

BY EMAIL

February 8, 2022

Council for the Municipality of St.-Charles
c/o Tammy Godden, Clerk
2 King Street East
St.-Charles, ON P0M 2W0

Dear Council for the Municipality of St.-Charles:

Re: Closed meeting complaint

My Office received a complaint alleging that the Environmental Services Committee (the “committee”) for the Municipality of St.-Charles (the “Municipality”) contravened the *Municipal Act, 2001* when members of the committee participated in an informal gathering on August 17, 2021. Specifically, we were told that two councillors and a staff person gathered with concerned residents in the municipal parking lot to discuss garbage collection concerns.

For the reasons set out below, I have determined that the Municipality did not contravene the open meeting requirements.

Ombudsman’s role and authority

As of January 1, 2008, the *Municipal Act, 2001*¹ (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, but the Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own. My Office is the closed meeting investigator for the Municipality of St.-Charles.

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 open meeting

¹ SO 2001, c 25.



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.

Review

My Office notified the Municipality of our intent to investigate this complaint in August 2021. We spoke with both members of council present at the gathering, the Director of Operations, and the Clerk. We reviewed the resolution appointing members of council to committees and e-mail correspondence related to the gathering. We also reviewed the agenda, the video recording, and a report to council from a subsequent council meeting on August 18, 2021.

Background

The Environmental Services Committee

The Environmental Services Committee is a standing committee of council. Resolution 2018-336 of the municipality provides that the committee is composed of two members of council. The committee is responsible for garbage and recycling collection and landfills. Those we interviewed indeed confirmed that garbage collection management comes squarely within the purview of the committee. However, we were told that the committee rarely meets and that items under the committee's purview are usually discussed before the Committee of the Whole. Our review indicates that the Environmental Services Committee has met once since council's term began in 2018.

The August 17, 2021 gathering

In late spring of 2021, municipal staff became aware of garbage collection issues affecting certain residents and took various steps to address these concerns. Dissatisfied, in early August 2021, a concerned resident met with municipal staff to again raise his concerns related to garbage collection. Due to a misunderstanding, the resident understood that he had been invited to meet at the municipal building on August 17, 2021 to discuss the issue further.

Information about this meeting was shared with other residents affected by the garbage collection issue, and we were told that one of these other residents invited two council

483 Bay Street, 10th Floor, South Tower / 483, rue Bay, 10^e étage, Tour sud
Toronto, ON M5G 2C9

Tel./Tél. : 416-586-3300 Facsimile/Télécopieur : 416-586-3485 TTY/ATS : 1-866-411-4211

www.ombudsman.on.ca

Facebook : facebook.com/OntarioOmbudsman Twitter : twitter.com/Ont_Ombudsman YouTube : youtube.com/OntarioOmbudsman



members to attend the gathering on August 17. One member of council inquired with municipal staff about this gathering and was told that there was no meeting. Both members of council nonetheless showed up and told us they hoped they could de-escalate the situation, reassure the residents, and listen to their concerns.

We were told that around 1 or 2 p.m., four to seven residents showed up at the municipal parking lot to discuss their garbage collection concerns. Both councillors who were invited attended and listened to the residents' complaints. Following this initial discussion, the Director of Operations was invited to join the gathering to address the garbage collection issue. He told the group that the issue had been recently resolved with the garbage collection contractor and that he was satisfied there would not be further issues. The Director gave the residents information about the municipal written complaint process and a copy of the complaint form. Most residents were satisfied by these explanations and left shortly after, along with both members of council.

Both members of council told us that no council or committee business was discussed. We were also told that no decision was made at the gathering and that those present only discussed the status of the garbage issue and the steps to make a municipal complaint.

Analysis

Section 238(1) of the *Municipal Act, 2001* sets out two requirements for a gathering to come within the definition of a "meeting".

"meeting" means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

(a) a quorum of members is present, and

(b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

The Environmental Services Committee consists of two members of council. At the August 17 gathering, both members of the committee were present, which constitutes a quorum of the committee.

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Having determined that a quorum was present, it is necessary to assess whether the councillors dealt with any matter in a way that materially advanced the committee's business or decision-making. In a report to the Village of Casselman, my Office stated:

[...] “materially advances” involves considering the extent to which the discussions at issue moved forward the business of the municipality, based on factual indicators.

Discussions, debates or decisions that are intended to lead to specific outcomes or to persuade decision-makers one way or another are likely to “materially advance” the business or decision-making of a council, committee or local board. Mere receipt or exchange of information is unlikely to “materially advance” business or decision-making, as long as there is no attempt to discuss or debate that information as it relates to a specific matter that is or will be before a council, committee or local board.²

Mere updates on recent activities or communication of information are unlikely to materially advance business or decision-making.³ However, votes, agreements, direction or input to staff, and discussion or debates of a proposal, course of action, or strategy is likely to materially advance business or decision-making.⁴ My Office has also determined that discussions about procedural options do not materially advance business,⁵ nor do discussions of a social nature.⁶

While the Supreme Court of Canada and my Office have consistently emphasized that the public has the “right to observe municipal government in process”⁷, a culture of absolute silence between council members outside of council chambers is not realistic, nor healthy for democratic governance in municipalities.⁸

In the present case, both members of the committee attended the gathering to hear and respond to their concerned constituents. The Director of Operations was brought out to

² *Casselman (Village of) (Re)*, 2018 ONOMBUD 11 at paras 30-31 [*Casselman*], online: <<https://canlii.ca/t/hvmtk>>.

³ *Ibid* at para 40.

⁴ *Ibid* at para 41.

⁵ *Saugeen Shores (Town of) (Re)*, 2020 ONOMBUD 3 at paras 49-50, online: <<https://canlii.ca/t/j93c3>>.

⁶ *Pelham (Town of) (Re)*, 2020 ONOMBUD 2 at para 20, online: <<https://canlii.ca/t/j8c83>>; *Greater Napanee (Town of) (Re)*, 2021 ONOMBUD 2 at para 48 online: <<https://canlii.ca/t/jctvh>>.

⁷ *London (City) v RSJ Holdings Inc.*, 2007 SCC 29 (CanLII) at para 32, online: <<https://canlii.ca/t/1rtq1>>.

⁸ *Letter from the Ontario Ombudsman to Loyalist Township* (6 December 2021), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2021/loyalist-township>>.



explain the municipality's operational response to the residents' concerns and the written complaint procedure. Everyone we spoke with agreed that no decisions were made during the gathering and that the discussion was informational in nature.

The gathering concluded with the hope that the situation was resolved and garbage collection would run smoothly going forward. Following the gathering, the Environmental Services Committee has not held a meeting and has not made any decisions related to garbage collection management, instead leaving these matters to municipal staff. There is also no evidence that the garbage collection issue was presented to council for discussion, and we were told that the matter has not been discussed during other meetings of council.

Accordingly, the facts of this case fail to indicate that committee business was moved forward in any way. The Environmental Services Committee's business and decision-making were not materially or significantly advanced, and the gathering was not a "meeting" contrary to the *Municipal Act*.

Conclusion

The Environmental Services Committee for the Municipality of St.-Charles did not contravene the *Municipal Act, 2001* when council members participated in an informal gathering on August 17, 2021 concerning garbage collection issues.

I would like to thank the Municipality for its co-operation during my review. The Clerk has confirmed that this letter will be included as correspondence at an upcoming council meeting.

Sincerely,



Paul Dubé
Ombudsman of Ontario

Cc: Tammy Godden, Clerk, Municipality of St.-Charles

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