



Telephone: 1.844.235.4442
Fax: 1.877.803.5127
Email: ombudsman@adr.ca
P.O. Box 1006, 31 Adelaide St. E, Toronto, Ontario M5C 2K4

ADRO INVESTIGATION REPORT

Complainants: Mrs. and Mr. Complainant
Complaint Reference Number: MUN-28166-1223
Complaint Commenced: November 14, 2024
Date Complaint Assigned to Investigator: January 21, 2025
Date All Required Information Received: May 5, 2025
Report Date: July 16, 2025
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

Mrs. and Mr. Complainant (collectively the “Complainants”) are residents of the City of Burlington (the “City”), and complained that the City hasn’t adequately complied with section 239(7) of the *Municipal Act, 2001* for an extended period of time. They wrote as follows in their November 13, 2024 Complaint Submission Form (“CSF”):

The City of Burlington have been made aware of non-compliance with 239(7) of the Municipal Act on several occasions through email, at a meeting ...

Our multiple efforts to resolve this complaint and others ... have failed ...

The City ... are knowingly and intentionally non-compliant with ... the ... requirement for transparency in terms of information brought to Committee and Council by delegations who are presenting information to the ... members ... when making decisions that affect the well-being and financial health of taxpayers.

Documentation that supports this complaint and identifies our efforts to resolve it are attached ...

The Complainants continued in an Appendix:

Efforts to resolve this complaint ... by Mrs. and Mr. Complainant in their role of Community Health Safety and Access Advocates have been ongoing since 2022 ...

... [T]he municipality's non-compliance ... raises the issues of lack of transparency and accountability. This ... has led to a loss of trust ... that the municipality has little or no interest in understanding all the factors that should go into their decision making or abiding by the rules ...

- 1. Examples ... delegation oral presentations ... from prior to 2017 and since mid-2022 unavailable on the current website.*
- 2. The complainants raised the issue (at) a meeting held on Jan 24, 2024 with the Head of Legal and the last CAO and other senior staff. ...*
- 3. An effort ... by Administrative Assistant, the CAO's admin assistant, arranging a meeting with City Clerk and the CAO was accepted by the complainants as reasonable ... However ... it was never held before the CAO retired.*
- 4. An email from Head of Legal, City Solicitor ... saw City Solicitor request three items ... but not the non-compliance with 239(7) item. Nor has there been any reason provided ... as to why the meeting to be arranged by Administrative Assistant has not taken place.*
- 5. ... [W]e put our position on the record at the October 2024 Council meeting. This made absolutely no difference to the continued non-compliance ...*

The Complainants provided various documentation. They emailed the City's former CAO ("Former CAO") on November 17, 2022:

... The major issue ... is related to the loss of crucial information from the website that prevented ... doing ... due diligence in terms of incumbent performance without any opportunity for the public to object or be heard. Ombudsman Closed Meeting Investigator is on the Burlington record that minutes do not at all times comply with the Municipal Act requirements. Consequently it is important that videos stay up on the web site for a good length of time. Many municipalities keep them up there permanently. ... Technology allows much more to be stored on a website than in the past ...

... Removal of all videos except those for the last term of office provides less engagement, accountability and transparency. Removing access ... to minutes, agenda and reports ... from 2009 to December 2018 without an opportunity for public engagement is, we believe, improper. ...

Former City Clerk¹ claims we have a 131 page by-law ... that requires removal of the videos etc. after four years but our review of the By-law does not support his position. ...

¹ The City Clerk preceding the present City Clerk

We offer once again to determine if a meeting with you can sort this or not. *This time we hope we at least get the courtesy of a response from yourself ...*

...

The Complainants delegated to the City's Council on May 21, 2013 and to the Audit Committee on December 14, 2016. Minutes they provided from the May 21, 2013 Council meeting reflected that the Complainants delegated about three different matters – it stated:

National Access Awareness Week Proclamation and report providing information on Corporate Occupational Health and Safety

- *Mrs. and Mr. Complainant, Community Health & Safety Advocates, commented on the importance of National Access Awareness Week and expressed disappointment with the Public Works Week poster which did not represent the broader community, including people with disabilities. Complainants requested Council to take another look at the Health and Safety report and rather than receive for information, discuss at the May 21, 2013 Council meeting whether enough attention is being given to such reports. In addition, Complainants requested that the Fire Plan for City Hall be reviewed immediately in order to identify where those with disabilities are in the building so they can be brought to safety when the fire alarm is activated.*

...

Approval of Resolution Opposing the Construction of the Nuclear Waste Repository in the Great Lakes Basin

Related to Item DI-18-14

- *Mrs. and Mr. Complainant spoke in support of the resolution and expressed concern about the special council meeting being held immediately after the Development & Infrastructure Committee meeting noting that this does not give the public the time or opportunity to be informed and engaged in the process. The Complainants requested that final approval of the resolution be delayed to a future date.*

Direction to explore solutions to parking recreational vehicles on private property in accordance with City By-laws.

Related to item SD-26-14

- *Mrs. and Mr. Complainant expressed concern about the special council meeting being held immediately after the Development & Infrastructure Committee meeting noting that this does not give the public the time or opportunity to be informed and engaged in the process.*

The December 14, 2016 Audit Committee meeting minutes stated:

3.1 Delegation from Mrs. and Mr. Complainant regarding public audit schedule (A-3-16)

Mr. and Mrs. Complainant appeared to relay that they will be preparing and presenting a series of local community audits to the Audit Committee in 2017.

The Complainants noted that s. 239(7) of the *Municipal Act, 2001* reads:

Record of meeting

(7) A municipality ... or a committee ... shall record without note or comments all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not.

They added:

... December 2014 ... The municipality was identified by Closed Meeting Investigator as being non-compliant with 239(7) in their report to Council.

There is no record of the municipality addressing the Closed Meeting Investigator report of non-compliance or how the municipality intended to correct this non-compliance ...

This has been a repetitive subject of discussion with staff and council members up to 2023.

...

Review of the Audit Committee Minutes of December 14, 2016 vs. the transcribed recording ... shows the decision to allow Mrs. and Mr. Complainant to present an external audit to the February 2017 Audit Committee and then make a decision on schedule for such external audits ... was left out of the minutes. This has prevented the public and Committee from receiving and reviewing multiple external audits beginning with the 2014 Nomination Paper Audit ...

Mrs. Complainant emailed Former CAO on February 26, 2024:

We had hoped to have the requests for minutes and recordings ... prior to the 2022 website update and ... election. ... [O]ur audits identify interference with a fair and accessible 2014, 2018 and 2022 democratic Burlington ... election process.

*The city requirement is very clear. "Records of what was said and done at meetings by a public body" are required to be retained until calendar year ends, plus 3 years **then archived** and Former Head of Communications personally assured us this was the case Indeed he provided us with one such recording that was no longer available on the website for public use.*

However, City Clerk and her team have been unable to provide a particular recording that we needed to get transcribed ...

...

Mrs. Complainant emailed our Office, cc'ing Executive Director – Community Relations and Engagement (“Community Relations Director”) and Mr. City Solicitor, on May 20, 2024:

... Retired CAO Former CAO was in attendance at a meeting with City Solicitor on January 24th and ourselves that raised several legal issues that City Solicitor has failed to address to date. A set of minutes of that meeting ... and a further meeting with the Director of Communications, have not been received.

... There has been no response from City Solicitor to the issues connected to an ADR Ombudsman complaint that are within his jurisdiction. ...

City Solicitor replied to Mrs. Complainant on June 18, 2024, cc'ing Community Relations Director and City Clerk:

... I write to respond to a number of matters you have raised ...

Issues Raised at Meeting

The material you forwarded ... made reference to a number of different issues that you had with the City going back to at least 2014. At the meeting, we had time to discuss three items:

- 1. The City confirming that your email communications would no longer be diverted to Clerks staff for distribution, and a reminder that your conduct, whether in person or in writing, would be subject to the City's Public Conduct Policy like all members of the public that engage with City staff and its elected officials.*
- 2. Your general concerns about the Audit Committee and your view that you should be able to bring matters directly to/put items on the Audit committee Agenda.*
- 3. Your concern regarding the passing of a Burlington Downtown Business Association By-law ... in 2015 pursuant to the Municipal Act, and a request that the City ... request ... the Superior Court of Justice to conduct a judicial investigation or inquiry into this by-law.*

It is the last item that I will provide a further response to as I believe that the Municipal Act non-compliance that you allege is an item that you are seeking to have the Ombudsman investigate.

... [Y]ou allege that in 2014 the City did not meet Municipal Act notice requirements ... to repeal Burlington Downtown Business Association by-laws for the purpose of enacting a new by-law that expanded the business association boundaries. You allege that notice was required to be mailed within 60 days of the Association's resolution seeking the

expansion ... By-law 30-2015 was enacted on March 23, 2015, approximately 94 days between the mailing of notice and enactment of the by-law. Neither the Burlington Downtown Business Association, or its membership, have raised this issue or any suggestion that they did not have adequate time ... Your proposed resolution ... is that the City pay \$10 million to businesses within the ... boundaries.

... [T]he remedy for someone that feels that a municipal bylaw was passed illegally is to bring an application to the Court to have the bylaw quashed. Section 273(5) of the Municipal Act provides that an application to quash a by-law ... must be brought within one year of its passing. No applications to quash the by-law in question were brought ...

... [A]s I understand it, you are asking the City to make a request under section 274 of the Municipal Act ...

... [T]his section of the Act has been the starting point for a number of municipal requests for judicial inquiries of significant matters of grave importance over the years, from the Toronto computer leasing matter to the review of the Red Hill expressway in Hamilton.

... In staff's view, any non compliance with the Municipal Act that occurred ten years ago (if it indeed did occur) did not result in any prejudice to those subject to the levy. If you had a concern ... your remedy was to bring an application to quash the by-law. ... [T]his matter is not of the type, scope and/or seriousness for which a municipality would take the significant step of making a request to the Superior Court of Justice pursuant to section 274 of the Municipal Act. ...

The Complainants also provided evidence that they delegated at the October 15, 2024 City Council meeting – the minutes identified:

11.3 Mrs. and Mr. Complainant spoke regarding Approval of 2025 Meeting Calendar (CL-22-24)

11.4 Mrs. and Mr. Complainant spoke regarding motion to approve Committee of the Whole minutes of October 7, 2024

The Complainants attached a transcription from their delegation during the meeting Mrs. Complainant told Council:²

... 239(7) discussed with City Solicitor and Former CAO January 24th, 2024. Uh, a record of municipality, a local board or committee ... shall record without note or comment all resolutions, decisions and other proceedings and meeting of the body whether it is closed to the public or not. It is the municipality's responsibility as well as the clerk's duty to ensure all resolutions, decisions and other proceedings at a meeting of the body whether it's closed to the public or not are publicly recorded. Since 2014, we

²([Link](#)), from (50:01) to (54:53)

have been trying to have this council, this municipality, comply with this particular part of the Municipal Act. We have gone through, this is our third clerk now we're on, and, uh, I think it's three CAOs we are now on, and we have got no further than we were then.

...

... If you look at the board ... the minutes say delegations. Mr. and Mrs. Complainant appear to relay that they will be preparing and presenting a series of local community audits to the audit committee. ... Nothing at all, just the title of the subject. Mrs. and Mr. Complainant spoke regarding approval of the 2025 meeting calendar. No summary of discussion as is required by the Municipal Act ... This is a very serious issue, and it's been going on for 23 years. And the Ombudsman is on notice that we have done everything possible including meeting with – requesting three CAOs, three clerks to fix this, and there is no move to fix it. ... So to blatantly and knowingly not comply with putting delegation's, uh, comments so the public can see what you've been told is wrong with how you, um, engage with the public is just – we don't understand it, and we believe there will be, um, proper consideration of this complaint if it doesn't change ... and we then have to do – go ahead with the complaint which we – it's just using more resources when you know what the Municipal Act says. You know what you're supposed to comply with, but you just choose not to. ... [A]nd that after taking it to City Solicitor and Former CAO and being promised a meeting with City Clerk, City Solicitor, Former CAO, to sort it out before we got a new CAO, but we didn't sort it out did we? Thank you.

Council raised no questions regarding the Complainants' delegation.

ADRO Investigation

I spoke with:

- The Complainants; and
- City Solicitor City Clerk

I asked Mrs. Complainant to provide me a copy of the relevant 2014 Closed Meeting Investigator decision – which she asked City Clerk to provide me, and City Clerk then provided it to me.³ Report CL-23-14 was provided to the Community and Corporate Services Committee on December 16, 2014, and subsequently to City Council on December 18, 2014. The Clerks Department prefaced the Report:

... The City of Burlington, through Local Authority Services Limited (LAS) engages the services of Closed Meeting Investigator Ltd. as the Municipal Closed Meeting Investigator and has authorized it to conduct investigations ... regarding meetings or parts ... that are closed to the public.

³ Given its date, the Report is not available on the City's website, and can only be accessed directly from the City Clerk's office. (CL-23-14 – "Report providing a summary of recommendations related to Closed Meeting Investigations of Committee and Council")

...

Section 239 of the Municipal Act, 2001 provides that all meetings of a municipal council ... shall be open to the public. Section 239 ... lists exceptions to the open meetings rule and list reasons for which a meeting or portion of a meeting may be closed to the public.

...

In 2014, the City of Burlington received two complaints related to closed meetings that were conducted in 2013.

The complaints are related to the following meetings:

- *A Special Meeting of Council on March 4, 2013 held at the Burlington Performing Arts Centre. This meeting was closed under the Education or Training section ...*
- *A meeting of the Community Services Committee on October 2, 2013 and a Meeting of City Council on October 15, 2013, both were held in Council Chambers. This meeting was closed to discuss the pending acquisition or disposition of land ...*

... In both cases, Closed Meeting Investigator found that the City of Burlington was in compliance with the closed meeting provisions of the Municipal Act. ... [T]he reports are ... attached as Appendix A and B to this report.

As part of their review, Closed Meeting Investigator has provided some recommendations which staff will review and either make changes immediately or include in the next review of the Procedure By-law. ...

Mrs. Complainant told me she was primarily referencing “item (c) of Appendix B” – i.e., the report regarding the October 2, 2013 closed session of the Community Services Committee and October 15, 2013 City Council meeting. It included:

...

V. BACKGROUND

(a) The Complaint

The complaint deals with a decision by City Council to sell certain waterfront property owned by the City and the Ministry of Natural Resources to adjacent property owners ... on the shore of Lake Ontario ... The complainant alleges that the decision to sell ... was “made in closed session so the public does not know the rationale for disposing of this waterfront asset.”

...

(c) Minutes of the CSC Meeting on October 2, 2013

The Minutes ... indicate that the meeting commenced at 6:30 p.m. in open session. The CSC went into closed session at 7:56 p.m. and returned to open session at 8:27 p.m. The CSC went into closed session a second time at 9:33 p.m. and returned to open session at 10:20 p.m. ... The CSC meeting adjourned at 10:43 p.m.

The Minutes ... are written in the format of a report ... listing recommendations for consideration. Therefore, the Minutes do not reflect the actual order of the proceedings of the meeting. Movers, seconders and votes are not recorded. A reader could also assume that items considered but not receiving majority support are not reported. It appears that they are not compliant with Section 239(7) with respect to the recording of committee minutes.

...

VI. CONCLUSION

Closed Meeting Investigator has concluded that the CSC did not breach the open meetings requirement of the Municipal Act in closing part of its meeting ... during discussion of the proposed acquisition or disposition ...

...

VI. ANALYSIS AND FINDINGS

(a) Section 239(2)(a) of the Municipal Act

...

... It makes sense that a council or local board would not have open public discussions about its negotiating strategy, most specifically the price it is willing to pay for lands ... or receive for lands ... Hence, the discussion can be held in closed session.

...

VII. RECOMMENDATIONS

Although we have found that neither the CSC, nor City Council breached the open meetings requirements of the Municipal Act, we offer one recommendation:

When convening into closed session, it is required for council, its committees, and local boards formally resolve to move into closed session by citing the specific applicable exemption in the Municipal Act and the general nature of the matter to be considered,

providing enough information to the public without undermining the reason for excluding the public. While it was clear to those present ... that the CSC was ... to consider the legal implications of its pending considerations ... it would not be so clear if one were reading the historical record of the meeting ... [I]t would have been appropriate if the motion had been:

that the Community Services Committee convene into closed session under section 239(2)(c) of the Municipal Act dealing with the proposed or pending acquisition or disposition of the Water Street land parcels.

City Clerk provided me a copy of the October 2, 2013 Community Services Committee minutes – they are attached as Appendix 1 to this Report. While I found the minutes mostly unremarkable, I do not challenge Closed Meeting Investigator’s assertions.

I spoke with Mrs. Complainant in March 2025. She identified beforehand that she wished to further address issues about the City’s compliance with s. 239(7) at the December 10, 2024 City Council meeting⁴ – during which she and Mr. Complainant delegated regarding evaluation of Audit Committee effectiveness.⁵ Mrs. Complainant said Mayor raised two points of privilege that weren’t noted in the minutes, and her delegation was only noted as “speaking to an audit” – when she felt she clearly raised deficiencies that Council failed to address. Mrs. Complainant sent me a certified transcript of her December 10, 2024 delegation,⁶ and said Mayor shut off their microphone, claimed (through a point of privilege) that there was “zero truth” in their delegation,⁷ and left them no opportunity to respond. She said she intended to file an official complaint to the Integrity Commissioner, that Mayor refused to apologize for her behaviour, and that City Solicitor’s approval of the minutes endorsed her behaviour.

I spoke with the Complainants together, although Mrs. Complainant did all of the talking for them. I asked Mrs. Complainant to describe their “Community Health Safety and Access Advocates” titles. She replied that those aren’t formal City titles, but rather something they’ve adopted themselves – she’s been a person with disabilities since birth, and so has a strong viewpoint on accessibility issues, many of which she has addressed with the City. She said during her career she was in legislative compliance with a large corporation, and undertook audits, so she started getting calls later to help people with issues like children’s aid, and used her skills in legislative compliance audits to return several children to their parents. She added that Mr. Complainant had been involved in health and safety, including as chair of a joint health and safety board. She said a private company in Burlington honoured them as community champions for the company’s 50th anniversary, and wrote an article on what they achieved with the title.⁸

⁴ <https://events.burlington.ca/meetings/Detail/2024-12-10-0930-Regular-Meeting-of-Council>

⁵ <https://burlingtonpublishing.escribemeetings.com/Meeting.aspx?Id=62797e89-2464-4153-a85c-4714b6c88569&Agenda=Merged&lang=English&Item=98&Tab=attachments>

⁶ The Complainants’ delegation began at (39:58) of the City’s above-noted official meeting video.

⁷ At (44:58) of the City’s meeting video.

⁸ See “Advocating for Barrier Free Communities” in “50 Years of Accounting for our Community” (SB Partners) https://sbpartners.ca/50_years_of_accounting_for_our_community/

I asked Mrs. Complainant to describe her interpretation of section 239(7) of the *Municipal Act, 2001*. She said she used to take minutes in a large corporation, so she understood that every point or issue before the meeting had to be documented, with a level of specificity, and the City used to briefly note why delegates attended, but now all they say is delegates attend to “speak to” subjects – which was a far cry from their former approach, which used to comply with s. 239(7). She said when delegates take the time to set out their concerns, they shouldn’t just be blatantly ignored. I asked if Mrs. Complainant was aware of any jurisprudence that supported her interpretation of s. 239(7), but she replied she hadn’t gone into the legal side of it at all yet.

I asked Mrs. Complainant to describe the significance of the 2013 and 2016 minutes she provided our Office. She said those minutes correctly summarized what had been said, and reflected how the City used to approach minutes, which complied with s. 239(7). She said she spoke with City Clerk and City Solicitor, showing them examples of how it used to be, and the City’s Former CAO promised to meet with them to discuss the exact points, but then he retired before the meeting was conducted, and when she tried to get the new CAO to honour the promise, it didn’t carry over.

I asked Mrs. Complainant to describe the significance of the 2014 Closed Meeting Investigator report. She said Council never addressed it – Closed Meeting Investigator were clear that they believed particular minutes didn’t comply with s. 239(7), but Council never discussed that deficiency when the Report was considered. So she felt an ombudsman had already supported what they were saying – i.e., that the City had a s. 239(7) issue, which the City never addressed despite being obligated to address it when they received the Report – Council only addressed the Report’s other issues. She thought if Council addressed the issue, they’d change their practice and always comply with s. 239(7), which was all they were trying to do – i.e., get the City compliant with the *Municipal Act, 2001*. As an example she said when the Mayor stood on a point of privilege twice in December 2024, that should have been in the minutes, but wasn’t.

Mrs. Complainant added that she and Mr. Complainant have a long history of putting things on record before Council, like their audits showing the City’s non-compliance with rules and regulations, but they were just ignored and buried. She said their issue with the City has been ongoing since 2014, and they were taking valid issues to Council but Council just didn’t want to address them publicly, which was what this was all about.

Several weeks after our call, Mrs. Complainant reiterated by email that the 2013 and 2016 minutes showed how the City formerly provided appropriate detail in their minutes, whereas today’s minutes give no such detail. With respect to my jurisprudence inquiry, she said:

In terms of jurisprudence unfortunately we have not been able to devote time to what we believe should be familiar to the investigators of complaints for the city of Burlington.

I simply interpreted this as a statement that the Complainants had no jurisprudence they could provide to support their position. However, I have written about some jurisprudence concerning the *Municipal Act, 2001* before, which I will note herein.

I spoke with City Solicitor and City Clerk for the City. City Solicitor said section 239(7) of the *Municipal Act, 2001* compels the City to do what it's doing – i.e., provide the resolutions, flow, and order of Council and Committee meetings, without commentary from staff or delegates. He said the City notes who delegated, but not the substance of their delegation, because meeting minutes aren't transcripts – which was where he thought the Complainants misunderstood the City's obligations. City Clerk added that s. 239(7) was also reflected in the City's Procedural By-Law, which governs meeting practices. I asked if the City was required to maintain any level of detail in the minutes. City Solicitor replied that the City was obliged to record without note or comments, so it had to set out what Council or Committee was considering, the delegate speaking, and votes that were taken – but the minutes wouldn't include (nor did the Act compel) a commentary, or details like if staff asked a question or a delegate made a presentation.

I asked the City how they interpreted the minutes of December 10, 2024, respecting Mayor's points of privilege. City Solicitor said "Mrs. and Mr. Complainant spoke regarding Evaluation of Audit Committee effectiveness (CA-18-24)" validly reflected who spoke and what they delegated about, and met the City's obligations under the *Municipal Act, 2001* and the Procedural By-Law. He acknowledged that points of privilege were raised, but said those are back-and-forth between Members of Council on a matter – not a decision or vote put to Members of Council, which would be minuted. He said there are frequently questions between councillors or with staff, and sometimes they'll raise points of order or matters of privilege, but those are matters between Members, which don't get reflected in the minutes. He reiterated that minutes aren't intended to be a transcript of everything discussed word-for-word – the City is only looking to identify what items were considered and decisions were made. He added that if a point of privilege resulted in an appeal, for which a vote was taken, then the minutes would reflect that (i.e., a vote taken by council) – but mere discussion back-and-forth among Council and staff isn't included in minutes, nor does the *Municipal Act* intend such. City Clerk added that points of order and privilege can be appealed by Members of Council and put to a vote for a decision point, which would get noted. She directed me to Schedule A of the Procedural By-Law:⁹

SCHEDULE A – COMMON MOTIONS

...

2. Point of Privilege

2.1 A member may at any time raise a point of privilege directing attention to a matter that affects the integrity, character or reputation of an individual, individuals or the entire Council ...

⁹ City of Burlington Procedure By-Law 59-2024 <https://www.burlington.ca/en/by-laws-and-animal-services/resources/By-laws/By-law-Search/2024-By-laws/059-2024-By-law.pdf>

2.2 A point of privilege will take precedence ... and a member will not be permitted to enter into any debate ... not related to the point of privilege.

2.3 The Chair will decide upon the point of privilege and advise the members of the decision.

2.4 The Chair's decision is final unless a member immediately appeals the decision.

2.5 If the decision of the Chair is appealed, the Chair will immediately call a vote on the decision ... without debate and the results will be final, based on a two-thirds vote.

...

8. Point of Order

8.1 A member may raise a point of order when they consider a matter to be a departure from or contravention of the rules, procedures and/or generally accepted practices of Council.

8.2 A member will raise the point of order by requesting the floor, and ... will state the point of order ... The Chair will make a timely decision ... Thereafter, the member will only address the Chair for the purpose of appealing the decision to Council.

8.3 If the member does not appeal, the decision of the Chair will be final. If the member appeals, the Chair will immediately call a vote on the decision ... without debate and the results will be final, based on a two-thirds vote.

City Solicitor said if everything said had to be documented, then the minutes would turn into a transcript – which was neither the intent nor the wording of the Act. City Clerk said the City makes all of their meeting videos public on its online calendar page,¹⁰ dating to 2018, which exceeds the retention obligations in their by-law,¹¹ and they also have some older videos available if individuals want to view such. She said the City implemented an electronic meeting management system in 2016, and started archiving videos then; she said the City doesn't have means to put everything online, but their current online library is quite substantial for the technology being used. She said the City's current retention period for videos is four years from the end of a calendar year,¹² which is under review as a matter of public access. She said there are technical limitations to what the City can retain, but they do what they can, and are happy to work with people to find records they're requesting. City Solicitor said the City is compliant with the four-year retention period, and goes above and beyond the by-law by providing additional service to help people like the Complainants access records when they ask for it.

I asked about Mrs. Complainant's allegations that the City used to write more fulsome minutes, as reflected for example in their May 2013 and December 2016 minutes. City Solicitor said the

¹⁰ [\(Link\)](#)

¹¹ City of Burlington By-Law 5-2015 – *A by-law to establish a new records retention schedule for the City of Burlington and to repeal By-law 97-2005 and amending By-law 62-2013* <https://www.burlington.ca/en/by-laws-and-animal-services/resources/By-laws/By-law-Search/2015-By-laws/005-2015-By-law.pdf>

¹² See page 39 of By-Law 5-2015

City's processes and procedures evolve over time, and they make sure to be compliant with their obligations under the *Municipal Act*, and change their Procedural By-Law based on legislative changes and Council direction. He said he couldn't speak to why the City wrote minutes the way it formerly did, but the City is now in a technical environment where all of its meetings are recorded, so anyone can watch them to see the entirety of what delegates had to say, which the City felt ought to satisfy the Complainants' concerns about their voice not being reflected in how the City tracks meetings.

I asked if the City ever took any action on the recommendation in Closed Meeting Investigator's October 2014 Report. City Solicitor replied that Report is a decade old, and the City makes continuous improvements in meeting its obligations under the *Municipal Act* and Procedural By-Law, which it was certainly meeting presently. He said the Closed Meeting Investigator report looked at a particular 2013 meeting, and said a review of minutes from the past decade would show the City has been following the *Municipal Act's* requirements.

Finally, I asked whether City Solicitor and/or City Clerk ever met together with the Complainants and Former CAO. City Solicitor confirmed that he attended two meetings with the Complainants and Former CAO – he said they included a very significant agenda from the Complainants, with multiple pages of allegations dating back over a decade. City Clerk said she didn't attend the meetings. City Solicitor continued that the Complainants included the present issues in their agenda, but they never got around to addressing them because the agenda addressed so many other issues, so these just weren't reached given the time needed to address all of the Complainants' complaints and suggestions during the two meetings. He said Former CAO retired after those meetings, following which no further meetings were scheduled. He said those meetings addressed and resolved a whole host of issues with the Complainants, including, among other things, that the Complainants were now free to delegate at the City. City Solicitor said Former CAO personally invited the Complainants to meet, and if he was interested in meeting with the Complainants he was free to decide that, although he didn't personally see the need. He said the Clerk's Office frequently addresses requests for information from the Complainants, requesting minutes and videos as they need, and they continue to have access to City Hall and services.

ADRO Analysis

I simply disagree with the Complainants' interpretation of what section 239(7) of the *Municipal Act, 2001* mandates. Mrs. Complainant told me she formerly took minutes for a corporation, through which she understood that every point or issue before the meeting had to be documented, with certain specificity. The *Municipal Act, 2001* simply doesn't mandate that same level of specificity – it simply says a municipality must record, “without note or comment”, “all resolutions, decisions, and other proceedings at a meeting.” What constitutes “other proceedings” could possibly be a debatable matter, but I accept City Solicitor and City Clerk's submissions that Points of Order and Points of Privilege are procedural questions between Members of Council, and only get recorded at the City when they are put to a formal vote among Members. I also accept City Solicitor's assertion that minutes of a meeting aren't intended (nor required) to be a transcript of the discussion.

The City wasn't required to maintain transcript-like detail in 2013 or 2016, either. I accept that the City seemingly includes less substantive detail today than it did at that time, but that should be considered within the context that the City now keeps a far larger video archive of its meetings, for four years, which allows interested people to view the entirety of the actual discussion. Accordingly, I do not believe the status quo reflects a failure of transparency or community engagement by the City. I also don't believe that Closed Meeting Investigator's 2014 report remains particularly relevant to the City anymore, and note that the Report itself found the City didn't contravene the *Municipal Act, 2001*'s closed meeting rules – which was the actual subject matter of the Report. Closed Meeting Investigator observed, in passing that the City didn't follow s. 239(7) of the Act appropriately for the Community Services Committee meeting of October 2, 2013, and recommended that the City reflect proceedings differently going forward. The Clerk's Office noted at the time that it would review the recommendations, and either make changes immediately or in its next review of the Procedure By-Law – which at this point has been updated multiple times since 2014. The City wasn't obliged to formally address that recommendation when Closed Meeting Investigator's report was presented to Council in December 2014, and I accept City Solicitor's assertion that many of the City's procedures have changed in the decade since. I simply am not willing to attribute any greater present significance to the 2014 Closed Meeting Investigator report.

However, some jurisprudence is relevant to this matter. I reiterate one of my comments from a Report I issued to the City last year:¹³

It is important to compare what took place to what the City is obligated to do pursuant to the Municipal Act. City Clerk¹⁴ said “the buck stops at the Municipal Act, and Council should follow the Municipal Act as the core tenets.” ...

The Blyth v. Northumberland (County) case¹⁵ 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

¹³ <https://burlingtonpublishing.escribemeetings.com/filestream.ashx?DocumentId=77492>
(ADRO's MUN-26078-0823 (April 1, 2024); City's CM-07-24)

¹⁴ Former City Clerk at the time.

¹⁵ *Blyth v. Northumberland (County)*, 75 O.R. (2d) 576, [1990] O.J. No. 2166 (Gen Div.)
<https://www.canlii.org/en/on/onsc/doc/1990/1990canlii6752/1990canlii6752.pdf>

described, a matter “wholly of domestic concern”, carrying no legal consequences to the City.

...

In short – all Ontario municipalities are only legally bound to follow rules specifically mandated upon them by the *Municipal Act, 2001*. Beyond that, municipalities are free to determine their own procedures and by-laws as they choose. The City cannot legally be held to a stricter standard than what the *Municipal Act, 2001* mandates.

I noted during this investigation that the relationship between the Complainants and the City seems quite strained, for perhaps about two decades now. This Office cannot fix that dynamic, nor is it really our role. Any offers Former CAO might have personally extended to the Complainants do not reasonably convey automatically to his successor. Our role is to provide independent oversight to ensure that, as best as possible, the City follows mandated policies, procedures, and rules, within an allowable range of approaches. I find the City within such acceptable approaches in this case, with no basis to recommend that they change their minute-taking practices going forward.

Conclusion and Recommendation

The evidence satisfies me that the City has adequately followed the requirements incumbent upon it pursuant to section 239(7) of the *Municipal Act, 2001*. Accordingly, no recommendations are made respecting its minute-taking practices.

Respectfully submitted,

Ben Drory
ADRO Investigator

APPENDIX 1

Minutes of the October 2, 2013 Community Services Committee meeting

City of Burlington

Community Services Committee Report No. 10-13

Recommendations to City Council Meeting: October 15, 2013

Minutes

Date of Meeting: October 2, 2013

Place of Meeting: Council Chambers, Level 2, City Hall at 6:30 p.m. (public), 7:56 p.m. (closed), 8:27 p.m. (public), 9:33 p.m. (closed), 10:20 p.m. (public)

Members Present: Councillors Paul Sharman (Chair), Blair Lancaster, Rick Craven, Marianne Meed Ward, John Taylor, Jack Dennison and Mayor Rick Goldring

Staff Present: Kim Phillips, Scott Stewart, Chris Glenn, Bruce Krushelnicki, Bruce Zvaniga, Rob Peachey, Rob Axiak, Ann Marie Coulson, Ron Steiginga, Blake Hurley, Lisa Shields, Scott Hamilton, Vito Tolone, Kyle Benham, Jackie Isada, Amir Aazam and Denis Farr (Clerk)

Declarations of Interest: None

Recommendations:

Two Items for Consideration:

APPROVAL OF DEVELOPMENT FOR WINDOWS-TO-THE-LAKE ON THE WATER STREET LAND PARCELS

Approve **Option Three** as outlined in parks and recreation department report PR-31-13-1 to dispose of Water Street land parcels and develop Windows-to-the-Lake **at the foot of St. Paul and Market Streets in a minimalistic manner (benches and signage);** and

Direct the Director of Parks and Recreation to report back with a concept for the Windows-to-the-Lake; and

Direct the Director of Roads and Parks Maintenance to enhance Port Nelson Park with available funds; and

Direct the City Solicitor and Manager of Realty Services to work with the Ministry of Natural Resources (MNR) and enter into an agreement for the sale of MNR and city lots between St. Paul Street and Market Street to the adjacent land owners within the next six months; and

Direct the City Solicitor and Manager of Realty Services to report back to Community Services Committee if a sale agreement for city lots between St. Paul Street and Market Street has not been reached within the six month period (PR-31-13-1).

AUTHORIZE THE CITY SOLICITOR TO PROCEED WITH LITIGATION MATTERS

Authorize the City Solicitor to proceed in accordance with the instructions contained in confidential legal department report L-27-13 dated September 18, 2013, regarding an update on the Burlington Executive Airport. (L-27-13)

Staff Directions: None

Six Items for Receipt:

Receive and file the following six items, having been given due consideration by the Community Services Committee:

- Confidential legal department report regarding a real estate matter. (L-20- 13, September 20, 2013)
- **Delegation material from Robert Wingfield, representing the Burlington Waterfront Committee, regarding the Water Street land parcels. (PR-31-13-2, October 2, 2013)**
- **Delegation material from James Ziegler, regarding the Water Street land parcels. (PR-31-13-3, October 2, 2013)**
- **Presentation from Scott Stewart, General Manager of Development and Infrastructure, regarding 3455 North Services Road. (CSC-19-13, October 2, 2013)**
- **Confidential Presentation from Scott Stewart, General Manager of**

**Development and Infrastructure, regarding 3455 North Services Road.
(CSC-20-13, October 2, 2013)**

- **Confidential correspondence from Councillor Marianne Meed Ward, regarding Water Street lands. (CSC-21-13, October 2, 2013)**

Delegation(s):

Report recommending approval for the development of a parkette on the Water Street land parcels. (PR-31-13, September 18, 2013)

- Robert Wingfield (Ward 2), representing the Burlington Waterfront Committee, advised that their committee voted unanimously for option two in the report (to preserve the land for future public use). Wingfield encouraged Committee to consider the current encroachments of public- owned lands, ownership of the retaining seawall, and increase public water front access in Burlington over the passage of time. (CC-38)
- James Ziegler (Ward 2) spoke in support of option one in the report (to develop a new waterfront parkette and windows-to-the-lake) and that Committee should consider saving a part of history and opening a walking view to Lake Ontario. Ziegler added that these lands should be developed into a loop and not a dead end, as this would help to make the area more welcoming and accessible for the public. (CC-39)
- Janice Connell and Mike Swartz (Ward 2) expressed interest in purchasing the Water Street land parcels and advised that leasing is not an option. Connell and Swartz do not support the idea of park development, as they feel it will come at an expense to taxpayers and increase vandalism and crime in the neighbourhood. Further, Connell and Swartz believe that there are already enough waterfront parks in the area that are both underutilized and ill-maintained. (CC-40)
- Byron Kaczmarek (Ward 2) urged Committee to consider improving Port Nelson Park rather than to build a new parkette in such close proximity. Kaczmarek was supportive of option three (the sale of the land to the three adjacent home owners). As a resident who lives very close to Port Nelson Park, Kaczmarek has witnessed crime and vandalism in this park and believes that another park nearby would create the same problems. Kaczmarek added that he supports the development of Windows-to-the-Lake on St. Paul and Market Streets similar to that of Sioux Lookout Park. (CC-41)

STAFF REMARKS:

- Scott Stewart, General Manager of Development and Infrastructure, provided an update on the Prosperity Corridor and 3455 North Service Road (IKEA Properties Limited). Stewart advised that a report was not ready but would be discussed on October 21 at the Development and Infrastructure Committee.

CLOSED SESSION:

- Moved into closed session in accordance with the following sections of the *Municipal Act, 2001*:

Section 239 (2)(c) to hear an update on a real estate matter regarding the proposed or pending acquisition of land by the municipality. (Wednesday, October 2, 2013, 7:56 p.m.)

Section 239 (2)(f) to hear an update regarding Burlington Executive Airport, which is subject to solicitor-client privilege. (Wednesday, October 2, 2013, 9:33 p.m.)

Adjournment: 10:23 p.m.