



“Enlightening Closed Council Sessions”

**Investigation into
Fort Erie Town Council
Closed Meeting of January 7, 2008**

**André Marin
Ombudsman of Ontario
February 6, 2008**

Complaint

- 1 On January 7, 2008, my Office received a complaint concerning a meeting scheduled by the Fort Erie Town Council for that evening. The meeting was to be closed to the public and held at an off-site location for the purposes of “education and training.” On January 16, my Office received a second complaint about the same meeting. This complaint focused on the lack of detail provided to the public about the nature of the education and training provided at the January 7 session. In addition, it was suggested that council may have engaged in the planning and discussion of town business during the closed meeting.

Ombudsman jurisdiction

- 2 Under the *Municipal Act, 2001*, municipalities and local boards are required to pass bylaws setting out the rules of procedure for meetings. The law requires that public notice be given that a meeting will be held, and that all meetings be open to the public unless they fall within prescribed exceptions. Until recently, the only way to enforce compliance with the open meeting provisions was to bring a court challenge against the municipal council or board.
- 3 As of January 1, 2008, legislative changes came into effect, giving citizens the right to request an investigation into whether a municipality that has closed a meeting to the public has complied with the law. The Act allows municipalities to choose who will investigate such complaints – they may appoint their own investigator or use the services of my Office. It also designates my Office as the default investigator for the more than 100 municipalities across the province that have yet to appoint one.
- 4 On December 10, 2007, Fort Erie Town Council voted to appoint the Ombudsman of Ontario as its investigator for closed meeting complaints.

Closed education and training sessions

- 5 Section 239 of the *Municipal Act, 2001* sets out a number of exceptions to the open meeting requirements. On January 1, 2007, an exception was added to the Act: A meeting of a council may be closed to the public if it is held for the purposes of educating or training council members, provided that members do

not discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council.¹

- 6 Before holding a closed meeting for the purposes of education or training, a council is required to pass a resolution stating that such a meeting will be held, as well as the general nature of its subject matter and the relevant legislative provision.²

Fort Erie Town Council's rules

- 7 The Corporation of the Town of Fort Erie's *Rules of Procedure*³ provide that a special meeting of council, including a closed meeting, may be called and that notice of such a meeting must state the business to be considered. As a general rule, no other business can be considered by council except that which has been disclosed.⁴ Public notice of the meeting must be posted on the website, "for accountability and transparency purposes."
- 8 With proper notice and a majority vote, council has the authority to hold meetings outside of its chambers.⁵

Investigative Process

- 9 On January 17, 2008, following preliminary inquiries by my Office, the complainants and the Town Solicitor of Fort Erie were notified of my intention to pursue an investigation into the complaints concerning the closed education and training session held on January 7.
- 10 Our investigators interviewed 11 individuals, including all seven members of council, as well as the Town Clerk, Town Solicitor, the town's Chief Administrative Officer, and the independent facilitator who developed the training materials and facilitated the closed session. In addition, documents from the municipality were obtained and reviewed including minutes, memoranda,

¹ s.239 (3.1), *Municipal Act, 2007*, as amended

² s.239(4)(b), *Municipal Act, 2007*, as amended

³ Bylaw No.145-06

⁴ s.3.3.2 of *Rules of Procedure Bylaw No.145-06*

⁵ s.239(3), *Municipal Act, 2001*, Bylaw No. 145-06

training materials and handouts, personal notes made by the participants at the session, municipal and procedural bylaws and applicable legislation.

- 11 This was the first investigation regarding a closed meeting that my Office has conducted since the new legislative provisions came into force. The exceptional co-operation of Fort Erie’s council and municipal staff contributed in large measure to its successful and timely completion.

Investigation Facts/Evidence

The need for education and training

- 12 During our investigation, we learned that the Mayor had informally discussed the possibility of training with council members in November 2007 and they had agreed it would be useful. Such a meeting would explore how they might better work towards the continued fulfillment of their mandate by strengthening interpersonal relationships and communication.
- 13 In a November 13, 2007 inter-office memorandum to council members, the Mayor explained the purpose of the proposed training as a chance to *“reflect on our past year in order to improve our performance as a Council by an exchange of views on how to strengthen Council-to-Council and Council-to-Staff relationships.”*
- 14 Given the nature of the contemplated training, the facilitator recommended that it take place in a closed session where the participants would likely feel more comfortable openly discussing their thoughts.
- 15 One council member expressed concern that some of the issues identified for discussion during the training might give rise to discussion of council business. The Town Solicitor and Town Clerk, who were consulted about the session from the outset, reviewed the proposed training agenda and determined there was nothing on it that could be considered a “business” item.

Resolving to go into closed session

- 16 The first public reference to the January 7, 2008 meeting occurred on December 10, 2007, when council passed a resolution to hold an education and training session in closed session under s.239 of the Act.

- 17 The agenda for the December 10 meeting referenced the item under ‘New Business’ as follows:
- a. *“(a) Closed Session Meeting – Monday January 7, 2008 at Peace Bridge Authority Conference Room. Re: Education and Training Session”.*
- 18 The minutes of the December 10, 2007 meeting contain the following resolution:
- “Resolution: “THAT: the Municipal Council of the Town of Fort Erie hereby authorizes the holding of a Closed Session Meeting on Monday January 7, 2008, commencing at 6:00 pm at the Peace Bridge Authority Conference Room in order to conduct an Education and Training Session on Council/Council-Staff Relations.”*
- 19 Both the December 10, 2007 agenda and minutes were posted on the Town of Fort Erie website. The agenda for the January 7 meeting was issued to council a few days before the meeting and was also posted to the website. It similarly referred to an “Education and Training Session on Council/Council-Staff Relations” to be held in closed session at the Peace Bridge Authority Conference Room. Although the education and training session was to be closed to the public, certain standard portions of the meeting were technically open, including the call to order, roll call, disclosures of pecuniary interest and general nature, and adjournment.

The January 7 closed session

- 20 The education and training session at the Peace Bridge Authority Conference Room started 20 minutes earlier than planned, at the request of the facilitator.⁶ It concluded at 9:03 p.m.
- 21 The closed session was attended by Mayor Douglas Martin, Councillors Ann-Marie Noyes, Bob Steckley, Tim Whitfield, Martha Lockwood, Richard Shular and Sandy Annunziata; Chief Administrative Officer Harry Schlange; Town Clerk Carolyn Kett; and the training facilitator, Beverley Carter. The Town Clerk also attended in her capacity as clerk to record the session and to provide advice on procedural matters.

⁶ Section 3.3 of Council Rule of Procedure Bylaw No.145-06, as amended, was waived to permit the meeting to commence at 5:40 p.m., instead of the scheduled 6 p.m. This is standard procedure.

Discussions during the closed session

- 22** According to those we interviewed and our review of the notes and training materials, the main issues discussed during the closed session were: Stages of group development, guiding principles for conducting skilled conversations, trust-building and trust-depleting behaviour, and how to develop effective groups. Participants were asked to discuss their own interpersonal skills, to imagine council performing at its optimum, and to consider how optimal functioning might be achieved.
- 23** The personal notes taken by the participants during this session, the official records of the session, and our discussions with the training facilitator, suggest that previous council business was only referred to in passing, to illustrate points being discussed, and no new council business was discussed.
- 24** My investigation confirmed that no resolutions were passed during the meeting, with the exception of the resolution to go into closed session and the resolution for the council to rise without report. This was also confirmed by the minutes. Our conclusion is that no council business was advanced during the closed session.

Public access to the 'open' portions of the meeting

- 25** The citizens who contacted my Office expressed concern about the location of the January 7 meeting. It was suggested that as the Peace Bridge Authority Conference Room is privately owned, members of the public were effectively prevented from attending even during the brief "open" portion of the meeting.
- 26** The Town Clerk confirmed that prior to the meeting she received inquiries from the public concerning the reason the training was being held outside of the town hall, and how they could access the open portions of the meeting. She said she responded to all of these inquiries.
- 27** The training facilitator told our investigators that she had recommended the training be conducted outside of council chambers, in an environment that would be conducive to open, frank discussion and would not replicate the atmosphere in which council normally did business. She also required a location with separate rooms for smaller group discussions. Council had used the Peace Bridge Authority Conference Room in the past, and determined it to be the most suitable venue.

Opinion

- 28** While municipalities in this province have long been required to hold open meetings, enforcement through investigative oversight is a brand new venture. It is a significant step forward in reinforcing the democratic legitimacy of municipal decisions. Any attempt to close doors to the public is likely to be met with considerable concern from citizens and requires careful scrutiny to ensure public confidence in local government is sustained.
- 29** After examining all the available evidence, I am satisfied that the January 7 closed session held by the Fort Erie council was focused on improving communication and team-building skills, and that it came within the education and training exception provided for under the *Municipal Act, 2001*.
- 30** Council had the authority to meet off-site for the purposes of engaging in education and training, provided its bylaw was followed. While a private meeting location might present an obstacle to public attendance in some instances, I am satisfied that had citizens wished to attend the open portions of the special meeting at the Peace Bridge Authority Conference Room, they could have done so.
- 31** The whole purpose behind the legislative drive to allow an avenue of complaint if council meets in a closed session is to enhance democracy by empowering citizens to hold municipalities to account for their decision to meet privately. The new provisions of the law require a broad and generous interpretation based on principles of openness and transparency. The “education and training” exception is a new addition to the list of permissible exceptions to the open meeting requirements, and concern about its use is understandable. These exceptions must be read restrictively with a corresponding obligation on municipalities to issue meaningful and informative notices that enlighten the public on the reasons for the closed meeting. The more information available about a closed session, the less room there is for conjecture.
- 32** In addition, how are citizens to make an informed decision to complain about a closed meeting if the notice of the meeting is bereft of meaningful information? The situation is akin to asking a citizen to navigate unknown territory without a map. Providing a few more details about a planned meeting is like raising the blinds in a dark room – it is not an arduous task, and is well worth the effort because the sunlight benefits everyone.

- 33** I believe that, in this case, to a significant degree, public concern and criticism would have been avoided had council chosen to provide more information about the nature of the training when it first gave notice of the meeting. As our investigation found, the actual substance of the meeting clearly fell within the ambit of the exception. Why not provide, then, greater clarity and include more specifics in the notice? To do so would not only meet the legal letter of the legislation but would fulfill its spirit. In response to our Preliminary Report, the Town of Fort Erie has agreed to provide greater explanation the next time it embarks on an education and training session in closed session.
- 34** I would like to thank the Town of Fort Erie for its co-operation during the investigation.



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