



Ombudsman Report

**Investigation into whether
Council for the Town of South Bruce Peninsula
held illegal closed meetings in
April, May and June 2015**

**André Marin
Ombudsman of Ontario
September 2015**

Complaint

- 1** In May 2015, my Office received a complaint about closed sessions held by council for the Town of South Bruce Peninsula on April 28, May 12 and May 21, 2015. The complaint alleged that council for the Town of South Bruce Peninsula voted illegally during several closed sessions discussing the Wiarton Keppel International Airport, all of which were closed under the “acquisition or disposition of land” exception to the open meeting provisions of the *Municipal Act, 2001* (the Act).
- 2** In addition, the complaint alleged that the discussion in closed session on April 28, 2015 improperly extended beyond the topic of acquisition and disposition of land.
- 3** Another complaint alleged that members of council met informally to discuss committee appointments on May 19 and on, or about, May 21, 2015. The same complaint alleged that on May 19, council went into closed session to discuss committee appointments without proper notice.
- 4** The complaint further alleged that members of council held an illegal meeting through a series of emails on June 6, 2015.

Ombudsman jurisdiction

- 5** 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.
- 6** As of January 1, 2008, the Act gives citizens 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 Ontario Ombudsman. 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 Town of South Bruce Peninsula.
- 8** In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipal procedure by-law have been observed.

Council procedures

- 9** The Town of South Bruce Peninsula's procedure by-law was amended after my Office received the initial complaint. The procedure by-law that applied to the April 28, May 12 and May 19 meetings was by-law 27-2014. The procedure bylaw that applied to the May 21 meeting is by-law 60-2015. With respect to the matters below the by-laws are identical.
- 10** The by-law states that regular council meetings are held at 1:30 p.m. on the first and third Tuesdays of every month. When a closed session is required, the meeting will be called to order at 1:00 p.m.
- 11** Notice other than the posting of the agenda on the municipal website is not required for regular meetings. Notice of special meetings is to be provided to each member of council at least 48 hours in advance of the meeting, or as soon as practicable in the event of a "bona fide emergency". Public notice of special meetings is to be provided on the municipal website and in the front lobby of the town hall. No timeframe with respect to notice to the public of special meetings is indicated.
- 12** The procedure by-law provides that before holding a closed session, a motion must be passed in open session identifying the *Municipal Act* section and general nature of the matter to be considered at the closed meeting. The provisions of the by-law relating specifically to closed meetings at A17 mirror those of section 239 of the Act. In addition, section A17.8 requires the Mayor to "state direction from closed on each item discussed during the closed session" upon reconvening into open session.
- 13** The procedure by-law also provides that whenever possible recordings using a recording device shall be made of regular and special open meetings of council. These recordings are posted on the town website for a two-week period following their initial recording. They are not retained in the town's corporate files thereafter. The by-law specifically states that closed meetings will not be recorded using a recording device.

Investigative process

- 14** Members of my Office's Open Meeting Law Enforcement Team (OMLET) reviewed the agendas and open and closed meeting minutes of the April 28, May 12, May 19 and May 21 meetings. They reviewed the open meeting

audio recordings around the April 28, May 12 and May 21 closed meetings¹ as well as related media coverage. They also spoke with the Clerk and the Mayor.

15 My Office received full co-operation in this matter.

The airport matter

The April 28, 2015 special meeting

- 16** The April 28, 2015 meeting was a special meeting of council. The meeting began at 1:00 p.m. The meeting notice indicated that council would be proceeding in camera “to address the Airport under Section 239(2)(c) of the Municipal Act (a proposed or pending acquisition or disposition of land by the municipality or local board).” This was also reflected in the meeting agenda.
- 17** The open meeting minutes show that a resolution to authorize the closed session was moved, seconded and carried to address “a proposed or pending acquisition or disposition of land by the municipality or local board (Airport).” Council then proceeded into closed session at 1:01 p.m.
- 18** According to the closed meeting minutes, all members of council were present except for Councillor Matt Jackson who arrived later in the meeting. The Clerk took minutes and the Manager of Financial Services attended the closed meeting.
- 19** The closed meeting minutes show that council received a report from staff about the airport. Council discussed the potential purchase of the airport from the neighbouring Township of Georgian Bluffs, including negotiating strategy and potential financial and economic impacts. Council discussed whether or not meetings of the airport management board were necessary. Council discussed the terms of an offer, including whether or not there needed to be a resolution in open session with respect to the offer.
- 20** Council reconvened into open session at 3:16 p.m.
- 21** The open meeting minutes indicate under item 8 “Direction from Closed Session – Airport” that “Mayor Jackson indicated that staff has taken

¹ The May 19 recording was no longer available by the time the related complaint was made.

direction from the discussion held with regard to the airport.” The recording of the open session confirms this report back.

The May 12, 2015 special meeting

- 22** The May 12, 2015 meeting was a special meeting of council. The meeting began at 9:00 a.m. The meeting notice indicated that council would be proceeding in camera for “a closed session meeting authorized under the Municipal Act Section 239(2)(c) a proposed or pending acquisition or disposition of land by the municipality or local board (Airport).” This was also reflected in the meeting agenda.
- 23** The open meeting minutes show that a resolution to authorize the closed session was moved, seconded and carried to address “[a] proposed or pending acquisition or disposition of land by the municipality or local board (Airport).” Council then proceeded into closed session at 9:04 a.m.
- 24** According to the closed meeting minutes, all members of council were present except for Councillor Jackson who arrived later in the meeting. The Clerk took minutes and the Manager of Financial Services attended the closed meeting.
- 25** The closed meeting minutes show that council received a report from staff about the airport. Council discussed a counteroffer from Georgian Bluffs and various options to respond to the counteroffer. The minutes show that closed session discussion concluded with a discussion of actions to be taken by staff.
- 26** Council reconvened into open session at 11:15 a.m.
- 27** The open meeting minutes indicate under item 8 “Direction from Closed Session – Airport” that “Mayor Jackson indicated that staff has taken direction from the discussion held in Closed Session.” The recording of the open session confirms this report back.

The May 19, 2015 regular meeting

- 28** The agenda of the May 19, 2015 regular meeting of council indicated that council would go into closed session at items 4.1 to 4.2 to approve the closed meeting minutes of May 5 and May 12, at item 4.3 to discuss “A proposed or pending acquisition or disposition of land by the municipality or local board (Airport)” and at item 4.4 to discuss “Personal matters about an identifiable individual including municipal or local board employees

AND Labour relations or employee negotiations (FS20-2015 Revised Organizational Chart and Compensation Grid).”

- 29** The open meeting minutes show that a resolution to authorize the closed session was moved, seconded and carried to discuss “A proposed or pending acquisition or disposition of land by the municipality or local board (Airport)” and to discuss “Personal matters about an identifiable individual including municipal or local board employees AND Labour relations or employee negotiations (FS20-2015 Revised Organizational Chart and Compensation Grid)”. Council then proceeded into closed session at 5:27 p.m.
- 30** According to the closed meeting minutes, all members of council were present except for Councillor Craig Gammie. The Clerk took minutes and the Manager of Financial Services attended the closed meeting.
- 31** The closed meeting minutes show that council adopted the closed session minutes of the May 5 and May 12, 2015 meetings with amendments.
- 32** The minutes continue with a discussion of a staff report with respect to the airport. Council discussed an offer made by Georgian Bluffs. The minutes go on to state that staff understood from the discussion that a counteroffer was to be made at a specified price.
- 33** The minutes then record a discussion with respect to the revised organizational chart and compensation grid. Council is noted discussing the performance and duties of staff members, as well as the assignment of roles and responsibilities in the future.
- 34** Council reconvened in open session at 8:12 p.m.
- 35** The open meeting minutes indicate under item 43 “Direction from Closed– Airport” that “Mayor Jackson indicated that staff was given direction.”
- 36** The minutes then indicate under item 44 “Direction from Closed – FS20-2015 Revised Organizational Chart and Compensation Grid” that “Mayor Jackson explained that Council had conversation in Closed Session and would now return to the staff report for consideration.” A number of resolutions were then moved, seconded and carried in open session relating to staffing and compensation. The minutes also note the comments of the Manager of Financial Services with respect to this matter.

The May 21, 2015 special meeting

- 37** The notice to the public of the special meeting of May 21, 2015, issued on May 20, 2015, stated that council would meet at 5:00 p.m. to consider three matters, one in open session and two in closed session. This was also reflected in the meeting agenda.
- 38** The open meeting minutes show that a resolution to authorize the closed session was moved, seconded and carried to address “[a] proposed or pending acquisition or disposition of land by the municipality or local board (Airport)” and to discuss “[a] proposed or pending acquisition or disposition of land by the municipality or local board AND litigation or potential litigation including matters before administrative tribunals affecting the municipality or local board (Airport Fuel Tank Removal Contract).” Council then proceeded into closed session at 5:30 p.m.
- 39** According to the closed meeting minutes, all members of council were present. The Clerk took minutes and the Manager of Financial Services attended the closed meeting.
- 40** Under item 3 “Airport Fuel Tank Removal Contract and Airport”, council discussed the work of a contractor. The discussion then continued under item 4 “Airport” and the minutes show that council received a report from staff. The minutes go on at length about whether or not to accept an offer from Georgian Bluffs.
- 41** The minutes note that a member of council “indicated that Council cannot vote in closed [session]” which is immediately followed by “No resolution was on the table for voting. The Clerk read from the Municipal Act with respect to voting in closed [session]. The member indicated that the Ombudsman had ruled contrary to that.”
- 42** Following further discussion of the offer, the closed meeting minutes then record a discussion about the need to amend the property disposal by-law to permit swift action on the offer. The minutes conclude with a note that staff took direction based on the discussion.
- 43** Council reconvened into open session at 7:35 p.m.
- 44** The open meeting minutes indicate under item 8 “Direction from Closed Session – Airport Fuel Tank Removal Contract” that “Mayor Jackson indicated that staff has taken direction from the discussion held in Closed Session.” The recording of the open session confirms this report back. The

Mayor is also heard saying that the fuel tank removal “was discussed and noted for information purposes only.”

- 45** The minutes then indicate under item 9 “Direction from Closed Session – Airport” that “Council discussed the Disposal By-Law and changes to the notice provisions.” Council then passed an updated disposal by-law, which was immediately followed by a resolution to declare the airport surplus to the needs of the town. Finally, the minutes note that “Mayor Jackson indicated that staff has also taken direction from closed with respect to [the] Airport.” The recording of the open session confirms this report back and sequence of votes.

Analysis of the airport matter

Notices

- 46** Notices to the public for the special meetings of April 29 and May 12 were given in compliance with the *Municipal Act* and the town’s procedure by-law. Notice of the May 19 regular meeting of council was also given in compliance with the Act and the procedure by-law.
- 47** However, only 24 hours’ notice was given in advance of the special meeting on May 21. The Town’s procedure by-law states the following with respect to special meetings:

A8.2 The members of Council shall be given forty-eight (48) hours notice of all special Council meetings. Such notice shall be transmitted by facsimile, e-mail or telephone to the members of Council.

The by-law goes on to make an exception for emergency situations:

A8.4 Notwithstanding the provisions of subsection A8.2, in the event of a bona fide emergency, a meeting may be held as soon as practicable following receipt of the summons or petition, as the case may be, and notice may be given by telephone, personal contact or e-mail as determined by the Clerk.

- 48** The Clerk explained that the meeting was called on an emergency basis. The offer from Georgian Bluffs had an irrevocable date of May 22, 2015. This was in response to South Bruce Peninsula’s offer following its May 19

meeting. Given these tight timelines, it was determined that there was a bona fide emergency sufficient to call a special meeting with less than 48 hours' notice.

- 49** In my June 2015 report about the Municipality of Magnetawan, I described “emergency” in the context of council meetings as “unexpected circumstances requiring immediate or urgent action.”² In that case, notice was provided to the public after the closed meeting had already occurred, contrary to the Act and to the municipality’s procedure by-law.
- 50** In my September 2015 report about the Village of Burk’s Falls, applying this same definition of “emergency” I found that a meeting called to appoint someone to a vacant board position was not an unexpected circumstance.³ In that case, council was aware well in advance of the deadline to appoint someone and had ample opportunity to do so with proper notice to the public.
- 51** In the South Bruce Peninsula case, council only became aware of the May 22, 2015 offer deadline following the May 20 meeting of Georgian Bluffs council. South Bruce Peninsula therefore had less than 48 hours to meet and respond to the offer. This was an unexpected circumstance that required urgent action. The short notice, given on May 20 for the May 21 meeting, was in compliance with the town’s procedure by-law that permits notice as soon as practicable in case of an emergency.

Resolutions

- 52** For all meetings, the resolution to go into closed session indicated the relevant exceptions under the *Municipal Act* and provided a general statement about the subject matter under discussion.

Exceptions cited

Acquisition or disposition of land

² Ombudsman Ontario, “Investigation into whether Council for the Municipality of Magnetawan held illegal closed meetings on February 28 and March 4, 2015” (June 2015). Online: <http://ombintranet/DOCS/OMLET/Closed%20Meeting%20Reports%20and%20Letters/Ombudsman%20Reports%20and%20Letters/Magnetawan/04-Magnetawan-June%202015%20Report.pdf>

³ Forthcoming.

53 The acquisition or disposition of land exception is intended to protect a municipality's bargaining position in property negotiations.⁴ With respect to acquisition and disposition of land, the closed meeting investigator for the Municipality of Kincardine stated:

It makes sense that a council or local board would not have open public discussions about its negotiating strategy, most specifically the price it is willing to pay for lands that it wants to acquire title to or receive for lands that it wants to dispose of. Open disclosure of the price that a municipality is willing to pay for acquisition of land, or willing to accept for disposal of land, could detrimentally affect the municipality's interest. Potential purchasers or sellers of land ought not to know what value a council is willing to accept or pay. The exemption under the Municipal Act protects the municipality's economic interests by not compromising the municipality's bargaining position. Hence, the discussion can be held in closed session.⁵

54 For all meetings, the closed session discussions with respect to the airport fit within the "acquisition or disposition of land" exception as council members discussed the potential purchase or sale of the airport, including negotiating strategy.

55 The complainant alleged that the discussion of the airport management board meetings during the closed session on April 28 should not have taken place in closed session. The Ontario Divisional Court has found that discussions closely related to a disposition of land, even if not entirely on topic, may be permissible as a matter of practicality:

The error in the Adjudicator's analysis is underscored by a consideration of the practical implications of the decision made. The decision determined that only parts of the meeting could be closed. How is such a meeting to be conducted? Whenever a participant interrupts the consideration of the disposition of land to refer to any other option being considered or to review and part of the history

⁴ See *Report of the Provincial/Municipal Working Committee on Open Meetings and Access to Information*, Toronto: The Committee, July 1984; S. Makush & J. Jackson, *Freedom of Information in Local Government in Ontario*, Toronto: Commission on Freedom of Information and Individual Privacy, 1979, as cited in Final Order MO-2468-F, *Re: City of Toronto*, [2009] O.I.P.C. No. 171.

⁵ Local Authority Services – Municipality of Kincardine – July 22, 2014, pp 5-6.

of background, the meeting would have to adjourn to go into a public session and then close again when the discussion returned to consider the sale of property. It is not realistic to expect the members of a municipal council to parse their meetings in this way. At minimum, it would detract from free, open and uninterrupted discussion. It could lead to meetings that dissolve into recurring, if not continuous, debate about when to close the meeting and when to invite the interested public to return.⁶

56 While it is true that the airport management board and other committee meetings were not on the agenda or included in the resolution to authorize a closed session, the April 28 closed session minutes indicate that the discussion about meetings of committees was directly related to the proposed purchase of the airport and council's negotiating strategy.

57 During the May 21 meeting, council discussed the contract for airport fuel tank removal under the "acquisition or disposition of land" exception. The closed session minutes indicate that the contract was discussed in the context of the offer to purchase the airport, as the purchase offer would have an effect on the need for the contract as well as responsibility for the fuel tank removal. As such, it was sufficiently related to the discussion of the disposition of the airport so as to be permitted under the "acquisition or disposition of land" exception.

Litigation or potential litigation

58 The May 21 closed session discussion of the airport fuel tank removal contract also took place under the "litigation or potential litigation" exception. The minutes do not record any discussion of litigation in progress or even contemplated litigation with respect to the contract. As such, this did not fit within the exception.

59 However, as noted above, the discussion of the contract was sufficiently related to the proposed disposition of the airport and was permitted under the "acquisition or disposition of land" exception.

Personal matters

60 For the personal matters exception to apply, the information being discussed must be about an individual in his or her personal capacity, rather

⁶ *St. Catharines (City) v. IPCO*, 2011 ONSC 2346 at para 42.

than his or her professional, official or business capacity. However, this information may still qualify as personal if it reveals something of a personal nature about the individual.

- 61** At the May 19 meeting, council discussed the performance and conduct of a staff member at length. These discussions took on a more personal nature and therefore fit within the personal matters exception.

Labour relations

- 62** The labour relations exception refers to the collective relationship between an employer and its employees.
- 63** At the May 19 meeting, council discussed the possibility of reorganizing the town's administration structure and reassigning duties to better reflect workloads. This discussion identified staff members' workloads and working relationships and thus fit within the labour relations exception.

Alleged voting in closed session

- 60** For all meetings, the minutes note that staff took specific direction in closed session with respect to the airport negotiations. No open session votes with respect to the closed session matters were recorded following the April 28 and May 12 meetings. The May 19 minutes record only open session votes following the closed session as they relate to staff roles and responsibilities, as well as remuneration. The May 21 minutes record a number of resolutions in open session related to the closed session discussion.

Were votes taken in closed session?

- 61** In a 2009 report, the closed meeting investigator for the County of Essex described a situation where:

The County Warden indicated that he took direction from the Committee of the Whole throughout the meeting based on his perception over whether or not there was implied consensus among the members that the direction was an appropriate one.

The investigator went on to say:

Best practice is to take votes when giving direction or instructions. Using the voting process, there can be no confusion or misunderstanding as to the actions to be taken

that flow from the closed session, or whether or not there is a consensus among the members that such actions should or should not be taken.⁷

- 62** As did the County Warden in Essex, the Clerk in South Bruce Peninsula acted based on an implied consensus. The closed session minutes in this case do not show that any formal procedural or directive resolution was made, nor any vote taken. However, staff was clearly expected to act according to council's wishes as expressed throughout the discussion.
- 63** A direction based on council consensus is for all intents and purposes a vote of council. As a best practice, council should more clearly identify the specific direction given, formally vote on it and record it as such in the closed meeting minutes. This is for the benefit of both staff and council so there is no confusion about what direction was given and voted on.

Were the closed session votes permitted under the Act?

- 64** The *Municipal Act* prohibits voting during a closed session unless the vote is for a procedural matter, or for giving directions to staff (s 239(5)-(6)).
- 65** In this case, the April 28 closed session minutes indicate that staff was directed to make an offer with respect to the airport, with council laying out related terms and conditions. The May 12 closed session minutes indicate that staff was directed to amend the offer in response to the counteroffer from Georgian Bluffs, again with related terms and conditions. The May 19 closed session minutes indicate that staff was directed to make a counteroffer in response to a new offer from Georgian Bluffs. Finally, the May 21 closed session minutes indicate that staff was directed to accept the offer made by Georgian Bluffs in response to the May 19 counteroffer.
- 66** Until staff for South Bruce Peninsula informed Georgian Bluffs of the acceptance of the offer following the May 21 meeting, the matter was still under negotiation. The final decision to effect the sale of the airport took place at the June 2 meeting of council, when the necessary resolutions were made and passed in open session.
- 67** In the context of acquisition or disposition of land, the votes by consensus of April 28, May 12, May 19 and May 21 were directions to staff. They were therefore permissible under the *Municipal Act*.

⁷ Local Authority Services – County of Essex – September 18, 2009

The committee appointments matter

May 19, 2015

- 68** The complaint alleged that council discussed committee appointments during a break from 1:30 to 1:40 p.m. at the May 19 meeting and that council discussed the matter during the closed session that same date without proper notice.

Alleged informal discussion

- 69** The break from 1:30 to 1:40 p.m. took place after a councillor had been asked to leave the council table.
- 70** According to the Mayor, she left council chambers during this time. It was during this time that police were called as well. The Clerk confirmed that council members were waiting for the Ontario Provincial Police to arrive because a councillor had refused to leave the council table. She could not recall if anything from the agenda was discussed, only that everyone was fighting.

Alleged discussion during closed session

- 71** The closed session minutes do not indicate that committee appointments were discussed. Neither the Mayor nor the Clerk had any recollection of the committee appointments being discussed during the closed session.
- 72** The Clerk stated that the committee appointments matter was discussed only in open session. The open session minutes record such a discussion.

Other alleged informal discussions

May 21, 2015

- 73** The complaint alleged that “there was at least one secret meeting of four council members” on May 21 during a break from 5:16 p.m. to 5:29 p.m. This was immediately after the councillor who had been barred from attending council at the prior meeting had been readmitted to council during the open session of council.
- 74** While the Clerk could not recall what took place at this time, the Mayor stated that she believed members of council were interviewed by the media

because council had allowed the councillor back into the session without the apology that council initially required.⁸

Unspecified gatherings

- 75** Based on a brief exchange among councillors in open session on June 2, the complainant alleged that council discussed the matter of committee appointments at some other point in time in an informal closed meeting.
- 76** The Mayor had no recollection of informal discussions among members of council about committee appointments. She did note, however, that she had had a conversation with the Clerk about the annual review of committees. This was a general discussion about changes to committees that may take place for various reasons.
- 77** The Clerk had no recollection of informal discussions among members of council about committee appointments. She did note, however, that prior to May 19 two members of council had approached her individually to ask if it was legal to change the members of the two committees.⁹

Analysis of the committee appointments matter

- 78** There is no evidence that council held an illegal closed meeting on May 19 or May 21 about the committee appointments. There is no evidence that council held an illegal closed meeting at some other unspecified time about the committee appointments.

The email matter

- 79** The complaint alleged that an email string from June 6, 2015 constituted an illegal closed meeting.
- 80** The first email was from Councillor Matt Jackson to a constituent, which was also sent to the Mayor and to Councillors Craig Gammie and Ana Vukovic. The second email was from the Mayor in response to Councillor Jackson's message to the constituent, sent to the same council members.

⁸ Contemporaneous media reports do quote the Mayor and other members of council: <http://www.wiartonecho.com/2015/05/22/gammie-ready-to-return>.

⁹ These council members would go on to propose the change in committee appointments on May 19.

- 81** Both emails related to a constituent's safety concerns about traffic on a particular road and the need for a stop sign. The second email included reference to the possibility of a motion being brought by a councillor at a meeting of council.

Analysis of the email matter

- 82** In a 2008 report, 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 applying the law:

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.

- 83** A series of emails between council members for the purpose of exercising the power or authority of council, or for the purpose of laying the groundwork necessary to exercise that power or authority, may also constitute a meeting for the purposes of the Act's open meeting requirements. This was reinforced recently in two reports about closed meetings in Leeds and the Thousand Islands.¹⁰
- 84** In the South Bruce Peninsula case, two members of council emailed a constituent about a stop sign. Two other members of council were also on the email string. A quorum of council was in receipt of the emails; however, only two members of council were actively part of the discussion.
- 85** Moreover, these emails appear to be more of an informative nature, akin to the emails complained of among councillors for the Municipality of Leamington.¹¹
- 86** In that case, a constituent had made an inquiry to a councillor about development charges and property taxes. The councillor forwarded the

¹⁰ Ombudsman of Ontario, "Re: *The Naughty Topic*" (June 2015), online: <https://ombudsman.on.ca/Resources/Reports/Township-of-Leeds-and-the-Thousand-Islands--Re--Th.aspx>; Ombudsman of Ontario, "Investigation into whether Council for the Township of Leeds and the Thousand Islands held illegal closed meetings to discuss Council's Code of Conduct" (June 2015), online: <https://ombudsman.on.ca/Resources/Reports/Township-of-Leeds-and-the-Thousand-Islands-%283%29.aspx>.

¹¹ <https://ombudsman.on.ca/Resources/Reports/Municipality-of-Leamington.aspx>

message to council and staff. The Mayor then responded to the constituent with council and staff copied and provided information as well as his views of the issues raised. Two other members of council also responded, concurring with the Mayor's views and providing clarifications as needed. My Office found:

Although all Council members are copied on the e-mails there is no evidence presented that Council collectively discussed or advanced Council business or that the three emails laid the groundwork for future decisions. As such, this email exchange with a constituent does not meet the definition of a "meeting" that is subject to the open meeting requirements.

- 87** In the South Bruce Peninsula case, while the possibility of discussing the stop sign issue at council was raised, this did not constitute advancing the business of council or laying the groundwork for doing so. Less than a quorum of council actively participated in the email discussion and the note about the matter being raised at council was merely to inform the constituent about council procedure.
- 88** The *Municipal Act* does not in any way prevent this type of informal communication between council and constituents.

Procedural matters

- 89** With the exception of keeping a more clear record of votes on procedural matters and directions to staff while in camera, the closed meeting minutes for the Town of South Bruce Peninsula provided a great deal of detail about the substance of the discussions that took place. I commend the Clerk for her thoroughness.
- 90** Having said that, I strongly encourage municipalities to make audio or video recordings of both open and closed council proceedings. This provides the most clear, accessible record for closed meeting investigators to review, and assists in ensuring that officials do not stray from the legal requirements during closed meetings.
- 91** More and more municipalities are opting to digitally record closed sessions for the sake of accuracy. These include: the Townships of Tiny, Adelaide Metcalfe, Brudenell, Lyndock & Raglan, and McMurrich-Monteith; the Towns of Midland and Fort Erie; the Municipalities of Lambton Shores and Brighton; and the Cities of Oshawa, Sault Ste. Marie, Brampton, Niagara Falls, and Welland.

Opinion

- 92** The Town of South Bruce Peninsula did not contravene the open meeting provisions of the *Municipal Act* when it went into closed session under the acquisition or disposition of land exception and provided directions to staff on April 28, May 12, and May 21, 2015.
- 93** There is no evidence to indicate that informal gatherings of council took place on May 19 or May 21, 2015 with respect to committee appointments.
- 94** The emails of June 6, 2015 did not constitute a meeting for the purposes of the *Municipal Act, 2001*.
- 93** The Town of South Bruce Peninsula has greatly improved its closed meeting practices since my July 27, 2010 report and my Office's July 19, 2011 letter that found a number of problems with respect to notice, citing proper exceptions, record-keeping and voting in closed session. I commend them for doing so. This is a good example of how my Office's independent role can be used to strengthen and validate municipal council's meeting practices. I have however, identified the following best practices and procedural steps, which Council could take to further improve its meeting practices.

Recommendations

Recommendation 1

The Town of South Bruce Peninsula should indicate in its procedure by-law the timeframe in which notice of special meetings is to be given to the public.

Recommendation 2

The Town of South Bruce Peninsula should audio or video record its closed meetings.

Recommendation 3

The Town of South Bruce Peninsula should ensure procedural or directive actions arising out of closed session discussions, where permitted under the *Municipal Act*, are the subject of a formal resolution and vote in closed session.

Recommendation 4

The Town of South Bruce Peninsula should ensure procedural or directive votes taken in closed session are clearly recorded in its closed session minutes.

Report

- 94** OMLET staff spoke with the Mayor and the Clerk on September 10, 2015 to provide an overview of these findings, and to give the municipality an opportunity to comment. Any comments received were taken into account in preparing this report.
- 95** My report should be shared with council for the Town of South Bruce Peninsula and made available to the public as soon as possible, and no later than the next council meeting.



André Marin
Ombudsman of Ontario