



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

BY EMAIL

August 2, 2019

Stephanie Troyer-Boyd, Clerk
Municipality of Lambton Shores
7883 Amtelecom Parkway
Forest, ON N0N 1J0

Dear Ms. Troyer-Boyd,

Re: Closed meeting complaint, April 14 and 15, 2019

I am writing further to our conversation on July 19, 2019. As discussed, the Ombudsman's Office received a complaint that the Municipality of Lambton Shores did not provide public notice before two council meetings. The complaint alleged that two council members held an informal meeting at a resident's house on April 14, 2019, and that council did not provide notice of a special meeting held at the municipal office on April 15, 2019.

For the reasons outlined below, we have determined that we will not be proceeding further with these complaints. We would like to provide you with best practice suggestions to assist the municipality with future meetings.

Closed meeting investigator

As of January 1, 2008, the *Municipal Act, 2001*, gives citizens the right to request an investigation into whether a municipality or its local boards have complied with the Act and the municipality's procedure by-law 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

Bell Trinity Square
483 Bay Street, 10th Floor, South Tower, Toronto, ON M5G 2C9
483, rue Bay, 10^e étage, Tour sud, Toronto (Ontario) 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

municipalities that have not appointed their own. The Ombudsman is the closed meeting investigator for the Municipality of Lambton Shores.

Review

We spoke to the complainant about the gathering on April 14, 2019. We reviewed the agenda and meeting minutes of the April 15, 2019 special meeting, as well as the municipality's procedure by-law. We also spoke with you and reviewed the municipality's electronic records respecting the posting of public notice for the April 15, 2019 meeting.

Gathering on April 14, 2019

The complaint alleged that on April 14, 2019, two council members met with members of the public at a resident's house without first notifying the public.

The open meeting rules apply to meetings of council, local boards, and committees. On January 1, 2018, the definition of "meeting" in s. 238 of the *Municipal Act, 2001* was amended to specify that for a meeting to occur, a quorum of members must be present:

- "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.

In a 2019 report about the City of Hamilton, the Ombudsman found that the new definition of meeting requires that a quorum of members be physically present in order for a gathering to be subject to open meeting requirements.¹

¹ Ombudsman of Ontario, *Investigation into complaints about emails exchanged by members of council for the City of Hamilton between June 7 and June 26, 2018 and a meeting of the General Issues Committee on July 9, 2018* (February 2019) at paras 25-27, online:

<<https://www.ombudsman.on.ca/Media/ombudsman/ombudsman/resources/Municipal-Meetings/Hamilton-Feb2019-final-EN.pdf>>.

Bell Trinity Square

483 Bay Street, 10th Floor, South Tower, Toronto, ON M5G 2C9

483, rue Bay, 10^e étage, Tour sud, Toronto (Ontario) M5G 2C9

Tel./Tél. : 416-586-3300

Facsimile/Télécopieur : 416-586-3485 TTY/ATS : 1-866-411-4211

www.ombudsman.on.ca



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

At the April 14, 2019 gathering, only two of nine members of council were present.

April 15, 2019 special meeting

The complaint alleged that council did not provide notice to the public of a special council meeting held at 12:00 p.m. on April 15, 2019.

Subsections 238(2) and (2.1) of the Act state that every municipality must pass a procedure by-law that provides for public notice of meetings. The Act does not specify how notice of meetings must be provided to the public nor how much notice is required.

With respect to regular council meetings, section 3.1 of the municipality's procedure by-law provides that the Clerk will prepare and submit the schedule of meetings to council for consideration. The schedule is posted on the municipal website once it is approved.

For special council meetings, the procedure by-law states that the Mayor can summon a special meeting and must provide 24-hour advance notice to other council members. In addition, notice must be posted on the municipal website and provided to the media "as soon as practical" after the Mayor notifies the other members of council. The by-law does not set out a minimum amount of time between these notices and the special meeting.

When we spoke, you told us that the Mayor called the special meeting before 12:00 p.m. on April 14, 2019. You told us that you had to locate a staff member to post the notice on the municipality's website, which was completed at 6:40 p.m. that night, seven hours after the meeting was called by the Mayor and less than 18 hours before the special meeting was scheduled to begin. You explained that you reviewed the municipality's electronic records and confirmed the timing of the posting, and that the meeting agenda was posted the next morning, April 15, at 10:40 a.m.

In our Office's investigation into closed meetings in the Township of Nipissing in 2008, the Ombudsman explained that, "one of the primary purposes behind the notice requirement is to ensure that individuals wishing to attend an open meeting have an

Bell Trinity Square

483 Bay Street, 10th Floor, South Tower, Toronto, ON M5G 2C9

483, rue Bay, 10^e étage, Tour sud, Toronto (Ontario) 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

opportunity to do so, because they have been informed when and where it will be held".²

In an investigation into closed meetings in the Township of North Shore in 2018, the Ombudsman found that the township's procedure by-law failed to provide for notice of special meetings. The Ombudsman recommended amending the by-law, "to formalize [the township's] general practice of providing notice of special meetings on its community bulletin boards and on the municipal website, and to specify a required public notice period for regular and special meetings".³

When we spoke, you told me that Lambton Shores would be reviewing its procedure by-law, including the section on notice for special meetings. As a best practice, we encourage the municipality to establish an explicit minimum amount of public notice for special meetings. This change will increase accountability and transparency in the municipality by ensuring the public is aware of and can attend future special meetings.

Conclusion

Given the circumstances, the Ombudsman will not be taking further action regarding this complaint. We encourage the Municipality of Lambton Shores to implement the suggested best practice regarding notice for special meetings.

To assist municipal councils, staff, and citizens, we have developed an online Digest of open meeting decisions that contains summaries of the Ombudsman's open meeting cases. This searchable repository was created to provide easy access to the Ombudsman's past decisions on, and interpretations of, the open meeting rules. Council members and staff can consult the Digest to inform their discussions and

² Ombudsman of Ontario, *Investigation into Council of the Township of Nipissing Special Meeting of April 25, 2008* (February 2009) at para 33, online:

<<https://www.ombudsman.on.ca/Media/ombudsman/ombudsman/resources/Municipal-Meetings/NipissingFinal-EN-accessible.pdf>>.

³ Ombudsman of Ontario, *Investigation into complaints about closed meetings held by the Township of The North Shore on December 13, 2017, February 7, 2018 and February 14, 2018* (June 2018) at para 83, online:

<<https://www.ombudsman.on.ca/Media/ombudsman/ombudsman/resources/Municipal-Meetings/Ombudsman-Final-Report-TheNorthShore-June2018-accessible.pdf>>.

Bell Trinity Square

483 Bay Street, 10th Floor, South Tower, Toronto, ON M5G 2C9

483, rue Bay, 10^e étage, Tour sud, Toronto (Ontario) 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



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

decisions on whether a matter should or may be discussed in closed session, as well as issues related to open meeting procedure. Summaries of all previous Ombudsman decisions may be consulted in the Digest at www.ombudsman.on.ca/digest.

You indicated to us that this letter would be included as correspondence at the next available meeting of council on August 13, 2019. We thank you for your co-operation during our review.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joseph Morin', written in a cursive style.

Joseph Morin
Counsel
Office of the Ontario Ombudsman

Bell Trinity Square
483 Bay Street, 10th Floor, South Tower, Toronto, ON M5G 2C9
483, rue Bay, 10^e étage, Tour sud, Toronto (Ontario) 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