



Ombudsman Report

**Investigation into a complaint about
a meeting held by the
Laird Fairgrounds Management Board
of the Township of Laird
on August 10, 2016**

**Paul Dubé
Ontario Ombudsman
January 2017**

Complaint

- 1 My Office received a complaint that the Laird Fairgrounds Management Board discussed a matter in camera on August 10, 2016, contrary to the open meeting rules in the *Municipal Act, 2001* (the Act). The complainant alleged that the subject matter discussed did not fall within any of the prescribed exceptions in the Act.
- 2 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.

Ombudsman jurisdiction

- 3 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.
- 4 The Ombudsman is the closed meeting investigator for the Township of Laird.
- 5 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the applicable procedure by-law have been observed.

Investigative process

- 6 We notified the board and the township that we would be investigating this complaint on November 2, 2016. We obtained and reviewed the town's procedure by-law and by-laws applicable to the board. We reviewed relevant meeting materials, including the agenda, minutes, and closed session minutes for the August 10, 2016 meeting. We interviewed the township's Clerk, who is also the Secretary-Treasurer for the board, and all members of the board.
- 7 My Office received full co-operation in this matter.

Laird Fairgrounds Management Board

- 8 The Laird Fairgrounds Management Board was created in 2000 to manage municipally-owned property used as fairgrounds, including a horse arena.
- 9 The horse arena was recently renovated by the municipality. It can be rented by members of the public. The municipality is currently in the process of developing rules for use of the arena.
- 10 The board has six members, including two members of council and four community members. The board also has a council alternate.
- 11 Before reviewing the August 10 meeting, we must determine whether the Laird Fairgrounds Management Board is subject to the open meeting rules. The open meeting rules in the *Municipal Act* apply only to a municipal council, a local board, or a committee of either of them.
- 12 A body is a committee of council if at least 50% of its members are members of one or more councils or local boards. A body can also be a committee if deemed so by municipal by-law.
- 13 The Laird Fairgrounds Management Board is not composed of at least 50% members of council or a local board, as only two of the six members are also members of council.
- 14 However, the Clerk, who also acts as Secretary-Treasurer for the board, told us that the board is a committee of council pursuant to a municipal by-law passed by council in 2012.
- 15 The board was established by by-law 779-00 in July 2000. The enabling by-law provided for 12 members, including one council member, and stated that the board was established to manage the Laird Fairgrounds on municipal property.
- 16 In August 2012, council passed by-law 927-12 to update the enabling by-law for the board. The update reduces the board's membership from 12 to 5 members – two from the local agricultural society, one from council, and two general members of the public. It states that council may appoint additional members by resolution.
- 17 Council appoints board members annually based on recommendations provided by the agricultural society. The board then elects its own chair

and secretary, advising council of those appointments. The board's treasurer is to be the township's treasurer. The by-law states that the board "shall act on behalf of the Council as a committee for activities relating to expenditures and revenues" relating to the fairgrounds.

- 18 The Laird Fairgrounds Management Board is a committee of council for the Township of Laird, subject to the open meeting rules.

Committee procedures

- 19 The board's establishing by-law states that the board shall conduct all meetings "open to the public," noting that no person can be excluded except for improper conduct. The board is required to keep minutes. The by-law does not provide for closing meetings.
- 20 The township's procedure by-law provides for closed meetings of council or committees. The by-law reflects the open meeting rules in the *Municipal Act* with respect to resolutions to close a meeting, voting during a closed session, and the closed meeting exceptions. However, the by-law does not reference the exception in subsection 239(3.1) for education or training sessions, or the exception in subsection 239(3)(b) for discussions about an ongoing investigation by our Office, an appointed closed meeting investigator, or an appointed ombudsman.
- 21 The Township of Laird should amend its procedure by-law to accurately reflect all the closed meeting exceptions in the *Municipal Act, 2001*.

Meeting on August 10, 2016

- 22 A regular meeting of the Laird Fairgrounds Management Board was scheduled for August 10 at 7:30 p.m. at the township office. The agenda included items identified as "New Business," including reviewing draft rules for the horse arena and surrounding area, reviewing rental rates and a rental agreement.
- 23 No closed session was listed on the agenda.
- 24 According to the meeting minutes, all members of the committee attended the meeting, including the council alternate (Wayne Junor). There were seven members present, as well as the Secretary-Treasurer, who is the township's Clerk.

- 25 During the open portion of the meeting, the board discussed the draft rules for use of the horse arena, and commented on the need for water to be applied to the surface of the arena prior to use. Members told us that, because the arena was recently renovated by the township, the township wants to maintain it in good condition.
- 26 We were told that members of the public at the meeting were allowed to make comments. Comments were made about the conduct of a member of the board and an employee of the township during an incident at the horse arena the day before the meeting.
- 27 The board voted to close the meeting to discuss “personal issues.”
- 28 During the closed session, the board discussed the incident at the arena that involved township employees, members of the board, and members of the public.
- 29 The Secretary-Treasurer provided a report to the board that identified individuals by name and described their alleged conduct during the incident.
- 30 Board members told us that the discussion focused on the conduct of individuals involved in the incident, including allegations made about that conduct.
- 31 During the course of the in camera discussion, board members noted that the ongoing development of rules for rental of the horse arena may prevent such incidents from occurring in the future.
- 32 The in-camera meeting lasted for approximately 15 to 30 minutes. The board did not report back to the public when it came back to open session.

Analysis

- 33 The resolution to close the meeting on August 10 referred to “personal issues.” There is an exception in s. 239(2)(b) of the *Municipal Act* for discussions about personal matters about an identifiable individual.
- 34 Discussions under this exception must be about an individual in their personal capacity, rather than their official capacity. However, information

about an individual in their official capacity can take on a more personal nature if it relates to scrutiny of that individual's conduct.¹

- 35 The discussion in camera on August 10 focused on the conduct of various individuals identified by name. The board discussed allegations about conduct outside the scope of the individuals' official roles.
- 36 During the closed meeting, board members referenced the ongoing effort to develop rules for renting the horse arena. However, this was not the focus of the discussion, and no information was discussed beyond what had already been discussed during the open portion of the August 10 meeting. The arena rules were referenced as part of the discussion about the conduct of identifiable individuals.
- 37 The discussion fit within the exception in s. 239(2)(b) for personal matters about an identifiable individual.
- 38 The board is composed of members of council and volunteer members of the public. The members of the public told us that they have not received training on the open meeting rules or the board's obligations under the *Municipal Act*. The Mayor and Clerk told us that the township would be open to providing training on the open meeting rules to the board.
- 39 The Township of Laird should ensure that all members of its committees receive training with respect to the open meeting rules.

Opinion

- 40 The Laird Fairgrounds Management Board is a committee of the Township of Laird. The committee did not contravene the *Municipal Act, 2001* or the Township of Laird's procedure by-law when it discussed a matter in camera on August 10, 2016. The discussion fit within the exception for personal matters about an identifiable individual.

¹ IPC Order MO-2519, Township of Madawaska Valley, April 29, 2010.

Report

- 41 The Laird Fairgrounds Management Board and council for the Township of Laird were given the opportunity to review a preliminary version of this report and provide comments. No comments were received.
- 42 My report should be shared with council for the Township of Laird. The report should be made available to the public as soon as possible, and no later than the next council meeting.



Paul Dubé
Ombudsman