



Final Report

Investigation into whether the City of Hamilton's NHL Proposal Sub-Committee held an improperly closed meeting

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Complaint

- 1 On May 25, 2011, our Office received a complaint that three councillors from the NHL Proposal Sub-Committee, and an additional councillor, had improperly held a closed breakfast meeting on January 13, 2011, with two members of the public - the coach/general manager of a local hockey team, and the President/Chief Operating Officer of the Edmonton Oilers of the National Hockey League.

Ombudsman Jurisdiction

- 2 Under the *Municipal Act, 2001*, municipalities are required to pass by-laws setting out the rules of procedure for meetings. The law requires public notice of meetings, and that all meetings be open to the public, unless they fall within prescribed exceptions.
- 3 As of January 1, 2008, changes to the *Municipal Act, 2001* (the “Act”) gave citizens the right to request an investigation into whether a municipality has properly closed 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.
- 4 The City of Hamilton appointed the Ontario Ombudsman as its investigator on December 7, 2007.
- 5 In investigating closed meeting complaints, our Office considers whether the open meeting requirements of the Act and the relevant municipal procedure by-law have been observed.

Investigative Process

- 6 After conducting a preliminary review of the complaint on July 25, 2011, our Office notified the city that we would be conducting a formal investigation.
- 7 During the course of our investigation, we obtained and reviewed relevant municipal documents, including motions, minutes and emails. We also considered the City’s procedure by-law, as well as the applicable legislation and case law.

- 8** In accordance with s. 19(1) of the *Ombudsman Act*, members of council and city staff are required to provide our Office with any documents or information requested during the course of our investigations. The council members we contacted and city staff co-operated fully with our investigation.
- 9** A two-person team conducted in-person interviews with the councillors who attended the breakfast meeting, as well as a fourth sub-committee member, the Mayor and municipal staff. We also interviewed restaurant staff as well as the coach/general manager of the local hockey team, who had attended the meeting. The remaining meeting attendee resides out of province and declined an interview. Our Office was able to obtain sufficient information from other sources to complete the investigation.

Analysis and Findings

The NHL Proposal Sub-Committee

- 10** Council established the current NHL Proposal Sub-Committee on December 1, 2010. It is comprised of the Mayor and four councillors. The Sub-Committee's mandate is "to review any proposals which are directed to them by Hamilton City Council".
- 11** During our investigation, the sub-committee members explained that their role was essentially responsive in nature, and that the sub-committee is only active when the city receives a proposal related to the National Hockey League. In January 2011, there was no such proposal before the sub-committee.
- 12** While one sub-committee member indicated that he was unfamiliar with the process, the rest of the sub-committee members who attended the breakfast acknowledged that the meeting requirements set out in the City's procedure by-law applied to the sub-committee. This was confirmed by the city clerk. However, the city clerk also confirmed that the sub-committee held no official meetings in 2011.

The Breakfast Meeting

- 13** The January 13, 2011 breakfast meeting first came to public attention when an article describing the gathering appeared in a local paper the next day. It was reported that the breakfast involved "casual conversation" about the future Pan-Am Games stadium, the NHL and Hamilton's experience in seeking a franchise,

and a proposed request for proposals to privatize the Hamilton Entertainment and Convention Facilities Inc., which operates a number of city facilities.

- 14** A later news article reported that the councillors who had participated characterized the meeting as a social session, in which they had discussed “the stadium issue, the Hamilton Tiger-Cats, and the NHL,” as well as a proposed request for proposals relating to Hamilton Entertainment and Convention Facilities Inc. This article also noted that a complaint about the meeting had been filed with the City’s Integrity Commissioner.
- 15** Months later, our Office received the complaint about the breakfast meeting. This was the same day another news article appeared, indicating that the Integrity Commissioner was unable to deal with the complaint he had received, as it did not engage the city’s Code of Conduct.
- 16** During our investigation, the coach/general manager of the local hockey team advised our investigators that he had organized the breakfast meeting in January 2011 when he became aware that the President/Chief Operating Officer of the Edmonton Oilers, whom he has known for a number of years, would be in Hamilton. He noted that he is a proponent of Hamilton obtaining an NHL franchise, and, although the President of the Edmonton Oilers would not be able to assist with this, he considered it beneficial for the city to increase its NHL contacts. He described the gathering as a “meet and greet.”
- 17** The three members of the sub-committee who attended the breakfast meeting confirmed that the coach and general manager of the local hockey team had invited them. One of these individuals invited another councillor to attend. A fourth member of the sub-committee told us he was invited, but did not attend the meeting. The Mayor indicated that he was not invited to the gathering and only learned of it after the fact.
- 18** The four councillors who attended the breakfast gathering described it as an opportunity to socialize and develop relationships. The presence of three members from the sub-committee meant that there was legal “quorum” for sub-committee decision-making, but all of the councillors emphasized that the get-together was not intended to be a formal “meeting” of the sub-committee, and that no sub-committee business was furthered. They also confirmed that there was no public notice of the meeting, agenda or minutes kept.
- 19** According to those we interviewed, a variety of issues were discussed during the breakfast gathering, including social topics. One councillor confirmed that he did speak briefly to the President of the Edmonton Oilers, in his capacity as the President of another corporation, about the company’s intent to bid in a future

request for proposals relating to Hamilton Entertainment and Convention Facilities Inc. Another councillor generally recalled some discussion about this other company, but not the particulars. The remaining two councillors who were present did not remember this subject coming up.

- 20** One councillor advised that there was some discussion about bringing an NHL team to Hamilton, but these discussions related to the fact that previous efforts had been unsuccessful. All of the councillors in attendance and the local coach who had arranged the gathering confirmed there was no discussion about the President and Chief Operating Officer of the Edmonton Oilers assisting in bringing an NHL team to Hamilton.

Opinion

- 21** The *Municipal Act* requires that all meetings of Council be open to the public, subject to specific and limited exceptions. In my report, *Don't Let the Sun Go Down on Me: Opening the Door on the Elton John Ticket Scandal*, I provided the following definition of a “meeting” for the purpose of determining whether a gathering is a “meeting” subject to the open meeting provisions of the Act:

Members of Council (or a committee) must come together for the purpose of exercising the power or authority of the Council (or committee), or for the purpose of doing the groundwork necessary to exercise that power or authority.

- 22** Informal gatherings for social reasons generally are not considered to be “meetings” for the purpose of the Act. However, where the intent of the gathering is to discuss council or committee business and/or to make decisions or to lay the groundwork for decision-making, a gathering is more likely to be considered a “meeting” that is subject to the open meeting requirements.
- 23** The evidence collected during our investigation suggests that some topics relating to the city, such as a future request for proposals, may have been generally and informally discussed by some of those in attendance at the meeting. However, the evidence did not substantiate that sub-committee business was discussed in any material way, that any decisions were made, or that the groundwork was set for future decision-making. The meeting appears to have been primarily an informal breakfast enabling councillors, and specifically those on the sub-committee, to meet a prominent NHL figure and generally discuss hockey and NHL matters.

- 24** However, while social gatherings involving councillors may be permissible, they naturally attract speculation and suspicion. As this case illustrates, conjecture will be particularly acute when a quorum of a decision-making body takes part in a private discussion with third parties. Unlike formal meetings, when minutes are kept, it is difficult to accurately reconstruct the conversational record of informal gatherings. It is challenging in these circumstances to assure the public that no improper discussions have taken place. Under the circumstances, councillors should be cautious when meeting informally, especially when they represent a quorum of a decision-making body, to ensure that any discussions do not stray into areas that might constitute laying the groundwork for future decision-making.
- 25** Based on the available evidence, it appears that the January 13, 2011 breakfast meeting was not a “meeting” as defined by the Act, and therefore, the open meeting provisions did not apply.

Report

- 26** I obtained and considered the City’s comments relating to my preliminary findings, analysis, and opinion before finalizing my report. This final report should be shared with Council and made available to the public.



André Marin
Ontario Ombudsman