

**BY EMAIL**

Council
City of Hamilton
71 Main Street West, 1st Floor
Hamilton, ON L8P 4Y5

April 22, 2021

Dear Members of Council for the City of Hamilton:

Re: Report – Office of the Ontario Ombudsman

I have completed my investigation into whether the LGBTQ Advisory Committee for the City of Hamilton held an improper closed meeting on October 20, 2020. Please find my final report enclosed.

The City agreed to make my report available to the public, and we ask that this be done no later than the next council meeting. In accordance with s. 239.2(12) of the *Municipal Act, 2001*, the City should pass a resolution stating how it intends to address this report.

Pursuant to section 14.1(9) of the *Ombudsman Act*, I will also post a copy of the report on my website at www.ombudsman.on.ca.

Yours truly,

Paul Dubé
Ombudsman of Ontario

cc. City Clerk



Ombudsman Report

**Investigation into a complaint about a
meeting held by the Lesbian, Gay, Bisexual,
Transgender and Queer Advisory Committee
for the City of Hamilton on October 20, 2020**

**Paul Dubé
Ombudsman of Ontario
April 2021**

Complaint

- 1 My Office received a complaint that the Lesbian, Gay, Bisexual, Transgender and Queer Advisory Committee (the “LGBTQ Advisory Committee” or the “committee”) for the City of Hamilton (the “City”) held a virtual meeting on October 20, 2020 that was not open to the public contrary to the *Municipal Act, 2001*¹ (the “Act”). The complaint alleged that during the virtual meeting, the livestream broadcast went down for approximately 23 minutes. During this time, the public was not able to watch the meeting in progress.

Ombudsman jurisdiction

- 2 Under the *Municipal Act*, all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 3 As of January 1, 2008, the Act gives anyone 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.
- 4 The Ombudsman is the closed meeting investigator for the City of Hamilton.
- 5 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality’s governing procedures have been observed.
- 6 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 procedures. Summaries of the Ombudsman’s previous decisions can be found in the digest: www.ombudsman.on.ca/digest.

¹ SO 2001, c 25.

Investigative process

- 7 On November 20, 2020, we advised the City of our intent to investigate the October 20, 2020 meeting.
- 8 Members of my Office's open meeting team reviewed relevant portions of the City's by-laws and policies, and the Act. We reviewed the meeting records from the meeting and documentation we were provided by the City. We interviewed the committee's staff member liaison and the Chair of the committee.
- 9 My Office received full co-operation in this matter.

Committee procedures

- 10 The City's procedural by-law (By-law No. 18-270) defines "committee" as a standing committee, sub-committee, selection committee or advisory committee or task force established by council from time to time. Under the procedural by-law, council may create advisory committees in response to specific matters requiring immediate or long-term attention.
- 11 Section 8 of the procedural by-law states that no meeting of council or a committee shall be closed to the public unless in accordance with the *Municipal Act, 2001*.
- 12 Section 9 of the procedural by-law permits electronic participation during meetings by members of advisory committees, including the LGBTQ Advisory Committee. Appendix L to the procedural by-law contains rules of procedures during electronic meetings for advisory committees.
- 13 The City updated its Advisory Committee Procedural Handbook to include guidance for holding and conducting electronic meetings. Page 11 of the Handbook provides steps advisory committees should follow if technical issues prevent public attendance during an electronic meeting:

If the meeting is interrupted and cannot proceed with its live feed, the meeting will be recessed for up to 15 minutes, or until the live feed is resumed. If the live feed cannot be resumed within 15 minutes, the meeting will be considered adjourned. The Committee will meet at the next regularly scheduled meeting date.

If the meeting is interrupted and its live feed cannot be resumed, the names of the Committee members present shall be recorded in the minutes of the meeting and any decisions of Committee up to the point in time of the interruption.

- 14 The Handbook was distributed to staff liaisons who were instructed by the Clerk's department to provide the Handbook to the City's advisory committees. The Handbook and the changes to the procedural by-law for electronic meetings was provided to the committee in August 2020.

Background

The LGBTQ Advisory Committee

- 15 The committee reports to City council on issues and concerns pertaining to the LGBTQ community. Its mandate includes eliminating barriers experienced by LGBTQ communities by making recommendations to council and staff.
- 16 The committee is comprised of one council member and nine citizen members.
- 17 Under s. 238 of the 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[.]" A body can also be a committee if deemed so by municipal by-law.
- 18 All meetings of council, local boards, and committees of council must follow the open meeting rules contained in the Act, as well as comply with the requirements of the procedure by-law.
- 19 The definition of committee under section 1.1 of the City's procedural by-law includes advisory committees:

"Committee" means a Standing Committee, Sub-Committee, Selection Committee or an Advisory Committee or Task Force established by Council from time to time.

- 20 The LGBTQ advisory committee's membership is not composed of at least 50 percent council members. However, the committee meets the definition of a "committee" as an advisory committee under the City's procedural by-law and is subject to the open meeting rules.

The October 20, 2020 committee meeting

- 21 The committee met virtually on October 20, 2020. The committee Chair told my Office that this was the second time the committee was meeting electronically and the first meeting with a full agenda. As such, the committee members were still familiarizing themselves with the electronic meeting technology and the process of conducting an electronic meeting.
- 22 In addition to the committee members, a staff liaison was also present during the meeting. The role of the staff liaison is to assist the committee with administration, act as a liaison between the committee and the City, and provide guidance during meetings. The Clerk told my Office that the staff liaison was provided with training on the virtual meeting process and the platform used to host virtual meetings. With respect to electronic meetings, the staff liaison is responsible for inviting committee members to meetings, acting as host during a meeting, and initiating the live broadcast of a meeting on YouTube. In order to livestream an electronic meeting, the staff liaison must be connected to the City's VPN and enter a unique key into the electronic meeting platform. Once the key is entered, the meeting is automatically broadcast on YouTube. Only the staff liaison is provided with the unique key by the City.
- 23 On October 20, the staff liaison was working from home and using her home internet connection to host the committee's electronic meeting and stream the meeting on YouTube. The staff liaison told my Office that she was also connected to the City's VPN while the meeting was ongoing.
- 24 During the committee's discussion about item 8.4 on the meeting agenda, the staff liaison's home Wi-Fi stopped working. As a result, the staff liaison dropped out of the electronic meeting and the YouTube livestream ceased. Members of the public who were watching the meeting on YouTube were unable to access the livestream.
- 25 The staff liaison told my Office that she assumed that, as the host of the meeting, when she dropped out of the electronic meeting, the meeting had ended for all of the participants. The staff liaison texted the committee chair to inform him that her internet had stopped working. The committee chair acknowledged her text but did not inform her that the meeting was ongoing.

- 26 The committee chair told my Office initially the committee did not notice that the staff liaison had left the meeting or that the livestream had stopped. During this period, the meeting continued. After a few minutes, the committee members noticed that the staff liaison was no longer present in the virtual meeting and the livestream was no longer working. After a brief discussion, the committee decided to continue the meeting.
- 27 Eventually, the staff liaison reconnected to the virtual meeting and re-connected the livestream on YouTube.
- 28 Neither the committee chair nor the staff liaison followed the procedure contained in the Advisory Committee Procedural Handbook when the meeting livestream was interrupted.
- 29 The next day, city staff investigated the incident and confirmed that when the staff liaison's home Wi-Fi went down, her connection the City's VPN was also severed. As a result, the livestream broadcast of the meeting stopped for approximately 23 minutes.

Analysis

Electronic meetings in the City of Hamilton

- 30 The *Municipal Act, 2001* requires that all meetings of a municipal council, local board, or a committee of either of them be open to the public, except in limited circumstances set out in s. 239 of the Act. The Act also sets procedural rules for closed meetings.
- 31 The Supreme Court of Canada acknowledged the importance of the open meeting rules in *London (City) v. RSJ Holdings Inc.*² According to the Supreme Court, the intent of the open meeting rules is to “increase public confidence in the integrity of local government, by ensuring the open and transparent exercise of municipal power”.³ A fundamental part of this is the public’s “right to observe the municipal government in process.”⁴
- 32 Municipalities are now permitted to hold electronic meetings. In response to the COVID-19 pandemic, the province amended the Act to provide that members of councils, local boards and committees who participate

² *London (City) v RSJ Holdings Inc.*, 2007 SCC 29, <<https://canlii.ca/t/1rtq1>>.

³ *Ibid* at para 19.

⁴ *Ibid* at para 32.

electronically in meetings may be counted for purposes of quorum. However, the amendments did not change the Act's basic requirement that meetings be open to the public, or a municipality's obligations under the open meeting rules.

- 33 On March 20, 2020, the City of Hamilton amended its procedural by-law to allow members of council to participate electronically in committee and council meetings. The City made further amendments to permit the use of electronic participation during citizen advisory committee meetings. City staff were deployed to support advisory committees by hosting electronic meetings and managing livestreaming to the public.
- 34 The City also updated the Advisory Committee Procedural Handbook to include procedures for holding and conducting electronic meetings. If an electronic meeting or its livestream is interrupted, the meeting should be recessed for up to 15 minutes and then adjourned if the livestream cannot be reconnected.

October 20, 2020 meeting

- 35 The City and the committee have acknowledged that the livestream of the October 20, 2020 meeting was unavailable for approximately 23 minutes due to technical issues. Accordingly, the meeting was improperly closed to the public during that time contrary to the *Municipal Act, 2001*.
- 36 In preparing for electronic meetings, the City established procedures to account for technology issues that could interrupt an electronic meeting. The Advisory Committee Procedural Handbook outlines the steps that committees must take in the event that the livestream of an electronic meeting goes down. Had those procedures been followed, the meeting may have been recessed or adjourned when the livestream went down rather than improperly closed to the public.
- 37 I recognize the City's efforts in developing electronic meeting procedures, which is a best practice recommendation that my Office has made in a previous report that considered virtual meetings.⁵ In that report, I also recommended that municipalities should consider having a second method for streaming the meeting so that they can switch to another service if there are issues with the first. Municipalities may also wish to consider having a staff member log in to the live stream as if they were a member of the public to monitor its quality and clarity.

⁵ *Westport (Village of) (Re)*, 2021 ONOMBUD 5 (CanLII), <<https://canlii.ca/t/jdpvc>>.

- 38 It is also important that municipalities provide training to members of council, local boards, and committees on electronic meeting policies and procedures. In this case, while the City provided the committee with the updated Handbook, my Office was told that the committee chair had also requested training from the City on the electronic meeting software. In response, the City provided the chair with some tips on how to run an electronic meeting, including how to take roll call and use the chat function to request technical assistance from staff. However, this advice did not address what to do if technical issues prevented the public from accessing the meeting.
- 39 In response to a preliminary version of this report, the Clerk informed my Office that the City has dedicated additional support for advisory committees and staff liaisons to ensure that electronic meetings adhere to the open meeting rules in future - such as providing additional training to staff liaisons on the City's electronic meeting procedures and creating a training video as a resource tool. I commend the City for these steps.

Opinion

- 40 The Lesbian, Gay, Bisexual, Transgender and Queer Advisory Committee for the City of Hamilton contravened the *Municipal Act, 2001*, on October 20, 2020 when it held a portion of a meeting that the public was unable to attend due to technical issues. While the meeting was closed inadvertently, the committee was aware that the livestream had failed and chose to continue the meeting anyways.

Recommendations

- 41 I make the following recommendations to assist the City of Hamilton and the LGBTQ Advisory Committee in fulfilling their obligations under the Act and enhancing the transparency of their meetings.

Recommendation 1


All members of the LGBTQ Advisory Committee for the City of Hamilton 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 procedure by-law.

Recommendation 2

The City of Hamilton should review its policy for the conduct of virtual meetings and ensure that staff members and advisory committee members receive training on the policy's content, especially the steps to be taken if technical issues prevent public attendance during a meeting.

Report

- 42 Council for the City of Hamilton 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 the COVID-19 pandemic, some adjustments were made to our normal preliminary review process and we thank the City of Hamilton for their co-operation and flexibility. Any comments received were considered in the preparation of this final report.
- 43 This report will be published on my Office's website, and should be made public by the City of Hamilton 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.



Paul Dubé
Ombudsman of Ontario