



Ombudsman Report

**Investigation into informal gatherings
held by council for the Township of The North Shore
on March 20, 2024, and between March 21
and March 25, 2024**

**Paul Dubé
Ombudsman of Ontario**

January 2025

Complaint

- 1 My Office received a complaint alleging council for the Township of The North Shore (the “Township”) contravened the *Municipal Act, 2001*¹ (the “Act”) by holding an informal meeting immediately following a council meeting on March 20, 2024. The complaint also alleged council held informal meetings in the days following.
- 2 My investigation found that a quorum of council engaged in an informal discussion after a council meeting on March 20, 2024. A quorum of council also participated in discussions over group text message between March 24 and March 25, 2024. However, although these discussions involved a quorum of council, they were not “meetings” subject to the open meeting rules because members did not materially advance the business or decision-making of council.

Ombudsman jurisdiction

- 3 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.
- 4 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.
- 5 The Ombudsman is the closed meeting investigator for the Township of The North Shore.
- 6 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the municipality’s procedure by-law have been observed.
- 7 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.

¹ SO 2001, c 25.

- 8 The Ontario Ombudsman also has the authority to conduct impartial reviews and investigations of hundreds of public sector bodies. This includes municipalities, local boards, and municipally-controlled corporations, as well as provincial government organizations, publicly funded universities, and school boards. In addition, the Ombudsman’s mandate includes reviewing complaints about the services provided by children’s aid societies and residential licensees, and the provision of French language services under the *French Language Services Act*. Read more about the bodies within our jurisdiction here: www.ombudsman.on.ca/have-a-complaint/who-we-oversee.

Investigative process

- 9 On April 11, 2024, my Office advised the Township of our intent to investigate this complaint.
- 10 Members of my Office’s open meeting team reviewed the Township’s procedure by-law and materials from the March 20, 2024 council meeting, including the agenda, minutes, and video recording of the open session. We also obtained and reviewed relevant documents, such as text messages sent between council members. We spoke to the Clerk and interviewed all five members of council.
- 11 My Office received full co-operation during this investigation.

March 20, 2024 council meeting

- 12 On March 20, 2024, at 6:00 p.m., the Township held a regularly scheduled council meeting. The meeting was held in a hybrid format, with two councillors attending electronically via Zoom. The other council members and the Clerk attended the meeting in person in council chambers. The meeting adjourned at 6:31 p.m.
- 13 After the meeting ended, the Clerk and the three council members present in council chambers engaged in a brief discussion.
- 14 Those present told us the entire discussion lasted between five and 10 minutes, and no concrete actions were discussed. The Mayor and the Clerk recalled discussing potentially cancelling an upcoming council meeting on March 25, 2024; however, no decision was made. The other two council members present did not recall this matter being discussed.

Analysis

The discussion after the March 20, 2024 council meeting was not a “meeting” under the Act

- 15 Under section 238(1) of the *Municipal Act, 2001*, a “meeting” is defined as any regular, special or other meeting of a council, of a local board or of a committee of either of them, where “a quorum of members is present, and members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.”²
- 16 The council for the Township of The North Shore is composed of a Mayor and four councillors. Three members of council were present during the discussion following the council meeting on March 20, 2024, constituting a quorum.
- 17 The second part of the test for whether a meeting occurred requires that council materially advance its business or decision-making. My Office has stated that assessing material advancement “involves considering the extent to which the discussions at issue moved forward the business of the municipality, based on factual indicators.”³ Discussions, debates, or decisions intended to lead to specific outcomes or to persuade decision-makers one way or another are likely to “materially advance” the business or decision-making of council, while mere receipt or exchange of information is unlikely to materially advance business.⁴
- 18 In this case, the discussion was brief. Council members did not discuss taking any concrete actions, and the discussion was not related to ongoing council business or decision-making. We were told that the discussion briefly touched on cancelling an upcoming council meeting; however, the council members did not make any decisions about the meeting in question.
- 19 This discussion did not materially advance the business or decision-making of council, and was not a “meeting” for the purpose of the open meeting rules in the Act.

² *Municipal Act, 2001*, SO 2001, c 25, s 238(1).

³ *Casselman (Village of) (Re)*, 2022 ONOMBUD 13 at para 26, online: <<https://canlii.ca/t/jrkx5>>.

⁴ *Ibid.*

Text messages exchanged between March 24 and March 25, 2024

- 20** The complaint alleged that following the March 20, 2024 council meeting, a quorum of council members discussed cancelling upcoming council meetings on March 25, April 2, and April 3, 2024, without complying with the open meeting rules.
- 21** The Mayor told us that he discussed cancelling the March 25, 2024 meeting with one other council member, and separately with the Clerk. On March 21, 2024, the Clerk posted a notice stating that the Mayor had cancelled the meeting originally scheduled for March 25, 2024.
- 22** Between March 24 and March 25, 2024, the Mayor and three council members exchanged group text messages about cancelling the council meetings on April 2 and April 3, 2024. One member of council was not included in this group. On March 24, 2024, the Mayor sent a text message to the group stating that all of council (with the exception of the council member not included in the group text message) was in favour of cancelling the meetings. One councillor responded to the text message, agreeing with the Mayor.
- 23** The following day, the Mayor instructed the Clerk to post a cancellation notice for the April 2 and April 3, 2024 meetings on the Township's website. The Clerk posted a cancellation notice stating that the meetings had been cancelled by the Mayor and council.
- 24** After the cancellation notice was posted online, the Mayor sent another group text to the same three council members stating that he was putting the meetings on hold, and inviting the other council members' thoughts or comments. One councillor replied with questions about the content of the cancellation notice. In a series of text messages following, the Mayor and councillor discussed the cancellation notice.

Analysis

Was a quorum of council members present during the discussions held over group text message between March 24 and March 25, 2024?

- 25 The definition of “meeting” in the Act requires that a quorum of members be present when a meeting occurs.⁵ This case raises the question of whether members are “present” for the purposes of the Act when they exchange electronic written communications, such as text messages.
- 26 Changes to the Act in 2020 permit council members to count towards quorum when participating electronically in meetings.⁶ My Office has determined that for the purposes of an electronic meeting, the meeting “place” is electronic⁷ and that members may be “present” when they come together electronically to discuss and advance business. For example, I have found that council members may be present and count towards quorum if a discussion takes place over videoconference.⁸
- 27 When members of council exchange written electronic communications, such as text messages, they are present in an electronic place, satisfying the presence requirement of the definition of “meeting” under the Act.
- 28 On March 24 and March 25, 2024, four members of council held a discussion over group text message. Since four of the five members of council were included in the group text messages, a quorum of council was present.

The group text messages did not materially advance council business and decision-making

- 29 As noted above, discussions, debates, or decisions intended to lead to specific outcomes or to persuade decision-makers one way or another are likely to “materially advance” the business or decision-making of council, while mere receipt or exchange of information is unlikely to materially advance business.

⁵ *Supra* note 2.

⁶ *Ibid*, ss 238(3.1)–(3.3).

⁷ *McKellar (Township of) (Re)*, 2023 ONOMBUD 3, at para 48, online: <<https://canlii.ca/t/jv6ck>>.

⁸ *Casselman (Municipality of) (Re)*, 2024 ONOMBUD 1, online: <<https://canlii.ca/t/k235v>>.

- 30 According to the Township's procedure by-law, the Mayor can cancel a meeting, in consultation with the Clerk, in specific circumstances, including where the meeting is no longer required.⁹ The procedure by-law does not require that the Mayor consult with council members about the decision to cancel a meeting.
- 31 The Mayor told my Office that he used his authority under the procedure by-law to cancel the meetings, but that it is important councillors have a say in the decisions made. He spoke with some councillors as he preferred to cancel meetings knowing others agreed with his decision.
- 32 As the Mayor is empowered by the procedure by-law to unilaterally cancel meetings, he would have no need to persuade the other councillors or seek their consensus in order to cancel the meetings. In fact, he instructed the Clerk to cancel the meetings without waiting on responses from a majority of councillors. Therefore, the Mayor's group texts regarding cancelling the meetings did not materially advance the business of council.

One-on-one discussions with the Mayor

- 33 On March 21, 2024, the Mayor met one-on-one with a member of council. On March 25 and March 26, 2024, the Mayor exchanged one-on-one text messages with another member of council. As only two members of council participated in each discussion, quorum was not met in either instance. Accordingly, the Mayor's communication with individual council members did not constitute a meeting.
- 34 My Office has always recognized that it is an important part of the democratic process for elected officials to be able to communicate with one another outside of the structure of a formal meeting:

To be clear, the *Municipal Act, 2001* does not create an absolute prohibition against members of council discussing city business outside chambers. It is a healthy thing in a democracy for government officials to share information informally before making policy decisions. I agree that to expect council members never to talk to one another outside of a public meeting is unrealistic and would have the effect of unnecessarily chilling speech.¹⁰

⁹ Township of the North Shore, by-law No 19-13, *Council Procedural By-Law* (1 May 2019), s 4.6.

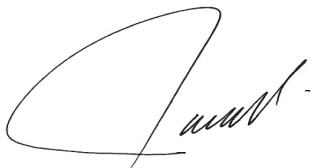
¹⁰ *London (City of) (Re)*, 2013 ONOMBUD 3 at para 25, online: <<https://canlii.ca/t/gtmhj>>.

Opinion

- 35 My investigation found that council for the Township of The North Shore did not contravene the *Municipal Act, 2001*, when a quorum of council held informal discussions in person after the March 20, 2024 council meeting and over group text message on March 24 and March 25, 2024, because council members did not materially advance council business.
- 36 I also found that the one-on-one discussions between the Mayor and individual council members, in person and over text message, did not contravene the Act because a quorum of council was not present.
- 37 While my investigation found that council for the Township of the North Shore did not contravene the *Municipal Act, 2001*, as a best practice, council should be mindful that electronic written communications, such as text messages, involving a quorum of council could be considered a meeting. In future, council should take care when using these communication methods to avoid inadvertently contravening the Act.

Report

- 38 Council for the Township of The North Shore was given the opportunity to review a preliminary version of this report and provide comments to my Office. No comments were received.
- 39 The Clerk indicated that my report would be shared with council and made available to the public at an upcoming council meeting. This report will also be published on our website at www.ombudsman.on.ca.



Paul Dubé
Ombudsman of Ontario

Ce rapport est aussi disponible en français