



Ombudsman Report

Investigation into complaints about a meeting held by the
Township of Southgate Fire Department Advisory and
Support Committee on October 22, 2019

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Ombudsman of Ontario
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Complaints

- 1 My Office received three complaints about a meeting held by the Township of Southgate's Fire Department Advisory and Support Committee ("the committee") on October 22, 2019.
- 2 The complainants alleged that the meeting began more than 30 minutes after its scheduled start time, in violation of the township's procedure by-law, and was therefore effectively closed to the public in violation of the open meeting rules.

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. 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 Township of Southgate.
- 6 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality's governing procedures have been observed.
- 7 To assist municipal councils, staff, and citizens, we have developed an online digest of open meeting decisions that contains summaries of the Ombudsman's open meeting cases. This searchable repository was created to provide easy access to the Ombudsman's past 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 a matter should or may be discussed in closed session, as well as issues related to open meeting procedure. Summaries of many of the Ombudsman's previous decisions can be found in the digest at <http://www.ombudsman.on.ca/digest>.

Investigative process

- 8 On February 5, 2020, I advised the municipality of our intent to investigate these complaints.
- 9 We reviewed the township's procedure by-law and relevant portions of the Act. We reviewed the meeting records, including the audio recording and minutes from the October 22, 2019 meeting. We also reviewed the terms of reference of the committee.
- 10 We spoke with each of the complainants, as well as the Deputy Clerk, who acted as recording secretary to the committee on the date in question.
- 11 My Office received full co-operation in this matter.

The Fire Department Advisory and Support Committee

- 12 The Fire Department Advisory and Support Committee was established by council to advise and assist the Fire Chief with planning and decision-making regarding fire department operations, policies, finances, training and legislative compliance.
- 13 The committee is comprised of three members of council. Two of these members are the Mayor and the Deputy Mayor, who acts as Committee Chair. Our review of the minutes of previous meetings held by the committee indicates that members of township staff, such as the Fire Chief, Chief Administrative Officer, and a recording secretary, typically attend meetings of the committee and are considered non-voting members. As such, they do not count towards quorum.
- 14 Under s. 238 of the *Municipal Act*, a committee “means any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards[.]”
- 15 Under s. 1(l) of the township's procedure by-law, a committee “means a Committee, Board, Task Force or other body constituted and appointed by Council, including the Committee of the Whole, with the exception of the Public Library Board[.]”

- 16 The Fire Department Advisory and Support Committee meets the definition of a committee under both the Act and the township's procedure by-law and is subject to the open meeting rules.

Southgate's procedure by-law

- 17 Section 10.2 of the township's procedure by-law states:

If a quorum is not present at a scheduled meeting thirty (30) minutes after the scheduled commencement time, the meeting shall stand adjourned until the date of the next regular meeting and the Clerk shall record the names of the members present[.]

- 18 Section 2.1 of the by-law further provides that the "rules of procedure set out in this by-law shall govern all proceedings of Council and committees".
- 19 This requirement applies to the Fire Department Advisory and Support Committee.

The October 22, 2019 committee meeting

- 20 The Fire Department Advisory and Support Committee gathered in council chambers for a scheduled meeting on October 22, 2019.
- 21 Notice had been provided to the public six days prior to the meeting when the agenda was posted on the municipality's website. We were told that notice had also been issued to all residents subscribed to the municipality's electronic notification system.
- 22 The meeting agenda stated that the meeting would be called to order at 2:00 p.m. in council chambers. We were told that at 2:00 p.m. on October 22, only one member of the committee (the Mayor) was present in council chambers. A number of municipal staff including the Deputy Clerk, the Acting Fire Chief, the Chief Administrative Officer, and the Fire Captain were also present.
- 23 Since only one member of the committee was present at 2:00 p.m., there was no quorum and, in accordance with the procedure by-law, the meeting could not begin.

- 24 We were told that, at or about 2:31 p.m., the Deputy Mayor arrived and quorum was achieved. However, discussion ensued amongst those present as to whether the meeting could proceed at this point, and the Deputy Clerk left the room to find the Clerk, so that she could provide advice and direction in this regard.
- 25 The Deputy Clerk told my Office that upon her return to chambers, she began to audio record the proceedings. My Office reviewed the recording.
- 26 While the recording's start time is not indicated, two minutes and 55 seconds into the recording, the Clerk can be heard stating that the time was 2:36 p.m. We determined, therefore, that the recording began at approximately 2:33 p.m.
- 27 The audio recording indicates that there was disagreement between some committee members and staff as to whether or not a quorum was present at 2:30 p.m. and whether the meeting could proceed as scheduled, given the requirement under the procedure by-law that it start within 30 minutes of its scheduled time.
- 28 The recording indicates that the Clerk was asked by those present whether the committee could have a 'discussion' rather than a 'meeting'. The Clerk cautioned the committee members that if they proceeded to hold a discussion, they could not make any decisions.
- 29 The recording indicates that those present agreed that instead of holding a formal meeting, the committee would instead simply brainstorm and discuss the issues on the agenda, reserving formal decisions for a future meeting.
- 30 After the Clerk left the room, the committee began its discussion of the items listed in the meeting agenda. According to our review of the recording, this discussion began at 2:38 p.m.
- 31 The committee discussed a "community safety and well-being plan" and the composition of a steering committee that would be established to implement the plan.
- 32 The committee also received an update on returning volunteer firefighters. According to the audio recording, the group agreed on and approved a plan to look for additional firefighters. Those present openly discussed and named individuals from the community and the likelihood of each returning to the department, as well as personal issues that might prevent them from returning.

- 33 The committee also discussed a new firefighter recruitment plan. There was general agreement with the proposed approach to this plan.
- 34 There was also discussion on vacant fire department positions, the fire department's capital and operating budgets, and other items related to the administration of the fire department.
- 35 The minutes and the audio recording confirm that, although no formal decisions or motions were made or voted on, those present openly expressed their agreement with ideas and courses of action put forward.
- 36 According to the minutes prepared by the recording secretary, the discussion concluded at 3:49 p.m., one hour and 11 minutes after it began.
- 37 We were told that while the doors of the room remained unlocked prior to and throughout the discussion, at no point did any members of the public attend to observe the proceedings.

Analysis

Was this a meeting?

- 38 The *Municipal Act* defines a meeting as:

any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

- (a) a quorum of members is present, and
- (b) members discuss or otherwise deal with a matter in a way that materially advances the business or decision-making of the council, local board, or committee.

- 39 The committee is composed of three voting members, who are all also members of council. At the time the discussion began, two were present. Therefore, a quorum of the members of the committee was present during the discussion.
- 40 With regard to the second branch of the test, I have found in previous cases that the phrase "materially advances the business or decision-making" of

the committee requires a consideration of the extent to which the discussion moved forward the business of the committee.¹

- 41 As I explained in a 2018 report about the Village of Casselman, “a council, committee or local board is likely to be materially advancing its business or decision-making ... when, for example, it votes, reaches an agreement, provides direction or input to staff, or discusses or debates a proposal, course of action, or strategy.”²
- 42 In this case, both the audio recording of the committee’s discussion and the minutes indicate that the committee advanced business or decision-making on a number of issues central to the fire department’s governance, including arriving at a consensus on approaches to attract new firefighters and retain existing volunteers. The records of the discussion also indicate that the committee provided direction to the Acting Fire Chief regarding two vacant fire department positions and the next steps in filling those positions.
- 43 Under the circumstances, I find that, on October 22, 2019, the committee held a meeting as defined by the *Municipal Act*, and the discussion was therefore subject to the open meeting provisions of the Act and the township’s procedural by-law.

Was the meeting illegally closed to the public?

- 44 We were advised by township staff who were present that no members of the public were present at 2:00 p.m., or half an hour later at 2.30 p.m. We also confirmed that no members of the public attempted to attend the meeting at any time after its 2:38 p.m. start. In fact, staff advised us that they could not recall members of the public ever attending a meeting of this committee in the past.
- 45 In the audio recording, committee members and others can be heard discussing the fact that the doors to the meeting room were being kept open in the event that any members of the public should arrive.
- 46 Our review confirmed that the meeting was held in council chambers as stated in the notice. While the discussion did not begin at the scheduled time, members of staff and one member of the committee were present at that time, such that if any members of the public had attempted to observe the meeting, they would have been informed of the delay. As such, I have

¹ *Casselman (Village of) (Re)*, 2018 ONOMBUD 11 (CanLII), <<https://canlii.ca/t/hvmtk>>.

² *Ibid* at para 41.

determined that no members of the public were prevented from observing the proceedings and that the meeting was not illegally closed to the public.

Did the meeting comply with the township's procedure by-law?

- 47 As set out above, section 10.2 of the township's procedure by-law states that:

If a quorum is not present at a scheduled meeting thirty (30) minutes after the scheduled commencement time, the meeting shall stand adjourned until the date of the next regular meeting and the Clerk shall record the names of the members present[.]

- 48 Our review determined that quorum was not achieved within 30 minutes of the scheduled meeting time on October 22, 2019. However, instead of complying with the by-law, the committee proceeded to discuss the agenda items while purporting to hold a discussion.
- 49 In the interest of accountability, the municipality should ensure the committee adheres to the requirements under the township's by-law. All members of the committee should ensure that the open meeting rules are followed whenever committee business is discussed.
- 50 In the future, should the township wish to provide council and committees with the flexibility to permit meetings to begin later, the township should amend its procedure by-law accordingly.

Opinion

- 51 I find that the discussion held by the Township of Southgate's Fire Department Advisory and Support Committee on October 22, 2019 was a meeting within the meaning of the *Municipal Act*, and was therefore subject to the open meeting provisions of the Act and the township's procedure by-law.
- 52 The meeting was not illegally closed to the public, and the township recorded meeting minutes in accordance with the Act and procedure by-law.

- 53 However, the committee contravened the township's procedure by-law when it proceeded to meet, while purporting to hold a discussion, where the procedure by-law did not permit beginning a meeting more than 30 minutes after the scheduled start time.

Recommendations

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

Recommendation 1:

All members of council and committees for the Township of Southgate 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 procedure by-law.

Recommendation 2:

The Township of Southgate should ensure that all meetings comply with its procedure by-law, including the requirement to adjourn any meeting where a quorum of members is not present within 30 minutes of the scheduled commencement of the meeting.

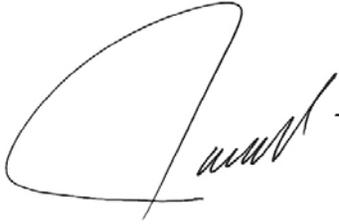
Recommendation 3:

The Township of Southgate should ensure that any discussion in which municipal business is materially advanced is recognized as a meeting subject to the open meeting rules.

Report

- 55 Council for the Township of Southgate was given the opportunity to review a preliminary version of this report and provide comments to our Office. In light of the restrictions in place related to COVID-19, some adjustments were made to our normal preliminary review process and we thank council for their co-operation and flexibility. Any comments received were considered in the preparation of this final report.

- 56 This report will be published on my Office's website, and should be made public by the Township of Southgate as well. In accordance with s. 239.2(12) of the *Municipal Act, 2001*, council should pass a resolution stating how it intends to address this report.



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