

**Pilon, Janet**

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**From:** clerk@hamilton.ca  
**Subject:** Closed Meeting Complaint re 2019-02-09 City Manager Recruitment Steering Committee  
**Attachments:** Letter re Closed Meeting Complaint 2019-02-09.pdf

**From:** Craig Burley  
**Sent:** February-09-19 6:50 PM  
**To:** clerk@hamilton.ca  
**Cc:** Office of the Mayor <mayor@hamilton.ca>; Farr, Jason <Jason.Farr@hamilton.ca>; Merulla, Sam <Sam.Merulla@hamilton.ca>; Collins, Chad <Chad.Collins@hamilton.ca>; Jackson, Tom <Tom.Jackson@hamilton.ca>; Whitehead, Terry <Terry.Whitehead@hamilton.ca>; Pearson, Maria <Maria.Pearson@hamilton.ca>; Johnson, Brenda <Brenda.Johnson@hamilton.ca>; Ferguson, Lloyd <Lloyd.Ferguson@hamilton.ca>; VanderBeek, Arlene <Arlene.VanderBeek@hamilton.ca>; Partridge, Judi <Judi.Partridge@hamilton.ca>; Wilson, Maureen <Maureen.Wilson@hamilton.ca>; Nann, Nrinder <Nrinder.Nann@hamilton.ca>; Clark, Brad <Brad.Clark@hamilton.ca>; Pauls, Esther <Esther.Pauls@hamilton.ca>; Danko, John-Paul <John-Paul.Danko@hamilton.ca>  
**Subject:** Closed Meeting Complaint re 2019-02-09 City Manager Recruitment Steering Committee

Dear Clerk, Councillors and Mayor,

I enclose for you a courtesy copy of a Closed Meeting Complaint submitted today to the Closed Meeting Investigator, regarding today's Resort and Spa Meeting of the City Manager Recruitment Steering Committee.

Please note my particular concern about the serious and deplorable departure from Canadian public standards in denying access to the public during the discussion of Declarations of Interest. **I do not want to see this repeated, ever, by bodies conducting this City's business.**

We the people not only have a right to clean government, we have a right to seen clean government be done. Denying the public access to the discussion of Declarations of Interest raises serious questions about what discussions may have occurred under that item. **You have every right to conduct certain matters *in camera*. You do not have the right, ever, to declare or discuss interests *in camera*.** I have asked the Investigator to review that item specifically, and its discussion, and to compare it to the minutes that are eventually produced. I will be asking for the recording myself of this open portion of the Resort and Spa Meeting through MFIPPA.

Wishing you all the very best in the ongoing budget debates,

Craig  
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Craig Burley  
Barrister & Solicitor  
[craig.burley@gmail.com](mailto:craig.burley@gmail.com)

*Craig Burley is located at 20 Hughson St. South, Suite 203, Hamilton, ON L8N 2A1 in the heart of downtown Hamilton. He can be reached at 905-870-0196.*



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Office of the Ombudsman (Ontario)  
Closed Meetings Investigator, City of Hamilton  
VIA ONLINE SUBMISSION

February 9, 2019

Dear Investigator,

I am writing to you to make a closed meeting complaint, under section 239.1 of the *Municipal Act, 2001*, (Ontario), S.O. 2001, c. 25 (the "**Municipal Act**"), in respect of:

- the meeting of the City of Hamilton CITY MANAGER'S RECRUITMENT STEERING COMMITTEE, Saturday, February 9, 2019, 8:30 A.M., Whiteoaks [sic] Conference Centre, 253 Taylor Road, Niagara-on-the-Lake, Ontario (the "**Resort and Spa Meeting**")

This meeting denied access to the public in several ways. I will enumerate them below.

**1. LOCATION OF THE RESORT AND SPA MEETING**

The Resort and Spa Meeting was held at the White Oaks Conference Resort and Spa (its trade name) in Niagara-on-the-Lake, Ontario, 66km from the City of Hamilton, in the Regional Municipality of Niagara. The Procedural By-Law, 18-270, of the City of Hamilton requires meetings of Council to be held "in the Council Chambers at City Hall in the City of Hamilton or at such other place within the City of Hamilton as Council may from time to time determine," (section 3.3) or, *for special meetings of Standing Committees only*, "at locations and times to permit convenient access for members of the public most affected by such a matter with at least 48 hours notice, delivering notice in accordance with subsections 3.4(3) and 3.4(4)." (section 5.4)

The location of the Resort and Spa Meeting was improper under the Procedural By-Law as it was not in the City of Hamilton. It was therefore also improper under section 236 of the *Municipal Act* as this section provides that meetings must be held at places that conform to the Procedural By-Law.

Even if the special meetings of Standing Committees section is allowed to apply, the Resort and Spa Meeting was not at the most convenient place for members of the public, and therefore was not in accordance with section 5.4 of the Procedural By-Law. Members of the public attempted to attend this meeting and found it impossible to transport there, as will be detailed below.

The remote scheduling of the Resort and Spa Meeting contrary to the *Municipal Act* effectively barred many Hamiltonians from this meeting.

## **2. TIMING OF THE RESORT AND SPA MEETING**

The Resort and Spa Meeting was originally scheduled for 9:00am on Saturday, February 9, 2019, was reported as such and notice was duly and timely given. It appears that at some point after 9:00am on Thursday, February 9, 2019, but before the Friday evening, that time was changed to 8:30am.

This would mean that there was insufficient notice of the Resort and Spa Meeting, as both subsection 5.5(2) and 3.3(4) require 48 hours' notice for such a meeting, and 3.2(1)(f) requires meetings otherwise to be at times approved by Council; when the Resort and Spa Meeting was approved, the schedule stated it was to take place at 9:00am. Even on the day of the meeting, the Committee meeting listing page still listed the Resort and Spa Meeting as happening at 9:00am. I can provide this document.

The selected time made the attendance of certain announced attendees at the Resort and Spa Meeting impossible. This appears to have been deliberate. Several proposed attendees (see section 3 below for further details) announced plans to attend in Niagara-on-the-Lake to observe the public portions of the Resort and Spa Meeting (they had also wanted to provide public delegations to the Steering Committee on Equity, Diversity and Inclusion matters, but had been denied by the Clerk). They announced plans to travel together via public transit, via GO, and the first bus put them there before 9am but not before 8:30am.

As such, the improper timing of the Resort and Spa Meeting served to deny access, and therefore close, the Resort and Spa Meeting to the public.

## **3. PHYSICAL DENIAL OF ACCESS TO THE RESORT AND SPA MEETING**

Several persons attempted to attend the public portions of the Resort and Spa Meeting nevertheless. These included Deanna Allain and Eric Gillis, who spoke about their denial of access in several public interviews. They took public transit as discussed above, and arrived at approximately 9:00am. I can provide contact information for them and link you to those public statements. They were ordered to produce invitations to the Resort and Spa Meeting, according to those public statements. When they could not produce invitations, they were physically ejected from White Oaks Conference Resort and Spa.

The Procedural By-Law, section 8.4, contains a requirement that Council make an announcement to "provide members of the public and the media time to return to the meeting room" when they return from closed session for more than 30 minutes. I submit that this was not done at the Resort and Spa Meeting, and the physical denial of access to White Oaks Conference Resort and Spa would have made such a "return" a mockery in any case.



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The physical denial of access to members of the public to the Resort and Spa Meeting, I submit, violates section 239 of the Municipal Act.

**4. DENIAL OF DELEGATION RIGHTS**

Members of the public submitted delegation requests in a timely manner to the Steering Committee but were rebuffed. I note public statements by multiple individuals and I will provide these to you.

**PARTICULAR CONCERN RE DECLARATIONS OF INTEREST**

I have particular concerns about the public having been entirely excluded from the Declarations of Interest public portions of this meeting. The need for clean government in the hiring of a top executive is critical. We have seen recent examples from the Regional Municipality of Niagara of the danger to the public that happens when there is a lack of transparency and cleanliness in the hiring of municipal chief executives. **I have grave concerns over the probity of allowing a public meeting of this sort to take place without the discussion of Declarations of Interest being observed. I urge the Ombudsman, as part of this investigation, to please review the recording of the public portions of this meeting to ensure that the recorded minutes of the Declarations of Interest match the actual discussions that took place amongst the members of the Committee about this item. For such matters to be discussed in secret only is a fundamental erosion of the standards of probity we expect in Canadian public life.**

We do not know why there was a need for such furious secrecy of the open, public portions of the Resort and Spa Meeting. But there was, and my gravest concerns are for its probity.

Please contact me at [craig@craigburley.com](mailto:craig@craigburley.com) to discuss the details of this complaint. Thank you.

With many thanks and regards for your service to the City,

Craig Burley  
Barrister and Solicitor