

OPEN MEETINGS

After 10 years, Ontario's "new era" of municipal transparency continues to evolve



Paul Dubé is the Ombudsman of Ontario, an independent, impartial officer of the Legislature who oversees the administration of provincial government and broader public sector bodies and recommends solutions to individual and systemic problems. The Ombudsman's Office handles some 20,000 public complaints per year.

Ontario municipalities and its citizens are marking an important anniversary with the arrival of this new year. It has been exactly 10 years since they embarked upon what was heralded as a "new era" in municipal accountability – an era that is still evolving.

On January 1, 2008, the transparency and accountability of local governments was enhanced considerably. Although the *Municipal Act, 2001* required local council and board meetings to be open to the public (with certain limited exceptions), the only way to challenge a closed meeting prior to 2008 was through the courts, a costly option open to few. That year, changes to the law enabled members of the public to complain about closed meetings of municipal councils, local boards, or committees – and have their complaints investigated.

For many in the municipal sphere, 2008 was also the year when a new word entered their vocabulary: "Ombudsman." Under the Act, the Ontario Ombudsman was the default investigator for complaints about closed meetings. If a municipality did not appoint its own investigator for such complaints, the Ontario Ombudsman would conduct the investigation, free of charge. If the investigation deemed the meeting illegal – that is, if it didn't fit within the narrow circumstances outlined in the Act, under which closed meetings are permissible – there would be a public report and recommendations.

Ten years later, municipal accountability has continued to grow. On January 1, 2016, the office's mandate was expanded to include not just closed meetings, but oversight of all aspects of municipal government and services.¹ As of New Year's Day 2018, new amendments to the Act further refined the open meeting rules, adding four new exceptions

and a much-needed definition of "meeting." And ... in 2019, every municipality will also be required to have a code of conduct and provide public access to an integrity commissioner.

All of this change is promising; but, like most progress, it took time. We need only to glance back 10 years ago to demonstrate just how far all stakeholders have come.

The introduction of the closed meeting investigator regime in Ontario was not always smooth sailing. The Ombudsman's Office was unfamiliar to many at the local level, despite four decades' of experience in resolving complaints about the provincial government. Not only that, enforcing the open meeting rules – narrowly defined by law – took some getting used to for an office like ours, whose key role has always been informal resolution.

There are often quick, constructive solutions to administrative problems – almost always without need for formal investigation. Hundreds of thousands of cases have been resolved this way.

While the open meeting regime is quite different from the office's regular oversight activities, it nonetheless adds value through validation of processes or constructive feedback on how municipalities and local boards can improve governance through enhanced transparency. Despite the challenges and learning curve for all stakeholders that came with the 2008 amendments, many benefits have surfaced.

And the feared flood of complaints did not materialize. As the investigator for around 200 of Ontario's 444 municipalities, the Ombudsman's Office receives roughly 100 complaints per year (related to a still smaller number of meetings). The only year that bucked this trend was 2013, when high-profile closed meetings in just two cities – London and Sudbury – accounted for more than 100 complaints from concerned citizens. Those cases demonstrated the strong public interest in open meetings, which was later amplified in local

1 Except those within the jurisdiction of Ombudsman Toronto.

elections. But, overall, the complaint rate remained steady.

A little-known fact about the received complaints is that many were from council members themselves. They often turned to the office in confidence, driven by concerns or confusion about whether they and their colleagues were following the open meeting rules. This turned out to be an excellent educational opportunity as clerks, CAOs, provincial officials, and, of course, Ombudsman staff developed and spread the word about best practices for transparent and publicly accountable meeting procedures. And, it ultimately paved the way for improved accountability mechanisms at the local level, including codes of conduct and integrity commissioners, and even local Ombudsman services, all of which are increasingly being embraced by municipalities now.

Slowly but surely, municipalities have also begun to record their closed meetings – a recommended best practice. This is a remarkable change, given that, back in 2008, it was not uncommon to discover councils where the mistaken belief was that even taking minutes in closed meetings was against the law. (In fact, the reverse is true, and recordings contribute to an accurate record and efficient investigations.)

The occasional egregious cases – like that of the council that held a secret meeting, but maintained it was “open” because the door was left ajar – were few and far between. Of the hundreds of closed meetings investigated, most were within the rules, and many of those

that weren't could be boiled down to misunderstandings or misapplications of passages in the Act. Across Ontario, best practice suggestions were embraced by officials who welcomed the feedback and the chance to improve.

As well, in writing hundreds of reports and recommendations, the Ombudsman's Office developed valuable expertise in open meeting practices – a body of work that can serve as a resource and guide for clerks, solicitors, and other officials for years to come. Since there is no central library for closed meeting decisions in Ontario, an online digest of the reports is being created (searchable by topic) to assist anyone interested in this important area of municipal law. Ombudsman reports on closed meetings are also available on the legal database CanLII.

In speaking with municipal stakeholders across the province, two things have been quite clear: it's important to recognize that each municipality is different, yet it's just as important to ensure that all Ontarians have consistent and equal access to accountable, transparent government.

Almost 6,000 general complaints about municipalities have been resolved in the past two years, and only four formal investigations have been launched. Complaints about closed meetings have declined slightly, likely because in the past, frustrated citizens with no other recourse to complain about local issues would bring closed meeting complaints in an effort to be heard. Now, they can seek help with those issues directly. And,

the closed meeting complaints received tend to be more substantive, touching on serious questions of procedure and law. That said, our most common advice in this area remains simple: When in doubt, open the meeting.

Today, the most common concerns heard from municipalities are not that different from those of 10 years ago. Fears persist that a sudden flood of complaints to the Ombudsman or to local accountability mechanisms will tax their limited resources. This, too, is an important educational opportunity. Complaints should be embraced as they help organizations identify and fix problems. Establishing clear, accessible complaints processes and mechanisms (like an integrity commissioner or local Ombudsman) allows municipalities to serve citizens fairly and transparently. As an office of last resort, the Ombudsman's Office can verify that those processes are working as they should, or recommend improvements. We do not advocate for complainants or for public sector bodies, but for fairness and transparency. We also have the power to investigate broader systemic issues beyond the scope of local mechanisms.

To coincide with this latest phase of the “new era,” the office is preparing to deal with the most recent amendments to the Act and will share information about them with municipal stakeholders and the public via its website – continuing to help municipalities ensure that all Ontarians can access open, transparent and accountable government, close to home. **MW**

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