



## **Ombudsman Report**

**Investigation into whether members of  
the Waterfront Improvement Committee  
for the Township of Billings  
held closed meetings in violation of  
the *Municipal Act, 2001***

**“On the Waterfront”**

**André Marin  
Ombudsman of Ontario  
October 2014**

## Complaint

- 1 On July 23, 2014, my Office received a complaint that the Waterfront Improvement Committee (the committee) for the Township of Billings regularly met and made decisions behind closed doors.
- 2 According to the complainant, waterfront development is a matter of great public interest to the community, and accordingly the committee's meetings should have been open to the public.

## Ombudsman jurisdiction

- 3 Under the *Municipal Act, 2001*, (the Act) all meetings of council, local boards, and their committees must be open to the public, unless they fall within prescribed exceptions.
- 4 As of January 1, 2008, the Act gives 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 Ontario Ombudsman as the default investigator for municipalities that have not appointed their own.
- 5 My Office is the closed meeting investigator for the Township of Billings.
- 6 In investigating closed meeting complaints, my Office considers whether the open meeting requirements of the Act and the relevant municipal procedure by-law have been observed.

## Investigative process

- 7 Members of my Office's Open Meeting Law Enforcement Team (OMLET) reviewed relevant portions of the Township's procedure by-law and the Act. They also spoke with municipal staff, the Mayor, and the Chair of the committee.
- 8 Members of council and staff co-operated fully during the course of our review.

## The Waterfront Improvement Committee

- 9 The Waterfront Improvement Committee was created in 2012 as a result of the Township's Sustainability Plan, which included improvements to the waterfront. Township staff told us that, although it is referred to as a

“committee,” it is not considered to be a committee of council for the purpose of the open meeting requirements. There was no by-law to form the committee, and it has no official terms of reference.

- 10** The committee is made up of the Mayor, one member of council, and three members of the public. All were appointed by council.
- 11** The committee meets on an as-needed basis. Discussions at committee meetings pertain to any ongoing or future projects to improve the waterfront. The committee has no budget or decision-making authority. Recommendations of the committee are brought back to council by the committee chair, who is a member of council.
- 12** Upcoming committee meetings are announced verbally at the council meeting preceding the committee meeting. Members of the public are permitted to attend committee meetings. An Economic Development Officer who attends the meetings takes minutes. The minutes are kept at the LaCloche Manitoulin Business Assistance Corporation (LAMBAC) and are available to the public upon request.

## **When is a committee subject to the open meeting requirements?**

### Relevant Legislative and Municipal By-law Requirements

- 13** The term “committee” is defined in section 238 of the *Municipal Act* as “any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards.”
- 14** The Township’s procedure by-law (by-law 2009-01) defines “committee” as “any committee, Local Board, or similar entity comprised of all Members appointed by Council of the Township, but does not include the Library Board.” Therefore, if all members of a committee or similar entity are appointed by council, that entity will be considered a “committee” for the purpose of the procedure by-law.
- 15** Section 11 of the procedure by-law states that council may not meet in camera unless the subject matter of the discussion falls under one of the exceptions outlined in the Act. Section 26 of the procedure by-law states that the rules governing the procedure of council shall be observed in all committees.

## Analysis

- 16** The Waterfront Improvement Committee does not meet the composition requirement for a “committee” of council, outlined in section 238 of the Act, as only two of the five members are also members of council. However, that is not the end of our review.
- 17** Section 239.2 of the Act states that a municipal investigator has the function to investigate whether the municipality has complied with s. 239 of the Act or a procedure by-law in respect of a meeting that was closed to the public (emphasis added). As has been noted by other closed meeting investigators<sup>1</sup>, a body that does not meet the composition requirements for a committee of council as described in section 238 of the Act may still be a committee of council if it meets the definition contained in the municipality’s own procedure by-law.
- 18** In this case, the Township’s procedure by-law defines a “committee” as “any committee, Local Board, or similar entity comprised of all Members appointed by Council of the Township.” The Waterfront Improvement Committee meets this definition, as all of its members were appointed by council, and therefore is a committee under the by-law. The by-law also states that the rules governing the procedures of council – including the requirement to hold meetings in accordance with the open meeting requirements – shall be observed at committee meetings.
- 19** Although staff advised our Office that the Waterfront Improvement Committee was not considered a “committee” of council, we were also told that it provides notice of its meetings, keeps minutes, and allows the public to attend its meetings.

## Conclusion

- 20** Although the Waterfront Improvement Committee is already following a practice of holding open meetings, there appears to be confusion as to the committee’s status as a committee of council for the purpose of the open meeting requirements. Staff and council should be aware that any group that meets the definition of “committee” under the township’s procedure by-law (2009-01), will be subject to the open meeting requirements as a result of the provisions contained in section 11 and 26 of the by-law.

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<sup>1</sup> See, for example, Amberley Gavel Ltd.’s August 2010 investigation into the Niagara District Secondary School Committee

- 21** For the sake of clarity, we encourage council to develop terms of reference for this committee, and to formalize – in writing – the committee’s practice for providing notice of meetings to the public.

## Report

- 22** My Office spoke with the Mayor, the Clerk Treasurer, and the Chair of the Waterfront Improvement Committee on September 30, 2014 to provide an overview of our findings, and to provide an opportunity to comment. Any comments received were taken into account in preparing this report.
- 23** My report should be shared with council and be made available to the public as soon as possible, and no later than the next meeting of council. My report should also be shared with the Waterfront Improvement Committee no later than its next meeting.



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