

BY EMAIL

December 9, 2021

Council for the Town of Espanola
100 Tudhope Street, Suite 2
Espanola, ON P5E 1S6

Dear Mayor and Members of Council for the Town of Espanola:

Re: Closed meeting complaint

My Office received a complaint in May 2021 that a quorum of council for the Town of Espanola (the “Town”) held a meeting on January 31, 2019 in violation of the open meeting rules under the *Municipal Act, 2001*. The complainant told us that the Mayor initiated a meeting with three other council members in a room at Town Hall after the regular council meeting had concluded. Four members of Espanola’s council constitute a quorum. The complainant alleged that by further discussing one of the topics from the open meeting that evening, the quorum of council advanced council business or decision-making.

I am writing to share the outcome of my Office’s review. For the reasons set out below, I have concluded that a quorum of council did not hold a meeting and the Town did not contravene the open meeting requirements.

Closed meeting investigator

As of January 1, 2008, the *Municipal Act, 2001* (the “Act”) gives anyone the right to request an investigation into whether a council, local board, or committee of either of them complied with the Act in closing a meeting to the public.¹ Municipalities and local

¹ *Municipal Act, 2001*, SO 2001, c 25, s 239.1.



boards 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. I am the closed meeting investigator for the Town of Espanola.

My 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.

Review

My Office spoke with the complainant and reviewed the open meeting agenda, minutes, and recording from the January 31, 2019 regular council meeting. We also spoke with the Mayor and three councillors who were present in the room at Town Hall for the discussion following the regular council meeting. My Office received full co-operation in this matter.

The January 31, 2019 regular council meeting

On January 31, 2019, council for the Town of Espanola held a regular council meeting. One of the items on the agenda was a discussion about a report from the Town's appointed integrity commissioner. The minutes and the recording of the meeting reflect that the three councillors who were the subject of the report declared a conflict of interest related to that item and removed themselves from council chambers when it came up for discussion.

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The remaining members of council had a brief discussion in open session and then resolved to go *in camera* under s. 239(2)(g) of the *Municipal Act, 2001*. Upon returning to open session, the remaining members of council, including the Mayor, voted to impose certain sanctions against the three councillors, who were still absent from council chambers. After the vote, the Mayor invited the three councillors back in and the regular council meeting resumed with all members present.

Gathering of a quorum of council after the regular council meeting

My Office was told that following the conclusion of the regular council meeting, each of the three councillors who were the subject of the integrity commissioner's report went to collect their personal belongings from a room at Town Hall that operates as both a boardroom and a coatroom. Two of the councillors told us that they knew the Mayor wanted to meet with them there, while one councillor told us that they did not know and that they were only there to pick up their belongings. Those we spoke with had different recollections as to who entered the room last. However, everyone agreed that once the Mayor and all three councillors were present, the door to the room was closed and there was a discussion about the sanctions against the three councillors. A majority of those with whom we spoke recalled that the discussion lasted approximately 10 minutes.

The Mayor told my Office that she wanted to inform the three councillors about the sanctions against them because they had not been present in chambers when council had voted to impose them. The three councillors told us that they were already aware of the sanctions, but that the Mayor nevertheless wanted to discuss them further.

The Mayor and three councillors agreed, however, that the only topic they discussed was the sanctions that council had already voted to impose in open session that evening. They also all agreed that council never revisited or reconsidered the matter of the sanctions at any subsequent meeting.

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Analysis

Under the *Municipal Act, 2001*, a “meeting” is a gathering of a quorum of members of council at which the business or decision-making of council is materially advanced.²

As Espanola’s council is comprised of seven members, a gathering of four constitutes a quorum. However, a gathering of a quorum at which council business or decision-making is not materially advanced does not meet the definition of a “meeting” under the Act.

I have previously considered what it means for council business or decision-making to be “materially advanced” and I have concluded as follows:

Discussions, debates or decisions that are intended to lead to specific outcomes or to persuade decision-makers one way or another are likely to “materially advance” the business or decision-making of a council, committee or local board. 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.³

For example, where a council “votes, reaches an agreement, provides direction or input to staff, or discusses or debates a proposal, course of action, or strategy”, it is likely to be materially advancing council business or decision-making.⁴ By contrast, an update on recent activities or the mere communication or exchange of information is not likely to be considered as materially advancing council business or decision-making.

In this case, the Mayor and three councillors who gathered in the room at Town Hall discussed a matter that council had already voted upon in open session – namely, to impose certain sanctions against the three councillors. The discussion did not result in

² *Ibid* s 238(1).

³ *Casselman (Village of) (Re)*, 2018 ONOMBUD 11 at para 31, online: <<https://canlii.ca/t/hvmtk>>.

⁴ *Ibid* at para 41.



any further decision being made or action being taken in regards to those sanctions. Council never revisited or reconsidered the matter again.

Accordingly, the discussion in question did not materially advance the business or decision-making of Espanola's council.

Conclusion

I have concluded that the gathering on January 31, 2019 in the room at Town Hall after the regular council meeting does not fall within the definition of a "meeting" under the *Municipal Act, 2001*. Although a quorum of council was present, the Mayor and three councillors did not materially advance council business or decision-making.

I would like to thank the Town of Espanola for its co-operation during my review. The Clerk confirmed that this letter would be included as correspondence at the next council meeting.

Sincerely,



Paul Dubé
Ontario Ombudsman

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