



J. Paul Dubé, Ombudsman

BY E-MAIL

March 18, 2025

Council for the Township of Russell
c/o Mike Tarnowski, Mayor
717 Notre Dame Street
Embrun, ON K0A 1W1

Dear members of council for the Township of Russell:

Re: Closed meeting complaint

My Office received two complaints alleging that council for the Township of Russell (“the Township”) may have held an illegal meeting before a regular council meeting on April 29, 2024 to discuss how to fill the vacant mayor’s seat. In particular, one complaint suggested that sequential discussions between members of council took place to circumvent the open meeting requirements in the *Municipal Act, 2001*.

For the reasons set out below, I have found that council members held one-on-one conversations about the mayoral vacancy ahead of the April 29, 2024 council meeting. However, I have found that these conversations did not contravene the *Municipal Act, 2001*.

Ombudsman’s role and authority

As of January 1, 2008, the *Municipal Act, 2001* 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 Township of Russell.

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My 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 Ombudsman's previous decisions can be found in the digest: www.ombudsman.on.ca/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: <https://www.ombudsman.on.ca/have-a-complaint/who-we-oversee>.

Review

On July 29, 2024, my Office notified the Township of our intent to investigate the complaints. We reviewed the agenda and minutes of the April 29, 2024 council meeting, as well as the audio-video recording of the meeting. We spoke with the Township's Clerk and interviewed the four members of council who held office at the time of the meeting.

Background

On April 2, 2024, the then-Mayor of the Township announced his intention to resign effective April 19, 2024. On April 19, 2024, council declared the mayoral seat vacant and resolved to provide direction to the Clerk on how to fill the vacancy at the next regular council meeting on April 29, 2024.

Council met in chambers on April 29, 2024, at 6:00 p.m. All four members of council who held office at the time were present. In open session, council discussed its options for filling the vacant mayor's seat. Three members of council delivered prepared remarks regarding appointing a member of council to fill the vacancy. Council then moved to fill the vacant mayor's seat by appointment and passed a by-law appointing a new mayor for the remainder of council's term, effective May 27, 2024. After council passed the by-law, the newly-appointed Mayor read a prepared speech which lasted approximately two minutes. The council meeting was adjourned at 7:28 pm.

The complaints we received alleged that the decision to appoint a member of council as mayor was pre-determined as a result of one or more illegal meetings or sequential discussions. They pointed to the rapid sequence of events at the April 29, 2024 council meeting and the fact that some members of council appeared to have prepared remarks.

The members of council we interviewed told our Office that a quorum of council members did not meet to discuss the vacant mayor's seat before the April 29, 2024 council meeting, but did report having one-on-one discussions over the phone with their fellow council members. Council members characterized these conversations as exploratory, information-gathering calls to discuss council's options for filling the vacancy, to exchange opinions, and to gauge their fellow council members' interest in serving as mayor. We were also told that council members discussed possible options to fill the vacancy and who might be best suited to serve as mayor, although no agreement was reached during these discussions on who to appoint to the position. All council members expressed their belief that all options were on the table heading into the meeting, including a by-election.

The members of council who spoke with my Office also noted that it is common practice for council members to prepare in advance of council meetings. The Mayor at the time of this investigation told my Office that he had prepared a speech because he suspected he might be asked to serve based on prior conversations with his colleagues.

Analysis

Section 239(1) of the *Municipal Act, 2001* ("the Act")¹ requires all meetings of a council, local board, or committee of either, to be open to the public, subject to the listed exceptions. The open meeting rules are tied to the public's right to observe municipal government in process.²

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.³

¹ SO 2001, c 25.

² *London (City) v RSJ Holdings Inc*, 2007 SCC 29 (CanLII), [2007] 2 SCR 588, online: <<https://canlii.ca/t/1rtq1>> at para 32.

³ *Casselman (Village of) (Re)*, 2018 ONOMBUD 11, online: <<https://canlii.ca/t/hvmtk>> [Casselman].

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In a report to the Town of Hawkesbury, I considered whether a series of one-on-one conversations between a quorum of members of council constituted a “meeting.” In that case, I explained that, based on how “meeting” is currently defined under the Act, a quorum is only formed when a quorum is present, either physically or electronically, as a group. Although they may be contrary to the principles of openness, transparency, and accountability, sequential discussions are therefore not strictly captured under the open meeting rules.⁴

Our review indicates that, ahead of the April 29, 2024 council meeting, members of council communicated by phone with other members. However, at no point did a member of council communicate with multiple members of council simultaneously. A quorum of council was therefore never present in the course of the one-on-one phone conversations.

However, my Office also assessed whether council materially advanced council business or decision-making as a result of the one-on-one discussions between members. Although such a practice would not be captured by the open meeting rules without the presence of a quorum, it would stand against the spirit of accountability, transparency, and openness which underlie these requirements. In my report to the Town of Hawkesbury, I noted that matters relating to council business and decision-making should be introduced at a formal council meeting.⁵

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.⁶ On the other hand, 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.⁷ In the past, I have found that it is usually acceptable to inquire about other members’ positions where the discussion is not intended to lead to specific outcomes or to persuade decision-makers.⁸

In this case, I am satisfied that the one-on-one discussions between council members did not materially advance council business or decision-making. The conversations were not aimed at making a determination. Council members discussed their options for filling the seat, as well as which council members would be interested in serving as

⁴ *Hawkesbury (Town of) (Re)*, 2021 ONOMBUD 7, online: <<https://canlii.ca/t/jdzm9>> at para 18.

⁵ *Ibid.*

⁶ *Casselman*, *supra* note 3.

⁷ *Ibid* at para 31.

⁸ *Letter from the Ontario Ombudsman to Loyalist Township* (6 December 2021), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2021/loyalist-township>>.

mayor, without agreeing on a specific outcome or course of action prior to the council meeting.

The conversations between council members do not suggest a movement on the overall spectrum of a decision. We were told that no council member explicitly solicited support for appointment as mayor. All council members expressed their belief that any outcome was possible heading into the council meeting and reported being uncertain as to their fellow council members' preferred course of action in filling the vacancy.

In addition, council members articulated their thought processes and expressed their preferences about filling the vacant mayor's seat during the open session of council. The public had the opportunity to observe the decision-making process relating to the filling of the vacancy. A quorum of council did not come together ahead of the meeting, and council business was not materially advanced during the series of phone calls.

Conclusion

Council for the Township of Russell did not contravene the *Municipal Act, 2001* when council members had informal conversations pertaining to the filling of the vacant mayor's seat ahead of the April 29, 2024 council meeting.

I would like to thank the Township 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: Joanne Camiré-Laflamme, Clerk, Township of Russell

Cette lettre est aussi disponible en français