



OMBUDSPERSON
BRITISH COLUMBIA

August 31, 2023

Bill Newell
General Manager of Administration
Regional District of Okanagan-Similkameen
101 Martin St
PENTICTON BC V2A5J9

①
② Mgr of legislative services
for Board Correspondence
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Dear Bill Newell,

RE: Office of the Ombudsperson Quarterly Report: April 1 - June 30, 2023

This package of documents details the complaint files the Office of the Ombudsperson closed for Regional District of Okanagan-Similkameen between April 1 and June 30, 2023. Though no action is required on your part, we hope that you will find this information useful and share it within your organization.

These reports provide information about the complaint files we closed regarding your organization within the last quarter, including both files we investigated and files we closed without investigation. Files currently open with the office are not included in these reports.

Enclosed you will find detailed reports containing the following:

- A one-page report listing the number of files closed and the category under which they were closed. The categories we use to close files are based on the sections of the Ombudsperson Act, which gives the Ombudsperson the authority to investigate complaints from the public regarding authorities under our jurisdiction. A more detailed description of our closing categories is available on our website at: <https://bcombudsperson.ca/assets/media/QR-Glossary.pdf>.
- If applicable: Copies of closing summaries written about the complaint files we investigated. These summaries provide an overview of the complaint received, our investigation and the outcome. Our office produces closing summaries for investigated files only, and not for enquiries or those complaints we chose not to investigate.
- If applicable: A summary of the topics identified in the complaint files closed during the quarter. We track general complaint topics for all complaints we receive, and when applicable, we include authority-specific and/or sector-specific topics for your organization and/or sector. Our office tracks the topics of complaints we investigate and those we close without investigation, but not for enquiries. Because complaints to our office are confidential, we do not share complaint topic information if we received too few complaints to preserve the complainants' anonymity.



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If your organization received too few complaints to produce a summary of complaint topics but you would like further information about the complaints our office received about your organization, our Public Authority Consultation and Training (PACT) Team can provide further details upon request.

If you have questions about our quarterly reports or notice any inaccuracies in the data provided, or if you would like to sign up for our mailing list to be notified of educational opportunities provided by our Public Authority Consultation and Training Team, please contact us at 250-508-2950 or consult@bcombudsperson.ca.

Yours sincerely,

Jay Chalke
Ombudsperson
Province of British Columbia

Enclosures



Type of complaint closure for Authority: Regional District of Okanagan-Similkameen	# closed
<p>Enquiries – Many people who contact us are not calling to make a complaint, but are seeking information or advice. These contacts are classified as <i>Enquiries</i> to distinguish them from <i>Complaints</i>, which are requests that our office conduct an investigation.</p>	0
<p>Complaints with No Investigation – Our office does not investigate every complaint it receives. First, we determine whether we have authority to investigate the complaint under the <i>Ombudsperson Act</i>. We also have discretion to decline to investigate for other reasons specified in the <i>Ombudsperson Act</i>.</p>	2
<p>Early Resolution Investigations – Early Resolution investigations provide an expedited process for dealing with complaints when it appears that an opportunity exists for the authority to take immediate action to resolve the issue. Typical issues that are addressed through Early Resolution include timeliness, communication, and opportunities for internal review.</p>	0
<p>Complaint Investigations – When we investigate a complaint we may conclude with a determination that a complaint is not substantiated, or with a negotiated settlement of the complaint, or with public findings and recommendations. We may also exercise discretion to cease investigation for a number of other reasons specified in the <i>Ombudsperson Act</i>.</p>	1
<p>Reason for closing an Investigation</p>	
<p>Pre-empted by existing statutory right of appeal, objection or review.</p>	0
<p>Investigation ceased with no formal findings under the <i>Ombudsperson Act</i>.</p>	
<p>More than one year between event and complaint</p>	0
<p>Insufficient personal interest</p>	0
<p>Available remedy</p>	0
<p>Frivolous/vexatious/trivial matter</p>	0
<p>Can consider without further investigation</p>	1
<p>No benefit to complainant or person aggrieved</p>	0
<p>Complaint abandoned</p>	0
<p>Complaint withdrawn</p>	0



Complaint settled in consultation with the authority – When an investigation leads us to conclude that action is required to resolve the complaint, we try to achieve that resolution by obtaining the voluntary agreement of the authority to settle the complaint. This allows matters to be resolved fairly for the complainant and authority without requiring a formal finding of maladministration.	0
Complaint substantiated with formal findings under the <i>Ombudsperson Act</i> .	0
Complaint not substantiated under the <i>Ombudsperson Act</i> .	0
Ombudsperson Initiated Investigations – The Ombudsperson has the authority to initiate investigations independently from our process for responding to complaints from the public. These investigations may be ceased at the discretion of the Ombudsperson or concluded with formal findings and recommendations.	0



The *Ombudsperson Act* requires that investigations be conducted in private. Ombudsperson investigation documents are not available through the *Freedom of Information and Protection of Privacy Act*, and may be subject to rules preventing their use in court and tribunal proceedings. **Please contact the Office of the Ombudsperson before disclosing this document, or any responses, to any third parties.**

Closing Summary Index

Closing summaries are provided for all investigated files closed in each quarter. Identifying information is removed from the closing summary itself to allow for broader distribution within your organization for quality improvement purposes without disclosing personal information. The table below provides an index of these investigated files and lists the file number, closing date and authority contact involved. Files closed under our Early Resolution Program are also identified. This identifying information is provided separately to assist you in following up on individual files with involved staff as needed.

File Number	Authority	Authority Contact	ER file
22-0197688 / 001	Regional District of Okanagan-Similkameen	Bill Newell	



Closing Summary

Authority:	Regional District of Okanagan-Similkameen
File Number:	22-0197688 / 001
Closing Date:	19-Jun-2023
Closing Status:	<i>Can consider without further investigation (s.13(e))</i>
General Complaint Topics:	Disagreement with Decision or Outcome, Process or Procedure
Authority-specific Complaint Topics:	All Local Government / Official Community Plan/Zoning/Development, Open Meetings, Business Licensing
Closing Summary:	<p>The complainant contacted our office and expressed a concern regarding the process followed in the approval of a temporary use permit. They explained that they raised concerns with the TUP application and requested their concerns be added to the agenda for the Advisory Planning Commission (APC) meeting. RDOS staff denied their request, explaining that, under the Regional District's APC Bylaw, the APC was only authorized to hear from an applicant or agent for a land use planning application referred to it by the Regional District Board. The staff also told the complainant that neighbours' concerns can be considered at the Public Information Meeting that takes place before an APC meeting and at the Board meeting following an APC meeting. The complainant considered the process unfair because preventing the public from providing their input gives the APC members a one-sided review of the issue; most jurisdictions do allow for public input at APC meetings; and before 2022 the RDOS allowed the APC Chair the discretion to approve members of the public to speak at APC meetings.</p> <p>The focus of our investigation was whether the RDOS' TUP application process was fair and reasonable with respect to concerned members of the public.</p>

Issue 1

The right to raise concerns with the RDOS APC during a TUP application process

The RDOS representative explained that the TUP consultation process follows a prescribed path and that the Local Government Act (LGA) does not contain provisions to allow members of the public to speak at APC meetings; consequently, the RDOS APC has not been empowered by the Board to hear from the general public. In order to enable the public to



express their concerns around an application, the authority created the Public Information Meeting process. The public may also write to the RDOS Board of Directors in advance of the Board meeting where the TUP would be considered.

The complainant disagreed with the current TUP approval process. They considered that the Regional District should follow the 2019 RDOS APC Guide which reads at page 7: "All APC meetings are open to the public and there is no provision for those meetings to be closed. Any information that is distributed to the commissions on meeting agendas is public, and also available on the RDOS website. The Chair may or may not allow audience members to speak." The complainant also considered that that the Regional District was outside the normal practice in prohibiting the public from speaking at APC meetings. In addition, they considered that the RDOS was providing an incorrect interpretation of the APC Bylaw 2339 and the Regional District Procedure Bylaw 2789. In their interpretation, APC Bylaw 2339 and the APC Policy do not address the topic of the public speaking at APC meetings. Therefore, the rules governing that aspect of the APC meetings should be those of the Regional District Procedure Bylaw. The RDOS Board Procedure Bylaw allows anyone to ask to be included on the agenda so they may address the meeting. The Board will also consider ad hoc requests that arise in the meeting itself, subject to a two thirds approval of the Board members.

Closing Reasons

Following review of both parties' submissions to our office, we determined that the matter in dispute was a matter of bylaw interpretation and not a matter of administrative fairness. The issue in dispute was not that the public may be unfairly restricted from appearing before the APC. Rather, the issue in dispute was whether the APC procedures should follow the Regional District's Board Procedure Bylaw No. 2789, 2021, knowing that there was no legal requirement for a local government to allow the public to appear before the APC.

Where there are two reasonable interpretations of a bylaw, as it seems to be the case here, our office will defer to the authority which drafted and democratically passed the applicable bylaws and policies.

Issue 2

Investigation

The right to present verbal submissions to the RDOS Board during a TUP application process

Furthermore, the complainant explained that when a TUP application is sent to the Board for their decision, the Board reviews in a public hearing the recommendations issued by the APC members and RDOS staff, together with any written feedback from the public. Members of the public opposing the application cannot speak while the applicant can. The permission for the public to speak as a delegation is at the Chair's discretion and therefore is usually not granted. The complainant considered this to be an administratively unfair process, as people



opposing an application should have just as much right to present their position as the applicant.

Closing Reasons

Following review of the applicable legal framework, we were able to confirm that, according to the LGA, persons who believe their interests are affected by a proposed bylaw or another decision of public interest may make representations to the Board, either orally or in writing. The legislation only requires that concerned citizens “must be afforded a reasonable opportunity to be heard or to present written submissions respecting matters contained in the bylaw that is the subject of the hearing”. (Sections 465(1) and (2) of the LGA)

In other words, as our office’s “Guide to Fairness and Maladministration” clarifies, the legislation does not require public authorities to allow concerned citizens to present verbal submissions at public meetings. Members of the public do not have an absolute and unrestricted right to speak at council meetings or public sessions. Boards are only required to allow public submissions, either orally, in writing, or in both manners, and consider the public submissions they receive.

Nevertheless, the complainant strongly believed members of the public should be allowed to present verbal submissions at public meetings and that this right should not be at the sole discretion of the Chair. We explained the complainant that legislative matters are outside of our jurisdiction but could be raised with their MLA.

Closing Status

In the absence of evidence of procedural flaws or unfairness, our Office would not challenge the decisions of duly elected representatives of the people. Ultimately, Board members are elected to make decisions based on what they consider to be the best interests of all their constituents. The Province of BC has established a legislative framework for local governments which recognizes that they are democratically elected, autonomous, responsible, and accountable within their jurisdiction. If constituents disagree with their representatives’ approach, they have recourse through the electoral process.

File closed under 13(e) of the Ombudsperson Act



The tables below summarize the complaint topics we are tracking for your sector and/or authority and the number of times this topic was identified in the files (investigated and non-investigated complaints) that were closed in the most recent quarter.

If you would like more information on the types of complaints we receive, please contact our Public Authority Consultation and Training Team: email us at consult@bcombudsperson.ca or call us at 250-508-2950.

Sector-Specific Complaint Topics – All Local Government

Business Licensing	2	1%
Bylaw Enforcement	44	29%
Council Member Conduct (incl. Conflict of Interest)	13	9%
Fees/Charges (incl. Taxes)	13	9%
Official Community Plan/Zoning/Development	25	17%
Open Meetings	6	4%
Other	31	21%
Procurement	2	1%
Response to Damages Claim	4	3%
Services (incl. Garbage, Sewer, Water)	11	7%

General Complaint Topics – All Local Government

Accessibility	12	6%
Administrative Error	10	5%
Communication	21	10%
COVID-19	3	1%
Delay	8	4%
Disagreement with Decision or Outcome	80	38%
Discrimination	3	1%
Employment or Labour Relations	3	1%
Other	8	4%



Process or Procedure	43	20%
Review or Appeal Process	5	2%
Treatment by Staff	15	7%