



J. Paul Dubé, Ombudsman

BY EMAIL

November 25, 2025

Council for the Town of Midland
c/o Bill Gordon, Mayor
575 Dominion Avenue
Midland, ON L4R 1R2

Dear Members of council for the Town of Midland:

Re: Closed meeting complaint

My Office received a complaint alleging that council for the Town of Midland (the “Town”) met in contravention of the open meeting rules in advance of a council meeting on August 7, 2024.

My review indicates that a quorum of council did not meet ahead of its meeting on August 7, 2024. Accordingly, I have determined that council for the Town did not contravene the open meeting requirements in the *Municipal Act, 2001*.

Ombudsman’s role and authority

The *Municipal Act, 2001* (“the Act”)¹ gives anyone the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public. Municipalities may appoint their own investigator, but the Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own. My Office is the closed meeting investigator for the Town of Midland.

¹ SO 2001, c 25.

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My Office has investigated hundreds of closed meetings. 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 Ombudsman's previous decisions can be found in the digest: www.ombudsman.on.ca/en/info-public-bodies-and-officials/municipal-government/municipal-meeting-digest.

The Ontario Ombudsman also has the authority to conduct impartial reviews and investigations of hundreds of public sector bodies. This includes municipalities, local boards, and municipally-controlled corporations, as well as provincial government organizations, publicly funded universities, and school boards. In addition, the Ombudsman's mandate includes reviewing complaints about the services provided by children's aid societies and residential licensees, and the provision of French language services under the *French Language Services Act*. Read more about the bodies within our jurisdiction here: www.ombudsman.on.ca/en/make-complaint/what-we-can-help-you/organizations-you-can-complain-about.

Review

My Office spoke with the Town's Clerk and Mayor. We reviewed the council meeting agenda, minutes, and a video recording of the meeting. We also reviewed meeting materials for the July 10, 2024 council meeting, which was related to the business carried out at the August 7, 2024 council meeting.

Background

On July 10, 2024, council for the Town of Midland declared one of its seats vacant after a member passed away. At that meeting, council opted to fill the council vacancy by direct appointment. As council had recently concluded a public call for nominees to fill another council vacancy in March 2024, council decided it would appoint one of the applicants who had participated in that earlier process rather than initiating a new call for nominees. Council scheduled a special meeting of council on August 7, 2024 to proceed with the direct appointment of one of those nominees.

The complaint to my Office primarily centres on comments made by the Mayor during the council meeting on August 7, 2024 that were understood to suggest that an informal meeting or education session took place that day before the council meeting.

In open session on August 7, 2024, before voting on nominations to fill the council vacancy, a member of council asked the Mayor whether there would be any discussions, or just nominations. The Mayor stated in response:

When we talked about this earlier, we're not really going to debate the merits of somebody. You're going to put their name forward, a seconder will be needed to be attained, a motion will be created. If there is something – some value you want to bestow about the person whom you've nominated, you're free to do so. [...] And we need to get a seconder and Madam Clerk – Madam Clerk – Madam Clerk is really expert on this. I know we just got educated on it today, but maybe I'll let Madam Clerk take it away.

The Clerk then reiterated that members could have a short discussion once a nomination received a seconder. The Mayor further noted that council was already familiar with the candidates, as they were the same as those for the other council vacancy a few months earlier. The Clerk and Mayor then re-explained the process to members: each nomination would require a motion, and council would then proceed to vote for their preferred candidates out of those who had been successfully nominated.

The complaint to my Office alleged that the Mayor's statement suggested that members held an improper meeting in advance to discuss the process to fill the council vacancy. The complaint also alleged that the Mayor's comments suggested that the filling of the council vacancy had been pre-determined by members of council ahead of the meeting.

We asked the Mayor about this. He told my Office that the process to fill the council vacancy had not been discussed at any informal meeting ahead of the August 7, 2024 council meeting. He also stated that no education session had been held, as members had just concluded the process of filling a council vacancy in March 2024 and were familiar with how it worked. The Mayor further explained that he did have some one-on-one discussions with other members where they generally expressed their thoughts and preferences on the candidates and, although he had no specific recollection of the statement cited above, he said he believed he would have been referencing those discussions.

Similarly, the Clerk told our Office that the process to fill the council vacancy had not been formally discussed by council since its July 10, 2024 council meeting, which was held in open session. She stated that she had no knowledge of members coming together to discuss this matter before the August 7, 2024 meeting.

Analysis

Section 239(1) of the *Municipal Act, 2001* requires all meetings of a council, local board, or committee of either, to be open to the public, subject to the listed exceptions. In order for a gathering to be considered a “meeting” under the open meeting rules:

- i. A quorum of a council, of a local board or of a committee of either must be present; and
- ii. The discussions must materially advance the business or decision-making of the council, local board, or committee.²

In this case, there is no evidence that a quorum of council gathered in advance of the August 7, 2024 meeting to discuss filling the council vacancy. As I noted in a report to the Town of Hawkesbury, a quorum is not “present” if communication occurs over a series of individual discussions.³

In addition to a lack of quorum being present, my review does not indicate that council business and decision-making were materially advanced outside of the July 10 and August 7, 2024 meetings. 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 a council, committee or local board.⁴ My Office has repeatedly recognized that council members are able to speak freely with one another outside the structure of a formal meeting as long as the discussions do not materially advance council business or decision-making.⁵

Council’s decision to proceed via a direct appointment of one of the candidates who had participated in the March 2024 nomination process was made in open session on July 10, 2024, and was supported by a staff report that explored the various options available to council. This process was re-explained, without material change, by the Mayor and the Clerk at the August 7, 2024 meeting.

At the August 7, 2024 meeting, council deliberated in open session for nearly 45 minutes to appoint a candidate to the vacant seat. Council voted on five nominations (of which three were successful), followed by three rounds of voting. Council members

² *Casselman (Village of) (Re)*, 2018 ONOMBUD 11, online: <<https://canlii.ca/t/hvmtk>> [Casselman].

³ *Hawkesbury (Town of) (Re)*, 2021 ONOMBUD 7, online: <<https://canlii.ca/t/jdzm9>> [Hawkesbury].

⁴ *Casselman*, *supra* note 2.

⁵ *Hawkesbury*, *supra* note 3; Letter from the Ontario Ombudsman to Loyalist Township (6 December 2021), online:

<<https://www.ombudsman.on.ca/en/our-work/municipal-meetings/loyalist-township-december-6-2021>>;

Letter from the Ontario Ombudsman to the Township of Russell (18 March 2025), online

<<https://www.ombudsman.on.ca/en/our-work/municipal-meetings/township-russell-march-21-2025>>.

articulated their thought processes throughout and expressed their preferences in open session about filling the vacant seat. The public had the opportunity to observe council's decision-making in process. When I consider the public deliberation that occurred, together with the Mayor's explanation, there is no reasonable basis to conclude that council's decision was predetermined or that a quorum of council gathered informally to advance council business or decision-making ahead of the meeting.

Conclusion

My review has determined that Council for the Town of Midland did not contravene the *Municipal Act, 2001*. There is no reasonable basis to conclude that an illegal meeting to discuss filling a council vacancy took place, as alleged by the complaint.

I would like to thank the Town for its co-operation during my review. The Clerk has confirmed that this letter will be included as correspondence at an upcoming council meeting.

Sincerely,



Paul Dubé
Ombudsman of Ontario

Cc: Sherri Edgar, Clerk, Town of Midland

Cette lettre est aussi disponible en français