



Ombudsman Report

**Investigation into whether
Council for the Township of Woolwich
held an illegal closed meeting on
March 22, 2016**

**Paul Dubé
Ombudsman of Ontario
August 2016**

Complaint

- 1 My Office received two complaints about a meeting held by Committee of the Whole for the Township of Woolwich on March 22, 2016. During the open session that day, the committee Chair told an individual who was scheduled to make a delegation that he was not allowed to do so. The complaints alleged that the decision on the delegation must have been made behind closed doors, prior to the open session, in violation of the *Municipal Act, 2001* (the Act).

Ombudsman jurisdiction

- 2 Under the Act, all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 3 As of January 1, 2008, the Act gives citizens 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 or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 4 The Ombudsman is the closed meeting investigator for the Township of Woolwich.
- 5 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipal procedure by-law have been observed.

Council procedures

- 6 The township's procedure by-law (by-law 01-2016) states that all meetings shall be open to the public, except as provided in section 239 of the *Municipal Act*. Prior to proceeding in camera, council or the committee must state by resolution the fact of holding a closed meeting and the general nature of the subject matter to be considered.

- 7 Section 28 of the procedure by-law states that the Rules of Procedure for Committee of the Whole meetings shall be the same as those for council meetings, except that the committee members may speak more than once to an issue.

Investigative process

- 8 On April 22, 2016, after conducting a preliminary review, we provided the municipality with notice that we would be investigating these complaints.
- 9 Members of my Office's Open Meeting Law Enforcement Team (OMLET) reviewed relevant portions of the municipality's procedure by-law and the Act, as well as the meeting materials for the meeting in question. They also listened to the audio recording of the March 22 closed session, and interviewed council members and municipal staff.
- 10 My Office received full co-operation in this matter.

The March 22, 2016 Committee of the Whole closed meeting

- 11 The meeting agenda stated that a closed session would be held prior to the committee's open meeting, at 5:30 p.m. The committee would be proceeding in camera under the "personal matters" exception, found in s. 239(2)(b) of the Act, to discuss committee appointments.
- 12 The minutes indicate that the committee passed a resolution to proceed in camera that mirrored the information provided on the agenda.
- 13 The audio recording of the in camera meeting lasted just over 11 minutes. During the closed session, the committee reviewed applications for the municipality's Heritage Committee. There was no discussion of a delegation to council captured on the audio recording. All those we interviewed agreed that there was no discussion of this issue during the closed session.

The time between the open and closed sessions

- 14 Two council members were unable to attend the closed session. Accordingly, only four council members and two members of staff attended the closed meeting and were in the closed session room for any amount of

time after the in camera meeting adjourned. The break between the open and closed sessions lasted approximately 10 minutes.

- 15** We were unable to obtain a consensus from those we interviewed about exactly what occurred during this break, but all those present agreed that something was said about the delegation that was scheduled to occur at the open meeting.
- 16** Councillor Murray Martin, who chaired the committee meeting, advised us that he stated to the group that he would not allow the delegation to proceed, and then left the room. Two others present had a similar recollection, but also remembered one or two follow-up comments being made. Three interviewees recalled committee members engaging in short one-on-one conversations about the delegation in the closed meeting room, before council members dispersed.
- 17** None of the council members or staff we interviewed recalled a quorum of the committee collectively discussing whether to allow the delegation during the 10-minute break.

The March 22, 2016 Committee of the Whole open meeting

- 18** The open session began at 6:00 p.m. Dr. Dan Holt, on behalf of the Citizens Public Advisory Committee, was present to provide a delegation regarding contamination of the Canagagigue Creek. Before the delegation began Councillor Martin, as Chair, told Dr. Holt that the subject matter was technical in nature, and accordingly should be taken to the Technical Advisory Committee prior to being brought before Committee of the Whole. Accordingly, he said he would not let the delegation speak.
- 19** According to the open session minutes, some debate ensued amongst council members about this decision. Those we interviewed estimated that the debate lasted 7-8 minutes. Although the minutes state that the committee “agreed, and the delegation was allowed to proceed”, council members and staff advised my Office that there was no vote or formal consensus reached. Committee members offered their opinions on the delegation and Councillor Martin ultimately reversed his earlier decision and allowed the delegation to proceed.
- 20** After the Canagagigue Creek delegation was complete, the committee discussed delegations generally. In particular, the committee considered whether all delegation requests should be allowed to come directly to

council or Committee of the Whole, or if topics that are the responsibility of a sub-committee should be directed to that sub-committee first.

- 21** Mayor Sandy Shantz moved a motion that staff should direct delegations with topics specific to a township sub-committee to the sub-committee in question prior to being brought before Committee of the Whole. The motion passed 5-1.

Analysis

- 22** The complaint to our Office alleged that the Committee of the Whole made a decision regarding a delegation behind closed doors on March 22, 2016. It is clear that a closed meeting took place on March 22. However, the evidence indicates that discussion was limited to appointments to the Heritage Committee, not the delegation, during this closed session.
- 23** We were told that individual councillors mentioned the delegation during the break between the closed and open session on March 22. The question is whether or not these discussions rose to the level of a meeting that was subject to the open meeting provisions of the Act.

What is a meeting?

- 24** The term “meeting” is defined in section 238 of the Act as “any regular, special or other meeting of a council, of a local board or of a committee of either of them.” This definition is unfortunately circular, and does not provide a clear description of what constitutes a “meeting”.
- 25** In one of our earliest reports¹, in 2008, we considered whether a discussion amongst council members for the City of Greater Sudbury, held outside of council chambers, contravened the open meeting rules. After a review of the relevant case law and considering principles of openness, transparency, and accountability, we formulated this working definition of “meeting”:

Members of council (or a committee) must come together for the purpose of exercising the power or authority of the council (or

¹ Ombudsman of Ontario, *Don't Let the Sun Go Down on Me: Opening the Door on the Elton John Ticket Scandal* (April 25, 2008), [online](#) at paras. 42-92.

committee), or for the purpose of doing the groundwork necessary to exercise that power or authority.

- 26** This definition remains consistent with leading interpretations of the open meetings law and reinforces the right of the public to observe municipal government in process.

Informal discussions

- 27** The *Municipal Act* does not prohibit members of council, committees and local boards from ever discussing city business outside of a formal meeting. It is expected that some informal conversations about municipal business will take place amongst individual members of such bodies. As we noted in a previous report regarding the City of London:

It is a healthy thing in a democracy for government officials to share information informally before making policy decisions. I agree that to expect council members never to talk to one another outside of a public meeting is unrealistic and would have the effect of unnecessarily chilling speech.²

- 28** A similar situation occurred in our investigation regarding a meeting for council of the City of Niagara Falls in April 2015.³ In that case, council members discussed whether to continue to have a prayer before council meetings. The discussion took place between the closed and open council meetings, and although a quorum of council was present, only four of the nine council members participated.
- 29** In both the Niagara Falls case and the present case, the discussions did not rise to the level of a “meeting” for the purpose of the open meeting requirements. The committee was not coming together for the purpose of exercising the power or authority of the committee, or for laying the groundwork necessary for committee decision-making.
- 30** We heard different recollections of what occurred during the break between the closed and open sessions of the Committee of the Whole of Woolwich council. The majority of those we interviewed agreed that Councillor Martin

² Ombudsman of Ontario, *In the Back Room*: Investigation into whether members of Council for the City of London held an improper closed meeting on February 23, 2013 (October 2013), [online](#).

³ Ombudsman of Ontario, Investigation into whether Council for the City of Niagara Falls held an illegal closed meeting on April 28, 2015, [online](#).

made a comment to the group about the ensuing delegation. Some councillors also recalled one-on-one conversations or unilateral declarations, and some recalled that a quorum of the committee was present in the room while individual discussions about the delegation were ongoing. However, there is no evidence that a quorum of the committee discussed the delegation as a group or laid the groundwork for a decision on whether the delegation should be allowed.

- 31** It is also clear from the debate, which transpired during the subsequent open session, that during the break no decision had been reached by a quorum of council on whether or not to allow the delegation to proceed. In fact, it was Councillor Martin, as committee Chair, who had the authority to decide whether to allow the delegation to proceed and after listening to the ensuing debate in open session, he ultimately decided to allow the delegation to go ahead.

Conclusion

- 32** Council for the Township of Woolwich did not violate the *Municipal Act* when some councillors informally discussed an upcoming delegation during the break between the March 22, 2016 closed session and the open meeting of the Committee of the Whole.

Procedural matters

- 33** In August 2015 my Office released a report regarding an investigation conducted into meetings held by council for the Township of Woolwich in January and February 2015. As a result of this investigation we made several recommendations as to how the township could improve its closed meeting practices.
- 34** We suggested that the township should provide more detail about closed session matters on their agendas and in the resolution to proceed in camera, that closed meeting minutes should be more comprehensive and should reflect the actual discussions that took place, and that council should consider audio recording its closed sessions.
- 35** I would like to recognize the steps the township has taken to improve its closed meeting practices since that report was released. During the current

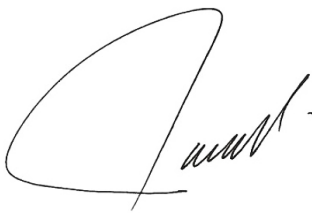
investigation we saw that both the agenda and the resolution to proceed in camera contained sufficient detail to give the public a general idea of the subject matter to be discussed. We were also provided with an audio recording of the closed session, which gave us a clear, accessible record of the closed meeting and greatly assisted with our investigation.

Opinion

- 36 My investigation found that the Committee of the Whole for the Township of Woolwich did not contravene the *Municipal Act, 2001* during its in-camera meeting on March 22, 2016, or during discussions that took place between the closed and open sessions that same day.
- 37 The township should be commended for taking steps to improve the transparency of its meetings since my Office's last investigation.

Report

- 38 OMLET staff provided the township with an overview of my findings and requested that this report be made available to the public at the next council meeting.



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