

May 2, 2013

Clerk Lesley Sprague
City of Elliot Lake
45 Hillside Drive North
Elliot Lake, ON P5A 1X5

Dear Ms. Sprague,

Re: Complaint - March 6, 2013 Special Closed Meeting of Council

I am writing further to our conversation on May 1, 2013 about our review of a complaint that Council for the City of Elliot Lake did not provide advance public notice of a March 6, 2013 special closed meeting.

As you know, the *Municipal Act, 2001* (the Act) requires that all meetings of Council, Local Boards, and their committees are open to the public with limited exceptions. The Act also requires that municipalities provide for public notice of meetings within the Procedure By-Law.

In reviewing this complaint, our Office reviewed the meeting documentation, and spoke with the Clerk, the Mayor, and Solicitor Paul Cassan of Wishart Law LLP.

The City of Elliot Lake's Procedure By-Law (No. 07-36) states that public notice of meetings will be provided by posting the Agenda cover page on the City Hall Bulletin Boards. The City's notice practice includes posting notice of meetings on the City's website and in the local newspaper.

Apart from regular meetings of Council that are held on the second and fourth Monday of each month, the By-Law provides that,

“The Mayor may at any time summon a special Council meeting to be held at the time, date and place of his preference.

In the case of special meetings of Council, where time does not permit delivery of the Agenda to meet the "previous Thursday" deadline, the City Clerk shall attempt to inform each Council member and such other persons as the Mayor and/or the City Clerk deem advisable of the day, time, place and purpose

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of the meeting by telephone or otherwise. In such case, the City Clerk shall deliver the Agenda as soon as reasonably possible.”

March 6, 2013 Special Closed Meeting

According to the information obtained, Solicitor Paul Cassan, the City’s representative in the Elliot Lake Mall Inquiry, contacted the Mayor at approximately 4:30 p.m. on March 6, 2013 and requested to meet with Council on an emergency basis to provide advice and obtain instruction relative to the Elliot Lake Mall inquiry. We were advised of the potential risks, including possible loss of evidence, if the meeting was delayed.

After receiving this request, the Mayor spoke with the Clerk between 5:15 and 5:30 p.m. and asked that she notify Council members of a Special Meeting of Council to commence at 6:30 p.m. that same evening. The Clerk contacted members of Council and six of the seven Councillors were able to attend the meeting. The Clerk and the Fire Chief also attended.

The Clerk pointed out that it was impossible to post advance notice of the meeting on the City’s website as the need for the meeting arose after regular business hours and an Information Technology staff member who is responsible for postings on the website had left for the day. The Clerk stated that she did, however, place a call and leave messages for media contacts at the local newspaper and radio station.

The day following the meeting, the Clerk said that she submitted a request to technical staff to post the meeting agenda. Both the meeting agenda and public minutes were posted on the website as of March 8, 2013.

In terms of the meeting, the public minutes confirm that Council passed a resolution to proceed in camera as follows:

That the verbal report from Mr. Paul Cassan, Wishart Law, be discussed in closed session pursuant to Section 239 (2) (f) of the *Municipal Act*, in order to receive advice that is subject to solicitor-client privilege with respect to a matter of potential litigation related to the Elliot Lake Inquiry.

The closed meeting record confirms that the Solicitor provided information and advice to Council and sought instructions for next steps.

The meeting adjourned at 7:25 p.m.

Analysis

The *Municipal Act* requires that a municipality's Procedure By-Law provide for public notice of meetings. The Act does not mandate the content or form of notice.

As noted above, the City of Elliot Lake's Procedure By-Law does provide for public notice of meetings by posting the agenda on the City's Bulletin Boards. It is also the City's practice to post notice of meetings on its website and in the local newspaper. The By-Law permits Council to call Special Meetings and states that..."in such case, the City Clerk shall deliver the Agenda as soon as reasonably possible."

In this case, it appears that the Clerk took reasonable steps to provide public notice. Although the need for the meeting arose after regular office hours and the Clerk had limited time to contact Councillors to request their attendance, we were advised that the Clerk made attempts to inform the local media about the occurrence of the special meeting and she requested that technical staff post the agenda on the website as soon as possible following the meeting. The public meeting minutes are also available on the website.

The Ombudsman has stated that agenda items that have not been the subject of advance notice should only be considered in rare circumstances where urgency does not permit the normal notice requirements to be observed¹.

The City of Elliot Lake is currently a key participant in the Elliot Lake Mall Inquiry. We received consistent information and the meeting record confirmed that the situation that gave rise to this meeting was of an urgent nature.

In addition, the subject matter considered in the closed session –the Solicitor's provision of legal advice and request for instruction from Council – is permitted under the Act under s. 239 (2) (f) – *advice that is subject to solicitor-client privilege, including communications necessary for that purpose.*

Based on the above, we did not find that Council violated the *Municipal Act* or its Procedure By-Law with respect to the March 6, 2013 special closed council meeting.

¹ December 2010 Ombudsman's Report on an *Investigation into whether the Town of Mattawa Council and its Ad Hoc Heritage Committee held improperly closed meetings.*



During our call, we asked that you share this letter at the next public Council meeting on May 13, 2013 and make a copy available on your website.

Again, thank you for your co-operation with our review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team