

## BY E-MAIL

February 9, 2023

Saugeen Municipal Airport Commission  
c/o Dave Hocking, Chair  
34 Saugeen Airport Road  
Walkerton ON N0G 2V0

Dear Members of the Saugeen Municipal Airport Commission:

### **Re: Closed meeting complaint**

My Office received a complaint that a meeting held by the Saugeen Municipal Airport Commission (the “Commission”) on June 20, 2022 contravened the *Municipal Act, 2001*<sup>1</sup> (the “Act”). The complainant alleged that they were not admitted to the meeting, which was held virtually over Zoom.

For the reasons set out below, I am satisfied on a balance of probabilities that the Saugeen Municipal Airport Commission did not contravene the *Municipal Act, 2001* on June 20, 2022.

### **Ombudsman’s role and authority**

As of January 1, 2008, the *Municipal Act, 2001* 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. Municipalities and local boards may appoint their own investigator, but the Act designates the Ombudsman as the default investigator for municipalities and local boards that have not appointed their own. My Office is the closed meeting investigator for the Saugeen Municipal Airport Commission.

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<sup>1</sup> SO 2001, c 25.



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 the Ombudsman's previous decisions can be found in the digest: [www.ombudsman.on.ca/digest](http://www.ombudsman.on.ca/digest).

## Review

My Office reviewed the minutes from the June 20, 2022 open meeting as well as the agenda containing the public notice. My Office also reviewed agendas containing the public notices for preceding and subsequent Commission meetings. Finally, we made enquiries with the then-Chair, the then-Vice Chair, and the recording secretary of the Commission to obtain further information about the complaint.

## The Saugeen Municipal Airport Commission

The Saugeen Municipal Airport was incorporated in 1990 by municipalities in Grey and Bruce Counties for the purpose of operating a regional airport. It was established through an agreement, which indicates that the airport is a joint municipal service board. Today, the airport is operated with the support of the Municipality of Brockton, the Town of Hanover, and the Municipality of West Grey.

The Saugeen Municipal Airport is governed by a Commission composed of five to seven members. Each of the participating municipalities appoints one member to the Commission and additional citizen members are also nominated to serve as Commissioners. The Commission is currently composed of six members, including three municipal councillors.

The *Municipal Act, 2001* defines a "local board" as including "a municipal service board." Two or more municipalities may enter into agreements to establish a joint municipal service board to manage and provide services as each municipality considers appropriate. Municipal service boards are deemed to be local boards by section 197 of the Act.

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The Act, at section 70, authorizes a municipality to establish and operate an airport. As such, the Commission is a local board exercising powers under the Act with respect to the affairs of the participating municipalities and is subject to the open meeting rules under the Act.

### **June 20, 2022 meeting**

The Commission posted public notice of the June 20, 2022 meeting ahead of time and included an electronic link to access it. The Commission told us that, for operational reasons, the Zoom link for the June 20, 2022 meeting was different from the usual Zoom link used by the Commission for its virtual meetings. This new Zoom link was provided in the public notice.

The Commission met virtually at 9 p.m. on June 20, 2022 for a special meeting over Zoom. The meeting was called to order by the then-Vice Chair at 9:04 p.m. We were told that no members of the public were present to observe the meeting.

The Commission immediately proceeded into closed session at 9:05 p.m. to discuss an identifiable individual. It came back to open session at 9:44 p.m. to give directions to staff and confirm proceedings. The meeting was adjourned at 9:47 p.m. The complaint did not raise any concerns with respect to the closed session discussions.

The complainant alleged that they repeatedly tried to join the open portion of the meeting via Zoom between 8:55 and 9:15 p.m. They told us that, after attempting to be admitted to the Zoom meeting using a computer, a mobile phone, and a tablet, they abandoned the attempt and were not able to observe any portion of the meeting. The complainant told us they did not attempt to contact the Commission during the meeting about the problem they were encountering.

The then-Chair and then-Vice Chair confirmed that at no time did they see anyone waiting online to be admitted to the Zoom meeting during the meeting on June 20, 2022. The recording secretary, who was administering the Zoom meeting in question, also confirmed that there was no one in the virtual waiting room waiting to be admitted.

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Both the then-Chair and then-Vice Chair suggested that the complainant might have used the wrong Zoom link, since the link used for this particular meeting was not the same as the one used by the Commission in the past. They said that if someone tried to use the link provided for previous Commission meetings, they would not have been able to access the meeting on June 20, 2022. When this possibility was suggested to the complainant, they told us that they believe they used the correct link.

## Analysis

Subsection 239(1) of the Act requires that all meetings of a municipal council and local board be open to the public, subject to prescribed exceptions. As indicated by the Supreme Court of Canada in *London (City) v. RSJ Holdings Inc.*, the open meeting requirements set out in the Act demonstrate that the public has “the right to observe municipal government in process.”<sup>2</sup>

Municipalities and local boards must provide notice of the time and place of the meeting, and then proceed to meet at the time and place specified in the notice.<sup>3</sup> Where a meeting is taking place electronically, the place is virtual. Notice of the place is effected by publishing the procedure to observe the meeting electronically, including the link.

In this case, public notice was included in the agenda for the June 20, 2022 meeting, which stated the date, time, and Zoom information to observe the meeting. Different options were provided to join the Zoom meeting: a web link, a meeting ID and password, or a phone number to dial in.

The Commission followed its procedure by posting public notice with the date, time, and Zoom information to observe the meeting.

The Commission maintains that there was no message indicating anyone was waiting online to be admitted to the June 20, 2022 meeting. The complainant maintains that they were waiting to be admitted to the meeting using what they believed to be the correct Zoom link (i.e., the same Zoom link used by members of the Commission).

<sup>2</sup> *London (City) v. RSJ Holdings Inc.*, 2007 SCC 29, at para 32.

<sup>3</sup> *Russell (Township of) (Re)*, 2020 ONOMBUD 1 at para 41, online: <<https://canlii.ca/t/j6n2t>>.

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On a balance of probabilities, I am satisfied that the Saugeen Municipal Airport Commission did not contravene the *Municipal Act, 2001* on June 20, 2022. However, I encourage the Commission to continue to be vigilant when it conducts meetings virtually to ensure that public access to its meetings is not impeded.

As a best practice, the Commission may want to call extra attention to any changes in access instructions when publishing a meeting notice, such as by noting when an access link has changed. The Commission should also consider including a phone number on the public notice for assistance in case a member of the public experiences technical difficulties when attempting to access or observe a Commission meeting.

## Conclusion

The Saugeen Municipal Airport Commission did not contravene the *Municipal Act, 2001* on June 20, 2022. I thank the Commission for its co-operation during my review. The current Chair has confirmed that this letter will be included as correspondence at an upcoming Commission meeting.

Sincerely,



Paul Dubé  
Ombudsman of Ontario

Cc: Catherine McKay, Recording Secretary, Saugeen Municipal Airport Commission

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