

J. Paul Dubé, Ombudsman

BY EMAIL

Council for the City of Hamilton
Hamilton City Hall
71 Main Street West
Hamilton, Ontario L8P 4Y5

July 4, 2019

Dear Members of Council for the City of Hamilton:

Re: Closed meeting complaint, March 1, 2019

My Office received a complaint that the City of Hamilton's Selection Committee held a vote in closed session on March 1, 2019 that did not comply with the open meeting rules in the *Municipal Act, 2001*. The complaint alleged that the committee violated the open meeting rules by selecting a candidate for the city's Police Services Board during the closed meeting.

The Ombudsman is the closed meeting investigator for the City of Hamilton. After reviewing the complaint and materials provided by the city, I have determined that the committee's vote complied with the open meeting rules in the *Municipal Act, 2001*.

Review

My Office reviewed the information provided by the complainant, and the open and closed session agendas and minutes of the March 1, 2019 committee meeting. We also spoke with the Legislative Coordinator of the committee and the Acting City Clerk.

During its March 1, 2019 meeting, the Selection Committee moved into closed session under the exception in section 293(2)(b) of the Act for personal matters about an identifiable individual. The resolution to proceed in closed session described the subject matter of the discussion as "respecting interviews for the Hamilton Police Services Board."

The open session minutes indicate that "[i]nterviews were conducted and staff were given direction in Closed Session." The minutes also state that the committee's recommendation with respect to appointments to the Hamilton Police Services Board for the 2018-2022 term was to be released publicly following approval by council.

According to the closed meeting minutes, the committee resolved that a named individual be referred to the March 27, 2019 council meeting for consideration as a potential appointee to the Hamilton Police Services Board. The committee directed staff to prepare a motion bringing forward its recommendation regarding a particular appointment, to be voted on in open session at the next council meeting. The committee did not make a decision with respect to the appointment, but rather provided direction to staff with respect to preparing the motion for council.

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Analysis

Section 239(6)(b) of the *Municipal Act, 2001* prohibits voting during a closed session unless the vote is for a procedural matter or for giving directions to staff.

In a 2015 report about the Town of South Bruce Peninsula, my Office considered a series of votes taken in closed session with respect to the purchase of land.¹ Council directed staff to make an offer, amend that offer in response to a counteroffer, and finally to accept the offer of the seller. The report explains that these votes were taken to direct staff, and that the land purchase was not complete until council voted on the matter in open session. Accordingly, the directions to staff were permitted in camera.

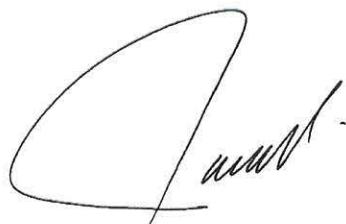
In this case, Hamilton's Selection Committee voted to direct staff to bring a matter forward for council consideration. Staff followed that direction by preparing the motion and ensuring it was brought to council. The committee's recommendation was considered in an open session of council on March 27, 2019. In a recorded vote on item 10.3, council voted to appoint Fred Bennink to the Police Services Board for a term commencing March 27, 2019 and continuing until a successor is chosen.

The appointment to the city's Police Services Board was not complete until council voted on the appointment. The committee's vote did not violate the open meeting rules.

Conclusion

My Office's review found that an improper vote did not occur during the March 1, 2019 closed session. This letter should be shared with council for the City of Hamilton at its next meeting. I will also make a copy of this letter public on my website at www.ombudsman.on.ca.

Sincerely,



Paul Dube
Ombudsman of Ontario

Cc: Janet Pilon, Acting Clerk

¹ South Bruce Peninsula (Town of) (Re), 2015 ONOMBUD 25 (CanLII) **at para. 68, online:** <<https://www.canlii.org/en/on/onombud/doc/2015/2015onombud25/2015onombud25.html>>.