



Ombudsman Report

**Investigation into whether
the Finance and Administration Committee
for the City of Elliot Lake
held an improper closed meeting
on July 7, 2014**

**André Marin
Ombudsman of Ontario
October 2014**

Complaint

- 1 On July 8, 2014, my Office received a complaint regarding a July 7, 2014 meeting of Elliot Lake's Finance and Administration Committee (the committee), which was closed to the public to discuss a matter pertaining to the White Mountain Academy under the "proposed or pending acquisition or disposition of land by the municipality or local board" exception found in subsection 239(2)(c) of the *Municipal Act, 2001* (the Act). The complaint alleged that subject was not appropriate for closed session discussion, since the White Mountain Academy is not owned by the municipality.

Ombudsman jurisdiction

- 2 Under the Act, all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 3 As of January 1, 2008, changes to the Act give citizens the right to request an investigation into whether a municipality has properly closed a meeting to the public. Municipalities may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 4 My Office is the closed meeting investigator for the City of Elliot Lake.
- 5 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the relevant municipal procedure by-law have been observed.

Investigative process

- 6 In reviewing this complaint, members of my Office's Open Meeting Law Enforcement Team (OMLET) spoke with the Mayor and municipal staff and reviewed the meeting documents, including the agenda and open and closed session minutes. We also considered relevant sections of the city's Procedure By-law and the Act.
- 7 We received full co-operation during our review.

Background: The White Mountain Academy

- 8 The White Mountain Academy housed the Northern Institute of the Arts from the mid-1990s until 2005, when the school shut down due to lack of enrolment. At that time, the city agreed to pay for maintenance of the building to guard against deterioration. The White Mountain Board had the responsibility of overseeing building maintenance. After the Algo Mall roof collapse in June

2012, certain services that used to be housed in the mall were moved to the White Mountain Academy. The Board was charged with managing construction associated with renovations to accommodate new tenants.

The July 7 committee meeting

- 9** The agenda for the July 7 meeting stated that the committee would be proceeding in camera at 6:00 p.m. to discuss a report from the White Mountain Academy under s. 239(2)(c) of the Act, as the matter dealt with a pending acquisition/disposition of land.
- 10** While in camera, the committee discussed confidential information from a report regarding a potential land acquisition, including potential purchase prices. The committee also reviewed a letter from the Academy's legal counsel. We were advised that other matters related to the potential land acquisition were considered that could have caused financial harm to the city's interests if they were considered in open session.

Analysis

- 11** As with most exceptions to the open meeting requirements, use of the "acquisition or disposition of land" exception is discretionary. As noted by another closed meeting investigator in an investigation regarding the City of Kingston, a municipal council or committee:

...should only exercise its discretion (to close a meeting under this exception) when there is some potential harm, financial or otherwise, of having a discussion on a pending acquisition held in open session¹.

- 12** It is understandable why the citizens of Elliot Lake would wish to have as much information as possible about matters concerning the Academy that may have an impact on the city's financial interests, given the relationship between the city and the White Mountain Academy. In this case, however, I am satisfied that the city's exercise of discretion to discuss the report in relation to White Mountain Academy in closed session was justified, because having the discussions in open session could have harmed the city's financial interests.
- 13** Accordingly, the discussion fit within s. 239(2)(c) of the Act.

¹ Report of Amberley Gavel, Ltd. regarding meetings held by council for the City of Kingston, January 7, 2010

Opinion

- 14** Our investigation established that the July 7 Finance and Administration Committee in camera meeting did not violate the open meeting requirements of the *Municipal Act, 2001*.

Report

- 15** Staff from my Office spoke with the recording secretary, the Chair of the Committee and the Mayor on October 21, 2014 to outline our findings, and to provide an opportunity for comment. Their comments were taken into account in preparing this report.
- 16** My report should be shared with the committee and made available to the public as soon as possible, and no later than the next committee meeting.



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