



Ombudsman Report

**Investigation into a gathering held by council
for the Township of Emo on May 28, 2022**

**Paul Dubé
Ombudsman of Ontario
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Complaint

- 1 My Office received a complaint about a training session held by council for the Township of Emo (the “Township”) on May 28, 2022. The complaint alleged that council’s closed session discussion did not fall within any of the prescribed exceptions in the *Municipal Act, 2001* (the “Act”)¹ and that the Township did not provide proper public notice of this training session.
- 2 My investigation determined that council for the Township of Emo did not contravene the *Municipal Act, 2001* or its own procedure by-law when it held a training session *in camera* on May 28, 2022. My review also found that the Township was not required to post notice of this training session, as it did not constitute a meeting for purposes of the Act and the Township’s procedure by-law, and was therefore not subject to the open meeting rules.

Ombudsman jurisdiction

- 3 Under the Act, all meetings of council, local boards, and committees of either must be open to the public, unless they fall within prescribed exceptions.
- 4 As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipality or local board has complied with the Act in closing a meeting to the public. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 5 The Ombudsman is the closed meeting investigator for the Township of Emo.
- 6 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the applicable procedure by-law have been followed.
- 7 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 procedures. Summaries of the

¹ SO 2001, c 25.

Ombudsman's previous decisions can be found in the digest:
www.ombudsman.on.ca/digest.

Investigative process

- 8 On June 21, 2022, my Office advised the Township of our intent to investigate this complaint.
- 9 My Office reviewed the Township's procedure by-law and relevant portions of the Act. Additionally, we reviewed the training session agenda, materials and correspondence related to the session, and the open session minutes. No minutes were taken during the closed session discussion.
- 10 My Office interviewed all five members of council as well as the Interim CAO/Clerk-Treasurer, the Special Projects Coordinator, and the Public Works Superintendent.
- 11 We received full co-operation in this matter.

Procedure by-law

- 12 The Township's procedure by-law 2019-04 specifies the manner in which notice of regular and special council meetings must be given. Specifically, notice of regular council meetings must be published in meeting agendas, and notice of both regular and special meetings must be posted at the Emo Post Office and the Municipal Office.² In addition, section 5.3 of the procedure by-law requires that the Township provide 48 hours' notice for special meetings, unless otherwise agreed to by a majority of council.

Background

- 13 The Township's staff developed a new format for the 2022-2023 budget, which included significantly more detail than the previous format. In preparation for the budget approval process, Township staff scheduled a training session on May 28, 2022 to explain the new budget format to council. There was some disagreement among council members and staff

² Township of Emo, by-law No 2019-04, *Being a by-law for governing the calling, place and proceedings of meetings of the Municipal Council for the Township of Emo* (5 February 2019), online: <<https://emo.ca/sites/twspemo.on.ca/files/Procedural%20By-law%20No.%202019-04.pdf>>.

about whether the May 28, 2022 training session constituted a meeting that required public notice. The Township ultimately did not provide public notice of the training session.

May 28, 2022 training session

- 14** On May 28, 2022, three of council's five members met at 10:00 a.m. in the Municipal Office. Council immediately passed a resolution to approve the agenda and then another to move into closed session "[...] to complete Council training to understand the 2022 budget documents as outlined on the 61 Excel Spreadsheets." The resolution did not cite an exception from the Act, but my Office was told that council relied on the "education or training" exception set out in section 239(3.1) of the Act.
- 15** My Office was told that at the session, the Township's Special Projects Coordinator informed council that no business would be moved forward during the training. We were told that the Special Projects Coordinator then gave a presentation on the new budget format, which was significantly more detailed than in previous years.
- 16** Those interviewed stated that the session's purpose was for council members to better understand how to read and understand the new budget document. One interviewee compared the presentation to a university-style lecture.
- 17** Our interviews suggest that council members did not interact with each other during the session, and only asked questions of staff. My Office found no evidence that council discussed or debated any issues, and determined that council did not make any decisions or provide any directions to staff during the session.
- 18** Council passed a resolution to return from closed session at 1:30 p.m. and subsequently adjourned the meeting at 1:32 p.m.

Analysis

Applicability of the exception for "education or training" under the Act

- 19** Under the Act, all meetings of council, local boards, and committees of either of them must be open to the public, unless they fall within a prescribed exception in s. 239 of the Act.

- 20** Council relied on the “education or training” exception at s. 239(3.1) as the basis for meeting *in camera* on May 28, 2022.
- 21** Under section 239(3.1) of the Act, a meeting may be closed to the public if it is both (1) held for the purpose of educating or training members of council, and (2) members do not discuss a matter in a way that materially advances the business or decision-making of council.
- 22** Regarding the first requirement, my Office has previously found that the “education or training” exception includes meetings that are closed to allow council members to acquire skills or information that may assist them in better understanding the business of the municipality.³
- 23** For example, my Office determined that the exception for education or training applied to a meeting in the Township of Russell where councillors sat in a classroom-like arrangement and were given training on vocabulary and principles related to the strategic planning process, with reference to Russell’s own strategic plan.⁴
- 24** In this case, our interviews indicated that the purpose of the session was for the Township to train council on how to read and understand the new budget format. This training was provided in a lecture-style format. Those we interviewed agreed about the purpose behind the meeting. As such, the first requirement is satisfied.
- 25** For the second requirement, it is necessary to determine whether council materially advanced its business or decision-making while receiving training on the budget format. If council materially advanced its business or decision-making, then the training session would not fit in the exception.
- 26** In a recent report to the Village of Casselman, I stated that “materially advances” means considering the extent to which the discussions at issue move forward the business of the municipality, based on factual indicators. Discussions, debates or decisions that are intended to lead to specific outcomes or to persuade decision-makers one way or another are likely to “materially advance” the business or decision-making of a council, committee, or local board.⁵ Similarly, council is likely to materially advance business or decision-making when it votes, reaches an agreement,

³ *Casselman (Village of) (Re)*, 2015 ONOMBUD 14 at para 54, online: <<https://canlii.ca/t/gtp61>>.

⁴ *Russell (Township of) (Re)*, 2016 ONOMBUD 1 at paras 18-22 and 68, online: <<https://canlii.ca/t/gt6gg>>.

⁵ *Casselman (Village of) (Re)*, 2022 ONOMBUD 13 at para 26, online: <<https://canlii.ca/t/jrkx5>>.

provides direction or input to staff, or discusses or debates a proposal, course of action, or strategy.⁶

- 27 On the other hand, the mere receipt or exchange of information is unlikely to materially advance business or decision-making, as long as there is no attempt to discuss or debate that information as it relates to a specific matter that is or will be before council.⁷ I have previously found that this includes sessions where staff merely conveyed updates on recent activities,⁸ or presented procedural next steps.⁹
- 28 On May 28, 2022, council for the Township of Emo received information and training on the Township's new budget format. Council did not discuss or debate any of the information presented, and did not vote or provide instructions to staff following the session. Accordingly, council did not materially advance its business or decision-making at the May 28, 2022 training session and the "education or training" exception applied to council's discussion.

Applicability of public notice requirement and other requirements under the Act and the Township's procedure by-law

- 29 While the training session met the requirements of the "education and training" exception, it was not a meeting for the purposes of the Act because it did not materially advance council's business or decision-making. This is because the definition of meeting in the Act requires that a quorum of councillors materially advance the business or decision-making of council.¹⁰ As the session did not materially advance council business and was not a meeting, requirements from the Act and the Township's procedure by-law did not apply.
- 30 However, while the Township of Emo's gathering was not technically a meeting for purposes of the Act and the Township's procedure by-law, the decision to record minutes of the open portions of the session increased the transparency of council's actions and assisted with my Office's review of this complaint. I commend the Township for going beyond the formal requirements of the Act and making additional information available to the

⁶ *Pelee (Township of) (Re)*, 2022 ONOMBUD 2 at para 23 [*Pelee*], online: <<https://canlii.ca/t/jm1f5>>.

⁷ *Ibid.*

⁸ *Casselman (Village of) (Re)*, 2018 ONOMBUD 11 at para 40, online: <<https://canlii.ca/t/hvmtk>>.

⁹ *Saugeen Shores (Town of) (Re)*, 2020 ONOMBUD 3 at paras 49-50, online: <<https://canlii.ca/t/j93c3>>.

¹⁰ *Pelee*, *supra* note 6 at paras 30-1.

public. As a best practice, and to help avoid confusion and increase the transparency of council's actions, the Township should consider posting public notice and agendas for education and training sessions, and recording minutes during such sessions.

Opinion

- 31 Council for the Township of Emo did not contravene the *Municipal Act, 2001* or its own procedure by-law when it held an education and training session to provide council members with training related to its reformatted budget document on May 28, 2022. The session satisfied the requirements of the “education and training” exception since council received training on the new budget format and did not materially advance its business or decision-making. While this was not a meeting subject to the requirements of the Act and the Township’s procedure by-law, I nonetheless encourage the Township to publicly post notice and agendas for training sessions, and to continue to record minutes.

Report

- 32 The Clerk indicated that my report would be shared with council and made available to the public at the next council meeting. This report will also be published on our website at www.ombudsman.on.ca.



Paul Dubé
Ombudsman of Ontario