



## **Ombudsman Report**

**Investigation into complaints about meetings held  
by the City of Sault Ste. Marie's Cultural Vitality  
Committee on November 17, 2021 and Tourism Board  
on November 25, 2021**

**Paul Dubé  
Ombudsman of Ontario**

**January 2023**

## Complaint

- 1 My Office received complaints regarding meetings held by the Cultural Vitality Committee (the “Committee”) and the Tourism Board (the “Board”) of the City of Sault Ste. Marie (the “City”).
- 2 The first complaint alleged that the Cultural Vitality Committee failed to provide adequate notice of its November 17, 2021 meeting, as the open meeting agenda did not include a link or information that would permit the public to observe the open meeting. The complaint also alleged that the Committee failed to provide sufficient information about the subject to be discussed in its resolution to enter into closed session at this meeting.
- 3 The second complaint alleged that the Tourism Board failed to provide adequate notice of its November 25, 2021 meeting, as the open meeting agenda did not include a link or information that would permit the public to observe the open meeting.

## Ombudsman jurisdiction

- 4 Under the *Municipal Act, 2001*<sup>1</sup> (the “Act”), all meetings of a council, local board, and committee of either must be open to the public unless they fall within prescribed exceptions.
- 5 As of January 1, 2008, 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 or use the services of the Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 6 The Ombudsman is the closed meeting investigator for the City of Sault Ste. Marie.
- 7 In investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the municipality’s governing procedures have been observed.

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<sup>1</sup> SO 2001, c 25.

- 8 Since 2008, my Office has investigated hundreds of closed meetings in municipalities throughout Ontario. 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. Summaries of the Ombudsman's previous decisions can be found in the digest: [www.ombudsman.on.ca/digest](http://www.ombudsman.on.ca/digest).

## Investigative process

- 9 On August 22, 2022, my Office advised the City of our intent to investigate the November 17, 2021 meeting of the Cultural Vitality Committee and the November 25, 2021 meeting of the Tourism Board.
- 10 We reviewed relevant portions of the City's procedure by-law, as well as the Act.
- 11 For the November 17, 2021 Committee meeting, we reviewed the open meeting records, including the agenda and minutes, as well as the YouTube recording of the open session, and email correspondence sent after the meeting.
- 12 For the November 25, 2021 Board meeting, we reviewed the open meeting agenda, email correspondence, and the Board's by-law, memorandum of understanding, funding agreement, and management agreement with the City.
- 13 We also spoke with the City Clerk.
- 14 My Office received full co-operation in this matter.

## Procedure by-law

- 15 Section 238(2) of the Act requires municipalities to pass a procedure by-law that governs the calling, place, and proceedings of meetings. Accordingly, the City has passed By-law No. 2022-100 (the "procedure by-law").
- 16 Sections 1.2 and 4.10 of the procedure by-law apply the open meeting requirements in s. 239 of the Act to all of the City's meetings, including meetings of committees and local boards.

- 17 The City's procedure by-law defines a committees as "[a]dvisory and other committees or boards whose members are appointed by Council for an ongoing purpose" or as "[s]pecial committees appointed by Council or the head of Council at any time as is deemed necessary for the consideration of special matters".<sup>2</sup>
- 18 The procedure by-law states that notice of meetings of council, local boards, and committees will appear on the City's website.<sup>3</sup>
- 19 The City's procedure by-law also provides for members of council, boards, and committees to participate electronically in meetings, and for those meetings to be livestreamed for public viewing:

Electronic Participation Open and closed meetings of Council (and its boards and committees) may take place physically or electronically or a hybrid of both. Members who participate in open or closed meetings electronically shall be counted for purposes of quorum. Electronic meetings of Council and its boards and committees shall be livestreamed for public viewing.

## The Cultural Vitality Committee

- 20 Council for the City established and approved the terms of reference for the Cultural Vitality Committee on October 26, 2021.
- 21 The Committee provides advice to council on issues, policies and strategies related to cultural enterprises and activities in the City. The Committee screens civic grant proposals for cultural endeavors and recommends to council the awarding of such grants. The Committee also assists council and makes recommendations relating to the implementation of the City's cultural policy.
- 22 One member of council sits on the Committee, along with three staff members. Members of the Committee are appointed by council.
- 23 The Committee's terms of reference state that it is a committee of council subject to the open meeting rules. We were told that the City considers the Committee to be a committee of council.

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<sup>2</sup> City of Sault Ste. Marie, by-law no 2022-100, *Being a by-law to regulate the proceedings of the Council of the City of Sault Ste. Marie* (21 March 2022), s 29.1, online: <https://saultstemarie.ca/Cityweb/media/Legal/BL/By-law-2022-100-Council-Procedure-March-21-2022.pdf>.

<sup>3</sup> *Ibid*, s 4.5.

## The Tourism Board

- 24** City council established the Tourism Board by resolution in December 2019.
- 25** The Board’s mandate, as set out in its by-law, is to provide recommendations to City council about how to best allocate funding from the Municipal Transient Accommodation Tax to promote tourism and tourism products.
- 26** The Board’s by-law states that it shall be comprised of nine voting members appointed by council. No council members sit on the Board, although one staff member attends meetings in a non-voting capacity as a resource person.
- 27** We were told that the City considers the Board to be a committee of council, and is therefore subject to the open meeting rules.
- 28** We note that the Board also meets the definition of a local board under the Act. “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.
- 29** The courts have explained that local boards are “integral to the day-to-day operation of the business of municipalities”, but will not generally include independent investigative or adjudicative bodies,<sup>4</sup> or ad hoc informal committees.<sup>5</sup> As a body that advises council on the allocation of funding to promote tourism locally, the Board fits within this definition of a local board.

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<sup>4</sup> *Ontario Ombudsman v. Hamilton (City)*, 2018 ONCA 502 at para 10, online: <<https://canlii.ca/t/hsb9j>>.

<sup>5</sup> *Kroetsch v. Integrity Commissioner for the City of Hamilton*, 2021 ONSC 7982 at para 49, online: <<https://canlii.ca/t/jlbcj>>.

## November 17, 2021 meeting of the Cultural Vitality Committee

- 30 On November 17, 2021, the Cultural Vitality Committee held a regular meeting that was livestreamed on the City's YouTube channel, "SaultSteMarieOntario."
- 31 The agenda for the Committee's November 17, 2021 meeting was posted to the City's online corporate calendar and the Committee's webpage, although a livestream link was not included on either site.<sup>6</sup> The agenda stated that the meeting would take place by videoconference, but did not indicate how the public could access the livestream.<sup>7</sup>
- 32 We were told that the City provided its YouTube channel information to anyone who requested access to the meeting.
- 33 During the November 17, 2021 meeting, the Committee passed a resolution to proceed into closed session to discuss applications for the City's Arts and Culture Assistance Program. As set out in the minutes, the resolution stated that the Committee would move *in camera* to discuss and review Arts and Culture Assistance Program applications.
- 34 As set out in the meeting minutes, the Committee considered six applications while in closed session.
- 35 The meeting was subsequently adjourned.
- 36 At the start of the Committee's next meeting on November 22, 2021, the Committee Chair stated that the November 17, 2021 meeting should have been held entirely in open session. He then summarized the Committee's *in camera* discussion on November 17, 2021 about the six applications and indicated that these applications would be reconsidered during open session at the November 22, 2021 meeting.

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<sup>6</sup> Sault St. Marie Corporate Calendar, online: <<https://saultstemarie.ca/City-Hall/Corporate-Calendar.aspx>>; Committee Calendar, online: <<https://saultstemarie.ca/City-Hall/City-Departments/Community-Development-Enterprise-Services/Community-Services/Recreation-and-Culture/Cultural-Vitality-Committee/Agendas-and-Minutes.aspx>>.

<sup>7</sup> For regular council meetings, the City posts the YouTube livestream link on both the Calendar page and the council meeting page in advance of meetings. The videos for past meetings are also included on both pages.

## Analysis

### *Public notice*

- 37** Subsection 239(1) of the *Municipal Act, 2001* requires that all meetings of a municipal council, local board, or committee of either be open to the public, subject to prescribed exceptions.
- 38** My Office has found that this requirement entitles the public to observe all parts of a meeting that occur in open session, and that a live broadcast is sufficient to meet this requirement.<sup>8</sup>
- 39** In a 2021 report on the Saugeen Municipal Airport Commission, my Office considered whether adequate notice was provided for a series of electronic meetings. The Commission did not provide advance meeting notice to the public on its website, and only provided the meeting log-in information upon request. My Office found that the Commission violated the Act by holding these meetings without providing adequate notice to the public.
- 40** In reaching this conclusion, my Office noted that “[w]ithout adequate notice of where and when meeting will occur, the meeting is effectively closed to the public, in violation of the Act.”<sup>9</sup>
- 41** In a 2021 report on the City of Richmond Hill, my Office reviewed an electronic meeting where a meeting notice similarly did not include any instructions on how to access the meeting. My Office found that the City provided inadequate notice, as a meeting is not truly open to the public if notice for the meeting does not contain sufficient information to access it.<sup>10</sup>
- 42** In this case, the agenda for the November 17, 2021 meeting indicated that the meeting would take place electronically but did not indicate how the public could access the livestream. In order to access the meeting, members of the public had to contact the City for more information or already be aware of the City’s YouTube channel.

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<sup>8</sup> *Niagara Falls (City of) (Re)*, 2021 ONOMBUD 13 [*Niagara Falls*], online: <<https://canlii.ca/t/jgvlq>>.

<sup>9</sup> *Saugeen Municipal Airport Commission (Re)*, 2021 ONOMBUD 18 at para 41, online: <<https://canlii.ca/t/jl964>>.

<sup>10</sup> *Richmond Hill (City of) (Re)*, 2021 ONOMBUD 8 at paras 119-122, online: <<https://canlii.ca/t/jf6b3>>.

- 43 Accordingly, the Committee did not provide sufficient notice of its meeting on November 17, 2021, as it failed to indicate how the public could access the meeting. The meeting was not fully open to the public, as required by the open meeting rules.
- 44 The Committee has since addressed this issue by adopting a new open meeting agenda template that provides the URL for the livestream of the meeting. I commend the City for taking steps to ensure full and meaningful notice is provided to the public going forward. I also commend the City for turning its mind to the open meeting rules in an effort to maximize transparency.

### *Resolution to go into closed session*

- 45 Subsection 239(4) of the Act requires a municipal council, local board, or committee of either to pass a resolution before moving *in camera*. This obligation is twofold: First, the fact of the holding of the closed meeting must be disclosed to the public, and second, the general nature of the matter to be considered at the closed meeting must also be disclosed.
- 46 The Court of Appeal stated in *Farber v. Kingston* that subsection 239(4) of the Act requires that “the resolution to go into closed session should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public.”<sup>11</sup>
- 47 Except for meetings closed under the exception for education or training, the Act does not require the resolution to proceed *in camera* to include a specific exception, though that is a best practice. The City’s Procedure By-law also does not require that a specific exception be cited.
- 48 In this case, the resolution to proceed into closed session noted that the discussion would relate to a review of Arts and Culture Assistance Program funding applications.
- 49 Accordingly, the resolution fulfilled the requirements of the Act.
- 50 The Clerk has since clarified with the Committee that resolutions to proceed *in camera* should include both an exception from the Act and a general description, in accordance with best practices.

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<sup>11</sup> *Farber v. Kingston (City)*, 2007 ONCA 173 at para 21, online: <<https://canlii.ca/t/1qtz/>>.



## November 25, 2021 meeting of the Tourism Board

- 51 On November 25, 2021, the Tourism Board held a regular meeting by Zoom.
- 52 The agenda for the Board's November 25, 2021 meeting was posted to the City website's corporate calendar. The agenda did not state how the meeting would be held, nor did it provide the Zoom coordinates for the meeting.<sup>12</sup>
- 53 We were told that the City provided the meeting's Zoom coordinates to anyone who requested this information. In addition, we were told that the Zoom coordinates were posted on the City's Facebook page. However, we found no evidence that this information was posted.
- 54 The City could not confirm whether the meeting was broadcast live on the City's YouTube channel, and we found no evidence that it was.
- 55 On November 26, 2021, a day after the meeting, a video recording of the meeting was posted to the City's YouTube channel.

## Analysis

- 56 As noted above, the Act sets out at section 239(1) that "[e]xcept as provided in this section, all meetings shall be open to the public." My Office has found that this requirement entitles the public to observe all parts of a meeting that occur in open session, and that a live broadcast is sufficient to meet this requirement.<sup>13</sup>
- 57 In this case, the notice for the November 25, 2021 meeting indicated the date and time the meeting would occur, but did not provide any information about how the public could access the meeting.
- 58 Further, the meeting was not broadcast live on the City's YouTube channel. If members of the public wanted to attend the meeting, they had to request the Zoom coordinates from the City or the Board.

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<sup>12</sup> Open Agenda, Tourism Sault Ste. Marie Board Meeting, Thursday, November 25, 2021 12:00pm, online: <<https://saultstemarie.ca/Cityweb/media/Community-Services/Tourism%20SSM/Board%20Meetings/2021/OPEN-AGENDA-November-25,-2021.pdf>>.

<sup>13</sup> *Niagara Falls*, *supra* note 17.

- 59 The Tourism Board did not provide sufficient notice of its meeting on November 25, 2021, as it failed to indicate how the public could access the meeting. The meeting was not fully open to the public as required under section 239(1) of the Act. Posting a video of the meeting afterwards does not satisfy the requirement that the public be able to observe a meeting in process.
- 60 The Board has since addressed this issue by adopting a new open meeting agenda template that provides the URL for the livestream of the meeting, and I commend the City for taking this step to ensure public access to meetings.

## Opinion

- 61 The Cultural Vitality Committee for the City of Sault Ste. Marie contravened the *Municipal Act, 2001* on November 17, 2021, by holding a meeting that did not comply with the open meeting requirements. The meeting was not open to the public, as the Committee did not provide the public with information about how to attend the virtual meeting.
- 62 The Cultural Vitality Committee's resolution to proceed *in camera* was sufficiently descriptive to provide information to the public without undermining the reason for excluding the public.
- 63 The Tourism Board of the City of Sault Ste. Marie contravened the *Municipal Act, 2001* on November 25, 2021 by holding a meeting that did not comply with the open meeting requirements. The meeting was not open to the public, as the Board did not provide the public with information on how to attend the virtual meeting.

## Recommendations

- 64 I make the following recommendations to assist the City of Sault Ste. Marie in fulfilling its obligations under the Act:

### Recommendation 1

**All members of the City's boards and committees should be vigilant in adhering to their individual and collective obligation to ensure that the municipality complies with its responsibilities under the *Municipal Act, 2001* and its procedure by-law.**

## Recommendation 2

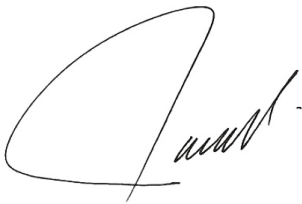
The City of Sault Ste. Marie should ensure that all meetings comply with the open meeting requirements set out in the *Municipal Act, 2001* and the City's procedure by-law.

## Recommendation 3

The City of Sault Ste. Marie should ensure that all meeting notices include accurate information about the time and location of the meeting, including how the public can access electronic meetings.

## Report

- 65 Council for the City of Sault Ste. Marie was given the opportunity to review a preliminary version of this report and provide comments to my Office. Any comments we received were considered in the preparation of this final report.
- 66 This report will be published on my Office's website, and should be made public by the City of Sault Ste. Marie. In accordance with s. 239.2(12) of the *Municipal Act, 2001*, council is required to pass a resolution stating how it intends to address this report.



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**Paul Dubé**  
Ombudsman of Ontario