



Ombudsman Report

Investigation into a complaint about a meeting held by Council for The Nation Municipality on August 31, 2015

**Paul Dubé
Ombudsman of Ontario
April 2016**

Complaint

- 1 Our Office received a complaint that council for The Nation Municipality held an illegal closed meeting on August 31, 2015 when it restricted access to a council meeting to those who could fit inside the Town Hall, and prohibited individuals from using a microphone and speakers to broadcast the meeting proceedings outside in the parking lot.

Ombudsman jurisdiction

- 2 Under the *Municipal Act, 2001*, all meetings of council, local boards and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 3 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 Ombudsman as the default investigator for municipalities that have not appointed their own.
- 4 The Ombudsman is the closed meeting investigator for The Nation Municipality.
- 5 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality's procedure by-law have been observed.

Investigative process

- 6 Members of my Office's Open Meeting Law Enforcement Team (OMLET) reviewed relevant portions of the municipality's procedure by-law and the Act, as well as the agenda and minutes for the council meeting on August 31, 2015. Our Office notified the municipality of our investigation on January 5, 2016. We interviewed the Clerk-CAO, Mayor, and all members of council, as well as the municipality's by-law enforcement staff. We also interviewed the complainant and five witnesses who attended the meeting.
- 7 My Office received full co-operation in this matter from the municipality.

Council procedures

- 8** The municipality's procedure by-law provides for public notice of meetings by posting on the municipal website.
- 9** Section 1.2 of the procedural by-law states that:

Council may decide, by resolution, to hold a meeting at another location to accommodate a very large gathering or a situation where it is deemed more feasible to locate and assemble elsewhere and only after proper notice has been given or posted.
- 10** The head of council may, at any time, summon a special meeting of council and, unless otherwise specified, the special meeting shall be held at the council chambers of the municipality. A special meeting may also be called by the Clerk upon receipt of a petition of the majority of the members of council.
- 11** With respect to delegations by individuals or groups, s. 29.2 of the by-law notes that delegations are to be notified that "they are given fifteen (15) minutes for their presentation subject to a waiver by the Presiding Officer".
- 12** We were told that council's practice is to run paperless meetings. Councillors each have a laptop connected to high-speed Internet. They access agendas, previous minutes, staff reports, and other supporting documentation online during meetings.

Background

- 13** In July 2015, representatives of a local citizens group called Save The Nation (Sauvons La Nation) asked to make a delegation to council at its August 31 meeting. According to its website, the group is composed of volunteers, and works to inform citizens about industrial wind projects in The Nation.¹
- 14** On July 31, Mayor François St-Amour confirmed that the group could provide a one-hour delegation to council on August 31, granting an extension of the 15-minute allotment for delegations set out in the procedure by-law.
- 15** On August 24, a member of the group wrote to the Mayor and Clerk, asking that a projector, screen and microphone be provided for the delegation. The group also

¹ <http://www.sauvonslanation.ca/>

asked that a translation service be provided. The Mayor replied that a projector, screen and laptop would be provided, but that the municipality does not have a microphone and does not provide translation.

- 16** On August 25, the same member of the group wrote to the Mayor, stating that there would be a crowd outside the Town Hall during the meeting on August 31, and that the group wanted to set up equipment to allow the crowd outside to listen to the presentation. The email noted that the group had the necessary equipment to make this happen, but wanted confirmation they would be able to plug equipment into electrical outlets inside the building. The Mayor replied, copying the Clerk and all members of council, that the municipality could not accommodate this request.
- 17** The Clerk and Mayor told our staff that the group did not need a microphone because the council chamber is small and councillors would be able to hear the presenters. Members of staff and council told us that, in their opinion, delegations are meant to be addressed to council, not to the public.
- 18** The Clerk also told us the municipality could not logistically accommodate the group's request for a power source; there are no electrical outlets outside the building, and it would have required running approximately 50 to 60 feet of wire from the council chambers to the front door of the building. She told us that running the cords through the front door would also have meant propping the door open during the meeting. (The building is air-conditioned, and this meeting occurred in August.)
- 19** While the municipality did not have confirmation of the number of people planning to attend the meeting, staff and council members told us they anticipated a large crowd after a meeting on August 10 – which also addressed issues of interest to Save The Nation – drew large numbers. Council members had also heard comments and saw social media posts indicating the same, as did the group's August 25 email to the Mayor.
- 20** We were told that the municipality did not consider relocating the meeting to facilitate a large group because it would have been difficult for council members to use their laptops and access high-speed Internet at an alternative location. Although the municipality holds public meetings in various locations, we were told that it does not relocate council meetings.

Meeting on August 31, 2015

- 21** The August 31, 2015 council meeting in The Nation began at 4:00 p.m. at Town Hall. The delegation regarding wind turbines by Save The Nation was on the agenda for 7:00 p.m.
- 22** Members of the public arrived to observe the council meeting over the next two and a half hours. By around 6:45 p.m., a large group of people associated with Save The Nation had arrived at Town Hall.
- 23** There were two municipal by-law enforcement officers at the doors to the building, and a third in the parking lot. The Clerk told us she was monitoring the number of people in the council chamber, as the room can accommodate approximately 50 people if some people stand. (The municipality does not have an official capacity posted for the council chamber, but operates on this unofficial estimate.) When she believed the room was full, the Clerk told the by-law officers not to admit any more people. Those who subsequently tried to enter were either told that the room was full, or determined that it was full themselves.
- 24** Those who were not admitted stayed outside in the parking lot. No precise headcount was taken, but witnesses estimate there were between 100 and 200 people outside Town Hall.
- 25** From the parking lot, members of the public could see into the council chamber through large windows but could not hear the proceedings, as the windows do not open. To allow people outside to hear the proceedings, members of Save The Nation set up speakers in the parking lot. These were connected wirelessly to a microphone that was placed near the group's representative inside council chambers.
- 26** At approximately 7:00 p.m., the representative for Save The Nation began presenting to council. We were told that one councillor became upset because the presenter was using a microphone.
- 27** Members of council told the group to stop using the microphone, noting that the group had been told this would not be permitted. Representatives of Save The Nation asked council if they could continue using the microphone, since council had not accommodated the group by holding the meeting in a larger space and they weren't using the building's electricity. Council denied the request, stating that this was a council meeting, not a spectacle or circus.
- 28** We were told that media camera crews were in attendance and reported on the meeting and the large crowd gathered outside of Town Hall. A September 1, 2015 article in *Le Droit* notes that the Mayor told the group to shut off the outside

speakers and accused them of trying to create a spectacle. He is quoted as saying, “This is a delegation to the council, not to those outside.”²

- 29** The presenter stopped using the microphone and continued speaking for about an hour. We reviewed a copy of the presentation, which describes public opposition to the installation of wind farms in the community. Concerns brought forward ranged from the health and property value impacts of wind turbines, to the risk of fires, stray voltage, landslides, and evacuation risks due to potential equipment malfunction. The presentation also focused on the *Green Energy Act* and the cost of excess electricity generation in Ontario.
- 30** Outside, members of Save The Nation provided the same presentation material to the crowd in French and English.
- 31** After the presentation, council addressed some additional business. According to the minutes, the meeting adjourned at 8:10 p.m.
- 32** A portion of the crowd remained outside in the Town Hall parking lot after the council meeting adjourned. Some individuals approached council members as they left the building to talk about the meeting and the wind turbine issue. The parking lot was clear by approximately 9:00 p.m.

Analysis

- 33** The August 31 council meeting was an open meeting. Journalists and members of the public were allowed into council chambers until the room was full.
- 34** In 2011, the closed meeting investigator for Durham Region council, Local Authority Services (LAS), considered a complaint about that council’s inaugural meeting of its then term. In that case, the municipality had distributed tickets to the meeting ahead of time. The meeting room filled to capacity and some members of the public were excluded. LAS found this was not a closed meeting, since municipalities must follow capacity limits for safety reasons, the meeting was televised on a local network, and the municipality did not discriminate with respect to who was allowed into the room.³

² “Sauvons La Nation de retour à l’hôtel de ville,” Martin Brunette, *Le Droit*, September 1, 2015 (quote translated from the original French).

³ Local Authority Services, Report to Council of the Regional Municipality of Durham regarding a complaint that the inaugural meeting held on December 8, 2010 was a closed meeting (June 2011), online: <http://www.agavel.com/wp-content/uploads/2013/09/Durham_Report_June_2011.docx>.

- 35** As a best practice, LAS recommended that council for Durham Region review the appropriateness of the number of guests each council member is allowed to invite to the inaugural meeting, and also consider a change of venue for meetings where a large number of guests are expected.
- 36** Our Office considered similar complaints about a meeting held by the City of Clarence-Rockland on September 15, 2014.⁴ In that case, people wishing to attend a council meeting were turned away because the room was filled to capacity. Our Office found the meeting did not violate the open meeting rules.
- 37** The municipality has an obligation to ensure that a meeting that is open to the public is truly open, in that attendance is not arbitrarily or unreasonably restricted. In this case, the meeting was open to the usual number of persons, restricted only by the capacity of the room, and there was no evidence to support the allegation that city staff or council were responsible for any unfair restrictions on attendance.
- 38** Council for The Nation allowed the meeting room to fill to capacity. The municipality did not discriminate with respect to who was allowed into the room or place any other restrictions on attendance by the public, such as distributing tickets or limiting attendance in the chamber to specified individuals. The meeting was open to the public for the purposes of the *Municipal Act*.
- 39** However, I am concerned that despite the fact that council and staff in The Nation had reason to anticipate a crowd on August 31, no attempt was made to accommodate all of those who wished to attend and observe the proceedings. Save The Nation had informed council and staff by email that there would be a crowd outside the building. A meeting related to the same wind turbine issue earlier in August had drawn approximately 200 people to the Town Hall. Council members told us they anticipated a large turnout because of discussions in the municipality and on social media.
- 40** Members of council told us that they did not attempt to accommodate the expected attendees because they believe the delegation was for council, and not for the public.
- 41** During an open meeting, such delegations are not only “for council” – they are part of the democratic process. The public has the right to be present and observe

⁴ Ombudsman of Ontario, Investigation into whether Council for the City of Clarence-Rockland held illegal closed meetings on August 27 and September 15, 2014 (December 2014), online: <<https://www.ombudsman.on.ca/Resources/Reports/City-of-Clarence-Rockland-%281%29.aspx>>.

local government in process, including delegations to council. The municipality should endeavour to facilitate full public access to its proceedings at all times, including during delegations.

- 42** In the interest of transparency and to facilitate access to municipal government in process, The Nation should consider options to increase access to council meetings when a large audience is anticipated. While it is admirable that the municipality is dedicated to conducting paperless council meetings, the public interest may be best served by relocating meetings in such cases. The municipality should review possible alternative arrangements and develop a contingency plan for such situations.
- 43** The Nation Municipality should also clarify the maximum capacity of its council chambers, instead of simply using an estimate based on the size of the room, the building code, and the number of tables and chairs that can fit. Once determined, the official capacity should be posted publicly.
- 44** Although it is not a substitute for the public's right to attend and observe open municipal meetings, council for The Nation should also consider broadcasting video of its meetings online, or making video of municipal meetings available online. This practice may reduce the demand for space within council chambers during meetings.

Opinion

- 45** The meeting of council for The Nation Municipality on August 31, 2015 did not contravene the open meeting provisions of the *Municipal Act, 2001*, as the public was allowed to attend the open session of council, subject only to the building's capacity restrictions.
- 46** As a best practice, I encourage council for The Nation Municipality to have a contingency plan to relocate meetings to a larger venue when it is apparent that a high level of public interest may result in greater numbers of citizens wishing to exercise their right to observe local government in process.
- 47** I also encourage council for The Nation to clarify the capacity of its council chambers and to post that information publicly.
- 48** Council for The Nation should also endeavour to broadcast or otherwise make available video of its meetings online to provide an additional means for the public to observe meetings.

Report

- 49** The municipality was given the opportunity to review a preliminary version of this report and provide comments to our Office. No comments were received.
- 50** My report should be shared with council and made available to the public as soon as possible, and no later than the next council meeting.



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