



Ombudsman Report

**Investigation into working group meetings
held by the Off Road Vehicle Task Force
of the City of Kawartha Lakes
on February 19 and March 4, 2021**

**Paul Dubé
Ombudsman of Ontario
April 2022**

Complaint

- 1 In September 2021, my Office received a complaint about two working group meetings of the Off Road Vehicle Task Force (the “Task Force”) of the City of Kawartha Lakes (the “City”) held on February 19, 2021 and March 4, 2021. The complainant alleged that the meetings were held in violation of the open meeting rules found in the *Municipal Act, 2001*¹ (the “Act”) because they were not open to the public.
- 2 My investigation has determined that the Task Force’s working group meetings contravened the Act’s open meeting requirements.

Ombudsman jurisdiction

- 3 Under the Act, 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 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 investigator to review complaints about whether the municipality or a local board has complied with the open meeting rules.
- 5 The Ombudsman is the closed meeting investigator for the City of Kawartha Lakes.
- 6 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the applicable procedure by-law have been observed.
- 7 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

¹ *Municipal Act, 2001*, SO 2001 c 25.

Ombudsman's previous decisions can be found in the digest:
www.ombudsman.on.ca/digest.

Investigative process

- 8 In November 2021, we advised the City of our intent to investigate this complaint.
- 9 Members of my Office's open meeting team reviewed relevant portions of the City's procedure by-law and the Act. We also reviewed the Task Force's Terms of Reference and meeting records.
- 10 We interviewed the Chair, Vice Chair, and Recording Secretary of the Task Force. We also interviewed the City's Clerk and Chief Administrative Officer.
- 11 My Office received full co-operation in this matter.

Procedure by-law

- 12 Section 238(2) of the Act requires municipalities to pass a procedure by-law that governs the calling, place, and proceedings of meetings. Accordingly, the City has passed By-law 2020-001.
- 13 The City's procedure by-law defines a task force as "an Advisory Committee with approved terms of reference that is formed for a set time period sufficient to make recommendations to the Council on a specific issue."² An advisory committee is defined as "any special purpose Committee created by Council with approved Terms of Reference to provide recommendations or advice to Council."³

The Off Road Vehicle Task Force

- 14 The Task Force was established on October 20, 2020. Its Terms of Reference indicate that the purpose of the Task Force was to provide advice and recommendations to council on the use of off-road vehicles on

² City of Kawartha Lakes, By-law 2020-001, "Procedural By-law" (28 January 2020) at s 1.01.

³ *Ibid.*

municipal roads.⁴ The Task Force held its final meeting on November 26, 2021.

- 15 The Task Force was composed of three councillors and four members of the public.
- 16 According to its Terms of Reference, the Task Force was charged with reviewing and providing recommendations on the use of municipal rights of way as trail linkages for off-road vehicles, as well as restrictions or prohibitions related to the use of off-road vehicles. It was also tasked with facilitating public and stakeholder consultation through regular meetings.⁵
- 17 The Terms of Reference contemplate two different types of meetings: Formal meetings and working group meetings. They say that the purpose of working group meetings was “to advance the efforts of the work plan,” a term which is not defined.⁶ Under the Terms of Reference, minutes were not required for working group meetings, but notes from these meetings had to be taken and forwarded to the City Clerk’s office.⁷ The Terms of Reference specifically indicate that the Task Force was not permitted to hold closed meetings.

Analysis

- 18 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-law,⁸ or is considered by the municipality to be a committee.⁹
- 19 In assessing if a body is a “committee,” my Office also considers its role and function, as the Act defines a committee as an advisory or other committee or similar entity. My Office has found that a body that exercises

⁴ City of Kawartha Lakes, “Terms of Reference: Off Road Vehicle Use of City Road - Task Force” (15 December 2020) at page 1.

⁵ *Ibid* at page 2.

⁶ *Supra* note 3 at page 4.

⁷ *Ibid* at page 4.

⁸ *Niagara (Regional Municipality of) (Re)*, 2015 ONOMBUD 37 (CanLII) <<https://canlii.ca/t/gtp7n>>; *Hamilton (City of) (Re)*, 2021 ONOMBUD 9 (CanLII) <<https://canlii.ca/t/jfj02>>.

⁹ *Hornepayne (Township of) (Re)*, 2016 ONOMBUD 20 (CanLII) <<https://canlii.ca/t/h2st9>>.

delegated authority from council to make decisions or recommendations is likely to be a committee.¹⁰ A body is not likely to be a committee if it serves an administrative purpose, merely exchanges information, or advances previously decided positions.¹¹

- 20 The composition of the Task Force did not meet the definition of a committee under the Act, as only three of the seven members of the Task Force were councillors. However, the procedure by-law indicates that task forces are advisory committees of council, and the Task Force was mandated to provide advice and recommendations to council.
- 21 Because the City designated the Task Force as a committee of council and it was mandated to provide advice and recommendations to council, the Task Force was obligated to comply with the Act's open meeting requirements.

February 19, 2021 working group meeting

- 22 On February 19, 2021, the Task Force held a regular meeting that was livestreamed on YouTube. All seven members were in attendance. At the end of this meeting, the Chair indicated that the Task Force members would meet for a working group meeting shortly after. As the Task Force did not consider this working group meeting to be subject to the Act's open meeting requirements, notice was not provided to the public and the public was not able to attend.
- 23 The notes from the working group meeting show that it began at 11:00 a.m. Formal attendance was not taken for the working group meeting, but we were told that four of the members certainly attended and that the other three members were likely in attendance as well.
- 24 We were told that at the working group meeting, the group created a list of questions that either had been commonly posed by the community or that members thought should pre-emptively be answered. The Task Force discussed the answers to these questions and created a list of frequently asked questions that was later posted to the Task Force's page on the City's website. This included information such as the time periods in which

¹⁰ *West Parry Sound (Heads of Council in) (Re)*, 2015 ONOMBUD 38 (CanLII) <<https://canlii.ca/t/gtp7q>>.

¹¹ *Hamilton (City of) (Re)*, 2014 ONOMBUD 11 (CanLII) <<https://canlii.ca/t/gtmh8>>; *West Parry Sound (Heads of Council in) (Re)*, 2015 ONOMBUD 38 (CanLII) <<https://canlii.ca/t/gtp7q>>; *Deep River (Town of) (Re)*, 2017 ONOMBUD 17 (CanLII) <<https://canlii.ca/t/hqspf>>.

off-road vehicles could operate and the requirements for carrying a passenger in such a vehicle.

- 25 The notes from this working group meeting also indicate that the group discussed which municipal roads could be used as trail linkages for off-road vehicles. A list of trail connectors and recommended travel routes was debated and created at this meeting. We were told that members proposed routes during this meeting and discussed the feasibility of using the identified roads. The group further discussed and added to this list at a later working group meeting prior to presenting it to council.

Analysis

- 26 The Act defines a meeting as “any regular, special or other meeting of council, of a local board, or of a committee of either of them, where,
- i. a quorum of members is present, and
 - ii. members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.”¹²
- 27 While there was no formal attendance taken for the working group meeting, at least four of the seven Task Force members were confirmed to have attended this meeting. This constituted a quorum of members.
- 28 With respect to the second part of the test, my Office has found that material advancement requires a consideration of the extent to which the discussion moved the business of the committee forward.¹³ We have identified factual indicators of material advancement such as discussing or debating a proposal, course of action or strategy.¹⁴
- 29 During the February 19, 2021 working group meeting, the Task Force created a document with frequently asked questions and discussed their answers. This document contained information previously in existence and did not involve recommendations that needed to be taken to council. It was published directly to the Task Force’s page on the City website. Creating this document did not involve debating the use of municipal roads as trail linkages and the group did not develop recommendations to council about the use of off-road vehicles. As this discussion did not further the general activities of the Task Force as listed in the Terms of Reference, drafting this document did not materially advance the business or decision-making of

¹² *Supra* note 1 at s 238(1).

¹³ *Southgate (Township of) (Re)*, 2020 ONOMBUD 7 (CanLII) <<https://canlii.ca/t/jc42r>>.

¹⁴ *Casselman (Village of) (Re)*, 2018 ONOMBUD 11 (CanLII) <<https://canlii.ca/t/hvmtk>> at 41.

the Task Force and this portion of the discussion was permitted under the Act.

- 30 However, the Task Force members also discussed the feasibility of using certain municipal roads as trail linkages for off-road vehicles, and debated which of those should be recommended to council. This discussion specifically came within the Task Force's designated mandate.¹⁵ The product of this discussion was a list of roads that the members thought could be used as trail linkages. In debating the merits and problems associated with the use of certain roads and in making decisions on which of them should be recommended to council, the members materially advanced the business of the Task Force. Accordingly, this portion of the discussion constituted a meeting subject to the Act's open meeting requirements.
- 31 As the Task Force did not consider any part of the working group meeting to be subject to the Act's open meeting requirements, no notice of the meeting was provided, formal minutes were not kept, and the public was not allowed to attend the meeting. This contravened the Act's open meeting requirements.

March 4, 2021 working group meeting

- 32 At 10:02 a.m. on March 4, 2021, the Task Force held a working group meeting. As the Task Force did not consider this meeting to be subject to the Act's open meeting requirements, notice was not provided to the public and the public was not able to attend. According to the notes from that meeting, five of the seven members were in attendance. Afterwards, at 11:00 a.m., the Task Force held a regular meeting that was livestreamed on YouTube.
- 33 We were told that at the working group meeting, the Task Force members finished compiling the list of roads they intended to recommend as trail linkages. This is the list that was started at the February 19, 2021 working group meeting. The notes from this meeting show that the intention was for the list to be finalized and then brought to the public meeting later that morning.
- 34 During that working group meeting, the Task Force also created a list of general recommendations pertaining to the requirements for off-road vehicle operators and the use of rural roads for off-road vehicles. These

¹⁵ *Supra* note 6.

recommendations were presented to council at a May 4, 2021 Committee of the Whole meeting.

Analysis

- 35** As noted above, to be considered a meeting there must be both a quorum of members present and the discussion must materially advance the business of the committee.
- 36** At the working group meeting on March 4, 2021, five of the seven members were present, constituting a quorum.
- 37** The second part of the test requires that the group materially advance the business or decision-making of the committee. The mission of the Task Force was to provide recommendations to council related to off-road vehicles.¹⁶ While it was not a decision-making body itself, its function and purpose was to produce recommendations. At the working group meeting, the members finished the list of recommended roads to be used as municipal trail linkages. The members also produced a separate list of Task Force recommendations about opening rural roads to off-road vehicles and what requirements should be placed on off-road vehicle operators. Further, it provided recommendations on establishing a two-year pilot program for these changes. The list of roads and the list of recommendations were presented to council on May 4, 2021.
- 38** The Task Force was created to discuss and produce recommendations for council regarding off-road vehicles. The discussion during the March 4, 2021 working group meeting materially advanced the Task Force's business and decision-making since it led to recommendations about off-road vehicles that were later presented to council. This gathering therefore constituted a meeting under the Act.
- 39** As this was not considered by the Task Force to be a meeting subject to the Act, notice was not provided, formal minutes were not kept, and the public was not able to attend. The meeting therefore contravened the Act's open meeting requirements.
- 40** In the course of investigating this complaint, we were told that the Task Force was dissolved after making its recommendations to council.

¹⁶ *Supra* note 5.

- 41 We were also told that the procedure by-law and the standard language used when drafting the City's terms of reference documents for task forces will be updated. We were told that changes will be made to clarify when and why a working group can be created out of a task force. We were also told that these updates will outline the types of discussions and the type of work that can be undertaken in a private working group meeting. I understand that the intent is to assist task forces in better understanding the role and limitations of a working group. I acknowledge the City's goal of improving the accountability and transparency of its task force meeting practices, and encourage the City to carefully consider the recommendations of this report while updating its procedures.

Opinion

- 42 The Off Road Vehicle Task Force contravened the *Municipal Act, 2001* on February 19, 2021 and March 4, 2021, by holding working group meetings that did not comply with the open meeting requirements. As the Task Force did not believe that these meetings were subject to the Act, notice was not provided, the public was not able to attend, and an official record in the form of meeting minutes was not kept.
- 43 In undertaking to update the procedure by-law and the language of the City's terms of reference documents, the City is taking positive steps to address issues with the meeting practices of task forces. I encourage the City to ensure that future task forces operate consistently with the open meeting requirements under the Act.

Recommendations

- 44 As the Off Road Vehicle Task Force has now been dissolved, I make the following recommendations to assist the City of Kawartha Lakes in fulfilling its obligations under the Act and enhancing the transparency of its meetings in the future:

Recommendation 1:

Members of task forces for the City of Kawartha Lakes should be vigilant in adhering to their individual and collective obligation to ensure compliance with their responsibilities under the *Municipal Act, 2001*.

Recommendation 2:

Members of task forces for the City of Kawartha Lakes should ensure that any discussion in which a quorum of members discusses a matter in a way that materially advances the task force's business or decision-making is recognized as a meeting subject to the open meeting rules.

Recommendation 3:

The City of Kawartha Lakes should provide future task forces with support and training regarding the closed meeting provisions of the *Municipal Act, 2001* and their application to the work of task forces.

Report

- 45 Council for the City of Kawartha Lakes was given the opportunity to review a preliminary version of this report and provide comments to my Office. No comments were received.
- 46 Due to the restrictions in place related to COVID-19, some adjustments were made to our normal preliminary review process and we thank council and staff for their co-operation and flexibility.
- 47 This report will be published on my Office's website, and should be made public by the City of Kawartha Lakes as well. In accordance with s. 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