



## **Ombudsman Report**

**Investigation into the closed meeting held by the  
City of Cornwall  
on September 19, 2017**

**Paul Dubé  
Ombudsman of Ontario  
December 2017**

## Complaint

- 1 Our Office received a complaint alleging that council for the City of Cornwall inappropriately met with council for the Township of South Glengarry in closed session on September 19, 2017, to discuss the Cornwall Regional Airport. The complainant alleged that council for the City of Cornwall discussed matters and provided directions to staff that did not fit within the cited “personal matters” closed meeting exception in the *Municipal Act, 2001*.

## Ombudsman jurisdiction

- 2 Under the *Municipal Act, 2001*, all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 3 The Act gives citizens 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 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 The Ombudsman is the closed meeting investigator for the City of Cornwall, but is not the closed meeting investigator for the Township of South Glengarry, which has appointed Local Authority Services for this function. Although the councils met jointly on September 19, 2017, the Ombudsman does not have authority to investigate the closed meeting practices of the Township of South Glengarry, and this report only considers whether council for the City of Cornwall complied with the *Municipal Act* and its procedure by-law.
- 5 When investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality’s procedure by-law have been observed.

## Investigative process

- 6 On September 26, 2017, our Office advised the City of Cornwall of our intent to investigate this complaint.
- 7 We reviewed relevant portions of the municipality’s procedure by-law and

the Act, as well as the meeting agenda and open/closed meeting minutes from the September 19, 2017 meeting. We also reviewed a video recording of the closed session discussion and interviewed the Clerk for the City of Cornwall. In addition, we reviewed the Cornwall Regional Airport Business Plan discussed during the open session and a confidential addendum to the report that was considered in closed session.

- 8 We received full co-operation with our investigation.

## Council procedures

- 9 The City of Cornwall's procedure by-law<sup>1</sup> states that, subject to the exceptions set out in s. 239 of the *Municipal Act* and the procedure by-law, all meetings of council and committees shall be open to the public. Prior to proceeding to closed session (in camera), council must pass a resolution stating the purpose of the closed meeting and the general nature of the matter to be considered.<sup>2</sup>
- 10 Section 4.13 of the by-law provides that closed meetings "shall be recorded without note or comment on all resolutions, decisions and other proceedings."

## Background regarding Cornwall Regional Airport

- 11 According to a report prepared by Raymond Chabot Grant Thornton LLP, a consultant hired to assess the airport's development opportunities, the Cornwall Regional Airport is jointly owned by the City of Cornwall and the Township of South Glengarry.<sup>3</sup> The Cornwall Regional Airport Commission manages the airport and consists of members appointed from both municipalities. According to Cornwall's Clerk, each municipality has historically appointed one council member and two lay members to serve on the commission's six-member board.

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<sup>1</sup> City of Cornwall, by-law 2012-058, *A By-law to govern the proceedings of the council of the Corporation of the City of Cornwall*, online: <<http://www.cornwall.ca/en/cao/resources/By-law-2012-058-Procedural-By-law-with-Amendments.pdf>>.

<sup>2</sup> *Ibid* at s 4.11.

<sup>3</sup> *Cornwall Regional Airport: Development Opportunity Assessment*, Raymond Chabot Grant Thornton LLP (June 2017), online: <[http://mail.cornwall.ca/Active/Development/egenda.nsf/965d04e85bb82eb4852573ae007b4532/773c182fbbdc877f852581990048b913/\\$FILE/2017-10\\_Appendix%20A\\_Cornwall%20Regional%20Airport%20Development%20Plan%20-%20Report%20\\_FINAL.pdf](http://mail.cornwall.ca/Active/Development/egenda.nsf/965d04e85bb82eb4852573ae007b4532/773c182fbbdc877f852581990048b913/$FILE/2017-10_Appendix%20A_Cornwall%20Regional%20Airport%20Development%20Plan%20-%20Report%20_FINAL.pdf)>.

- 12 The City of Cornwall and the Township of South Glengarry subsidize the airport's operation, and according to Cornwall's Clerk, there has been growing concern about the amount that each municipality contributes and the value that the airport brings to the community. Currently, the City of Cornwall pays 85 percent of the subsidy while the Township of South Glengarry pays 15 percent.
- 13 The Commission contracts with an airport tenant – Cornwall Aviation – to provide airport management services. The airport manager is an employee of Cornwall Aviation.

## **September 19, 2017 special council meeting**

- 14 On September 19, 2017, at 6:00 p.m., council for the City of Cornwall met in the Cornwall Civic Complex for an open special joint meeting with council for the Township of South Glengarry. Both municipalities treated the meeting as a special meeting of their own council and followed their typical meeting procedures (i.e. each provided notice, passed separate resolutions, and recorded separate meeting minutes).
- 15 According to our discussion with Cornwall's Clerk and a review of the meeting materials, the consultant presented a report to council regarding development opportunities for the Cornwall Regional Airport. The report, which was included in the meeting agenda, began by providing a history of the airport, its operations, and the current challenges it faces. Of note, the report identified "major governance and management issues" that have negatively affected the commission's credibility and effectiveness. The report also analyzed other regional airports in Ontario and identified opportunities the Cornwall Regional Airport may wish to pursue. The report concluded with various recommendations to address the airport's short-term priorities.
- 16 Following the presentation and resulting discussion, council for the City of Cornwall resolved to:

"direct Administration to prepare a path to developing a short term action plan and for the [Chief Administrative Officers] of both Municipalities to report back to Council after having taken sufficient time to consider the matter based on the recommendations contained in this report."
- 17 According to the open meeting minutes, council then resolved to proceed in camera at 8:10 p.m. to address a matter pertaining to "personal matters about an identifiable individual, including municipal or local board

employees” under section 239(2)(b) of the *Municipal Act*. Neither the resolution nor the agenda provided additional information about what council intended to discuss during the closed session.

- 18 Once in camera, council considered various issues identified in a confidential report prepared by the consultant as an addendum to the report discussed in open session. The confidential report, which our Office has reviewed, identifies specific members of the airport commission and discusses aspects of their performance and conduct related to airport operations. The report also identifies personal matters about another identifiable individual.
- 19 According to the recording of the closed session, councillors from each municipality were given the opportunity to address the issues raised in the consultant’s report. The resulting discussion focused on specific incidents related to identified individuals from the report and whether the municipality needed to take any steps in response to these issues going forward. The airport commission chair, who is also the Deputy Mayor for the Township of South Glengarry, offered additional information relevant to these matters and responded to questions and concerns raised by other councillors.
- 20 When asked by our Office why council relied on the “personal matters” closed meeting exception, Cornwall’s Clerk advised that council needed to discuss the conduct of commission members and another identified individual and that these discussions were not appropriate for open session consideration.
- 21 At the conclusion of the closed session, council resolved to receive the confidential addendum to the consultant’s report. Council did not pass any other resolutions or directions to staff. Council rose from closed session at 9:25 p.m. and the meeting was immediately adjourned.
- 22 Cornwall’s Clerk told our Office that since this meeting, council for the City of Cornwall appointed two members of council to serve as interim airport commission members. She also indicated that the City of Cornwall was, at the time of the investigation, recruiting two lay members to serve on the commission.

## Analysis

### *Applicability of the “personal matters” exception*

- 23 Council relied on the “personal matters” exception in section 239(2)(b) to discuss matters related to the Cornwall Regional Airport in closed session.

This exception allows council to discuss personal matters about an identifiable individual, including municipal or local board employees, in closed session.

- 24** The Information and Privacy Commissioner of Ontario (IPC) and our Office have determined that this exception does not apply to discussions about council members or employees in their professional capacity. However, discussions about an individual in their official capacity can take on a more personal nature if the individual's conduct is scrutinized.<sup>4</sup>
- 25** The IPC has established a two-part test to distinguish personal information from professional information for the purposes of the open meeting rules:
1. In what context do the names of individuals appear? Is it in a personal or business context?
  2. Is there something about the particular information that, if disclosed, would reveal something of a personal nature about the individual?
- 26** We were told that council relied on the personal matters exception because the performance and conduct of commission members and another individual were discussed. Our review of the confidential report addendum and a recording of the meeting confirm that council talked about aspects of the conduct of commission members and another individual that went beyond their professional roles, such that if the information were disclosed, it would reveal something of a personal nature about the individuals.
- 27** Accordingly, this discussion fit within the exception in section 239(2)(b) of the Act.

*Resolution to proceed in camera*

- 28** The resolution to proceed in camera indicated that council would be discussing "personal matters about an identifiable individual, including municipal or local board employees" under section 239(2)(b) of the *Municipal Act*. Neither the resolution nor the agenda provided additional information about what council intended to discuss during the closed session, although each indicated that the special council meeting related to the Cornwall Regional Airport.
- 29** Section 239(4)(a) of the *Municipal Act* and the City of Cornwall's procedure by-law both require that the resolution to enter closed session

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<sup>4</sup> IPC Order MO-2519 (29 April 2010).

disclose the “the general nature of the matter to be considered”. As noted by the Court of Appeal in *Farber v. Kingston (City)*, “the resolution to go into closed session should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public.”<sup>5</sup>

- 30 In this case, the city’s resolution failed to provide meaningful information to the public about the issue that would be discussed in camera. Council should ensure that future resolutions provide a brief description of the subject matter to be considered in closed session, in addition to the wording of the specific exception(s) being relied upon.

## Opinion

- 31 Council for the City of Cornwall did not contravene the *Municipal Act, 2001*, when it discussed the performance and conduct of identified commission members and another individual in camera. This topic fit within the “personal matters about an identifiable individual” exception to the *Municipal Act’s* open meeting requirements.
- 32 However, the City of Cornwall contravened the requirements of section 239(4)(a) of the Act and its procedure by-law by failing to state the general nature of the matters to be considered in the resolution to proceed in camera.

## Recommendations

- 33 I make the following recommendation to assist council for the City of Cornwall in fulfilling its obligations under the Act and enhancing the transparency of its meetings.

### Recommendation 1

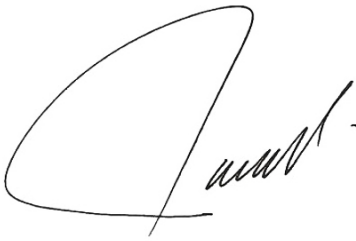
When proceeding in camera, council for the City of Cornwall should pass a resolution that clearly sets out the facts of the closed meeting and the general nature of the matters to be discussed.

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<sup>5</sup> 2007 ONCA 183 at para 21.

## Report

- 34** The City of Cornwall was given the opportunity to review a preliminary version of this report and provide comments. All comments received were considered in the preparation of this final report.
- 35** In its response, council for the City of Cornwall accepted our Office's recommendation and indicated that it will make sure that its resolutions to proceed in camera always include information about the general subject matter of the discussion. Council indicated that it already follows this practice for regular council meetings and said that, in future, it will apply to all council meetings, including special council meetings that only discuss one topic. I commend the City of Cornwall for taking prompt action to respond to my recommendation.
- 36** My report should be shared with council for the City of Cornwall and should be made available to the public as soon as possible, and no later than the next council meeting.



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**Paul Dubé**  
**Ombudsman of Ontario**