



Ombudsman Report

**Investigation into whether
Heads of Council in West Parry Sound have been
holding illegal closed meetings including on
February 19, 2015**

**Barbara Finlay
Acting Ombudsman of Ontario
November 2015**

Complaint

- 1** In May 2015, the Office of the Ontario Ombudsman received a complaint that the heads of council of seven municipalities in the West Parry Sound area meet behind closed doors to discuss municipal business on a regular basis, including on February 19, 2015. The complainant alleged that these meetings do not comply with the open meeting requirements of the *Municipal Act, 2001* (the Act).
- 2** The seven municipalities that participate in the heads of council meetings are the Town of Parry Sound, the Township of McKellar, Seguin Township, the Municipality of McDougall, the Township of The Archipelago, the Municipality of Whitestone, and the Township of Carling.
- 3** 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 prescribed exceptions.

Ombudsman jurisdiction

- 4** 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.
- 5** Of the seven municipalities whose heads participate in the heads of council meetings, the Ontario Ombudsman is the closed meeting investigator for four: Seguin Township; the Municipality of McDougall; the Municipality of Whitestone; and the Township of McKellar. The other three have appointed Local Authority Services (LAS) as their closed meeting investigator.
- 6** On its website, LAS addresses circumstances where the municipalities associated with a joint body have not all appointed the same closed meeting investigator:

[I]f one or more of the appointing municipalities has not appointed an Investigator and the Joint Board has not passed a resolution accepting the appointment of an Investigator of one of the appointing municipalities, it is likely that the Provincial Ombudsman will be the Investigator for the Joint Board's situation.¹

¹ Local Authority Services, "LAS Closed Meeting Investigator Program – Frequently Asked Questions" at 3, online: <<https://www.las.on.ca/PDFs/Services/Closed-Meeting-Investigator/Service-Information/Investigator-Program-FAQ-2013.aspx>>.

- 7** The Ombudsman is the closed meeting investigator for a majority of the municipalities named by the complainant.
- 8** In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and any applicable municipal procedure by-laws have been observed.

Investigative process

- 9** My Office's Open Meeting Law Enforcement Team (OMLET) reviewed the agenda for heads of council meetings on January 14, February 19, April 15, and May 21, 2015, emails exchanged by the heads and administrative staff ahead of meetings, and the minutes of meetings of council for the Township of McKellar where the heads of council meetings were discussed. We interviewed all seven participating heads of council, the Clerk for the Township of McKellar, and the Assistant to the Chief Administrative Officer (CAO) for the Township of The Archipelago.
- 10** We received full co-operation in this matter.

The West Parry Sound Heads of Council meetings

- 10** According to the participating heads of council, the purpose of the meetings is to establish rapport between the municipalities, exchange ideas and information, and "precipitate ideas".
- 11** The heads of council meet on an irregular basis, generally every two or three months. In 2015, the heads met on January 14, February 19, April 15, and May 21. According to one head of council we interviewed, heads of council from the seven municipalities have been meeting in a similar fashion for at least 17 years. Not all heads over that time period have chosen to participate and some participate less often than others.
- 12** The meetings are typically held at The Archipelago's municipal building. The Administrative Assistant to the CAO for The Archipelago has been coordinating the meetings for the heads of council for the past three or four years, since taking over the task from the clerk for the Town of Parry Sound.

- 13** The Administrative Assistant creates an agenda for all upcoming meetings. One item on each agenda is “date of next meeting”. A week or so after each meeting, the Administrative Assistant emails the head of either The Archipelago or Parry Sound to ask if a date has been set. She organizes the meeting accordingly, including emailing the heads to ask for discussion topics, creating the agenda, and sending it out by email. No attachments are ever sent with the agenda. The agendas are never made public.
- 14** On the day of the meeting, the Administrative Assistant organizes refreshments for the meeting, which are paid for by The Archipelago. The meetings are typically held in the evening, often at 6:30 p.m. No public notice of the meetings is provided.
- 15** Several heads of council told us that the meetings are not closed, in that if someone from the public asked to attend, they would be allowed to do so. However, at least one head believed that the meetings were closed and confidential. The Reeve of the Township of McKellar reported to his council on April 20, 2015, that the heads had considered whether members of the public could attend the meetings, and that the heads had agreed that the meetings are closed and confidential.²
- 16** No staff attend the meetings and no minutes are recorded. Some participants told us they take notes for their own use or for reporting back to their councils. At their respective council meetings, the heads share general information about the heads of council meetings including what the other municipalities are doing. However, each local council decides independently how to proceed on any actionable items.
- 17** Several of the heads told us the public has expressed positive feedback about their efforts to work together, as there has not always been co-operation amongst the area’s municipalities.

February 19, 2015 meeting

- 18** The complaint to our Office was about the general practice of the heads of council holding meetings that are closed to the public. The complainant identified a meeting on February 19, 2015 as a specific example.
- 19** The agenda for that date includes the logos of the seven municipalities. It states

² “Reeve’s Report to Council” (20 April 2015), on file with municipality.

that the heads of council were to have a dinner meeting at 6:30 p.m. at the township office in The Archipelago. The agenda listed the following items for discussion:

- **Parry Sound Area Community Business and Development Centre Inc. (CBDC)/CiiNO**
 - **Regional Economic Development Advisory Committee (REDAC)**
 - **Belvedere Heights**
 - **Area Projects: Suggestions on how to Collaborate**
 - **Date of Next Meeting**
 - **DEPUTATION: Near North District School Board Regarding Accommodation Review Committee's Recommendation to Replace the High School and Nobel and McDougall Schools.**
- 20** The meeting was attended by Reeve Peter Hopkins (McKellar), Reeve Peter Ketchum (The Archipelago), Mayor Dale Robinson (McDougall), Mayor Jamie McGarvey (Parry Sound), and Mayor Bruce Gibbon (Seguin). Mayor Mike Konoval from the Township of Carling and Mayor Chris Armstrong from the Municipality of Whitestone told our Office that they did not attend this meeting.
- 21** No minutes were recorded, no staff attended the meeting, and no audio or video recording was made. The following information was obtained through interviews.
- 22** The heads of council discussed whether their councils planned to co-operate with the Parry Sound Area Community Business and Development Centre to apply to the Federal Economic Development Initiative for Northern Ontario (FedNor) for a grant. Each council was aware of the issue and had held several discussions about it over the previous months. The heads told us they wanted to check in with each other at this gathering to see whether the other councils planned to participate.
- 23** The heads of council next discussed the Regional Economic Development Advisory Committee (REDAC), a committee shared by a number of municipalities in the area. The heads talked about what the committee does and how it benefits municipalities, and discussed the fact that it no longer has a membership fee.
- 24** The heads talked about a retirement home and long-term care facility that they jointly fund. They discussed the possibility of establishing benchmarks with another long-term care facility in the area. The heads also discussed that Mayor Gibbon from Seguin Township would approach the facility to gauge its interest in conducting a benchmarking study.
- 25** The heads next shared information about various projects planned by the

municipalities for the upcoming year.

- 26** Finally, representatives from the Near North District School Board attended the gathering to make a deputation to the heads of council regarding school closures in the area. The school board representatives discussed information that had already been made public, including the results of an accommodation review process that resulted in a decision to replace certain local schools with a new kindergarten to grade twelve school. They provided an update on the progress of the new school and introduced new board representatives to the heads.
- 27** Three of the heads of council told us that the school board met with the heads group to make it easier for the board to report to the municipalities, since the alternative would have required them to make seven different trips to the area to attend all the local council meetings.

Analysis

- 28** For open meeting purposes, s. 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”.

Does the heads of council group constitute a “local board” for the purposes of the open meeting requirements?

- 29** “Local board” is defined in the Act as a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority. For open meeting purposes, the Act excludes police services boards and public library boards.
- 30** The heads of council group was not established by statute and is not empowered to exercise any power under any act. It does not have any of the corporate powers or attributes normally associated with other local boards. The group does not constitute a local board for the purposes of the Act.

Does the heads of council group constitute a “committee” for the purposes of the open meeting requirements?

- 31** Committee is defined in s. 238(1) of the Act as any advisory or other committee, sub-committee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards.
- 32** All seven members of the heads of council group are also individual members of seven local councils. However, this fact alone is not determinative. The role and function of the group must also be examined in order to determine whether it functions as a committee, sub-committee, or similar entity.
- 33** LAS and the Ombudsman’s Office have both recognized that it is healthy in a democracy for government officials to share information informally, and officials are not expected to never talk with one another outside a formal meeting.³ However, officials must be cautious not to exercise the power or authority of council or a committee, or to lay the groundwork necessary to exercise that power or authority.
- 34** In a report about the City of Hamilton’s Government Relations Contact Team in 2014, our Office found the team was not a committee subject to the open meeting rules because it did not have its own authority to make decisions or provide recommendations.

[The team] did not serve the role of a committee that is charged with making recommendations to council on items of council business in order to inform council decision-making. Rather, it appears that the role of the Team was to bring council-approved positions to the attention of other government officials. The Team does not have its own authority to make decisions or provide recommendations, but rather advances positions the city has already decided upon.⁴

³ Local Authority Services, *Report to the Council of the City of Greater Sudbury Regarding an Investigation into Complaints about an Alleged Closed Meeting of Members of Council held on or before February 12, 2013* (August 2013) at 8, online: <http://www.agavel.com/wp-content/uploads/2013/09/Greater_Sudbury_2013.docx>; Ombudsman of Ontario, *In the Back Room* (October 2013), online:

<http://www.ombudsman.on.ca/Files/sitemedia/Images/Reports/London_BT_Final-EN_1.pdf>; Ombudsman of Ontario, *Turning Tables* (September 2014) at para 19, online:

<<https://ombudsman.on.ca/Files/sitemedia/Documents/LondonTurningTables-ENaccess.pdf>>.

⁴ Ombudsman of Ontario, *Investigation into whether a Committee of Council for the City of Hamilton held an illegal meeting on July 25, 2014* (November 2014) at para 42, online:

<<https://www.ombudsman.on.ca/Resources/Reports/City-of-Hamilton-November-2014.aspx>>.

- 35** Like the team in Hamilton, the heads of council group does not have its own authority to make decisions or provide recommendations. The heads of council do not collectively make recommendations to their respective councils and the group has no formal advisory role or authority. All of those interviewed agreed that the purpose of the group is to share information amongst its members. While certain heads report back to their respective councils, this is done to share information about what is happening in the other communities.
- 36** When determining whether a body functions as a committee, both our Office and LAS have also considered whether the group is established as a committee by municipal by-law.⁵ The heads of council group was not established by any of the seven municipalities nor was it delegated any power or authority by any of the municipalities. The group is not described in any of the municipalities' procedure by-laws.
- 37** At least one member is officially authorized to attend the meetings by council and is compensated for doing so. This authorization was provided in the same manner as for any outside meeting that a member of council is asked by council to attend. For example, council members in McKellar are sent to meetings of the local chamber of commerce, the board of a local retirement home, the District of Parry Sound Municipal Association, and the North Bay Parry Sound District Health Unit, none of which are committees of that council.
- 38** Even without delegated authority from the municipalities, a group may act as a committee if it advances or lays the groundwork for council business. The heads of council do talk about matters that pertain to municipal council business, such as the local school board's efforts to build a new school, and regional economic development projects. However, these discussions are conducted to exchange information, rather than to advance council decision-making or lay the groundwork for council decisions.
- 39** The heads of council told us that their discussions do not influence the decisions

⁵ See e.g. Local Authority Services, *Report to the Council of the Town of Niagara-on-the-Lake regarding the Investigation of the Meetings of the Niagara District Secondary School Strategy Committee* (August 2010), online: <http://www.agavel.com/wp-content/uploads/2013/09/NOTL_Investigation_Report_Aug_25_2010_Final_08_07_11.doc>; Local Authority Services, *Report to the Council of the Town of Whitchurch-Stouffville Regarding the Investigation to determine if the North Shore Roads Committee is subject to the Open Meetings Provision of the Municipal Act* (August 2011), online: <http://www.agavel.com/wp-content/uploads/2013/09/Whitchurch_Stouffville_Report_2011.docx>; Local Authority Services, *A Report to the Council of the Town of Deep River regarding the Investigation of Alleged Improperly held Closed Meetings of the Town's Property Standards Committee* (November 2013), online: <<http://www.agavel.com/wp-content/uploads/2013/09/Deep-River-2013-Final.docx>>.

made by their individual councils, and the councils often decide to take different courses of action on issues discussed. For example, following the heads meeting on February 19, some councils decided to support the grant that the heads discussed, while others decided not to do so. The Archipelago decided to join REDAC, while McKellar decided to withdraw from the committee.

- 40** The West Parry Sound heads of council meetings can be distinguished from a series of meetings considered in 2014 by LAS. In its report on a complaint about the County of Bruce, LAS considered whether a group that included the heads of a number of local councils was subject to the open meeting rules.⁶ The heads of council in that case had been invited by Ontario Power Generation (OPG) to a series of meetings between 2009 and 2012 to discuss the establishment of a deep geologic nuclear waste repository on Lake Huron.
- 41** The heads of the local lower-tier councils who attended were also members of council for the upper-tier municipality, the County of Bruce. When they met with OPG, even though most were invited as individual heads of the lower-tier municipalities, they achieved quorum of the upper-tier council.
- 42** LAS found their discussions materially advanced decision making at the county level. Accordingly, LAS found the meetings of the group were subject to the open meeting rules as council for the County of Bruce.⁷
- 43** In West Parry Sound, there is no upper-tier government in place. The heads of council concerned in this case do not constitute quorum of any other body subject to the open meeting rules. The group has no formal decision-making authority. It does not play an advisory role or make formal recommendations. The gatherings consist of information sharing among the various participants.

Opinion

- 44** The West Parry Sound heads of council group was not established by by-law as a committee, and is not delegated authority or given a mandate by any municipal council. The group's discussions are limited to information sharing. The group does not serve an advisory role like a committee, nor does it make any decisions or advance the business of any of the seven represented municipalities.

⁶ Local Authority Services, *Report to the Corporation of the County of Bruce Regarding the Investigation of Alleged Improperly Closed Meetings of County Council* (July 2014), online: <<http://www.brucecounty.on.ca/assets/files/Amberley%20Gavel%20Meeting%20Investigation%20Report%20July,%202014.pdf>>.

⁷ *Ibid* at 6-7.

- 45** The gatherings of the heads of council for West Parry Sound are not meetings for the purposes of the *Municipal Act* and therefore not subject to the open meeting requirements of the Act.
- 46** The heads of council are encouraged, however, to consider opening their gatherings to the public. The *Municipal Act* does not prevent members of councils from coming together informally to share information, but council members should consider whether there is a public interest to be served by opening their information-sharing sessions to the public.
- 47** There is significant public interest in the type of information that is shared amongst the heads of council of West Parry Sound when they come together. For instance, it is likely that the presentation by the school board would have been of interest to members of the seven individual councils and members of the communities they represent. I also note that several of the heads of council we interviewed expressed the view that members of the public would be free to attend the meetings if they so wished. Opening these information-sharing sessions to the public would serve to increase transparency and strengthen public confidence in local governments.

Report

- 48** OMLET staff spoke with all seven heads of council (Reeve Hopkins, Reeve Ketchum, Mayor Robinson, Mayor McGarvey, Mayor Konoval, Mayor Armstrong, and Mayor Gibbon) on November 19 and 20 to provide an overview of these findings, and to give each member of the West Parry Sound heads of council group an opportunity to comment. Any comments received were considered in preparing this report.
- 49** This report should be shared with councils for the Town of Parry Sound, the Township of McKellar, Seguin Township, the Municipality of McDougall, the Township of The Archipelago, the Municipality of Whitestone, and the Township of Carling, and made available to the public by each municipality at its next scheduled council meeting.



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