



Ombudsman Report

**Investigation into complaints about meetings
held by council for the Municipality of Calvin
on May 10 and June 14, 2022**

**Paul Dubé
Ombudsman of Ontario**

June 2023

Complaints

- 1 My Office received two complaints about electronic meetings held by council for the Municipality of Calvin (the “Municipality”) on May 10 and June 14, 2022.
- 2 The complaints alleged that the Municipality did not provide the public with proper public notice or the means to observe these two electronic council meetings, contrary to the *Municipal Act, 2001* (the “Act”)¹ and the Municipality’s procedural by-law.
- 3 My investigation determined that council contravened the open meeting rules by failing to ensure proper notice was provided for the May 10 and June 14, 2022 meetings. Additionally, council contravened the Act on June 14, 2022, by failing to ensure that the public could observe the meeting in real time.

Ombudsman jurisdiction

- 4 Under the Act, all meetings of council, local boards, and committees of either must be open to the public, unless they fall within prescribed exceptions.
- 5 As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipality or local board has complied with the Act in closing a meeting to the public. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 6 The Ombudsman is the closed meeting investigator for the Municipality of Calvin.
- 7 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the applicable procedure by-law have been followed.

¹ SO 2001, c 25.

- 8 Our 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.

Investigative process

- 9 On June 24, 2022, my Office advised the Municipality of our intent to investigate these complaints.
- 10 My Office reviewed the Municipality's procedural by-law in force at the time, as well as relevant portions of the Act. We also reviewed the public notices, agendas, minutes, and relevant portions of the meeting recordings, as well as materials and correspondence related to the meetings.
- 11 My Office interviewed the former Mayor, a former councillor, a former Clerk, a former Deputy Clerk, a representative from the company that maintains the Municipality's website, and the principal and two consultants from the organization that provided administrative services to the Municipality for these meetings.
- 12 We received full co-operation in this matter.

Amended procedural by-law

- 13 The section 5.2 of the procedural by-law in force at the time of the meetings,² the notice provisions indicated that the Municipality was required to post a meeting schedule on its website that included the time and

² The procedural by-law in force in May and June 2022 was subsequently repealed in November 2022: Municipality of Calvin, by-law No 2008-008, *Being a by-law to govern and regulate the meetings and proceedings of Council and committees of the Corporation of the Municipality of Calvin and commonly called "the procedural by-law"* (22 April 2008), online: <https://calvintownship.ca/uploads/documents/by-laws/2008-008%20Procedural%20By-Law.pdf>.

location of council meetings, and that agendas were required to be posted on the Municipality's website at least 24 hours prior to a meeting.

- 14 An amendment to the now-repealed procedural by-law enabled the Municipality to hold electronic meetings, and required it to livestream meetings to an approved platform.³

Background

- 15 During the COVID-19 pandemic, the Municipality has held its council meetings on Zoom and livestreamed the proceedings to its YouTube channel. The public was able to observe the meetings by clicking a link located at the top of the Municipality's meeting schedule webpage, which took visitors to its YouTube channel.

May 10, 2022 meeting

- 16 The Municipality had no administrative staff working during the week leading up to and including the May 10, 2022 meeting. Due to its staffing issues, the Municipality contracted an external organization to provide it with administrative support.
- 17 Prior to the May 10 meeting, the Municipality's meeting schedule webpage listed the meeting's time and date, and stated that it would take place electronically via Zoom.
- 18 On May 6, 2022, the Municipality posted the May 10 meeting agenda. The agenda identified that the meeting would take place electronically, but did not provide a link to attend the virtual meeting or specify where that information could be found.
- 19 On May 9, 2022, the Municipality learned that it was locked out of both its Zoom and YouTube accounts, as it did not have access to the passwords or the answers to the security questions. As such, the Municipality arranged to use an alternative Zoom account to host the May 10, 2022 meeting, and planned to have the public join the Zoom meeting.

³ Municipality of Calvin, by-law No 2020-019, *Being a by-law to amend By-law 2008-008 and By-law 2020-008 which are by-laws to govern and regulate the meetings and proceedings of Council and committees of the Corporation of the Municipality of Calvin and commonly called "the procedural by-law"* (25 August 2020), s 2, amending s 2.9 of the procedural by-law, online: <https://calvintownship.ca/uploads/documents/by-laws/2020-019%20Amendment%20to%20Procedural%20By-Law.pdf>.

- 20 The Municipality posted the Zoom meeting link on its meeting schedule webpage approximately one hour before the meeting began. However, it did not remove the incorrect link directing the public to its YouTube channel.
- 21 Council met at 7:00 p.m. on May 10, 2022 via Zoom. The consultant who acted as clerk for that meeting told my Office that at least two members of the public attended the meeting. The meeting recording reveals that a member of the public spoke during the meeting. The meeting adjourned at 8:50 p.m.

Analysis

- 22 Section 238(2.1) of the Act requires that a municipality's procedure by-law provide for public notice of meetings. The Act requires that all meetings be open to the public, subject to the open meeting exceptions.
- 23 In response to the COVID-19 pandemic, the open meeting rules were modified in section 238(3.1) of the Act to allow municipalities to amend their procedure by-laws to permit council to hold electronic meetings. This gives municipalities the option to satisfy the open meeting requirements without holding in-person council meetings. However, the Act's basic requirement that meetings be open to the public remains.
- 24 To uphold the public's right to observe municipal government, municipalities must provide notice of the time and place of the meeting, and then proceed to meet at the time and place specified.⁴ For the purposes of an electronic meeting, the "place" is electronic and notice of the place is effected by publishing the procedure for how the public can observe the meeting electronically, including providing a link.⁵ If the notice does not provide this information, the meeting is effectively closed to the public, contrary to s. 239(1) of the Act.⁶

⁴ *Russell (Township of) (Re)*, 2020 ONOMBUD 1 at para 41, online: <<https://canlii.ca/t/j6n2t>>.

⁵ *McKellar (Township of) (Re)* 2023 ONOMBUD 3 at para 48 [*McKellar*], online: <<https://canlii.ca/t/jv6ck>>.

⁶ *Brockville (City of) (Re)*, 2022 ONOMBUD 12 at para 35 [*Brockville*], online: <<https://canlii.ca/t/jrhjr>>; *The North Shore (Township of) (Re)*, 2018 ONOMBUD 9 at para 76, online: <<https://canlii.ca/t/hvmv3>>.

- 25** In a 2021 report on the City of Richmond Hill, my Office reviewed an electronic meeting where the meeting notice did not include any instructions on how to access the meeting. I found that the City provided inadequate notice, as a meeting is effectively closed to the public if the notice for the meeting does not contain sufficient information to enable the public to access it.⁷
- 26** More recently, I found that the Township of McKellar contravened the open meeting rules when it provided inconsistent meeting notices for a council meeting. The agenda stated that the meeting would take place electronically, and provided a Zoom link, while a subsequent notice indicated that council would instead meet at a physical location.⁸ Despite some members of the public being able to attend the meeting, I concluded that the failure to remove the incorrect information in the agenda, which served as the original public notice, interfered with the public's ability to observe the meeting.⁹
- 27** In this case, the Municipality eventually provided notice of the date, time, and format of the May 10, 2022 meeting, as the correct Zoom information was posted on the Municipality's meeting schedule webpage approximately one hour prior to the meeting. However, the link to the inactive YouTube channel remained prominently posted on the meeting schedule webpage without it being identified as an old or archival channel.
- 28** As in my report to the Township of McKellar, some members of the public were able to join the Zoom meeting and observe council; however, the Municipality's failure to remove the link to the inactive YouTube channel, or to clearly identify it as an archival channel, interfered with the public's ability to observe the May 10, 2022 meeting.
- 29** To prevent similar confusion in the future, the Municipality should ensure that all meeting notices and its website include accurate and up-to-date information about the time and location of council meetings. If this information changes, previously published notices and the website should be amended.

⁷ *Richmond Hill (City of) (Re)*, 2021 ONOMBUD 8 at paras 119-122 [*Richmond Hill*], online: <<https://canlii.ca/t/jf6b3>>.

⁸ *McKellar*, *supra* note 5 at paras 53-4.

⁹ *Ibid* at para 62.

June 14, 2022 meeting

- 30 The Municipality hired a Clerk and Deputy Clerk prior to the June 14, 2022 meeting.
- 31 As with the May 10 meeting, the Municipality's meeting schedule webpage listed the June 14, 2022 meeting's time and date, and stated that the meeting would take place electronically via Zoom.
- 32 The Municipality created a new YouTube account on June 13, 2022, to livestream the June 14, 2022 meeting. The Municipality did not add the information about the new YouTube channel to its website, or delete the old information.
- 33 That same day, the Municipality posted the agenda for the June 14, 2022 meeting. The agenda stated that the meeting would take place electronically, but did not provide any information about how to attend the electronic meeting. The Municipality did not post any information about how the public could access the June 14, 2022 meeting on its website in advance of the meeting.
- 34 Council met via Zoom at 7:01 p.m. on June 14, 2022. The Municipality livestreamed the meeting to the new YouTube channel.
- 35 During the meeting, it became evident to some members of council and staff that the link to the meeting's livestream had not been made public.
- 36 The Deputy Clerk told my Office that the Municipality posted the link for the new YouTube channel on the meeting schedule webpage about halfway through the meeting. The link to the Municipality's old YouTube channel remained posted on the same webpage.
- 37 The Deputy Clerk told my Office that several members of the public were watching the livestream by the end of the meeting. Council adjourned at 10:57 p.m.

Analysis

- 38** As discussed above, municipalities must provide adequate and meaningful notice of meetings. Adequate notice for electronic meetings requires that municipalities provide the public with the procedure for accessing a meeting, including a link.¹⁰ Without proper notice of a meeting, the meeting is effectively closed to the public, contrary to s. 239(1) of the Act.¹¹
- 39** Municipalities must also ensure that the public is able to observe council meetings live. In a 2021 report to the Township of Bonfield, I determined that the public must be able to observe electronic meetings in real time, and that providing recordings after the fact does not satisfy the requirements of the Act.¹²
- 40** While the Municipality provided advance notice of the time, date, and format of the meeting, it did not provide any information about how the public could observe the meeting. For half of the meeting, the public would have had no way of knowing where to find the livestream of council's proceedings.
- 41** Although the public was able to watch the recording of the June 14, 2022 meeting on YouTube once the meeting had ended, the Act requires that the public be able to observe council business in process. The Municipality's failure to provide clear information about how the public could observe the meeting in real time violated the open meeting requirements in the Act and the Municipality's procedural by-law.

Opinion

- 42** Council for the Municipality of Calvin contravened the open meeting rules on May 10, 2022, when it provided two conflicting links on its website that resulted in inconsistent information about how the public could access the meeting, thereby interfering with the public's ability to observe council business.
- 43** Council for the Municipality of Calvin also contravened the open meeting rules on June 14, 2022, when it failed to provide information necessary to access the livestream of its meeting. As a result, the public did not have the means to observe the entire meeting in real time, and the meeting was therefore effectively closed to the public contrary to the Act.

¹⁰ *McKellar*, supra note 5.

¹¹ *Brockville*, supra note 6; *Richmond Hill*, supra note 7.

¹² *Bonfield (Township of) (Re)*, 2021 ONOMBUD 14 at para 47, online: <<https://canlii.ca/t/jh0vt>>.

Recommendations

- 44 I make the following recommendations to assist the Municipality of Calvin in fulfilling its obligations under the Act and enhancing the transparency of its meetings:

Recommendation 1

All members of council for the Municipality of Calvin should be vigilant in adhering to their individual and collective obligation to ensure that the municipality complies with its responsibilities under the *Municipal Act, 2001* and its procedural by-law.

Recommendation 2

Council for the Municipality of Calvin should ensure that the public is provided with notice of all council meetings that contains the date, time, and location of the meeting, including specific information about how to access the meeting electronically, if appropriate.

Recommendation 3

Council for the Municipality of Calvin should ensure that all meeting notices, agendas, and webpages include consistent, accurate, and up-to-date information about how the public can attend scheduled council meetings, and that any outdated information is removed.

Report

- 45 Council for the Municipality of Calvin was provided the opportunity to review a preliminary version of this report and provide comments to my Office. All comments we received were considered in the preparation of this final report.
- 46 In its response, council affirmed its commitment to ensuring compliance with its responsibilities under the *Municipal Act, 2001*. I applaud council's commitment to improving the accountability and transparency of its meeting practices.

- 47 This report will be published on my Office's website, and should also be made public by the Municipality of Calvin. In accordance with s. 239.2(12) of the *Municipal Act, 2001*, council is required to pass a resolution stating how it intends to address this report.



Paul Dubé
Ombudsman of Ontario

Ce rapport est aussi disponible en français