Township of Leeds and the Thousand Islands held illegal closed meetings* (June 2015), online:

<[https://www.ombudsman.on.ca/Resources/Reports/Township-of-Leeds-and-the-Thousand-Islands-\(3\).aspx](https://www.ombudsman.on.ca/Resources/Reports/Township-of-Leeds-and-the-Thousand-Islands-(3).aspx)>.

24 In addition, the Recreation Committee is listed as a committee of council on Kirkland Lake's website⁷ and is listed as a committee of council in Schedule A of by-law 10-096⁸, which establishes the committee's membership. Accordingly, the Recreation Committee is also subject to the open meeting requirements for committees in the town's procedure by-law.

Opinion

25 The Town of Kirkland Lake's Recreation Committee is a committee of council subject to the open meeting provisions of the *Municipal Act* and the town's procedure by-law. Because the town did not treat the Recreation Committee as a committee of council, the committee did not comply with these requirements: public notice was not provided, meetings were not open to the public, and formal minutes were not taken.

26 In making the above findings, our Office acknowledges that some Town of Kirkland Lake council and staff members have recognized the issues outlined in this report, and there is a growing awareness that meeting practices must improve.

Recommendations

27 I make the following recommendations to assist the town in fulfilling its obligations under the Act and enhancing the transparency of its meetings.

Recommendation 1

The Town of Kirkland Lake should reaffirm that the Recreation Committee is a committee of council subject to the open meeting requirements of the *Municipal Act, 2001* and the town's procedure by-law.

Recommendation 2

All members of the Recreation Committee for the Town of Kirkland Lake should be vigilant in adhering to their individual and collective obligation to ensure that the committee complies with its responsibilities under the *Municipal Act, 2001* and the town's procedure by-law.

⁷ Town of Kirkland Lake, *Board and Committee Members*, online: <http://kirklandlake.ca/index.php?id=12>

⁸ *Supra* note 3

Recommendation 3

The Town of Kirkland Lake's Council should ensure that it and its committees adhere to the open meeting requirements of the *Municipal Act 2001*, especially with respect to public notice of its meetings and the taking of minutes.

Report

- 28** The municipality was given the opportunity to review a preliminary version of this report and provide comments to our Office. Comments received were considered in the preparation of this final report.
- 29** My report should be shared with council and made available to the public as soon as possible, and no later than the next council meeting.



Paul Dubé
Ontario Ombudsman