



Ombudsman Report

**Investigation into a complaint about
a gathering of members of council
for the Township of Morley
on December 14, 2022**

**Paul Dubé
Ombudsman of Ontario**

November 2023

Complaint

- 1 My Office received a complaint about a gathering of council members and one municipal staff member for the Township of Morley (the “Township”) in a Township garage on December 14, 2022. The complaint alleged that the gathering was a meeting that did not comply with the open meeting rules in the *Municipal Act, 2001* (the “Act”).¹
- 2 My investigation determined that the Township of Morley contravened the open meeting rules on December 14, 2022, by failing to treat the gathering as a meeting subject to the open meeting rules.

Ombudsman jurisdiction

- 3 Under the Act, all meetings of council, local boards, and committees of either must be open to the public, unless they fall within prescribed exceptions.
- 4 As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipality or local board has complied with the Act in closing a meeting to the public. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 5 The Ombudsman is the closed meeting investigator for the Township of Morley.
- 6 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the applicable governing procedures have been observed.
- 7 Our 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.

¹ SO 2001, c 25.

Investigative process

- 8 On April 26, 2023, my Office advised the Township of Morley of our intent to investigate this complaint.
- 9 My Office reviewed the Township's procedure by-law and relevant portions of the Act. We also reviewed minutes from the meetings preceding and following the gathering, as well as the Township's committee appointment by-law.
- 10 My Office spoke with the Clerk-Treasurer, the Deputy Clerk-Treasurer, the Reeve, and two councillors.
- 11 We received full co-operation in this matter.

Background

- 12 The Township of Morley is a single-tier municipality with a population of fewer than 500 people. Township council is composed of a Reeve and four councillors. The Township's typical staff complement consists of one part-time and two full-time employees.
- 13 Following the 2022 municipal elections, the Township adopted a new committee appointment by-law. The by-law appointed the Reeve to every committee, and also appointed two councillors to the Roads and Public Utilities Standing Committee ("Roads Committee"). Accordingly, there were three members of the Roads Committee, all of whom had recently been elected at the time of the alleged meeting in December 2022.
- 14 At a regular council meeting on December 12, 2022, the then-Public Works Superintendent provided an update to council on various matters and left the meeting shortly thereafter. During the discussion following the Superintendent's departure, council members noted that they had additional questions for the Superintendent about general snowplowing operations, including about the Superintendent's workload, in advance of a predicted heavy snowfall. Council agreed that the three members of the Roads Committee should meet with the Public Works Superintendent in the coming days to discuss additional snowplow operators and levels of service for the upcoming snowfall event.

- 15 My Office was told that the three council members agreed on December 12 to informally speak to the Public Works Superintendent before he went to plow snow on December 14, 2022. We were told that the councillors did not consider the conversation with the Superintendent to be a meeting of council or of the Roads Committee.

December 14, 2022 gathering

- 16 Around 7:00 a.m. on December 14, 2022, the Reeve met the Public Works Superintendent at the Township office and noted that two other council members would be joining them for a conversation. Neither the Clerk-Treasurer nor the Deputy Clerk-Treasurer were present.
- 17 At approximately 7:05 a.m., the three council members and the Public Works Superintendent spoke in the garage attached to the Township office. They discussed whether the Public Works Superintendent had additional snowplow operators on call to assist with the specific ongoing snowfall, and asked about an ongoing process to recruit back-up snowplow operators in general.
- 18 My Office was told the conversation also covered other subjects related to snowplowing and public works, including the Public Works Superintendent's hours of work, as well as the certification and safety training related to the Township's snowplowing equipment.
- 19 We heard varying estimates for how long the discussion lasted, with most estimating less than half an hour, as there was a shared understanding that the Public Works Superintendent needed to go out to plow the roads.
- 20 Following this conversation, the Public Works Superintendent left to plow, and the three council members moved into the Township office. The Reeve proceeded to call an individual who was included on a list of potential snowplow operators (the "additional operator"). The additional operator indicated his availability and willingness to immediately meet with the Public Works Superintendent at a second municipal garage to assist with plowing the roads.
- 21 After trying to contact the Public Works Superintendent by radio and phone, the two councillors went to find the Superintendent to discuss this update in person. The Reeve remained at the Township office before going home. Eventually, the two councillors, the Public Works Superintendent, and the additional operator gathered at a second municipal garage. Shortly thereafter, the additional operator and Public Works Superintendent each went out to

plow in different areas of the Township, while the two councillors departed at some point between 9:00 a.m. and 10:00 a.m.

- 22 The Clerk-Treasurer told my Office that following these events, she has reminded council members of the appropriate procedures related to hiring decisions. The Township has also reviewed the roles, practices, and structures of committees of council.

Analysis

- 23 Section 238(1) of the *Municipal Act, 2001* sets out a two-part test to determine whether a gathering meets the definition of a “meeting” under the Act. A regular, special or other meeting of a council, local board, or a committee is a “meeting” where: (i) a quorum of members is present, and (ii) members discuss or deal with a matter in a way that materially advances their business or decision-making.
- 24 Three of the five council members were present on the morning of December 14, 2022. These three council members also comprised the entire membership of the Roads Committee.² Accordingly, there was a quorum of both bodies.
- 25 For the second requirement, it is necessary to determine whether the gathering on December 14, 2022, materially advanced the Township’s business or decision-making.
- 26 In a 2022 report to the Municipality of Casselman, I stated:

“[M]aterially advances” involves considering the extent to which the discussions at issue moved forward the business of the municipality, based on factual indicators.

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-

² The Roads Committee meets the definition of a committee of council under section 238(1) of the Act, which requires that at least 50% of the body’s members be members of council. All three members of the Roads Committee at that time were members of council.

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

- 27** I have also previously found that a council is likely to materially advance council business or decision-making when it votes, reaches an agreement, provides direction or input to staff, or discusses or debates a proposal, course of action, or strategy.⁴ By contrast, the following activities do not or are unlikely to materially advance council business or decision-making:
- Discussing procedural options;⁵
 - Receiving updates on recent activities or communication of information;⁶ and
 - Receiving information that may assist council in better understanding the business of the municipality and/or acquiring skills.⁷
- 28** In a 2022 letter to the Municipality of St.-Charles,⁸ I reviewed a complaint about an informal gathering of two councillors, who comprised the Environmental Services Committee. The two councillors met with residents to discuss concerns about garbage collection and requested that a staff member join the discussion to provide information, which the staff member did. No decisions were made and the discussion was merely informational in nature. The committee did not meet afterward and the matter was not brought to council. I therefore concluded that business was not materially advanced, and that gathering was not a “meeting.”
- 29** In this case, at the December 12, 2022 council meeting prior to the December 14, 2022 gathering, council specifically agreed that the Roads Committee should meet with the Public Works Superintendent to discuss matters of interest to council, including concerns related to forecasted snowfall. To achieve this goal, the council members on the Roads Committee met with the Superintendent in the municipal garage on December 14, 2022, to discuss snowplowing operations. Following this discussion, they also contacted and arranged for an additional snowplow operator to plow snow on the same day.

³ *Casselman (Municipality of) (Re)*, 2022 ONOMBUD 13, online: <<https://canlii.ca/t/jrkx5>>.

⁴ *Casselman (Village of) (Re)*, 2018 ONOMBUD 11, online: <<https://canlii.ca/t/hvmtk>> [*Casselman* 2018].

⁵ *Saugeen Shores (Town of) (Re)*, 2020 ONOMBUD 3, online: <<https://canlii.ca/t/j93c3>>.

⁶ *Casselman* 2018, *supra* note 4.

⁷ *Casselman (Village of) (Re)*, 2015 ONOMBUD 14, online: <<https://canlii.ca/t/gtp61>>.

⁸ Letter from the Ontario Ombudsman to the Municipality of St.-Charles (8 February 2022), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2022/municipality-of-st-charles>>.

These actions materially advanced the Township's business and decision-making.

- 30 Accordingly, the gathering on December 14, 2022, was a Township meeting that needed to comply with the open meeting rules. The Township did not meet these requirements because it did not provide notice, take minutes, or otherwise observe meeting procedures.

Opinion

- 31 I recognize that the Township of Morley is a small municipality with limited resources, and council was doing its best to respond in real time to a significant snowfall. However, the gathering on December 14, 2022, of three members of council for the Township of Morley contravened the open meeting rules in the *Municipal Act, 2001*. I am pleased to see that the Township has already begun taking steps to address these concerns, and commend council for its ongoing commitment to accountability and transparency.

Recommendations

- 32 I make the following recommendations to assist the Township of Morley in fulfilling its obligations under the Act and enhancing the transparency of its meetings:

Recommendation 1

All members of council for the Township of Morley 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*.

Recommendation 2

Members of council for the Township of Morley should ensure that any discussion in which a quorum of members discusses a matter in a way that materially advances the Township's business or decision-making is recognized as a meeting subject to the open meeting rules.

Recommendation 3

Council for the Township of Morley should ensure that it receives appropriate training on the open meeting provisions of the *Municipal Act, 2001* and their application to committees.

Report

- 33 Council for the Township of Morley was given the opportunity to review a preliminary version of this report and provide comments to my Office. In its response, the Township expressed appreciation for my recommendations. I would like to thank the Township for its co-operation during my investigation.
- 34 This report will be published on my Office's website, and should also be made public by the Township. In accordance with subsection 239.2(12) of the *Municipal Act, 2001*, council is required to pass a resolution stating how it intends to address this report.



Paul Dubé
Ombudsman of Ontario