



Ombudsman Report

**Investigation into whether
Council for the Municipality of Killarney
held an improper closed meeting on
April 25, 2014**

“At the Wharf”

**André Marin
Ombudsman of Ontario
October 2014**

Complaint

- 1 On May 28, 2014 my Office received a complaint that council for the Municipality of Killarney met with representatives of a local business at the local wharf on April 25, 2014, and made a decision to build a temporary processing facility for this business.
- 2 The complaint arose from a May 4, 2014 letter that the business owner wrote to council, which was included on the agenda for the May 14 open council meeting. The May 4 letter stated that, on April 25, the business owner met with council at the wharf and was told that council was going to build a temporary processing facility for his business.
- 3 The complainant believed that council must have made the decision to build the temporary facility during the gathering at the wharf on April 25, since there was no record of the decision in the minutes for the open council meeting. Accordingly, the complainant alleged that council engaged in decision-making at the wharf, and that the gathering therefore constituted an improperly closed meeting of council, held in violation of the *Municipal Act, 2001* (the Act).

Ombudsman jurisdiction

- 4 Under the *Municipal Act, 2001*, (the Act) all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 5 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.
- 6 My Office is the closed meeting investigator for the Municipality of Killarney.
- 7 In investigating closed meeting complaints, our Office considers whether the open meeting requirements of the Act and the relevant municipal procedure by-law have been observed.

Investigative process

- 8 On July 14, 2014, members of my Office's Open Meeting Law Enforcement Team (OMLET) advised the municipality that we would be investigating the complaint.

- 9 We considered the meeting documents, including the agenda and meeting minutes for the April 25 council meeting, as well as the municipality's procedure by-law and relevant sections of the Act. We also spoke with the municipality's staff and interviewed members of council and the business owner who was present at the April 25 wharf gathering.
- 10 Members of council and staff co-operated fully during the course of our investigation.

The April 25 open council meeting

- 11 The agenda stated that a special council meeting would be held at 1:30 p.m. on April 25, 2014.
- 12 The open session minutes indicate that council heard from a local business owner regarding the need for a temporary processing facility to be set up along the wharf for his business while a new facility was under construction.
- 13 At 1:50 p.m., the Mayor adjourned the meeting to the wharf property. We were told by council members that this was so they could look at the site and better visualize where a temporary facility could be built to accommodate the local business. The Mayor invited anyone in attendance at the council meeting to come along to view the site, and one member of the public did so. All of council, the deputy clerk, and representatives of the business also went to the wharf.
- 14 The meeting in council chambers resumed at 2:25 p.m.

The discussions at the wharf

- 15 The wharf is very close to the municipal building, and the majority of council members walked there.
- 16 Those we interviewed told us that the discussions at the wharf involved possible locations for the temporary facility that would not interfere with ongoing construction. No member of council recalled any votes being taken or any decisions being made about what actions council would take to accommodate the business owner's request.
- 17 All members of council were in agreement that no final decision on the matter was reached until the May 7 council meeting. At that meeting, council voted in open session to buy a trailer to accommodate the business, rather than building a temporary facility.
- 18 The business owner advised my Office that the intention of his letter to council on May 4 was to convey that he understood that building a temporary facility

was one option council would be considering.

- 19** He also stated that this was not decided at the April 25 meeting at the wharf, and that he was aware that that council would have to discuss and vote on the matter at a council meeting. He did not recall seeing any votes being taken or consensus reached at the wharf on April 25.
- 20** There is no record, written or otherwise, of the discussions that took place at the wharf on April 25.

Analysis

- 21** Council members gathered at the wharf on April 25 to see firsthand where a temporary facility for a local business might be placed. Members of the public who were present at the council meeting that day were invited to attend as well. All members of council agreed that no decisions were made and no votes were taken during the wharf visit.
- 22** The complaint to our Office alleged that council must have made a decision to build a temporary processing facility during the gathering at the wharf, since the business owner's May 4 letter referenced this decision. However, council ultimately decided – at the May 7 meeting – not to build a temporary facility, but instead to purchase a trailer to house the business while the permanent facility was under construction.
- 23** The business owner advised us that, despite the statement made in his May 4 letter, he did not see any votes taken or consensus reached at the wharf.
- 24** Several of my earlier reports on closed meetings¹ have outlined my definition of “meeting,” which is as follows:

Members of council (or a committee) must come together for the purpose of exercising the power or authority of the council (or committee) or for the purpose of doing the groundwork necessary to exercise that power or authority.
- 25** At the wharf on April 25, council was undoubtedly coming together for the purpose of doing the groundwork necessary to exercise its power or authority. Specifically, council was gathering information to assist it in deciding what accommodations to put in place for the local business owner. Council exercised its authority to vote to purchase a trailer for the business owner on May 7.
- 26** The gathering at the wharf was therefore a meeting of council, subject to the open meeting requirements. However, because members of the public were

¹ See, for example, the Ombudsman's report *Don't Let the Sun Go Down on Me*, regarding a meeting held by the City of Greater Sudbury in February 2008.

invited to come to the wharf, it was not a closed meeting of council. Rather, it was a continuation of the open meeting commenced in council chambers.

- 27** Accordingly, certain procedural formalities, including minute taking, should have been observed. This would have provided some much-needed clarity regarding the substance of the discussions. In addition, if meetings or portions of meetings occur anywhere other than council chambers, notice should be provided of the change of venue so that members of the public can attend if they wish.

Opinion

- 28** Our investigation established that the gathering of councillors for the Municipality of Killarney at the local wharf on April 25, 2014 was not a closed meeting in violation of the open meeting requirements of the *Municipal Act, 2001*.

Report

- 29** Staff from my Office spoke with the clerk and Mayor on October 1, 2014 to provide an overview of these findings, and to give the municipality an opportunity to comment. Their comments were taken into account in preparing this report.
- 30** My report should be shared with Council for the Municipality of Killarney and made available to the public as soon as possible, and no later than the next council meeting.



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