

## Decision

Case Number: 398566

## BACKGROUND

### The Issue as Raised in the Complaint:

The issue which is under consideration in this complaint relates to leadership and transparency in the Eastside Public Advisory Committee (EPAC) decision process. In particular, the complainant claims that the questions used in the Ipsos survey were not vetted by the committee prior to release of the survey.

## FINDINGS

### Survey was posted without having been vetted through the EPAC

In order to understand if there was a breach of fair process as it relates to the development and ultimate posting of the survey questions for the February 2016 Ipsos survey, I turn first to the mandate of the Eastside Public Advisory Committee.

#### *Mandate of Committee*

According to the Committee's Terms of Reference their purpose is as follows:

*"The Eastside Public Advisory Committee (Advisory Committee) will advise the Eastside Select Committee on the public consultation required for the development of the wastewater and resource recovery plan. The Advisory Committee will serve as a sounding board on the consultation process by:*

- *reviewing information and material prepared by consultants and staff and referred to by the Eastside Select Committee;*
- *providing feedback and advice on the consultation process;*
- ***reviewing and providing advice on the structure and tools that could be used to consult with the participating communities."*** [emphasis added]

In discussions with staff and the consultants charged with leading the Eastside consultation process, as well as through a review of meeting minutes, it is my understanding that, while the EPAC has been actively involved in various aspects of the development of the survey, there was never any procedural requirement for the Committee to vet the final survey instrument. In my view, this is consistent with the Committee's Terms of Reference quoted above. Their role is an advisory one as opposed to a decision-making body (which is reserved for the CALWMC).

#### *Forum for Committee Input*

The record indicates that the EPAC used a few methods to solicit feedback from Committee members. Formal Committee meetings were held where issues were discussed; workshops were also held in which members would deliberate on key issues; and materials were circulated to members who had email accounts. As it pertains to Committee meetings, I understand that there was an expectation that the EPAC Chair would call another meeting prior to the launch of the consultation period in January 2016, but that this meeting was not called.

### **Public Record of Committee Meetings**

The involvement of the Committee as evidenced through meeting minutes was at the conceptual and strategic level. A. Gibbs is the lead consultant for consultation undertakings with the Eastside committee, and her role includes overseeing the planning, development and implementation of the consultation materials. It is reported in the minutes of October 27<sup>th</sup>, 2015 that *“A. Gibbs provided an Eastside Wastewater Public Engagement Planning document.... The Committee discussed the public engagement planning and A. Gibbs provided clarification on timelines for the integration of Eastside and Westside select committees activities, the release of technical information, and formal consultation in affected neighbourhoods.”*

Minutes of the November 10<sup>th</sup>, 2015 meeting point to the role of the Eastside Public Advisory Committee as it pertains to public engagement materials. These minutes suggest that their role was advisory as opposed to decision-making: *“A. Gibbs briefed the Committee on the status of the decision process and development of public engagement materials.... The Eastside Public Advisory Committee can provide input on the public engagement process, such as helping to develop questions and answers for the website, updating the citizens’ guide, and in survey design.”* Here we clearly note their advisory role.

In minutes of the December 1<sup>st</sup>, 2015 EPAC meeting, we find that: *“A. Gibbs provided sample work in progress and spoke of the timelines for the communications plan and reported that a draft of the citizen’s guide will be updated after Technical Memo 3 at the December 9, 2015, [CALWMC] meeting. The Committee provided feedback.”* This further illustrates the role of the EPAC to provide feedback on 2016 consultation materials.

The minutes of December 15<sup>th</sup>, 2015 indicate once again that the survey development process was iterative and that Committee feedback was sought. *“A. Gibbs demonstrated the beta version of the proposed public survey and the Committee provided feedback. The Committee discussed that the survey would only go out once the content has been confirmed by the Core Area Liquid Waste Management Committee.”* I note the latter part of this excerpt from the minutes suggests that the decision-maker vetting the survey is ultimately, the CALWMC.

### **Specialist Expertise Sought**

Finally, I note that the final version of the survey instrument was created with the assistance of a polling firm, specialized in the development of public polling instruments.

### **Conclusion**

As I have noted in previous decisions, with respect to the workings of public authorities, procedural fairness can be judged by looking at whether or not the process afforded individuals the ability to express their standpoints; whether the process was characterized by respectful treatment of individuals; the consistency of the authority in its application of processes; and the transparency of the decision-making process.

In this instance, the focus is on whether the process was characterized by opportunities for input; and on how consistently the processes were applied. I find that in both cases, there was no diminishment of fair process.

The Committee’s Terms of Reference are clear in specifying that the role of the Committee is advisory in nature, characterized by the provision of advice through the review of information and materials provided by staff and consultants. I find that the minutes support this in that there is evidence that such review took place with respect to the 2016 survey on the options on at least two separate occasions prior to its release.

With respect to the Committee meeting which was not called - while regrettable, as this would have afforded a final opportunity for staff and consultants to seek counsel - it does not give rise to a breach of procedural fairness. Given that the Committee is an advisory body; they were not vested with final decision-making powers.

In short, I find that attacking the survey on procedural grounds for not having afforded the Committee a final review of the survey questions, is unsupported neither by the Committee's Terms of Reference nor by the facts. Involving review mechanisms such as advisory committees, introduces a tension into any process. Having to manage expectations related to when and how much feedback will be sought, is no easy task and one fraught with potential disquiet. I must find in this instance that the record is clear that "advice" was sought at key junctures with respect to the recent survey's development. While I acknowledge a temporary diminishment of leadership at the chair level, I cannot state that this seriously impeded the ability of the process to be fair as it relates specifically to the finalization of the survey instrument.