



Ombudsman Report

**Investigation into a complaint about
a meeting held by the Board of Directors
for Saugeen Mobility and Regional Transit**

**Paul Dubé
Ombudsman of Ontario**

September 2024

Complaint

- 1 My Office received a complaint that the Board of Directors for Saugeen Mobility and Regional Transit held a meeting on May 26, 2023 that was not open to the public as required by the *Municipal Act, 2001*.¹
- 2 My investigation has determined that Saugeen Mobility and Regional Transit (“SMART”) is a joint local board of its 10 member municipalities: The Town of Hanover, the Municipality of Arran-Elderslie, the Municipality of Brockton, the Municipality of Kincardine, the Township of Chatsworth, the Township of Huron-Kinloss, the Town of Saugeen Shores, the Township of Southgate, the Municipality of Grey Highlands, and the Municipality of West Grey. SMART’s Board of Directors (the “Board”) must hold meetings that are open to the public. The Board’s meeting on May 16, 2023 was not open to the public.

Ombudsman jurisdiction

- 3 Under the *Municipal Act, 2001* (the “Act”), all meetings of a council, local board, and committee of either must be open to the public, unless they fall within prescribed exceptions.
- 4 As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipal council, local board or committee of either has complied with the Act in closing a meeting to the public. Municipalities may appoint their own investigator. 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 SMART.
- 6 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the local board’s governing procedures have been observed.
- 7 Our 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

¹ SO 2001, c 25.

procedures. Summaries of the Ombudsman’s previous decisions can be found in the digest: www.ombudsman.on.ca/digest.

- 8 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: www.ombudsman.on.ca/have-a-complaint/who-we-oversee.

Investigative process

- 9 On January 22, 2024, we advised SMART of our intent to investigate this complaint.
- 10 We obtained and reviewed the records from SMART, including meeting records, corporate by-laws, the operating agreement between SMART and its member municipalities, and SMART’s incorporation documents. Members of my Office spoke to SMART’s staff manager and its legal counsel.
- 11 My Office received full co-operation in this matter.

Background

Saugeen Mobility and Regional Transit (SMART)

- 12 SMART was incorporated in December 1980 as a not-for-profit corporation under the name “Bruce, Grey and Huron Disability Transportation Corporation” by three private citizens. During the 2000s, the corporation’s name was updated to Saugeen Mobility and Regional Transit (SMART). The corporate records do not document when the member municipalities took over SMART’s operation and governance.
- 13 The affairs of SMART are governed by an operating agreement between the member municipalities and SMART, and by By-law 3 which relates to the transaction of the affairs of SMART.²

² Saugeen Mobility and Regional Transit, By-law #3, *A by-law relating generally to the transaction of the affairs of Saugeen Mobility and Regional Transit*.

- 14 Each member municipality is entitled to appoint one director to the Board. Board meetings may be called by the president, vice-president, or two directors. The Board does not provide public notice of its meetings and the meetings are not open to the public.
- 15 According to the operating agreement, SMART operates a disability transportation system pursuant to sections 69 and 203 of the Act and O. Reg. 599/06. Section 69 authorizes municipalities to operate transportation systems. Section 203 and O. Reg. 599/06 govern municipal services corporations.

Board of Directors meeting on May 26, 2023

- 16 The Board met on May 26, 2023. SMART did not provide public notice of the date, time or location of the meeting. Members of the public did not attend the meeting.

Analysis

Local board

- 17 The Act defines a “local board” as “a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities.”
- 18 The Courts have found that to be a local board, a body’s activities must be “integral to the day-to-day operations of the business of the municipality.”³ The Courts have explained that the definition of local board is to be interpreted in a broad and expansive manner, but that a local board will generally not include an ad hoc or informal body, or an investigative or adjudicative body.⁴ SMART is neither ad hoc nor informal, and neither investigative nor adjudicative.
- 19 A “transportation commission” is an enumerated entity within the definition of “local board.” “Transportation commission” is not defined in the Act, any regulations under it, or any statute. In *Hamilton (City) v. Ontario Ombudsman*,

³ *Ontario Ombudsman v. Hamilton (City)*, 2018 ONCA 502, online: <<https://canlii.ca/t/hsb9j>>.

⁴ *Kroetsch v. Integrity Commissioner for the City of Hamilton*, 2021 ONSC 7982, online: <<https://canlii.ca/t/jlbcj>>.

the Divisional Court noted that the term “transportation commission” is “not defined or connected to specific legislation describing its purposes.”⁵

- 20 SMART provides public transit service to passengers with disabilities on behalf of 10 municipalities. As members of the corporation, the municipalities exert control over the corporation by appointing directors to the Board. As a recipient of the Gas Tax Program, SMART is considered a “public transit system” run by municipalities.⁶
- 21 Sections 8 and 69 of the Act specifically contemplate that municipalities are authorized to pass by-laws to establish, operate and maintain passenger transportation systems, including public transit. Section 11 empowers municipalities to pass by-laws respecting the “health, safety and well-being of persons” and “protection of persons and property.” Public transit, and transportation systems for passengers with disabilities specifically, are services that are integral to the daily operations of a municipality.
- 22 Accordingly, SMART is a joint local board of the 10 member municipalities.

Municipal services corporations

- 23 Section 203 of the Act establishes the authority of two or more municipalities to create a corporation for the purpose of undertaking activities or services collectively authorized by the municipalities. These corporations are known as municipal services corporations. Under O. Reg. 599/06, in certain circumstances, municipal services corporations are deemed not to be local boards and are not subject to the open meeting rules.⁷
- 24 O. Reg. 599/06 sets out requirements for municipalities exercising powers related to municipal services corporations. The provision which deems a municipal services corporation not to be a local board only applies where a municipality “uses or expects to use” at least one of the following powers in relation to the corporation⁸:

⁵ *Hamilton (City) v. Ombudsman of Ontario*, 2017 ONSC 4865 at para 57 (CanLII), online: <<https://canlii.ca/t/h5mvm>>.

⁶ *Dedicated Funding for Public Transportation Act, 2013*, S.O. 2013, c. 2, Sched. 3 and *An Introduction to the Provincial Gas Tax Program*, Ministry of Transportation Transit Policy Branch, Kevin Dowling, online: <<https://www.ruralontarioinstitute.ca/uploads/userfiles/files/Kevin%20Dowling%20-%20Gas%20Tax%20Introduction.pdf>>.

⁷ O. Reg. 599/06 s. 21(1).

⁸ O. Reg. 599/06 s. 2(3).

- a. The power to establish a corporation;
 - b. The power to nominate or authorize a person to act as an incorporator of a corporation established by a municipality;
 - c. The power to nominate or authorize a person to act as a member of a corporation established by a public sector entity and carrying on business in the municipalities; or
 - d. The power to deal with securities of a corporation established by a public sector entity and carrying on business in the municipalities.
- 25** SMART was created in 1980 by private individuals. It was not incorporated pursuant to section 203 of the Act, which did not exist at the time. Even if SMART were to be considered a municipal services corporation, the member municipalities do not exercise any of the powers listed above in relation to SMART, therefore, the deeming provision does not apply to it.

Notice of Board of Directors meeting on May 26, 2023

- 26** I have found that SMART is a joint local board. Accordingly, the Board is obliged to hold meetings that are open to the public. This includes providing public notice for all meetings, ensuring that meetings are open unless one of the limited exceptions to the open meeting rules applies, adopting a resolution before moving into closed session that states the exception being relied upon and the general nature of the matter to be discussed, and voting in open session unless the vote is for a procedural matter or directions to staff.
- 27** The Board did not provide public notice of its meeting on May 26, 2023. The public was not permitted to attend the meeting. Accordingly, this meeting was improperly closed to the public.

Opinion

- 28** SMART is a joint local board that is subject to the open meeting rules in the *Municipal Act, 2001*. Under the circumstances, SMART should enact a procedure by-law governing meetings in accordance with the Act and comply with the Act's open meeting requirements.
- 29** The Board of Directors meeting on May 26, 2023 was improperly closed to the public.

Recommendations

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

Recommendation 1

All members of the Board of Directors for Saugeen Mobility and Regional Transit (SMART) should be vigilant in adhering to their individual and collective obligation to ensure that SMART complies with its responsibilities under the *Municipal Act, 2001*.

Recommendation 2

The Board of Directors for Saugeen Mobility and Regional Transit (SMART) should adopt a procedure by-law governing the calling, place and proceedings of meetings, in accordance with its obligations under the *Municipal Act, 2001*.

Report

- 31 SMART 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.
- 32 This report will be published on my Office's website and should also be made public by SMART. In accordance with subsection 239.2(12) of the *Municipal Act, 2001*, the Board of Directors 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