

February 2, 2021

Council for the Township of Lanark Highlands
75 George Street
PO BOX 340
Lanark, ON, K0G 1K0

Sent by email: p.mclarenfarms@sympatico.ca

Dear Members of Council for the Township of Lanark Highlands:

Re: Complaints about the August 11, 2020 committee of the whole meeting

My Office received complaints about a committee of the whole meeting held by the Township of Lanark Highlands (the "Township") on August 11, 2020, which was conducted by teleconference. The complainants told my Office that the audio quality of the meeting was so poor that the public could not meaningfully follow the meeting.

On September 2, 2020, my Office advised the Township of our intent to investigate these complaints. I am writing to advise you of the outcome of my Office's investigation.

Based on the evidence, I do not find that the meeting contravened the *Municipal Act's* open meeting rules.

Ombudsman jurisdiction

Under the *Municipal Act, 2001*¹ (the Act), all meetings of council, local boards, and committees of each must be open to the public, unless they fall within prescribed exceptions. 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.

¹ SO 2001, c 25.

Municipalities may appoint their own closed meeting investigator. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own. The Ombudsman is the closed meeting investigator for the Township of Lanark Highlands.

In reviewing closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality's governing procedures have been observed.

Our Office has investigated hundreds of closed meetings since 2008. To assist municipal councils, staff, and the public, we have developed an online digest of open meeting cases. This searchable repository was created to provide easy access to the Ombudsman's decisions on, and interpretations of, the open meeting rules. Council members and staff can consult the digest to inform their discussions and decisions on whether certain matters can or should be discussed in closed session, as well as issues related to open meeting procedure. Summaries of previous Ombudsman decisions can be found in the digest at www.ombudsman.on.ca/digest.

Investigative process

On September 2, 2020, my Office advised the Township of our intent to investigate these complaints. Members of my Office's Open Meeting Team reviewed the relevant portions of the Township's procedural by-law and the Act. We reviewed text message conversations between the Township's staff that documented their efforts to monitor the sound quality during the meeting. We also reviewed email correspondence between the Township's staff and members of the public who complained about the audio quality of the meeting. Further, we reviewed portions of an audio recording of the August 11 meeting.²

We also spoke to the Chief Administrative Officer/Clerk and to the Deputy Clerk. My Office received full co-operation in this matter.

Electronic and remote meetings during the COVID-19 pandemic

Due to the COVID-19 pandemic, council for the Township amended its procedure by-law (No. 2020-1612) in accordance with the *Municipal Act* to allow for electronic participation in meetings. The Township's procedure by-law limits electronic participation in meetings to meetings which occur during a declared state of emergency. Township staff told my Office that

² The audio recording was taken by a member of the public who called in to the council meeting on August 11. The recording was briefly made public on Facebook before subsequently being taken off of the website. Ombudsman staff had the opportunity to listen to, and take note of, the first 30 minutes of the recording prior to its removal from Facebook.

council members began to participate in meetings electronically in April 2020. The public was provided with a teleconference number in order to listen to meetings in progress.

To assist council and members of the public, the Township created a “Teleconference Participation Etiquette” document that is included as the first page of each meeting’s agenda. The document provides information about how to join the teleconference, describes what to expect during the teleconferenced meeting, and asks that council members and the public follow certain rules.

Audio quality concerns regarding the August 11, 2020 meeting

The provincial state of emergency ended on July 24, 2020. The August 11 meeting was the first meeting held by the Township’s council following the end of the declared state of emergency. The Township’s procedure by-law only provides for electronic participation in a meeting which occurs during a declared state of emergency. Therefore, council members were physically present in council chambers for the August 11 meeting. The Leeds, Grenville and Lanark District Health Unit to which the Township belongs was in Stage Three of reopening at the time of the August 11 meeting, which meant that the indoor gathering limit was a maximum of 50 people subject to physical distancing requirements.³ To facilitate social distancing, the Township determined that council chambers could not safely accommodate council members, staff, and members of the public. It was decided that council members would meet in council chambers in person, and the group as a whole would dial into the teleconference line. Members of the public could individually dial into the teleconference in order to listen to the proceedings.

We were told that Township staff conducted preliminary testing in preparation for the August 11 meeting. Since this was to be the first meeting where council dialed into the teleconference as a group, Township staff told us they wanted to ensure that council members could be heard by members of the public joining the call. Based on these tests, staff determined that council members should be socially-distanced within chambers, not wearing masks, and that most council members should not use a microphone. We were told that one councillor was soft-spoken and would use a microphone at the meeting.

The August 11 meeting of the Township’s committee of the whole began at 6:05 p.m. A staff member listened to the meeting via teleconference from outside council chambers, and commented in real time on the audio quality through text messages with staff who were present in chambers.

³ The Government of Ontario, *Newsroom, Nearly All Businesses and Public Spaces to Reopen in Stage 3* (July 13, 2020), online: <<https://news.ontario.ca/en/release/57575/nearly-all-businesses-and-public-spaces-to-reopen-in-stage-3>>.

My Office reviewed the text messages, which describe a feedback noise at the beginning of the meeting. We were told that the feedback noise did not occur during the preliminary testing and that it went away when all of the microphones in council chambers were turned off. The text messages later referenced the audio quality of the meeting, noting that most council members could be heard perfectly. When some members could only be heard faintly, staff texted that they should be prompted to speak louder. The staff member texted that the sound quality improved when they used headphones to listen to the meeting.

The Township did not audio or video record the August 11 meeting. A member of the public recorded their experience dialing into the teleconference, which provided us with a sample of the audio quality.

We listened to the recording. It captured the feedback noise described by staff at the beginning of the meeting, and showed that the Township had to restart the teleconference twice due to technical difficulties. The Township did not begin the meeting until the feedback noise stopped. Based on the recording, it was possible to hear a staff member and delegates speaking at the meeting, but it was very difficult to hear council members. The quality of this recording may have been impacted by the fact that it was a personal phone recording of the teleconference.

The committee of the whole meeting ended at 9:12 p.m.

After the August 11 meeting, Township staff told us they received four complaints about the audio quality of the teleconference. Staff conducted subsequent audio testing with members of the public to obtain their feedback on the audio quality issues. At a meeting on November 3, 2020, council for the Township approved \$15,000 worth of audio system upgrades and improvements in order to better support remote participation in meetings going forward.

Analysis

The public has the right to attend and observe municipal meetings in process. The Supreme Court of Canada has found that this right is at the foundation of the open meeting rules, commenting that the *Municipal Act's* openness requirement “was intended to increase public confidence in the integrity of local government by ensuring the open and transparent exercise of municipal power”.⁴

While the unprecedented COVID-19 pandemic has changed the way the public can safely follow municipal decision-making in progress, it has not changed the public’s fundamental right to do so. I have repeatedly found that municipalities have an obligation to ensure that the

⁴ *RSJ Holdings Inc. v. London (City)*, 2007 SCC 29, at para 19.

public can freely observe all open meetings of municipal councils, local boards, and committees.⁵ I have also found that municipal meetings may be found to be illegally closed to the public when the public, even through inadvertence or mistake, is unable to access the meeting.

Township staff monitored the sound quality of the meeting, made suggestions to improve the quality, and were able to follow the meeting as it progressed.

After the meeting, the Township became aware that some members of the public were not able to hear council members. In response, it conducted additional audio testing with members of the public to obtain their feedback. Further, the Township's council recently approved audio system upgrades and improvements for council chambers to better support remote access to meetings.

Conclusion

Poor audio quality of a teleconferenced meeting may interfere with the public's ability to access a meeting. While audio quality issues may arise from factors outside a municipality's control, municipalities should ensure that any meeting conducted by teleconference is accessible to the public. As a best practice, municipalities should take steps to monitor the clarity of such teleconferences to ensure that the public can follow municipal decision-making in a meaningful way.

I commend the Township for making efforts to ensure the August 11 meeting was open to the public. The Township conducted preliminary testing prior to the meeting and had staff monitor audio quality in real time. The Township believed that the audio quality was sufficient to allow the public to observe the meeting in progress. Based on the evidence, I do not find that the meeting contravened the *Municipal Act's* open meeting rules.

The COVID-19 pandemic has changed the way that municipalities meet their obligations under the *Municipal Act*. We recognize that many rural municipalities face challenges in ensuring that local infrastructure can support the broadcast of meetings in real time over the internet. We were told that due to the lack of high-speed internet in the community, the Township could not broadcast its meetings in real time and chose to open its meetings to the public by teleconference instead.

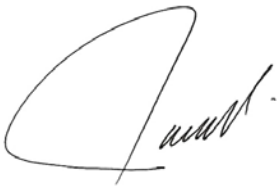
Limited broadband internet access is a serious, complex issue, and both the provincial and federal governments have recently announced new initiatives that would see billions of dollars

⁵ *Hamilton (City of) (Re)*, 2019 ONOMBUD 7 (CanLii), online: <<http://canlii.ca/t/j2pwf>>.

invested to improve broadband internet access.⁶ My Office met with senior officials in the Ministry of Municipal Affairs and Housing and the Ministry of Infrastructure to emphasize the importance of these initiatives and to highlight how poor broadband infrastructure may prevent municipalities from ensuring meetings are consistently open to the public in accordance with the *Municipal Act*. Even once the COVID-19 pandemic has subsided, ensuring municipalities have sufficient technological capacity to choose to broadcast council meetings will improve the public's access to municipal decision-making.

I would like to thank the Township of Lanark Highlands for its co-operation during my Office's investigation. The Reeve has communicated to us that this letter will be included as correspondence at the next meeting of council.

Sincerely,



Paul Dubé
Ombudsman of Ontario

Cc: Ryan Morton, CAO/Clerk CAO@lanarkhighlands.ca

⁶ Information about the Federal government's Universal Broadband Fund is available at: https://www.ic.gc.ca/eic/site/139.nsf/eng/h_00006.html. Information about the Province's "Improving Connectivity for Ontario Program" is available at: <https://www.ontario.ca/page/connecting-ontario-improving-broadband-and-cellular-access#section-1>.