



Ombudsman Report

**Investigation into meetings
held by the Municipality of Calvin's
Ad Hoc Code of Conduct Working Group
and Ad Hoc Municipal Planning Working Group**

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Ombudsman of Ontario**

April 2024

Complaint

- 1 My Office received a complaint about meetings held by the Municipality of Calvin's Ad Hoc Code of Conduct Working Group and Ad Hoc Municipal Planning Working Group.
- 2 The complaint alleged that these two bodies were committees of council, and that they did not provide the public with notice of their meetings, publish meeting agendas, or have someone clerk or record minutes of their meetings, contrary to the *Municipal Act, 2001* (the "Act")¹ and the Municipality's procedural by-law. The complaint also raised procedural concerns that these bodies were not properly established by resolution or by-law.
- 3 My investigation determined that the Ad Hoc Code of Conduct Working Group and Ad Hoc Municipal Planning Working Group were established through council resolution and were committees of council. The Municipality contravened both the *Municipal Act, 2001* and its own procedural by-law in not providing notice of meetings of these groups, and in not having someone clerk or record minutes of their meetings. However, the Municipality did not violate either the Act or the Municipality's procedural by-law by not providing members of the public with their meeting agendas.

Ombudsman jurisdiction

- 4 Under the Act, all meetings of council, local boards, and committees of either must be open to the public, unless they fall within prescribed exceptions.
- 5 As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipality or local board has complied with the Act in closing a meeting to the public. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 6 The Ombudsman is the closed meeting investigator for the Municipality of Calvin (the "Municipality").
- 7 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the applicable procedure by-law have been followed.

¹ SO 2001, c 25.

- 8 My Office has investigated hundreds of closed meetings since 2008. To assist municipal councils, staff, and the public, we have developed an online digest of open meeting cases. This searchable repository was created to provide easy access to the Ombudsman’s decisions on, and interpretations of, the open meeting rules. Council members and staff can consult the digest to inform their discussions and decisions on whether certain matters can or should be discussed in closed session, as well as issues related to open meeting procedures. Summaries of the Ombudsman’s previous decisions can be found in the digest: www.ombudsman.on.ca/digest.
- 9 The Ontario Ombudsman also has the authority to conduct impartial reviews and investigations of hundreds of public sector bodies. This includes municipalities, local boards, and municipally-controlled corporations, as well as provincial government organizations, publicly funded universities, and school boards. In addition, the Ombudsman’s mandate includes reviewing complaints about the services provided by children’s aid societies and residential licensees, and the provision of French language services under the *French Language Services Act*. Read more about the bodies within our jurisdiction here: <https://www.ombudsman.on.ca/have-a-complaint/who-we-oversee>.

Investigative process

- 10 On May 2, 2023, my Office advised the Municipality of Calvin of my intent to investigate this complaint.
- 11 My Office reviewed the Municipality’s procedural by-law and relevant portions of the Act. We also reviewed notes taken by a member of the Ad Hoc Code of Conduct Working Group. We also reviewed a Temporary Clerk’s internal draft minutes and signed copies of the resolutions from the council meeting at which these two groups were first discussed.
- 12 We also reviewed the open meeting materials and available video recordings from council meetings at which these bodies reported back, as well as documents that these two groups provided to council.
- 13 My Office spoke with the Municipality’s former Chief Administrative Officer (the “CAO”)/Clerk/Treasurer, the former Interim Clerk, and the current CAO/Clerk/Treasurer who formerly served as a Temporary Clerk for council meetings.

- 14 My Office interviewed the Mayor, the Ad Hoc Code of Conduct Working Group's two members, one member of the Ad Hoc Municipal Planning Working Group, and a Temporary Clerk.

Establishment of Ad Hoc Working Groups

- 15 Council held a special meeting on November 25, 2022. At the time, and as noted in a recent report from my Office, the Municipality was facing significant staffing issues.² The Interim Clerk delegated the Clerk's powers and duties to a Temporary Clerk for this meeting.
- 16 The Municipality told my Office that it does not have any minutes or recordings of this special meeting, although it provided my Office with a document that it described as the Temporary Clerk's "internal draft minutes", which it says were prepared prior to the meeting. The former Interim Clerk provided my Office with signed copies of the resolutions from this meeting, which were prepared by the Temporary Clerk.
- 17 Both the Municipality's "internal draft minutes" and the resolutions provided by the former Interim Clerk include the following three resolutions, which we were told passed at this meeting:

Agenda Item # 5.1.1 Code of Conduct Working Group

NOW THEREFORE BE IT RESOLVED THAT:

"Council for the Corporation of the Municipality of Calvin hereby establishes the Ad Hoc Code of Conduct Working Group and appoints Councillors Grant and Moreton to this working group.

And further that the purpose of this working group is to research municipal codes of conducts and inquiry processes and make recommendations to Council regarding a new Code of Conduct for the Municipality of Calvin."

Agenda Item # 5.1.2 Municipal Planning Working Group

NOW THEREFORE BE IT RESOLVED THAT:

"Council for the Corporation of the Municipality of Calvin hereby establishes the Ad Hoc Municipal Planning Working Group and appoints

² *Calvin (Municipality of) (Re)*, 2023 ONOMBUD 9 at para 16, online: <<https://canlii.ca/t/jxg32>>.

Councillors Adams and Latimer and Municipal Administrator Jacob Grove to this working group.

And further that the purpose of this working group is to consider options for recruiting a municipal clerk as well as to evaluate the existing organizational structure/operation and make recommendations to Council.”

Agenda Item # 6 Confirmatory Bylaw

NOW THEREFORE BE IT RESOLVED THAT:

“Bylaw 2022-067 being a By-Law to confirm the proceedings of Council, its Special Meeting of November 25, 2022, be read and adopted.”

- 18 Accordingly, my investigation found that both groups were established by council resolution.

Ad Hoc Code of Conduct Working Group

- 19 The Ad Hoc Code of Conduct Working Group was composed of two individuals, both of whom are members of council. The Municipality told my Office that this body is no longer active.
- 20 My Office’s investigation found that the Municipality also referred to this body as the “Code of Conduct Working Group”, “Integrity Commissioner Ad Hoc Group”, “Integrity Commissioner Committee”, “Code of Conduct and Integrity Commissioner Committee”, and the “Integrity Commissioner Hiring Committee.”
- 21 The Municipality told my Office that it did not consider the Ad Hoc Code of Conduct Working Group to be a committee of council because it was not composed of a quorum of council. The Municipality did not provide the public with notice of this body’s meetings or publish meeting agendas, and did not have an officer take minutes of its meetings.
- 22 The resolution to establish this body stated that its purpose was “to research municipal codes of conducts and inquiry processes and make recommendations to Council regarding a new Code of Conduct for the Municipality of Calvin.”

- 23 Shortly after this resolution was passed, at a special meeting on December 9, 2022, council resolved to terminate the Municipality's contract with its Integrity Commissioner effective immediately and to repeal the Municipality's Code of Conduct.
- 24 The Ad Hoc Code of Conduct Working Group gathered on multiple occasions between December 2022 and February 2023 by telephone, at a councillor's home, and at the municipal office.
- 25 This body's two members (both councillors) discussed a variety of topics related to the Municipality's need to adopt a Code of Conduct and to appoint an Integrity Commissioner.
- 26 One of the members took personal notes summarizing their activities, which are the only written record of this body's meetings.
- 27 Members of the committee told my Office that they individually contacted third parties to gather information about municipal codes of conduct and integrity commissioner services, and then reported back to one another on these discussions. Municipal staff did not attend these gatherings.
- 28 My Office's investigation found that the Ad Hoc Code of Conduct Working Group reported back to council on its work. For example, at a regular council meeting on January 10, 2023, the working group advised that although the municipality had not yet publicly advertised for the vacant role, it had received three applications for the Integrity Commissioner position. The Working Group also presented council with a draft posting for the Integrity Commissioner position, and council then passed a resolution stating that it was in agreement with posting the role publicly.
- 29 At a special council meeting on February 21, 2023, council passed a resolution granting the working group authority to appoint one of three prospective candidates as the Municipality's Integrity Commissioner. At a regular council meeting on March 2, 2023, a working group member reported that the Integrity Commissioner position had been offered to one of these three individuals. Council then passed a by-law to appoint this individual as its Integrity Commissioner.
- 30 My Office was told that the working group had recommended the individual who was ultimately appointed to the Integrity Commissioner position. At the March 2, 2023, meeting, it also presented council with a draft interim Code of Conduct, which council resolved to adopt.

Analysis

- 31 Section 238(1) of the Act defines a “committee” as any advisory or other committee, subcommittee or similar entity of which at least 50% of the members are also members of one or more councils or local boards. In addition, my Office has previously found that a body may be subject to the open meeting requirements if it is a committee as defined in the municipality’s procedure by-law³ or if it is considered by the municipality to be a committee.⁴
- 32 My Office has found that a body that exercises delegated authority from council to make decisions or recommendations is likely to be a committee.⁵ A body that serves an administrative purpose, merely exchanges information, or advances previously decided positions is unlikely to function as a committee.⁶
- 33 The Ad Hoc Code of Conduct Working Group was composed of two members, both of whom were council members. Accordingly, this body met the Act’s 50% membership threshold.
- 34 Further, the working group exercised delegated authority from council to make decisions and recommendations on the matters within its authority. Specifically, council granted this body the authority to select an Integrity Commissioner from among three applicants. The working group subsequently reported to council that the position had been offered to one of these applicants, and council passed a by-law to appoint this individual as its Integrity Commissioner. My Office was told that this group recommended the individual who was appointed to the Integrity Commissioner position.

³ *Niagara (Regional Municipality of) (Re)*, 2015 ONOMBUD 37, online: <<https://canlii.ca/t/gtp7n>>.

⁴ *Hornepayne (Township of) (Re)*, 2016 ONOMBUD 20, online: <<https://canlii.ca/t/h2st9>>.

⁵ *West Parry Sound (Heads of Council in) (Re)*, 2015 ONOMBUD 38 [*West Parry Sound*], online: <<https://canlii.ca/t/gtp7q>>; *Cornwall (City) (Re)*, 2023 ONOMBUD 4 [*Cornwall*], online: <<https://canlii.ca/t/jvc71>>.

⁶ *Hamilton (City of) (Re)*, 2014 ONOMBUD 11 [*Hamilton*], online: <<https://canlii.ca/t/gtmh8>>; *West Parry Sound*, *supra* note 5; *Deep River (Town of) (Re)*, 2017 ONOMBUD 17 [*Deep River*], online: <<https://canlii.ca/t/hqspf>>; Letter from the Ontario Ombudsman to City of Hamilton (18 January 2023) [*Letter to Hamilton*], online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2023/city-of-hamilton>>.

- 35** The Ad Hoc Code of Conduct Working Group also reported back to council with various recommendations, including drafting a potential code of conduct. As such, this group's functions went beyond the mere exchange of information. The group functioned similarly to the City of Cornwall's Municipal Grants Review Committee/Working Group, which I determined was a committee of council.⁷ In reaching this conclusion, I noted that Cornwall's Municipal Grants Review Committee received, reviewed, and scored applications, and brought final recommendations to council for approval.⁸
- 36** Since the Ad Hoc Code of Conduct Working Group meets the Act's 50% membership threshold requirement and exercised delegated authority from council, the working group was a committee of council that was subject to the open meeting rules.
- 37** As the Municipality did not consider the Ad Hoc Code of Conduct Working Group to be subject to the Act's open meeting requirements, notice of its meetings was not provided and an officer did not take minutes of its meetings, as required by sections 239(7) and 239(8)(b) of the Act and the Municipality's procedural by-law.

Ad Hoc Municipal Planning Working Group

- 38** The Ad Hoc Municipal Planning Working Group consisted of two members of council and the Municipal Administrator. One of the council members has since passed away and the Municipal Administrator is no longer employed with the Municipality. The Municipality told my Office that this body is no longer active.
- 39** My Office's investigation found that the Municipality also referred to this body as the "Municipal Planning Working Group."
- 40** The Municipality told my Office that it did not consider the Ad Hoc Municipal Planning Working Group to be a committee of council because it was not composed of a quorum of council. The Municipality did not provide the public with notice of this body's meetings or publish meeting agendas, and did not take official minutes of its meetings.

⁷ *Cornwall*, *supra* note 5.

⁸ *Ibid* at para 24.

- 41 The resolution to establish this body stated that its purpose was “to consider options for recruiting a municipal clerk as well as to evaluate the existing organizational structure/operation and make recommendations to Council.”
- 42 My Office was told that the group’s two council members gathered once in early December 2022 at one of their homes, and that the purpose of this meeting was to discuss the recruitment of a Municipal Clerk. The Municipal Administrator did not attend this meeting.
- 43 My Office was told that the councillors discussed the requirements of the Clerk’s role, the need to create a job description for this position, and general strategies for recruiting a Clerk. The Municipality told my Office that it does not have any written records of this gathering, although we were told that the deceased council member may have taken personal notes.
- 44 Shortly after this meeting, one of the council members passed away. My Office was told that the Municipal Administrator commenced a leave of absence in December 2022 and never returned to work with the Municipality.
- 45 At a special meeting on December 9, 2022, council repealed a by-law that had appointed an Interim Clerk and passed a resolution to appoint someone else as temporary clerk. My Office was told that the Ad Hoc Municipal Planning Working Group was not involved in this appointment process.
- 46 At a regular council meeting on January 10, 2023, the group’s remaining member recommended that council adopt a proposed municipal organizational chart, and a draft posting for the Clerk/CAO position. Council then resolved to accept the chart and to publicly distribute the posting.

Analysis

- 47 As noted above, section 238(1) of the Act defines a “committee” as any advisory or other committee, subcommittee or similar entity of which at least 50% of the members are also members of one or more councils or local boards.

- 48 My Office has found that the body must also function as a committee, such as exercising delegated authority from council to make decisions or recommendations.⁹ A body is not likely to be a committee if it serves an administrative purpose, merely exchanges information, or advances previously decided positions.¹⁰
- 49 The Ad Hoc Municipal Planning Working Group was composed of three members: Two members of council and the Municipal Administrator. Accordingly, this body met the Act's 50% membership threshold.
- 50 Further, this group exercised delegated authority from council to make recommendations. Specifically, council granted this body the authority to make recommendations to council on matters pertaining to the recruitment of a Clerk and the Municipality's organizational structure and operation. After this group's only gathering, one of its members presented council with a draft organizational chart and a draft posting for the Clerk/CAO position. Council resolved to accept the organizational chart and to publicly distribute the posting. As such, this group's functions went beyond the mere exchange of information, and materially advanced council business and decision-making.¹¹
- 51 My Office's investigation determined that the Ad Hoc Municipal Planning Working Group met the Act's 50% membership threshold requirement and exercised delegated authority from council. Accordingly, this body was a committee of council that was subject to the open meeting rules.
- 52 Because the Municipality did not consider Ad Hoc Municipal Planning Working Group to be subject to the Act's open meeting requirements, notice of its one meeting was not provided and an officer did not take minutes of this meeting. This contravened both the Act and the Municipality's procedural by-law.

Agenda

- 53 The complaint raised concerns that the Ad Hoc Code of Conduct Working Group and the Ad Hoc Municipal Planning Working Group did not publish meeting agendas.

⁹ *West Parry Sound*, supra note 5; *Cornwall*, supra note 5.

¹⁰ *Hamilton*, supra note 6; *West Parry Sound*, supra note 5; *Deep River*, supra note 6; Letter to Hamilton, supra note 6.

¹¹ *Pelee (Township of) (Re)*, 2022 ONOMBUD 2 at para 23, online: <<https://canlii.ca/t/jm1f5>>.

- 54 The *Municipal Act* does not specify the content of the notice to be given to the public, and there is no requirement in the legislation to post meeting agendas in advance. However, municipalities may choose to publicly post an agenda listing the matters to be discussed in advance of a meeting.
- 55 Although the Municipality's procedural by-law requires that the Municipality prepare agendas for its meetings and circulate them to council members,¹² it does not require the Municipality to provide members of the public with these agendas. Accordingly, the Municipality did not violate either the Act or its procedural by-law by not providing members of the public with agendas for these groups' meetings.

Opinion

- 56 The Municipality of Calvin's Ad Hoc Code of Conduct Working Group and Ad Hoc Municipal Planning Working Group were established through council resolution and were committees of council. The Municipality contravened both the *Municipal Act, 2001* and its procedural by-law in not providing notice of these committees' meetings and in not having an officer record minutes of their meetings.
- 57 However, the Municipality did not violate either the Act or the Municipality's procedural by-law by not providing members of the public with meeting agendas for the Ad Hoc Code of Conduct Working Group or the Ad Hoc Municipal Planning Working Group.

Recommendations

- 58 I make the following recommendations to assist the Municipality of Calvin in fulfilling its obligations under the Act and enhancing the transparency of its meetings:

Recommendation 1

All members of council for the Municipality of Calvin should be vigilant in adhering to their individual and collective obligation to ensure that the municipality complies with its responsibilities under the *Municipal Act, 2001* and its procedural by-law.

¹² ss 6.1.1 and 6.1.10.

Recommendation 2

Council for the Municipality of Calvin should provide public notice in advance of all meetings, including committee meetings.

Recommendation 3

Council for the Municipality of Calvin should ensure that complete and accurate records are kept of all meetings, including committee meetings.

Recommendation 4

Council for the Municipality of Calvin should assess all new bodies that it creates to determine whether they are subject to the open meeting rules in the *Municipal Act, 2001*.

Report

- 59 Council for the Municipality of Calvin was given the opportunity to review a preliminary version of this report and provide comments to my Office. All comments we received were considered in the preparation of this final report. In its response, council for the Municipality of Calvin indicated that it is following meeting requirements, and I applaud this commitment to openness, accountability and transparency.
- 60 This report will be published on my Office's website, and should also be made public by the Municipality of Calvin. In accordance with section 239.2(12) of the *Municipal Act, 2001*, council is required to pass a resolution stating how it intends to address this report.



Paul Dubé
Ombudsman of Ontario

Ce rapport est aussi disponible en français