



ADR Chambers Ombuds Office

www.municipalombuds.ca

Telephone: 1.800.941.3655

Fax: 1.877.803.5127

Email: ombudsman@adr.ca

P.O. Box 1006, 31 Adelaide St. E, Toronto, Ontario M5C 2K4

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August 27, 2024

**BY E-MAIL:** samantha.yew@burlington.ca

Samantha Yew, City Clerk  
The Corporation of the City of Burlington  
Office of the City Clerk  
426 Brant Street  
Burlington, ON L7R 3Z6

Dear Madam:

**RE:** MUN-29735-0224 Complaint against the City of Burlington

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Our investigation of the above complaint against the City of Burlington has been completed, and I have enclosed the Ombudsman's report.

As you are aware, both parties were provided the opportunity to comment on the draft report. The Ombudsman then takes the comments into account and makes any modifications deemed appropriate. In this case, other than anonymizing the report, the report is unchanged.

Our file in this matter is now closed.

Yours sincerely,



Peter Maniatakis  
Deputy Ombuds



## ADRO INVESTIGATION REPORT

**Complainant:** Complainant  
**Complaint Reference Number:** MUN-29735-0224  
**Complaint Commenced:** February 12, 2024  
**Date Complaint Assigned to Investigator:** May 15, 2024  
**Date All Required Information Received:** July 10, 2024  
**Report Date:** August 27, 2024  
**Investigator:** Ben Drory

### Terms of Reference

This report has been prepared pursuant to the ADR Chambers Ombuds Office (ADRO) Terms of Reference, which describe the scope of ADRO's mandate, its process upon receiving Complaints, and the authority and responsibilities of an ADRO Investigator. Defined terms used below have the same meaning as in the Terms of Reference.

### Complaint – History of Proceedings

The Complainant is a resident of the City of Burlington (the “City”), and complained that the City improperly held a Pipeline to Permit Committee meeting on February 8, 2024, without the committee being defined in the City’s Procedure By-Law. The Complainant wrote the following in his February 12, 2024 Complaint Submission Form (“CSF”) to ADRO:

*On February 8, the City of Burlington held a standing committee meeting for which there is no information in the Procedure By-law.*

*The Terms of Reference for the Committee was passed in November 2, 2024.*

*Staff was supposed to update the Procedure By-law but have not done so.*

*The Meeting was therefore not held in accordance with the Municipal Act, which requires the time and place of meetings to be established in a Procedure Bylaw.*

*I informed the Clerks office and the relevant councillors of the problem but they held the meeting anyway.*

...

*Clerks office of the City of Burlington needs to get remedial training in its responsibilities under the Municipal Act. This is not the first problem they have created.*

The Complainant attached an email he sent to the Clerks Office and City Council on the morning of February 7, 2024:

**From:** Complainant

**To:** Clerks Office

**Cc:** Mayor; Councillor One; Councillor Two; Councillor Three; Councillor Four; Councillor Five; Councillor Six; + 3 publishers

**Subject:** Pipeline to Committee Meeting

**Sent:** February 7, 2024, 10:46 am

*This is my objection to the Pipeline to Permit Committee meeting scheduled for Thursday February 8, 2024.*

*This meeting violates the Municipal act as no such committee exists in the Procedure By-law.*

*The highlighted section in the attached report shows that Staff were suppose to amend the Procedure By-law in a timely manner.*

*Staff has not as yet presented an amended Procedure By-law to council for approval.*

*Should this meeting go ahead I will be filing another complaint with the Ombudsman.*

*The Rule of Law is fundamental to the functioning of a democracy.*

...

*It is past time that Council actually learns the rules under which it is supposed to operate.*

The Pipeline to Permit Committee's Terms of Reference<sup>1</sup> were presented to the City's Corporate Services, Strategy, Risk and Accountability Committee ("CSSRA") by Report CM-15-23 on November 1, 2023, and were passed by City Council the next day.<sup>2</sup> The City Manager recommended that Council approve the Terms of Reference, stating:<sup>3</sup>

***Recommendation:***

*Approve the Pipeline to Permit Committee Terms of Reference ... and*

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<sup>1</sup> <https://burlingtonpublishing.escribemeetings.com/filestream.ashx?DocumentId=72076>

<sup>2</sup> <https://burlingtonpublishing.escribemeetings.com/Meeting.aspx?Id=1a84bcae-82e4-41a7-bb3c-da347fc39f08&Agenda=PostMinutes&lang=English&Item=29&Tab=attachments>

<sup>3</sup> <https://burlingtonpublishing.escribemeetings.com/filestream.ashx?DocumentId=72075>

*Appoint the following members of Council to Pipeline to Permit Committee for a two year term, ending November 30, 2025:*

- ...

...

### ***Background and Discussion:***

*Mayoral report M0-01-23 introduced the concept of creating a new standing committee called the Pipeline to Permit Standing Committee, (the Committee) regarding the development process, and with respect to Burlington's approved housing pledge. The report was approved by Council on October 17, 2023, requesting that the Mayor and City Manager build a term of reference ...*

*The Committee will focus on tracking growth, addressing issues, and pursuing continuous improvement opportunities for the development approval process within the City of Burlington, recognizing overarching legislative planning requirements and any other relevant regulations. ... The Pipeline to Permit Committee (P2P) will make recommendations to Council to ensure the timely and efficient issuance of development approvals and building permits for residential and commercial customers to enable the development of complete communities.*

### ***Standing Committee Procedure Changes***

*Through the approval of the terms of reference, the Pipeline to Permit Committee will work slightly different from other standing committees. Rules will be somewhat relaxed to afford organic and interactive discussion, fostering a free flow of ideas and commentary. ...*

...

### ***Next Steps***

*This report is recommending that the Committee Terms of Reference be approved on November 2, 2023. This will allow the Office of the City Clerk to include the Pipeline to Permit Standing Committee into the Fall/Winter Public Appointments Recruitment drive.*

...

*Should Council approve the Terms of Reference, staff will also review to ensure the appropriate procedure by-law amendments are made in a timely manner.*

<highlighted by the Complainant>

### **ADRO Investigation**

I spoke and/or corresponded with:

- Complainant
- City Clerk

### ***Contextual Background to this Complaint***

This was not the Complainant’s first complaint to our Office respecting the City’s compliance with its Procedure By-Law. I conducted a significant investigation of Procedure By-Law issues throughout fall 2023, which our Office reported to Council on April 1, 2024.<sup>4</sup> In that Report, I accepted that the Complainant’s observations about the Procedure By-Law not being followed were often correct, but observed that no formal legal consequence typically flowed from such, based on the legislative scheme. I stated:

*It is important to compare what took place to what the City is obligated to do pursuant to the Municipal Act. City Clerk said “the buck stops at the Municipal Act, and Council should follow the Municipal Act as the core tenets.” Executive Director of Legal Services also provided me compelling information establishing that:*

*“The courts will not quash or set aside a by-law for the reason that in passing it the council failed to observe its own procedure for the management of its affairs and the governing of its proceedings. The exception to this rule is the case of procedural requirements which are statutory and therefore obligatory.”*

*The Blyth v. Northumberland (County) case established that:*

*“...the law is clear that (a) the procedure adopted by a council in passing by-laws or in transacting any other business within its jurisdiction, in the absence of express statutory requirements, is a matter wholly of domestic concern and internal regulation; and (b) the failure of council to conform with its procedure by-law or rules of procedure does not invalidate a by-law passed by council ... a court will not quash a by-law for the reason that in passing it the council failed to observe its own procedure unless such procedure is statutory and obligatory.”*

*Accordingly, the Municipal Act, 2001 is primary. So long as the City complies with that Act, any other failure to follow its own by-laws or procedures is, as the Blyth court described, a matter “wholly of domestic concern”, carrying no legal consequences to the City.*

*It is true that the Municipal Act, 2001 requires all municipalities to establish a procedural by-law, but beyond their mere existence little else is mandated on point. Section 238(2) of the Municipal Act, 2001 only requires:*

### ***Procedure by-laws respecting meetings***

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<sup>4</sup> <https://burlingtonpublishing.escribemeetings.com/filestream.ashx?DocumentId=77492>  
(ADRO’s MUN-26078-0823; City’s CM-07-24)

*(2) Every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings.*

***Notice***

*(2.1) The procedure by-law shall provide for public notice of meetings.*

*Accordingly, the only substantive matter that must be included in a procedural by-law is a provision regarding public notice for meetings – and even then, the municipality can choose what that notice should be (subject to Ombudsman Ontario’s comments in the July 2023 Adjala-Tosorontio Report). I believe that section 22 of the City’s Procedure By-Law substantively meets the obligations incumbent upon it pursuant to s. 238(2.1) of the Municipal Act, 2001.*

...

*However, I note that even though Council isn’t legally bound to follow its own Procedure By-Law, Ontario’s provincial Ombudsman has encouraged other municipalities to follow their procedural by-laws on several occasions. There is arguably an ethical imperative that goes beyond the mere legalities of the situation. ...*

...

*The provincial Ombudsman’s stance – which I respect – is that municipalities should be vigilant in ensuring compliance with their responsibilities under both the Municipal Act, 2001 and their own procedural by-laws. While municipalities aren’t legally bound to follow their procedural by-laws, it is nonetheless clearly a best practice to do so. ... In my opinion, the Municipal Act, 2001 probably intended for procedural by-laws to be consequential, and respected as such by their enactors.*

*... I urge the City to determine a set of rules that it wishes to live by, and then commit itself to living within them. The Procedure By-Law can be an important part of building transparency and accountability in the City’s decision-making, which are principles specifically described in s. 270(1)5 of the Municipal Act, 2001.*

***Conclusion and Recommendation***

*The evidence affirms that the City didn’t follow its Procedure By-Law on several occasions ... But no legal consequence flows from such – the law is clear that courts will not quash a by-law simply because Council failed to observe its own procedure, except for procedures required by statute. ...*

I note that this present Complaint was initiated on February 12, 2024 – several weeks prior to the April 1, 2024 Report having been released. Accordingly, neither party had the benefit of knowing this Office’s position then. However, the Complainant opined in May 2024 that my April 1, 2024

Report had no impact upon this complaint. I disagree, and find it appropriate to apply the same reasoning to this case's circumstances.

### ***Procedure By-Law***

The City's Procedure By-Law is By-law 31-2021,<sup>5</sup> most recently amended in July 2023. It includes:

...

#### ***DEFINITIONS***

***1.6 "Committee" means a Committee of Council. This may be a Standing Committee or an Advisory Committee.***

...

***1.29 "Standing Committee" means any Committee outlined in the Procedure By-Law and having an ongoing mandate or purpose.***

...

#### ***STANDING COMMITTEES OF COUNCIL***

##### ***8. Organization and Rules***

***8.1 There are five Standing Committees of Council being Community Planning, Regulation and Mobility; Environment, Infrastructure and Community Services; Corporate Services, Strategy, Risk and Accountability; Council Workshop and Audit.***

...

##### ***11. Date, Time, and Place of Meetings***

***11.1 Standing Committees will meet in the Council Chambers of Burlington City Hall, 426 Brant Street, unless otherwise indicated, generally on the following dates and times, in accordance with the calendar set annually and approved by Council:***

***Council Workshop***

***Mondays at 9:30 a.m. and/or 1 p.m.***

***Community Planning, Regulation & Mobility Committee (CPRM)***

***Tuesdays at 9:30 a.m. and/or 6:30 p.m.***

***As scheduled at 6:30 p.m. for public meetings.***

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<sup>5</sup> <https://www.burlington.ca/en/by-laws-and-animal-services/resources/By-laws/By-law-Search/2021-By-laws/031-2021-By-law.pdf>

***Corporate Services, Strategy, Risk & Accountability Committee (CSSRA)***  
*Wednesdays at 9:30 a.m. and/or 6:30 p.m.*  
*As scheduled for budget meetings.*

***Audit Committee (Audit)***  
*Wednesdays at 3:30 p.m.*

***Environment, Infrastructure & Community Services Committee (EICS)***  
*Thursdays at 9:30 a.m. and/or 6:30 p.m.*

## ***12. Duties of the Standing Committees***

*12.1 Standing Committees will receive public delegations for input and report to Council on all matters connected with their duties or referred to them by the Mayor and/or by Council and to recommend such action as they deem necessary.*

<Sections 13 through 17 detail the duties of each specific Standing Committee, and section 18 details the duties of the Committee of the Whole.>

...

## ***COUNCIL AND COMMITTEES OF COUNCIL***

...

## ***22. Notice of Meeting***

...

*22.2 The agenda for each regular Council or Committee meeting will be posted to the City's website not less than seventy-two hours before the hour appointed for the holding of the meeting. All items listed on the meeting agenda, and any addendum will constitute notice, unless otherwise directed by another by-law, city policy or applicable legislation.*

...

In my April 1, 2024 Report, I noted that in fall 2023 the City was conducting a review of its Procedure By-Law in fall 2023, which I understood remained ongoing upon the Report's release. I followed up with the City Clerk for more information. The City Clerk confirmed to me in July 2024 that the City was working on changes to the Procedure By-Law – which would be brought forward in September 2024, and would include adding the Pipeline to Permit Committee to the roster of listed Standing Committees, and amending relevant sections to reflect its addition.

## **ADRO Analysis**



I find this issue straight-forward. The Pipeline to Permit Committee has been a Standing Committee of the City since February 2024, but hasn't presently been formally reflected as such in the City's Procedure By-Law, in the way that is done therein for the City's other Standing Committees. The Complainant asserts that as so long as this is the case the Pipeline to Permit Committee can't meet without violating the Procedure By-Law – but I disagree. As previously noted, Ontario case law has established:

*“The courts will not quash or set aside a by-law for the reason that in passing it the council failed to observe its own procedure for the management of its affairs and the governing of its proceedings. The exception to this rule is the case of procedural requirements which are statutory and therefore obligatory.”*

With respect to committee governance, the City is only legally obligated to follow procedures or rules mandated in the *Municipal Act, 2001*; it isn't subject to legal consequences for otherwise failing to observe its own governance procedures. Nothing in the *Municipal Act, 2001* mandated the City to create a Pipeline to Permit Committee, nor how to structure it or schedule its meetings – those are discretionary decisions by the City. In the same vein, nothing in the *Municipal Act, 2001* mandates the City to update its Procedure By-Law to accommodate the Pipeline to Permit Committee.

Notwithstanding that, I acknowledge that there is still compelling logical reason for the City to update its Procedure By-Law – the City has also acknowledged so itself. In Report CM-15-23, which the Complainant highlighted, the City Manager recommended:

*“Should Council approve the Terms of Reference, staff will also review to ensure the appropriate by-law amendments are made in a timely manner.”*

That statement clearly reflected that the City always intended to amend the Procedure By-Law to reflect the Pipeline to Permit Committee. The City Clerk advised that such a change is presently expected in September 2024. So the Complainant's concern seems to be (at least partially) that this amendment wasn't made quickly enough – but it simply isn't something that can be ordered.

I do recommend that the City follow up on its acknowledged statement of intent, and amend its Procedure By-Law to reflect that the Pipeline to Permit Committee is a Standing Committee of the City – but not because of any legal requirement that it must do so. I simply believe it would more logically and consistently reflect the City's Standing Committees. But I am not ordering any timeline for such a change to take place – it is clearly already intended to be effected shortly, and there would be no pragmatic benefit in me suggesting anything different.

### **Conclusion and Recommendation**

I recommend that the City update its Procedure By-Law to reflect the Pipeline to Permit Committee as a Standing Committee of the City, and note its meeting schedule therein. This is to aid consistency in how the Procedure By-Law treats the City's Standing Committees, but doesn't arise from any binding legal requirement to do so.

Respectfully submitted,

Ben Drory  
ADRO Investigator