



Ombudsman Report

**Investigation into a gathering held by council
for the Township of Pelee on June 22, 2021**

**Paul Dubé
Ombudsman of Ontario
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Complaint

- 1 My Office received a complaint about a gathering held by council for the Township of Pelee (the “Township”) on June 22, 2021.
- 2 The complaint alleged that council’s closed session discussion did not fall within any of the prescribed exceptions in the *Municipal Act, 2001* (the “Act”).

Ombudsman jurisdiction

- 3 Under the Act,¹ all meetings of council, local boards, and committees of either must be open to the public, unless they fall within prescribed exceptions.
- 4 As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipality or local board has complied with the Act in closing a meeting to the public. 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 Pelee.
- 6 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the applicable procedure by-law have been observed.
- 7 Our 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 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.

¹ SO 2001, c 25.

Investigative process

- 8 We received a complaint about a June 22, 2021 gathering held by council for the Township of Pelee. On August 4, 2021, we advised the Township of our intent to investigate.
- 9 We reviewed the Township's procedural by-law and relevant portions of the *Municipal Act*. Additionally, we reviewed meeting records, including the closed meeting agenda and draft minutes.
- 10 We also reviewed the Township's publicly available Service Delivery Review report, which was the impetus for the Township's meeting on June 22, 2021, as well as other relevant communication shared by the complainant.
- 11 We interviewed all members of council as well as the Deputy Clerk/Treasurer and Clerk/Chief Administrative Officer (CAO).
- 12 My Office received full co-operation in this matter.

June 22, 2021 council meeting

- 13 The agenda for the June 22, 2021 meeting indicated that council would hold an *in camera* discussion under the open meeting exception for education or training, set out in section 239(3.1) of the Act.
- 14 The meeting began at 3:00 p.m. and council immediately passed a resolution to move into closed session under the exception for education or training.
- 15 As reflected in the draft closed meeting minutes, and validated by interviewees, during the meeting, members of council received information and training on federal processes, communication techniques, and stakeholder relations from staff of the local Member of Parliament.
- 16 Those we interviewed consistently described the purpose of the gathering as "education and training", and maintained that any reference to specific policy issues occurred only at a high level to facilitate the training. We found no evidence that council members discussed or debated any issues.

- 17 Interviewees emphasized council's intention to use the information and training provided to facilitate the implementation of the Township's Service Delivery Review and the development of an intergovernmental affairs strategy.
- 18 Council passed a resolution to rise from the closed session and adjourn the meeting at 4:15 p.m.
- 19 My Office's review found that no decisions were made, nor direction provided to staff, as a result of the *in camera* discussion.

Analysis

Applicability of the exception for education or training under the Act

- 20 Under the Act, all meetings of council, local boards, and committees of either of them must be open to the public, unless they fall within a prescribed exception in s. 239 of the Act.
- 21 Council relied on the "education or training" exception as the basis for meeting *in camera* on June 22, 2021.
- 22 Under section 239(3.1) of the Act, a meeting may be closed to the public if it is held for the purpose of educating or training members of council and if members do not discuss a matter in a way that materially advances the business or decision-making of council.
- 23 The 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 On the other hand, council is likely materially advancing business or decision-making when it votes, reaches an agreement, provides direction or input to staff, or discusses or debates a proposal, course of action, or strategy.³

² *Casselman (Village of) (Re)*, 2018 ONOMBUD 11 at para 31, online: <<http://canlii.ca/t/hvmtk>>.

³ *Ibid.*

- 24 My Office has explained that the “education or training” exception includes meetings closed to allow council members to acquire skills or information that may assist them in better understanding the business of the municipality.⁴
- 25 In a 2016 report on meetings in the Township of Russell, my Office found that the “education or training” exception applied to a meeting where councillors were educated on vocabulary and principles related to the strategic planning process.⁵ Similarly, my Office found the exception applied to a meeting in the Town of Fort Erie where council members were trained on interpersonal relationships and communication.⁶
- 26 On June 22, 2021, council for the Township of Pelee received information and training on federal processes, communication techniques, and stakeholder relations. Council did not vote or provide instructions to staff following the session, nor did it deliberate on specific decisions before council. Council did not materially advance its business or decision-making during the course of the discussion.
- 27 Accordingly, the *in camera* discussion held on June 22, 2021 fit within the “education or training” exception.

Definition of “meeting”

- 28 While the subject matter discussed on June 22, 2021 fits within the exception for education or training in the Act, we also considered whether or not the gathering was technically a “meeting”. Section 238(1) of the Act defines “meeting” as:

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 of either. [emphasis added]

⁴ *Casselman (Village of) (Re)*, 2015 ONOMBUD 14 at para 54, online: <<https://canlii.ca/t/gtp61>>.

⁵ *Russell (Township of) (Re)*, 2016 ONOMBUD 1 at para 33, online: <<https://canlii.ca/t/qt6gg>>.

⁶ *Fort Erie (Town of) (Re)*, 2008 ONOMBUD 1 at para 29, online: <<https://canlii.ca/t/gttg4>>.

- 29 As stated above, council did not discuss a matter in a way that materially advanced business or decision-making when it came together on June 22, 2021.
- 30 In a 2016 report about a meeting in the City of Greater Sudbury, my Office explained that “not all gatherings of council will constitute a meeting subject to the open meeting provisions.”⁷ In that case, our Office reviewed a complaint about a private roundtable meeting with the Prime Minister. The discussion was limited to high-level remarks regarding the community’s needs and opportunities. The roundtable did not constitute a meeting for the purposes of the Act and was not subject to the open meeting rules.
- 31 Though a quorum of council for the Township of Pelee attended the closed session on June 22, 2021, the discussion was limited to the communication of information and did not materially advance the business or decision-making of council. As such, the discussion did not constitute a meeting per section 238(1) of the Act and was not subject to the open meeting rules.
- 32 While the Township of Pelee’s gathering was not technically a meeting, the decision to post notice of the gathering publicly and to record minutes increased the transparency of council’s actions. It also assisted with my Office’s review of this complaint. I commend the Township for going beyond the formal requirements of the Act and maximizing the information available to the public.

Opinion

- 33 Council for the Township of Pelee did not contravene the Act when it received information and training on June 22, 2021. The gathering was not a “meeting” as defined in the open meeting rules. Even if the gathering had been a meeting, the discussion would have been permitted to take place *in camera* under the exception for education or training in section 239(3.1) of the *Municipal Act, 2001*.

⁷ Letter from the Ontario Ombudsman to City of Greater Sudbury (19 May 2016), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2016/city-of-greater-sudbury>>.

Report

- 34 Council for the Township of Pelee was given the opportunity to review a preliminary version of this report and provide comments to my Office. Due to restrictions in place related to COVID-19, some adjustments were made to the normal preliminary review process and we thank council and staff for their co-operation and flexibility. All comments we received were considered in the preparation of this final report.
- 35 My report should be shared with council for the Township of Pelee. The Township agreed to make my report available at the next council meeting.



Paul Dubé
Ombudsman of Ontario