



Ombudsman Report

**Investigation into whether members of
Council for the City of Elliot Lake
held an improper closed meeting on
July 2, 2014**

“Around the Table”

**André Marin
Ombudsman of Ontario
October 2014**

Complaint

- 1 On July 17, 2014, my Office received a complaint regarding a July 2, 2014 gathering at a symposium to discuss sustainable development, which municipal staff and members of council for the City of Elliot Lake attended. The complaint alleged that the gathering constituted a meeting of council, held in violation of the open meeting requirements in the *Municipal Act, 2001*.

Ombudsman jurisdiction

- 2 Under the Act, all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 3 As of January 1, 2008, changes to the Act give 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 My Office is the closed meeting investigator for the City of Elliot Lake.
- 5 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the relevant municipal procedure by-law have been observed.

Investigative process

- 6 In reviewing this complaint, members of my Office's Open Meeting Law Enforcement Team (OMLET) spoke with the Mayor and municipal staff and reviewed publicly available information about the sustainable development gathering. We also considered relevant sections of the city's Procedure By-law and the Act.
- 7 We received full co-operation during our investigation.

The gathering

- 8 Although the complaint was about a gathering on July 2, the Regional Roundtable on Sustainable Development (the Roundtable) took place over two days: July 2 and 3, 2014.

- 9 Serpent River First Nation organized the roundtable, and announced it in a June 27 media release¹. The media release noted that a discussion taking place on the evening of July 2 was open to the public, and organizers of the event advised my Office that the daytime sessions were open as well. Leaders from six local municipalities and three First Nations communities were to attend, according to the release.
- 10 The purpose was to have a dialogue about sustainable development in the traditional First Nations lands in the Lake Huron North Shore region, including issues surrounding mining, forestry, and cottage lot development. Information regarding the discussions was publicly available in an open letter to Premier Kathleen Wynne.²
- 11 Municipal staff advised my Office that all of council was invited to attend the roundtable. In the interest of ensuring a quorum of council was not present, staff told council that only three members – one less than quorum – could attend. The Mayor and two councillors, as well as the Chief Administrative Officer, attended the gathering.
- 12 The Mayor’s recollection of the discussions at the roundtable was consistent with the publicly available information. He said they heard panel discussions regarding how communities could work together toward a goal of sustainable development in the region. The Mayor recalled that members of the public as well as the media attended at various times. The Chief Administrative Officer had similar recollections, although he was unable to attend the entire conference.
- 13 We were advised that nothing discussed at the roundtable was specific to matters that would be before Elliot Lake council in the near future, and accordingly there was no official reporting back to council. At the subsequent council meeting, there was a vote to appoint the Deputy Mayor to sit on the steering committee for the next symposium.

When is a meeting a “meeting”?

- 14 The *Municipal Act, 2001* defines a “meeting” as “any regular, special or other meeting of a council, of a local board or of a committee of either of them.”³ This definition is circular and not particularly helpful in determining whether a meeting has actually occurred.

¹ Available here: <https://www.scribd.com/doc/231514577/Regional-Roundtable-on-Sustainable-Development>

² Available here: <http://www.newswire.ca/en/story/1383827/an-open-letter-to-premier-kathleen-wynne-and-ontario-s-liberal-cabinet>

³ s. 238(1)

- 15** In a 2008 report,⁴ through review of the relevant case law and keeping in mind the underlying objectives of open meeting legislation, I developed a working definition of “meeting” to assist in the interpretation of the definition contained in 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.⁵

- 16** This definition remains consistent with leading interpretations of the open meetings law and reinforces the right of the public to observe municipal government in process.⁶

Analysis

- 17** Three members of Elliot Lake’s seven-member council attended the Sustainable Development Roundtable in July 2014. In other closed meeting letters and reports⁷, my Office has cautioned municipal councils that attendance of councillors at a gathering hosted by a third-party could result in an illegal closed meeting taking place. This could occur if councillors at the gathering received information and/or engaged in discussions that directly influenced future council decision-making.
- 18** In this case, however, a quorum of Elliot Lake councillors was not present at the roundtable. Furthermore, our investigation did not substantiate that any council decision making took place or that the groundwork for future decisions was laid. The information received and discussed at the roundtable also did not pertain to matters on upcoming Elliot Lake council agendas. Accordingly, council members who attended the symposium were not coming together for the purpose of exercising the power or authority council, or to do the groundwork necessary to exercise that power or authority.

Opinion

- 19** The July roundtable gathering was not a meeting of Elliot Lake council for the purpose of the open meeting requirements of the *Municipal Act*.

⁴ Ombudsman of Ontario, *Don’t Let the Sun Go Down on Me: Opening the Door on the Elton John Ticket Scandal* (April 25, 2008), online: http://www.ombudsman.on.ca/Files/sitemedia/Documents/Resources/Reports/Municipal/SudburyReportEng2_2.pdf.

⁵ *Ibid* at paras 54-60.

⁶ *London (City) v. RSJ Holdings Inc.*, [2007] 2 S.C.R. 588, 2007 SCC 29 at para. 32; *Southam Inc. v. Ottawa (City)* (1991), 5 O.R. (3d) 726 (Ont. Div. Ct.) at paras. 12-18; *Southam Inc. v. Hamilton-Wentworth Economic Development Committee* (1988), 66 O.R. (2d) 213 (Ont. C.A.) at paras. 9-12

⁷ See, for example, my office’s July 12, 2011 letter to the Township of Georgian Bay

Report

- 20** Staff from my Office's Open Meeting Law Enforcement Team (OMLET) spoke with the Mayor and the Clerk on October 21, 2014 to outline our findings, and to provide an opportunity for comment. Their comments were taken into account in preparing this report.
- 21** My report should be shared with council and made available to the public as soon as possible, and no later than the next council meeting.



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