



Ombudsman Report

**Investigation into a meeting held
by the Finance and Administration Committee
for the City of Elliot Lake on December 18, 2023**

**Paul Dubé
Ombudsman of Ontario**

September 2024

Complaint

- 1 My Office received a complaint about a meeting of the Finance and Administration Committee (the “Committee”) for the City of Elliot Lake (the “City”) on December 18, 2023. The complaint alleged that council’s closed session discussion about procurement practices did not fall within any of the prescribed exceptions in the *Municipal Act, 2001* (the “Act”).¹
- 2 For the reasons set out below, my investigation determined that the Finance and Administration Committee for the City of Elliot Lake contravened the *Municipal Act, 2001* on December 18, 2023, as its discussion did not fit within any of the Act’s closed meeting exceptions.

Ombudsman jurisdiction

- 3 Under the *Municipal Act, 2001*, 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 City of Elliot Lake.
- 6 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the applicable governing procedures 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 15, 2024, my Office advised the City of Elliot Lake of our intent to investigate this complaint.
- 10 We reviewed the City’s procedure by-law², the open and closed meeting agenda packages, the minutes of the meeting, and an audio recording of the closed meeting.
- 11 We interviewed the Chair of the Finance and Administration Committee, the Director of Finance and Treasurer (the “Treasurer”), and the Deputy Clerk & Accessibility Coordinator (the “Deputy Clerk”), who serves as the Committee’s Recording Secretary.
- 12 We received full co-operation in this matter.

The Finance and Administration Committee

- 13 Section 71(1)(a) of the City’s procedure by-law states that the Finance and Administration Committee is a standing committee of council.
- 14 The City’s procedure by-law states that standing committees are “responsible for formulating major and general policies for recommendation to Council”.³
- 15 The Committee is composed of three members of council.⁴

² City of Elliot Lake, By-law No 16-06, *Being a By-law to establish the Procedures of Council and its Committees and to Repeal By-law No. 07-36*, online: <https://www.elliottlake.ca/Modules/Bylaws/Bylaw/Download/3dfd6f00-c8d1-459b-8981-81370464847c>.

³ s 72(1).

⁴ City of Elliot Lake, *2022-2026 Finance and Administration Committee*, online: <https://www.elliottlake.ca/en/resources/2022-26---Finance--Adminstration-Committee.pdf>.

December 18, 2023 meeting

- 16 On Monday, December 18, 2023, beginning at 4:00 p.m., the Finance and Administration Committee held an open meeting in council chambers. According to the open meeting minutes, after discussing other matters in open session, the Committee passed a resolution at 4:31 p.m. to proceed into closed session to receive a presentation from the City's Special Projects Manager titled "Procurement Policy Education and Training." The Committee cited section 239(3.1) of the *Municipal Act* in this resolution, noting that the topic of discussion pertained to "educating and/or training the members of Council."
- 17 According to the closed meeting minutes, all three members of the Committee, as well as two other members of council, attended this meeting. Council was composed of six members at the time. Accordingly, a quorum of both the Committee and council was present. In addition, the Special Projects Manager, the Acting Director of Public Works, the Treasurer, the Deputy Treasurer, and the Deputy Clerk attended this closed session.
- 18 The closed meeting agenda package for this meeting included a draft procurement by-law and slides from a PowerPoint presentation on proposed changes to the City's procurement practices, among other documents.
- 19 At the beginning of the closed meeting, the Treasurer noted that the Special Projects Manager would be providing a presentation to outline potential changes to the municipality's procurement practices.⁵ Interviewees told my Office that a version of the draft procurement by-law is expected to be presented to the Committee for its approval in the future.
- 20 The Committee Chair then asked the Treasurer about the expected timeframe for when the new procurement by-law would be approved and implemented. The Treasurer responded that this would likely occur at the same time as the launch of the City's new enterprise resource planning ("ERP") software.
- 21 The Special Projects Manager subsequently provided the Committee with a presentation on proposed changes to the City's procurement by-law. The Special Projects Manager provided council with an overview of how the new by-law would change the City's procurement processes.

⁵ Under section 270(1) of the *Municipal Act*, a municipality is required to adopt and maintain policies with respect to its procurement of goods and services.

- 22 During the presentation, members of council asked questions and provided feedback on the City’s existing purchasing practices. In answering these questions, the Special Projects Manager reviewed the City’s existing procurement practices, and explained how these practices would change under the new by-law. In addition, council members shared how staff members in general felt about potential changes to the procurement process and discussed how to communicate any changes to staff.
- 23 The Committee Chair asked the Treasurer questions about challenges the City was experiencing in implementing the new enterprise resource planning software, which the Treasurer answered. The actual name of the software was briefly referenced, although the software program was mostly referred to as an “ERP” system.
- 24 The Committee returned to open session at 5:57 p.m. and adjourned the meeting at 5:58 p.m.

Analysis

- 25 Under the Act, all meetings of council, local boards, and committees of either of them must be open to the public, unless they fall within the prescribed exceptions set out in section 239 of the Act.

Applicability of the exception for education or training under the Act

- 26 The resolution to proceed *in camera* cited the exception to the open meeting rules for education or training found in subsection 239(3.1) of the Act. This exception allows a meeting to be closed to the public if it is held for the purpose of “educating or training” members, and if no member discusses or otherwise deals with a matter in a way that materially advances the business or decision-making of the municipality, local board, or committee.
- 27 My Office has previously noted that this exception is to be narrowly construed, and the use of the exception must be carefully scrutinized.⁶ The scope of this exception only includes meetings that are closed to allow council members to receive information that may assist them in better understanding the business of the municipality and/or to acquire skills, rather than “exchange information” on an issue.⁷

⁶ *Brockville (City of)*, 2016 ONOMBUD 12 at para 35 [*Brockville*], online: <<https://canlii.ca/t/h2ssr>>.

⁷ *Casselman (Village of) (Re)*, 2015 ONOMBUD 14 (CanLII) at para 54, online: <<https://canlii.ca/t/gtp61>>.

- 28** In past reports, my Office has found that discussions fit within the exception when the purpose is to provide general information about how to understand certain processes, concepts or documents, rather than to consider the content of a particular proposal in front of council.
- 29** For example, in a report to the Township of Russell, my Office determined that the exception for education or training applied to a meeting where councillors sat in a classroom-like arrangement and were given training on vocabulary and principles related generally to strategic planning. The only references to Russell's own strategic plan were made to illustrate abstract concepts.⁸
- 30** Similarly, a meeting of the City of Brockville fit within the exception when a committee received general information about how to understand the Ontario Provincial Police's costing process, prior to receiving a costing proposal at a later date.⁹ Likewise, I determined that council for the Township of Emo was permitted to receive lecture-style training on how to understand its new budget format, prior to discussing the content of the budget at future open meetings.¹⁰
- 31** Conversely, in a 2014 letter to the Town of Moosonee, my Office determined that a presentation from an employee of the Ministry of Municipal Affairs and Housing regarding the terms and conditions of certain funding agreements did not fit within the "education or training" exception. In that case, after the closed session presentation, council voted to approve the course of action presented by the ministry employee. We noted that the information was not general in nature, and related to matters that directly affected the business of the municipality.¹¹
- 32** In this case in Elliot Lake, the Special Projects Manager provided the Finance and Administration Committee with a presentation on proposed changes to the City's procurement by-law in closed session. Council members asked questions and provided feedback on the City's existing procurement practices. In addition, council members discussed how municipal employees generally felt about proposed changes to the procurement process and how to communicate these changes to staff.

⁸ *Russell (Township of) (Re)*, 2016 ONOMBUD 1 at paras 18-22 and 68, online: <<https://canlii.ca/t/gt6qg>>.

⁹ *Brockville*, *supra* note 7 at para 38.

¹⁰ *Emo (Township of) (Re)*, 2023 ONOMBUD 5 at para 24, online: <<https://canlii.ca/t/jvj4d>>.

¹¹ Letter from the Ombudsman's Office to the Town of Moosonee (9 September 2014), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2014/town-of-moosonee>>; cited in *Brockville*, *supra* note 7 at para 36.

- 33** The presentation went beyond simply providing members of council with information to help them understand the municipality’s business or to acquire new skills. Instead, the presentation involved an exchange of information with respect to the municipality’s draft procurement by-law, a version of which is expected to be presented to the Committee for approval in the future.
- 34** As the purpose of the discussion was not to educate or train council members, the discussion did not fit within the exception for education or training at section 239(3.1).

Exception for personal matters about an identifiable individual

- 35** Although not cited in the resolution to proceed *in camera*, the Deputy Clerk and the Committee Chair said that the presentation was held in closed session because the Committee discussed personal information about identifiable staff members.
- 36** Under section 239(2)(b) of the Act, a meeting or part of a meeting may be closed to the public if the discussion would reveal personal information about an identifiable individual. The exception for personal matters applies to discussions involving information about an individual in their personal capacity, rather than their professional, official or business capacity.¹² However, professional information may qualify if it reveals something of a personal nature about an identifiable individual.¹³
- 37** In this case, council members provided feedback on how staff members in general felt about potential changes to the procurement process and discussed how to communicate any changes to staff. Our review did not identify any instances where individual employees were identified, either by name or by role.
- 38** As the Committee did not discuss personal information about identifiable individuals, the discussion did not fit within the “personal matters” exception.

Exception for security of the property of the municipality

- 39** Although not cited in the resolution to proceed *in camera*, both the Deputy Clerk and the Treasurer told my Office that the municipality could be vulnerable to cyber security threats if the name of its new enterprise resource planning software was made public.

¹² *Elliot Lake (City of) (Re)*, 2024 ONOMBUD 3 at para 29, online: <<https://canlii.ca/t/k2wqr>>.

¹³ *Ibid.*

- 40 Section 239(2)(a) of the Act allows a municipality or local board to discuss “the security of property of the municipality or local board” in closed session. I have previously found that “security of the property of the municipality” should be given its plain meaning: The phrase applies to discussions about the protection of property from loss or damage, and the protection of public safety in relation to that property.¹⁴ This exception may apply to both corporeal and incorporeal property of the municipality.¹⁵
- 41 As noted above, the actual name of the software was briefly referenced during the meeting. Otherwise, the Committee mostly referred to the software as an “ERP” system. Our review did not identify any instances where the Committee discussed protecting the municipality’s property, including its new enterprise resource planning software, from physical loss or damage. As such, the discussion did not fit within the exception for the security of the property of the municipality.

Opinion

- 42 Council for the City of Elliot Lake contravened the *Municipal Act, 2001* on December 18, 2023 when it discussed matters in closed session that did not fit within any of the exceptions to the open meeting rules.

Recommendations

- 43 I make the following recommendations to assist the City of Elliot Lake in fulfilling its obligations under the Act and enhancing the transparency of its meetings:

Recommendation 1

All members of council for the City of Elliot Lake 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*.

Recommendation 2

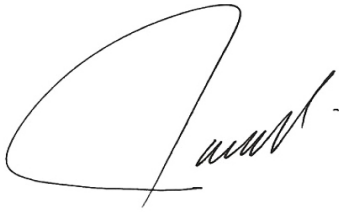
Council for the City of Elliot Lake should ensure that no subject is discussed in a closed session unless it clearly comes within one of the statutory exceptions to the open meeting requirements.

¹⁴ *Amherstburg (Town of) (Re)*, 2018 ONOMBUD 8 at para 43, online: <<https://canlii.ca/t/hvmv1>>. See also: *Port Colborne (City of)*, 2015 ONOMBUD 32 at para 84, online: <<https://canlii.ca/t/gtp7c>>.

¹⁵ *Amherstburg (Town of) (Re)*, 2018 ONOMBUD 8, online: <<https://canlii.ca/t/hvmv1>>.

Report

- 44 Council for the City of Elliot Lake was given 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.
- 45 This report will be published on my Office's website, and should also be made public by the City of Elliot Lake. 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.



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