



J. Paul Dubé, Ombudsman

## SENT BY EMAIL

Hamilton Waterfront Trust  
Board of Trustees  
c/o Bernie Mueller, Chair  
47 Discovery Drive  
Hamilton Ontario  
L8L 8K4

February 6, 2023

Dear Board of Trustees:

### **Re: Closed meeting complaints**

My Office received complaints about the Hamilton Waterfront Trust's meeting practices. The complaints alleged that the Hamilton Waterfront Trust (the "Waterfront Trust") is a local board of the City of Hamilton (the "City") and is subject to the open meeting rules of the *Municipal Act, 2001* (the "Act"). The complaints alleged that the meetings of the Waterfront Trust's Board of Trustees (the "Board") were not open to the public because members of the public were not permitted to attend Board meetings. In addition, the complaints alleged that the Waterfront Trust did not provide public notice of its Board meetings and did not make its agendas and minutes public.

I am writing to share that my investigation has determined that the Waterfront Trust is a local board of the City. As such, the Waterfront Trust is subject to the open meeting rules under the Act. I understand that beginning in April 2021, after this concern was raised with the City and the Board, the Board began to comply with the open meeting rules, including providing adequate public notice and ensuring that the public could observe meetings in progress. I commend the City and the Board for taking swift action to remedy this situation.

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## Ombudsman's role and authority

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. The Ombudsman is the closed meeting investigator for the City of Hamilton.

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 closed 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](http://www.ombudsman.on.ca/digest).

## The Hamilton Waterfront Trust is a local board of the City of Hamilton

My Office was told that the Hamilton Waterfront Trust was created in 2000 by deed of trust between the City and the Hamilton Port Authority. In 2018, the City entered into a revised deed of trust with the Waterfront Trust. The revised deed of trust restructured the Waterfront Trust's governance, leaving the City with sole oversight over the Waterfront Trust.

The Waterfront Trust's primary mandate is to promote and facilitate the public's access to, and enjoyment of, Hamilton's waterfront.<sup>1</sup> According to the Revised Deed of Trust, the Board of Trustees consists of five representatives, all of whom are appointed by the City. Currently, the Board is made up of three council members and one member of the public, as one of the Board positions is currently vacant.

The Act defines a "local board" as "a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities."

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<sup>1</sup> <https://www.hamiltonwaterfront.com/>



The Courts have found that to be a local board, a body's activities must be "integral to the day-to-day operations of the business of the municipality".<sup>2</sup> The Courts have explained that the definition of local board is to be interpreted in a broad and expansive manner, but that a local board will generally not include an ad hoc or informal body, or an investigative or adjudicative body.<sup>3</sup>

The Waterfront Trust was established by the City to manage and develop the waterfront lands on behalf of the City for the benefit of its citizens. Under the terms of the revised deed of trust, the Waterfront Trust operates to fulfill its mandate in a way that is consistent with the City's vision for the waterfront. This is a municipal affair and is integral to the day-to-day operation of the business of the City. The Trust is neither ad hoc or informal, nor investigative or adjudicative. Accordingly, the Waterfront Trust is a local board.

### **Waterfront Trust's meeting practices**

The Waterfront Trust confirmed that for the period of April 2020 to February 2021, members of the public were not permitted to attend Board meetings. Since then, the Waterfront Trust has taken steps to facilitate public access of its meetings by:

- posting its meeting agendas on its website 72 hours prior to each meeting;
- providing directions to access the livestream of its meetings; and
- allowing the public to view previously recorded meetings online.

I commend the Waterfront Trust for introducing these measures proactively and its commitment to holding open meetings.

On September 28, 2022, council announced that it had directed staff to work with the Waterfront Trust to prepare a report on "[...] how to transfer the Waterfront Trust's operational responsibilities and Hamilton Waterfront Trust's assets to the City of Hamilton." I encourage the City and the Waterfront Trust to continue to steward the waterfront for the benefit of all citizens in a transparent and accessible manner, in accordance with the open meeting rules.

<sup>2</sup> *Ontario Ombudsman v. Hamilton (City)*, 2018 ONCA 502, online: <<https://canlii.ca/t/hsb9j>>.

<sup>3</sup> *Kroetsch v. Integrity Commissioner for the City of Hamilton*, 2021 ONSC 7982 (CanLII), online: <<https://canlii.ca/t/jlbcj>>.



## Conclusion

The Chair of the Board of Trustees and the Administrative Assistant/Interim Executive Director of the Hamilton Waterfront Trust were given the opportunity to review these findings and provide comments to my Office. All comments we received were considered in the preparation of this final letter. I would like to thank the Waterfront Trust and the City of Hamilton for their co-operation during my review. This letter will be published on my Office's website, and should also be made public by the Waterfront Trust. In accordance with s. 239.2(12) of the *Municipal Act, 2001*, the Waterfront Trust is required to pass a resolution stating how it intends to address this letter.

Sincerely,



Paul Dubé  
Ombudsman of Ontario

Cc: Council for the City of Hamilton, c/o Andrea Holland, City Clerk

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