



## **Ombudsman Report**

**Investigation into whether  
Council for the City of Thorold  
held an illegal closed meeting**

**André Marin  
Ombudsman of Ontario  
January 2015**

# Complaint

- 1 On November 13, 2014, my Office received a complaint that the Mayor of Thorold met with newly-elected city councillors to discuss and advance council business.
- 2 The complaint arose as a result of two media articles. The first article referenced the Mayor's intention to meet with the new councillors to discuss the need for councillors' co-operation in the upcoming term, and also to get feedback on their vision for the city.<sup>1</sup> The second article quoted the Mayor as saying, "I've already had luncheon dates with two of the councillors and I'm going to set luncheon dates with all eight".<sup>2</sup>
- 3 The complaint alleged that these gatherings constituted meetings of the new council that were closed to the public.

## Ombudsman jurisdiction

- 4 Under the *Municipal Act, 2001* (the Act), all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 5 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.
- 6 The Ombudsman is the closed meeting investigator for the City of Thorold.
- 7 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipal procedure by-law have been observed.

## Investigative process

- 8 My Office's Open Meeting Law Enforcement Team (OMLET) reviewed relevant portions of the Act and spoke with municipal staff and the Mayor.
- 9 My Office received full co-operation in this matter.

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<sup>1</sup> Fraser, Don. "Thorold: Luciani Wins Another Squeaker." *St. Catharines Standard*. 27 Oct. 2014. Web. <<http://www.stcatharinesstandard.ca/2014/10/27/thorold-luciani-wins-another-squeaker>>.

<sup>2</sup> Walter, Karena. "New Thorold Council Promised Teamwork." *St. Catharines Standard*. 30 Oct. 2014. Web. <<http://www.stcatharinesstandard.ca/2014/10/29/new-thorold-council-promises-teamwork>>.

## The October election

- 10** Municipal elections took place in Ontario on October 27, 2014. In the City of Thorold, four of nine council members from the last term, including Mayor Ted Luciani, were re-elected. Three of the newly-elected councillors had experience on council from previous terms.

## The Mayor's meetings with council members

- 11** Municipal staff advised our Office that, to their knowledge, there was no gathering of newly-elected council members to discuss council business outside of a formal meeting. The Mayor's assistant told us the Mayor's calendar indicated he had met with the new council members one-on-one.
- 12** The Mayor confirmed to us that he met with each of the eight council members individually over lunch, between November 3 and November 28. Each discussion lasted approximately an hour and a half, and involved the Mayor obtaining feedback about council co-operation and what each councillor would like to achieve over the next four years.

## Analysis

- 13** The *Municipal Act, 2001* defines a "meeting" as "any regular, special or other meeting of a council, of a local board or of a committee of either of them."<sup>3</sup> This definition is circular and not particularly helpful in determining whether a meeting has actually occurred.
- 14** In a 2008 report,<sup>4</sup> through review of the relevant case law and keeping in mind the underlying objectives of open meeting legislation, I developed a working definition of "meeting" to assist in the interpretation of the definition contained in the Act:

Members of council (or a committee) must come together for the purpose of exercising the power or authority of the council (or committee), or for the purpose of doing the groundwork necessary to exercise that power or authority.<sup>5</sup>

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<sup>3</sup> s. 238(1)

<sup>4</sup> Ombudsman of Ontario, *Don't Let the Sun Go Down on Me: Opening the Door on the Elton John Ticket Scandal* (April 25, 2008), online: [http://www.ombudsman.on.ca/Files/sitemedia/Documents/Resources/Reports/Municipal/SudburyReportEng2\\_2.pdf](http://www.ombudsman.on.ca/Files/sitemedia/Documents/Resources/Reports/Municipal/SudburyReportEng2_2.pdf).

<sup>5</sup> at paras 54-60.

- 15** This definition remains consistent with leading interpretations of the open meetings law and reinforces the right of the public to observe municipal government in process.
- 16** When determining whether a meeting has occurred, the concept of a legal quorum is also an important consideration. Alone, it is not conclusive, but having a quorum means a sufficient number of members are present to legally transact business. It is obvious that once a gathering constitutes a quorum of a council or committee, the opportunity and risk of those individuals collectively exercising their authority increases.
- 17** The information provided to my Office in this case indicates that between November 3 and November 28 the Mayor met with all eight council members who will be serving with him in the upcoming council term. These lunch meetings took place one-on-one. There is no evidence that a meeting involving quorum of either the newly-elected council, or of the outgoing council, met at any time outside of formal council meetings to discuss and/or advance council business.
- 18** As I noted in my February 2013 report regarding the City of London,
- To be clear, the *Municipal Act, 2001* does not create an absolute prohibition against members of council discussing city business outside chambers. It is a healthy thing in a democracy for government officials to share information informally before making policy decisions. I agree that to expect council members never to talk to one another outside of a public meeting is unrealistic and would have the effect of unnecessarily chilling speech.<sup>6</sup>
- 19** The one-on-one meetings complained of involved individual discussions between the Mayor and newly-elected members of council regarding council co-operation and ideas for the upcoming term. These discussions were not meetings for purpose of the *Municipal Act* and accordingly there was no violation of the Act's open meeting provisions.

## Opinion

- 20** My review established that council for the City of Thorold did not contravene the *Municipal Act, 2001* during individual discussions held between November 3 and November 28, 2014.

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<sup>6</sup> Ombudsman of Ontario, *In the Back Room* (February 23, 2013), online: [https://ombudsman.on.ca/Files/sitemedia/Images/Reports/London\\_BT\\_Final-EN\\_1.pdf](https://ombudsman.on.ca/Files/sitemedia/Images/Reports/London_BT_Final-EN_1.pdf). At paragraph 25

# Report

- 21 OMLET staff spoke with the Mayor and clerk on January 15 to provide an overview of these findings, and to give the municipality an opportunity to comment. Any comments received were taken into account in preparing this report.
  
- 22 My report should be shared with council for the City of Thorold and made available to the public as soon as possible, and no later than the next council meeting.



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André Marin  
Ombudsman of Ontario