



Ombudsman Report

**Investigation into a complaint about the meetings of the
Baconfest Committee, Finance Working Group, and Policy
Working Group of the Township of Lucan Biddulph**

**Paul Dubé
Ontario Ombudsman
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Complaint

- 1 My Office received a complaint regarding meetings held by three bodies created by council for the Township of Lucan Biddulph (the “Township”): the “Baconfest Committee”, “Budget working group”, and “Policy working group”. The complainant alleged that these bodies held meetings contrary to the *Municipal Act, 2001*, because public notice was not provided and minutes were not kept.

Ombudsman jurisdiction

- 2 Under the *Municipal Act, 2001* (the “Act”),¹ 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, the Act gives anyone the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public. Municipalities may appoint their own investigator. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 4 I am the closed meeting investigator for the Township of Lucan Biddulph.
- 5 In investigating closed meeting complaints, I consider whether the open meeting requirements of the Act and the municipality’s governing procedures have been observed.
- 6 My 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 my previous decisions can be found in the digest: www.ombudsman.on.ca/digest.

¹ SO 2001, c 25.

Investigative process

- 7 On February 19, 2021, my Office advised the Township that we would investigate this complaint.
- 8 The complaint in this case alleged that the three bodies did not comply with the open meeting rules generally, rather than in relation to specific meetings. In a similar investigation into the Ad Hoc Committee of the Town of Goderich's Recreation Board of Management, the Ombudsman investigated whether that committee was subject to the open meeting rules.² In this case, our review focused on whether the Baconfest Committee is subject to the Act's open meeting requirements, as both the policy and budget working groups had already been disbanded by the time our investigation began.
- 9 Members of my Office's open meeting team reviewed relevant portions of the Township's procedure by-law and the Act. We reviewed council meeting agendas and minutes, and other relevant documents.
- 10 We also interviewed all members of council and the Chief Administrative Officer/Clerk.
- 11 My Office received full co-operation in this matter.

Procedure by-law

- 12 Section 238(2) of the *Municipal Act* requires municipalities to pass a procedure by-law that governs the calling, place, and proceedings of meetings. The Township has passed By-law No. 61-2013 (the "procedure by-law").
- 13 Section 6.1 of the procedure by-law applies the open meeting requirements in s. 239 of the *Municipal Act* to all of the Township's meetings, including meetings of committees.
- 14 The by-law provides a broad definition of committee, namely that a "committee" is "a committee established by council".³ It does not provide for the creation of "working groups". The Township therefore applies the open meeting rules from s. 239 of the *Municipal Act* to any body that is a committee established by council.

² *Goderich (Town of) (Re)*, 2016 ONOMBUD 16 (CanLII), <<https://canlii.ca/t/h2st1>>.

³ Township of Lucan Biddulph, by-law No. 61-2013, *By-law to govern the proceedings of the Council, the conduct of its members and the calling of meetings* (4 December 2013), s 1.

- 15 The procedure by-law requires that public notice of meetings be posted on the Township's website at the beginning of the calendar year, and that agendas be posted where possible.⁴

The Baconfest Committee

- 16 My Office was told that the Baconfest Committee co-ordinates the annual Lucan Baconfest event. This body was formed when a private event grew into a larger community effort, and the Township formalized a committee through which it provides funding and helps co-ordinate the event's activities. In addition to generally co-ordinating efforts between community groups, the Baconfest Committee is provided a budget by council, determines how to spend that budget, and makes requests to council for budget increases and provincial road closure applications.
- 17 The membership of the committee is set out in the Township's 2019 and 2021 appointments by-laws. For 2021, the Baconfest Committee is composed of the Mayor, the Township's Economic Development & Communications Officer, and nine members of the public, including local business owners and community group representatives.
- 18 During my Office's inquiries, we were told that the Baconfest Committee usually meets three to five times throughout the year. The Baconfest event was cancelled in 2020 and 2021 due to the COVID-19 pandemic, and so the committee met less frequently.
- 19 The Township does not have a dedicated webpage for the Baconfest Committee and does not list its meetings on the same page as council and other committee meetings. Although the Township posted various updates about the status of the Baconfest event during the pandemic on the Township's Facebook page, it did not provide information about Baconfest Committee meetings.
- 20 While those interviewed told us they thought that past meetings had been open to the public, we did not find evidence that the public was provided with notice of meetings, with the exception of a meeting on March 18, 2021.
- 21 Similarly, although some interviewees thought that notes were taken during meetings, we found no evidence that the committee recorded meeting minutes or that such minutes were retained in the municipality's records.

⁴ *Ibid*, s 5.1.

Analysis

The definition of a “committee”

- 22** Section 238(1) of the *Municipal Act* defines a “committee” as any advisory or other committee, subcommittee or similar entity of which at least 50% of the members are also members of one or more councils or local boards. In addition, my Office has previously found that a body may also be subject to the open meeting requirements if it is a committee as defined in the municipality’s procedure by-law,⁵ or is considered by the municipality to be a committee.⁶
- 23** In assessing if a body can be considered a committee, my Office also considers its role and function, as the Act defines committee as an advisory or other committee or similar entity. My Office has found that a body that exercises delegated authority from council to make decisions or recommendations is likely to be a committee.⁷ A body is not likely to be a committee if it serves an administrative purpose, merely exchanges information, or advances previously decided positions.⁸

The Baconfest Committee

- 24** The Baconfest Committee’s composition does not meet the definition of committee under the Act, as the Mayor is the only member of council out of 11 members. However, the committee was formally established as a committee of council in the Township’s appointments by-law.
- 25** The Baconfest Committee also functions as a committee of council. It is provided with a budget by council and makes spending decisions regarding the event within that budget. It also makes recommendations to council regarding Baconfest, including with respect to its budget and applying to the province for road closures during the event.
- 26** The Baconfest Committee is a “committee” subject to the open meeting rules.

⁵ *Niagara (Regional Municipality of) (Re)*, 2015 ONOMBUD 37 (CanLII), <<https://canlii.ca/t/gtp7n>>; *Hamilton (City of) (Re)*, 2021 ONOMBUD 9 (CanLII), <<https://canlii.ca/t/jfj02>>.

⁶ *Hornepayne (Township of) (Re)*, 2016 ONOMBUD 20 (CanLII), <<https://canlii.ca/t/h2st9>>.

⁷ *West Parry Sound (Heads of Council in) (Re)*, 2015 ONOMBUD (CanLII), <<https://canlii.ca/t/gtp7q>>.

⁸ *Hamilton (City of) (Re)*, 2014 ONOMBUD 11 (CanLII), <<https://canlii.ca/t/gtmh8>>; *West Parry Sound (Heads of Council in) (Re)*, 2015 ONOMBUD (CanLII), <<https://canlii.ca/t/gtp7q>>; *Deep River (Town of) (Re)*, 2017 ONOMBUD 17 (CanLII), <<https://canlii.ca/t/hqspf>>.

- 27** My Office’s review found no evidence that the Baconfest Committee regularly complies with the open meeting requirements. No notices, agendas, or minutes were posted on the Township’s website, with the exception of notice of one meeting in March 2021. Those we spoke with did not provide any evidence of notice provided to the public or of minutes taken by the committee.
- 28** As a committee of council, the Baconfest Committee is obligated to comply with the *Municipal Act’s* open meeting requirements, including providing notice of its meetings and keeping a record of its discussion and decisions.

The working groups

- 29** My Office also received a complaint regarding the meeting practices of two “working groups” that previously existed in the Township.
- 30** We were told the Budget working group emerged several years ago as an informal body that provided an opportunity for members of council and staff to work together during the yearly budget cycle. We were told that the Budget working group did not hold formal meetings. Instead, its gatherings were meant to give council members an opportunity to ask questions and provide comments on the draft budget directly to staff before the budget was presented formally to council.
- 31** As an informal body, the Budget working group did not have clear operating policies or procedures, and its membership appears to have included the relevant staff for various budget items on an as-needed basis. Although meeting notices were provided for two meetings of the Budget working group in 2020, we were unable to find notice of its earlier meetings and no agendas or meeting minutes were posted publicly.
- 32** Our investigation indicated that the Policy working group was set up in 2019 as an informal committee that allowed members of council to ask questions of staff and provide input while the Township reviewed and updated its human resources policies. The Policy working group did not operate as a formal committee, but provided a venue for council members to ensure that staff were reviewing policies in a timely manner and in accordance with council’s priorities.
- 33** Although initially conceived of as a committee, the Policy working group did not have clear operating policies or procedures. Its membership included the Mayor and Deputy Mayor with various staff participating depending on the policy under consideration. We found no evidence that public meeting notice was provided, and there are no agendas or meeting minutes posted on the Township’s website.

- 34 We were told that both of these working groups were dissolved prior to my Office's investigation after the Township received governance training in January 2021. According to those we spoke with, the Budget working group was replaced with a formal Finance Committee. We were told the Policy working group was dissolved and not replaced.
- 35 I applaud the Township for taking these proactive steps to review and improve its meeting and governance practices.

Opinion

- 36 The Township of Lucan Biddulph's Baconfest Committee contravened the *Municipal Act* and the Township's procedure by-law by holding meetings that did not comply with the open meeting requirements, including by failing to provide public notice of meetings and to record meeting minutes.
- 37 In dissolving the Budget and Policy working groups, the Township of Lucan Biddulph has taken positive steps to address issues with the meeting practices of these former bodies. I encourage the municipality to ensure that future committees operate consistently with the open meeting requirements under the Act and the Township's procedure by-law.

Recommendations

- 38 I am making the following recommendations to assist the Township of Lucan Biddulph in adhering to the open meeting requirements of the Act and its own procedure by-law, and to improve its procedures and practices related to meetings of committees:

Recommendation 1

All members of council for the Township of Lucan Biddulph 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 own procedure by-law.

Recommendation 2


The Township of Lucan Biddulph should ensure that all committees are formally established by by-law, in order to clarify their obligation to comply with the open meeting rules.

Recommendation 3

The Township of Lucan Biddulph should ensure that all meetings of the Baconfest Committee comply with the open meeting requirements set out in the *Municipal Act* and the Township's procedure by-law.

Report

- 39 Council for the Township of Lucan Biddulph was given the opportunity to review a preliminary version of this report and provide comments to my Office. Due to the restrictions in place related to COVID-19, some adjustments were made to our normal preliminary review process and we thank council and staff for their co-operation and flexibility.
- 40 In its response, council committed to implementing the report's three recommendations going forward, and I applaud the municipality's commitment to improving its meeting practices. All comments we received were considered in the preparation of this final report.
- 41 This report will be published on my Office's website, and should be made public by the Township of Lucan Biddulph as well. 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