



## **Ombudsman Report**

**Investigation into a complaint about a meeting  
held by the Township of Alberton  
on May 11, 2022**

**Paul Dubé  
Ombudsman of Ontario**

**July 2023**

## Complaint

- 1 My Office received a complaint from a person who was removed from the May 11, 2022 virtual meeting of council for the Township of Alberton (the “Township”) because they refused to identify themselves.
- 2 For the reasons set out below, I have concluded that in removing the complainant from the virtual meeting on May 11, 2022, the Township contravened the open meeting rules.

## Ombudsman jurisdiction

- 3 Under the *Municipal Act, 2001*, all meetings of a council, local board, and committee of either must be open to the public, unless they fall within prescribed exceptions.<sup>1</sup>
- 4 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 or use the services of the Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 5 The Ombudsman is the closed meeting investigator for the Township of Alberton.
- 6 In investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the municipality’s governing procedures have been observed.
- 7 Since 2008, my Office has investigated hundreds of closed meetings in municipalities throughout Ontario. To assist municipal councils, staff, and the public, we have developed an online digest of open meeting cases. This searchable repository was created to provide easy access to the Ombudsman’s decisions on, and interpretations of, the open meeting rules. Summaries of the Ombudsman’s previous decisions can be found in the digest: [www.ombudsman.on.ca/digest](http://www.ombudsman.on.ca/digest).

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<sup>1</sup> SO 2001, c 25.

## Investigative process

- 8 In February 2023, we advised the Township of our intent to investigate this complaint.
- 9 We reviewed the May 11, 2022 meeting agenda and minutes, as well as the Township's procedural by-law, and the relevant portion of the meeting video. We spoke with the Reeve<sup>2</sup> and the CAO/Clerk-Treasurer.
- 10 My Office received full co-operation in this matter.

## Background

- 11 Section 23(b) of the Township's procedural by-law sets out requirements for the content of meeting minutes:

23. The record of the meeting (the minutes) shall be recorded by the Clerk, in the case of a meeting of Council, or by the appropriate officer, in the case of a meeting of a local board or committee, and shall record:

...

the names of the Presiding Officer or officers and record of the attendance of members and other attendees... [Emphasis added]

- 12 We were told that prior to the pandemic, anyone attending an in-person meeting was asked to sign the Township's guest book and/or identify themselves for the purposes of the minutes. The CAO/Clerk-Treasurer explained that this practice had been in place for more than 20 years. We were told that the purpose of this requirement was to maintain an accurate historical record.
- 13 It was explained to us that when the Township began holding its council meetings electronically, shortly after the beginning of the COVID-19 pandemic in March 2020, its practice of asking attendees to sign the guest book was "carried over" to the virtual context by asking people to identify themselves by using their names when joining its meetings over Zoom. We were told that, in addition to maintaining an accurate historical record of the meetings, the Township required identification for security purposes, in order to prevent "Zoom bombings" (where uninvited individuals join a virtual

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<sup>2</sup> The Township recently changed this individual's title to Mayor. However, for the purposes of this report, we will refer to him as the Reeve, as this was the title he held at the time.

meeting and act in a disruptive manner). The CAO/Clerk-Treasurer told us that at the time, “Zoom bombings” were being reported in the news and discussed amongst municipal clerks.

- 14 Finally, we were told that the authority to remove attendees who refused to identify themselves came from the Reeve’s power, as head of council, to “expel any person for improper conduct at a meeting”. This power comes from section 241(2) of the *Municipal Act, 2001* and is also set out in the Township’s procedural by-law. This information is also stated at the top of the first page of each Township meeting agenda, including the agenda for the May 11, 2022 meeting.

## May 11, 2022 meeting

- 15 At the time of the May 11, 2022 meeting, the Township was holding meetings in a hybrid manner, with council attending in person, while members of the public were only permitted to attend virtually over Zoom. Members of the public who joined the meeting were initially placed in a virtual “waiting room”, and had to be “admitted” to the meeting by the Reeve in order to observe it.
- 16 The agenda for the May 11, 2022 meeting set out that this would be a hybrid meeting, that the public was to attend electronically, and that “[a]ll persons attending electronically must identify themselves.”
- 17 According to the minutes, the meeting was called to order at 7:10 p.m. The minutes identify all attendees – both council and staff attending in person and members of the public attending via Zoom – by full name.
- 18 According to the video of the meeting, approximately 55 minutes after it was called to order, the Reeve remarked that “iPhone” had joined the waiting room. This was the complainant, who told my Office they wanted to observe council’s discussion of one of the items on the May 11, 2022 agenda. The CAO/Clerk-Treasurer asked the Reeve who this was, and the Reeve responded that the person would be asked to identify themselves. He admitted the complainant to the meeting, who showed up onscreen only as “iPhone”.
- 19 According to the minutes and the video of the meeting, the Reeve asked the person who had joined as “iPhone” to identify themselves, stating that it was “for the purposes of our minutes”. There was no response. The complainant told us that they did not believe they should have had to identify themselves in order to observe the meeting.

- 20 The Reeve then asked a second time for the complainant to identify themselves, and warned that if they did not, they would be removed from the meeting. When there was no response again, the Reeve said he was giving them a “final chance” to identify themselves before removing them. Again, there was no response. Shortly afterwards, the Reeve removed “iPhone” from the meeting. The video confirms that the complainant was removed from the meeting within two minutes of having been admitted.
- 21 The meeting then continued and was adjourned at 11:14 p.m.
- 22 The complainant told us that after they were removed from the meeting, they tried to rejoin, but found they could not do so. They attempted to type in their name on Zoom, even though they did not believe they should have had to, but they received a message that because they had been removed from the meeting, they were unable to rejoin.
- 23 The Reeve and CAO/Clerk-Treasurer told us that they were unaware that attendees who were removed from meetings could not rejoin. They indicated that as long as someone is willing to identify themselves, they would like them to be able to attend the Township’s meetings. It turned out that the inability of someone who had been removed to rejoin a meeting was due to a default setting on Zoom. After our Office advised the Township of this complaint, the CAO/Clerk-Treasurer was able to change the Township’s Zoom settings so that if an attendee is removed from a meeting, they will be able to rejoin.
- 24 However, the Township still requires, as a condition of access to its open meetings, that members of the public identify themselves.

## Analysis

- 25 Section 239(1) of the *Municipal Act, 2001* requires that all meetings of council, local boards, and committees of either of them must be open to the public, unless the topic discussed falls within one of the exceptions prescribed in the Act. The Supreme Court has recognized that the open meeting requirement in section 239 concerns the public’s “right to observe municipal government in process”.<sup>3</sup>

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<sup>3</sup> *London (City) v. RSJ Holdings Inc.*, [2007] 2 SCR 588, 2007 SCC 29, at para 32, online: <<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/2368/index.do>>.

- 26 I have previously determined that a failure to grant physical access to an open meeting, even if inadvertent or without council knowledge, constitutes illegal closure of a meeting.<sup>4</sup> For example, in a 2016 report about the City of London, my Office found that the City effectively closed a meeting to the public when it failed to ensure that the doors to City Hall were unlocked during the meeting, even though council members believed the doors to be open.<sup>5</sup> As I concluded in a 2019 letter to the City of Hamilton, municipal councils are required under the Act to ensure that meetings are open to the public, meaning that the public is able to access the building and meeting room.<sup>6</sup>
- 27 The mandatory language of section 239(1), together with this Office's prior determination that municipalities have an obligation to ensure that the public can freely access and observe open meetings, means that municipalities must be careful about placing conditions on the public's ability to do so. Under the Act, it is council that has the obligation and responsibility of transparency, not members of the public who attend to observe open meetings.
- 28 While there should be as few conditions on the public's ability to attend open meetings as is safely possible, that does not mean that all such conditions will be a violation of the open meeting rules. As in the 2016 report to the City of London referenced previously, my Office has found that the Act's open meeting requirements do not preclude council from taking appropriate measures to preserve security and maintain order at council meetings.<sup>7</sup>
- 29 Case law analyzing the issue of public access to meetings in the context of the *Canadian Charter of Rights and Freedoms*<sup>8</sup> supports this conclusion. In applying the *Charter*, the courts have found that security measures (like metal detectors and bag checks) may be justified to protect health and safety, but have noted that requiring individuals to identify themselves may

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<sup>4</sup> See e.g. *London (City of) (Re)*, 2016 ONOMBUD 4, online: <<https://canlii.ca/t/gt8dh>>; Letter from the Ontario Ombudsman to the City of Hamilton (July 4, 2019), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2019/city-of-hamilton-2>>; and *Hamilton (City of) (Re)*, 2019 ONOMBUD 7, online: <<https://canlii.ca/t/j2pwf>>.

<sup>5</sup> See *London (City of) (Re)*, 2016 ONOMBUD 4, online: <<https://canlii.ca/t/gt8dh>>.

<sup>6</sup> See Letter from the Ontario Ombudsman to the City of Hamilton (July 4, 2019) at 3, online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2019/city-of-hamilton-2>>. See also *Hamilton (City of) (Re)*, 2019 ONOMBUD 7 at para 106, online: <<https://canlii.ca/t/j2pwf>>.

<sup>7</sup> See *London (City of) (Re)*, 2016 ONOMBUD 4 at para 51, online: <<https://canlii.ca/t/gt8dh>>.

<sup>8</sup> Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

be considered too intrusive.<sup>9</sup> In all cases, the security measure must be reasonably connected and proportionate to its objective.

- 30 I acknowledge that the Township was concerned about “Zoom bombings” at its council meetings. However, requiring the public identification of all attendees at open council meetings is an overly intrusive measure to achieve this objective. Technological options exist that could permit the public to observe a meeting in process without being able to interrupt. Some municipalities choose to livestream their council meetings, so that members of the public can observe them, but are not able to participate. Many electronic meeting platforms allow the host of a meeting to control who is able to speak during a meeting and who is only able to observe.

## Opinion

- 31 By electronically removing the complainant from the May 11, 2022 council meeting for their refusal to identify themselves over Zoom, the Township of Alberton contravened the open meeting rules in the *Municipal Act, 2001*. The Township’s requirement that all members of the public identify themselves to attend its open meetings is not proportionate to the objective of preventing public interruptions of meetings. As a result, the Township illegally closed the May 11, 2022 meeting to the public.

## Recommendations

- 32 I make the following recommendations to assist the Township of Alberton in fulfilling its obligations under the Act and enhancing the transparency of its meetings:

### Recommendation 1

**All members of council for the Township of Alberton should be vigilant in adhering to their individual and collective obligation to ensure that the municipality complies with its responsibilities under the *Municipal Act, 2001* and its procedural by-law.**

### Recommendation 2

**Council for the Township of Alberton should ensure that the public has unimpeded access to observe open council meetings, whether they are held electronically or in person.**

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<sup>9</sup> *Langenfeld v. Toronto Police Services Board*, 2019 ONCA 716, online: <<https://canlii.ca/t/j2cj3>>.

### Recommendation 3

**Council for the Township of Alberton should amend its procedural by-law to remove the requirement that all attendees of open meetings identify themselves for the purposes of the meeting record.**

## Report

- 33** The Township was given the opportunity to review a preliminary version of this report and provide comments to my Office. All comments we received were considered in the preparation of this final report. I would like to thank the Township for its co-operation during my investigation.
- 34** This report will be published on my Office's website, and should also be made public by the Township. In accordance with subsection 239.2(12) of the *Municipal Act, 2001*, council is required to pass a resolution stating how it intends to address this report.



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Paul Dubé  
Ombudsman of Ontario

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