

September 20, 2013

Mr. Bruce Smith, Secretary-Treasurer
Niagara Central Airport Commission
P.O. Box 67,
247 East Main Street,
Welland, ON
L3B 5N9

Dear Mr. Smith,

Re: Ombudsman Review of Niagara Central Airport Commission

I am writing further to my conversation with you on September 20, 2013, regarding the outcome of our Office's review of whether the Niagara Central Airport Commission (the Commission) is subject to the open meeting requirements in the *Municipal Act*. Our Office received a complaint that the Commission does not have a procedure by-law and does not adhere to the open meeting requirements of the *Municipal Act* because it did not consider itself a local board.

Our Office's review process

As you know, the *Municipal Act, 2001* requires meetings of Councils and local boards and their committees to be open to the public, subject to the limited exceptions outlined in section 239 of the Act. They must also observe certain procedural requirements in order to close a meeting to the public. Our Office reviewed this complaint to assess whether the Commission falls within the definition of a "local board" in the *Municipal Act*.

In reviewing this issue, our Office spoke with you and the Clerks of the City of Port Colborne and the City of Welland. We also reviewed the relevant legislation, including the *Welland-Port Colborne Airport Act, 1976* and the *Niagara Central Airport Commission Act, 2001*. We received full cooperation from the Commission and the municipalities involved during our review.

Information obtained during our Office's review

Information regarding the Commission

According to the *Welland-Port Colborne Airport Act, 1976*, the Welland-Port Colborne Airport Commission was originally established in 1969 by agreement among six municipalities.

The *Welland-Port Colborne Act* states that the Commission “shall be deemed to have been a corporation since its inception with power to acquire and hold land in its own name for airport purposes.” The Act further states that “the *Corporations Act* and the *Business Corporations Act* do not apply to the Commission.”

According to Schedule A of the Act, the Commission was created “for the purposes of establishing, operating and maintaining the premises known as the Welland-Port Colborne Airport.” Currently, in accordance with this Schedule, the Commission is composed of seven members appointed by four involved Councils as follows:

- 3 Councillors from the City of Welland
- 2 Councillors from the City of Port Colborne
- 1 Councillor from the Town of Pelham
- 1 Councillor from the Township of Wainfleet

These municipalities fund the Commission on a per capita basis, and the only other revenue comes from the fees from airport users. The Commission sets its own budget and it is then submitted to the four municipalities for approval.

Schedule B to the Act sets out an agreement reached between the federal government (Minister of Transport) and the Welland-Port Colborne Airport Commission dated May 26, 1970, under which the Minister granted Letters Patent to the Commission for the Airport, including the land, buildings, and structures, in return for payment of \$38,401.00, subject to a number of conditions.

In 2001, the *Niagara Central Airport Commission Act* was passed, changing the name of the Commission to the Niagara Central Airport Commission, and changing the name of

the airport to the Niagara Central Airport. No additional changes were made to the legislation.

The Commission continues to operate the Niagara Central Airport on behalf of the four municipalities.

Definition of “local board” in the *Municipal Act*

A local board is defined in section 1 of the *Municipal Act* as:

a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority;

The open meeting provisions apply to all local boards except police services boards and library boards (s. 238(1)).

The courts have held that provisions of this nature are to be interpreted in accordance with the principle of *ejusdem generis* (“of the same kind or class”). The Commission is similar to the other types of municipal organizations referred to in the definition of local board. When considering whether a particular entity is a local board, the courts have typically taken the following four factors into account:¹

- The entity must be carrying on the “affairs of the municipality.” The phrase “affairs of the municipality” is not defined in the *Municipal Act*, but it has generally been interpreted to mean that the body must be engaged in activities that are for public purposes and are of a local nature;

¹ For further information on the relevant caselaw, see: O'Connor, Rick, “*Bill 130 – A Review of Ottawa’s Agencies, Boards, Committees and Commissions*” November 5, 2007, online: <<http://www.ottawa.ca/calendar/ottawa/citycouncil/occ/2007/11-28/csedc/ACS2007-CMR-LEG-0007>>



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

- A direct link with the municipality must be found. It appears that the courts will not consider a body to be a local board unless it was created by way of a municipal by-law or provincial legislation, not federal legislation;
- There must be a connection to or control by the municipality. The courts usually look at the composition of the board of the entity to assess whether there is a significant connection to or control exercised by the municipality; and
- There must be an element of autonomy – the board must not simply be an advisory committee without any decision-making functions of its own.

Based on these factors, the Commission appears to be a local board. It operates the airport for the benefit of four municipalities. It was created through municipal agreement later enshrined in provincial legislation. The Commission has an ongoing relationship with the involved municipalities, which appoint its members and approve its funding. The Commission also has operating authority and is not an advisory body.

Conclusion

Based on our review, it appears the Commission is a local board subject to the open meeting requirements. Under the circumstances, the Commission should enact a procedure by-law governing meetings in accordance with the *Municipal Act* and comply with the open meeting requirements.

On September 20, 2013, we shared our findings with you and offered an opportunity to provide any additional information or comment. We are requesting that you share this letter with the public and with the Commission as soon as possible, and in any event no later than at the next Commission meeting on September 26, 2013.

In closing, we would like to thank you for your cooperation during this review.

Ronan O'Leary
Investigator
Open Meeting Law Enforcement