



Final Report

Investigation into a complaint about
meetings held by the
Ad Hoc Multi-Use Committee for the
City of Elliot Lake

Paul Dubé
Ombudsman of Ontario
December 2016

Complaint

- 1 In June 2016, my Office received a complaint about two meetings held by the Ad Hoc Multi-Use Complex Committee for the City of Elliot Lake (the committee) on March 22, 2016 and May 5, 2016.
- 2 The complaint raised concerns that public notice for the two meetings was not provided either on the public bulletin board located at city hall or on the city's website.

Ombudsman jurisdiction

- 3 Under the *Municipal Act, 2001*, all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 4 The Act's provisions are intended to increase the public's confidence in the integrity of local government and ensure that municipal power is exercised in an open and transparent manner. Open meeting legislation ensures effective democracy.
- 5 While the Act allows for closed meetings in some circumstances, it prescribes various procedural requirements before a meeting can be closed to the public. It is important to remember that these procedural requirements are not a mere formality.
- 6 As of January 1, 2008, the Act gave citizens the right to request an investigation into whether a municipality has complied with the Act and its own procedure by-law in closing a meeting to the public. Municipalities may appoint their own investigator. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 7 The Ombudsman is the closed meeting investigator for the City of Elliot Lake.
- 8 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality's governing procedures have been observed.

Committee procedures

- 9 Section 238(2) of the Act requires that a procedure by-law provide for notice to the public of all meetings.
- 10 The city's procedure by-law (No. 16-6) requires that all committee meetings shall be open to the public, except as otherwise provided by law or the open meeting exceptions in the Act.
- 11 With respect to notice, section 81 of the procedure by-law states that:

Notice of meetings of Committees shall be given to the public by posting the date and time of the meeting on the public bulletin board at City Hall and, as a matter of convenience only, on the City website.

- 12 Although posting notice to the city's website is not required by the procedure by-law, the clerk told my Office that it is the city's normal practice to post notice on the website.
- 13 The city does not have a record-keeping system for notices posted on the public bulletin board. The program used by the city to provide online notice maintains a record of postings.

Investigative process

- 14 On August 12, 2016, we advised the municipality of our intent to investigate this complaint.
- 15 Members of my Office's Open Meeting Law Enforcement Team (OMLET) reviewed relevant portions of the city's by-laws and policies, and the Act. We also reviewed the agenda and minutes for the meetings.
- 16 We spoke with the clerk, the executive assistant to the Chief Administrative Officer (CAO), and the mayor with respect to the complaint.
- 17 My Office received full co-operation in this matter.

Background

The Ad Hoc Multi-Use Complex Committee

- 18 The committee was struck on February 8, 2016, and consists of three members of council: Mayor Dan Marchisella, Councillor Tammy VanRooy, and Councillor Scot Reinhardt.
- 19 The CAO's executive assistant is the secretary for the committee. As secretary, she is responsible of creating meeting agendas, recording meeting minutes and posting notice of the committee's meetings.
- 20 The committee does not have terms of reference.
- 21 The committee meets the definition of 'committee' in section 238(1) of the Act, since council members comprise more than fifty percent of its membership.

The March 22 and May 5 committee meetings

- 22 The committee secretary could not recall whether notice for either meeting was posted on the public bulletin board. Neither the clerk nor Mayor Marchisella were able to remember if notice for either meeting was posted on the bulletin board.
- 23 The committee secretary did not post notice for either meeting on the city's website. She explained that in order to post notice on the city's website for a newly formed committee, she had to first create a new profile for the committee. This process takes longer than simply posting notice (approximately 15-20 minutes) and requires detailed information about the committee, including member names and email addresses.
- 24 The committee secretary told my Office that she failed to post notice of the meetings online as an oversight. She explained that the meetings were scheduled with short notice and she was busy with her other duties at the time.

Analysis

- 25 The city was required by its procedure by-law to post notice of the committee's meetings on the public bulletin board. Based on the information

provided to my Office by the mayor and city staff, there is no evidence that notice of either meeting was posted on the bulletin board.

- 26** It is clear that the city did not post notice of the meetings on the city's website. Although online notice is not required by the procedure by-law, it is part of the city's normal practice.
- 27** Given that the city regularly posts notice of committee meetings both on the public bulletin board and online, no notice was provided on the website of the committee's March 22 and May 5, 2016 meetings, and the city cannot recall posting notice of these meetings on the public bulletin board, I find it is more likely than not that the city failed to provide the required notice of the March 22 and May 5, 2016 meetings on the public bulletin board.

Opinion

- 28** The failure by the City of Elliot Lake to provide notice for the Ad Hoc Multi-Use Complex Committee meetings on March 22 and May 5 was a violation of the open meeting requirements in the *Municipal Act* and the city's procedure by-law.

Recommendations

Recommendation 1

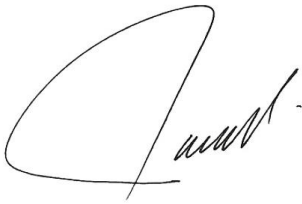
The City of Elliot Lake should implement a record-keeping system for notice of all meetings of council and committees posted on the public bulletin board located in city hall.

Recommendation 2

The City of Elliot Lake should continue to follow its normal practice of providing notice of committee meetings on the city's website and to incorporate this practice into its procedure by-law.

Report

- 29 OMLET staff provided the city with an opportunity to review a preliminary version of this report and provide comments to our Office. No comments were received.
- 30 My report should be shared with council for the City of Elliot Lake and made available to the public as soon as possible, and no later than the next council meeting.



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