



Ombudsman Report

**Investigation into whether
Council for the City of Clarence-Rockland
held illegal closed meetings on
August 27 and September 15, 2014**

“Access Denied”

**André Marin
Ombudsman of Ontario
December 2014**

Complaint

- 1 My Office received more than 20 complaints about a meeting held by council for the City of Clarence-Rockland on August 27, 2014. The complainants alleged that the Mayor unilaterally decided to move a public meeting from council chambers to a small conference room in the basement, resulting in members of the public being excluded from the meeting.
- 2 We also received three complaints about a council meeting on September 15, 2014. The complainants claimed that the meeting was illegally closed to the public because there was insufficient room to accommodate all the residents who wished to attend.

Ombudsman jurisdiction

- 3 Under the *Municipal Act, 2001* (the Act), all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 4 As of January 1, 2008, changes to the Act give citizens the right to request an investigation into whether a City has properly closed 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.
- 5 My Office is the closed meeting investigator for the City of Clarence-Rockland.
- 6 In investigating closed meeting complaints, I consider whether the open meeting requirements of the Act and the relevant municipal procedure by-law have been observed.

The 2014 municipal election

- 7 The municipal election was held on October 27, 2014, while our investigation was ongoing. The Mayor of Clarence-Rockland, Marcel Guibord, was defeated in that election by former councillor Guy Desjardins. Only one other member of the council was re-elected.
- 8 In this report, all mentions of the Mayor and council refer to the council as it stood prior to October 27.

Investigative process

- 9 On September 29, 2014, members of my Office's Open Meeting Law Enforcement Team (OMLET) notified the city that we would be investigating the complaints.
- 10 We considered the meeting documents, including the meeting minutes and the video recording of the meetings, as well as the city's procedure by-law and relevant sections of the Act. We also spoke with the Mayor and staff, the Commander of the Russell detachment of the Ontario Provincial Police (OPP), and representatives of a local development company.
- 11 Members of council and staff co-operated fully with our investigation.

Procedure by-law

- 12 The City's procedure by-law (2012-165) states that regular council meetings are held on the third Monday of each month at 7:15 p.m.
- 13 At the time of the August 27, 2014 meeting, the by-law provided that council meetings were to be held in council chambers at 1560 Laurier St. in Rockland, unless otherwise decided by a majority of council. In extenuating circumstances, the Mayor could decide on his own to hold the meeting elsewhere. At its September 15 meeting, council amended the procedure by-law, eliminating reference to the address of the council chamber.
- 14 The *Municipal Act, 2001* provides that the head of council or other presiding officer may expel any person for improper conduct at a meeting (s. 241(2)). The city's procedure by-law governing meetings confirms that the Mayor is responsible for enforcing the procedural rules, maintaining order and decorum, and may order anyone to vacate council chambers for making personal impertinent, slanderous and profane comments or remarks or for using offensive or abusive language. If it is impossible to maintain order, the Mayor may adjourn the meeting to another time.

Background: Disturbances at council meetings

- 15 According to city staff, in the last several years there have been many situations during council meetings when members of the public or council members have been extremely vocal and verbally aggressive. The city's Director of By-law Enforcement mentioned that by-law or OPP officers have had to warn some

individuals about maintaining decorum during council meetings. As a result of disruptive conduct, some meetings have been adjourned, while in other cases several councillors have left meetings early in frustration.

- 16** In addition, the Mayor and the Clerk both told us that occasionally members of city staff have expressed fear for their safety during meetings, especially as they sit with their backs to the public gallery.
- 17** We were also told that several discussions had taken place amongst council, city staff and the police to address strategies for dealing with disruptive situations. The city consequently developed an internal policy outlining the role of by-law enforcement officers during council meetings. Internal Operational Guideline Number REG2014-01-INT, prepared February 10, 2014, includes the direction:

During the council session, the officer is required to make an assessment of any situation that may be of a disturbance to the proper continuance of the session and keeping in mind safety issues prior to getting involved:

- discretely advise any individuals causing a disturbance to obey rules of Council;
- anyone refusing to comply shall be advise to leave the session voluntarily;
- failure to obtain a voluntary compliance by an individual(s) to leave the session, officer shall advise individual that Police will be notified to have him removed from the room;
- failure to obtain compliance at this stage, officer to request police to attend.

- 18** The Acting Chief Administrative Officer told us that the city could issue “no trespass” notices to unruly individuals, but has never done so. The Clerk suggested that adjourning a meeting is not a real solution, but the city has no other effective means of ensuring security during meetings.

The August 27 special council meeting

- 19** The August 27 meeting was a special open meeting, scheduled to take place in council chambers to hear outstanding matters from an August 18 meeting, which was adjourned because of disruptive conduct.
- 20** Our review of the video recording of the August 27 meeting revealed that a verbal altercation erupted between the Mayor and a councillor during a public question-

and-answer session, when the councillor asked about the adjournment of the August 18 meeting. The councillor accused the Mayor of being a dictator, stating: “*Vous êtes un dictateur, monsieur le Maire*” Throughout the exchange, some members of the public became increasingly agitated and noisy. The Mayor called for a recess, and asked the council member to leave.

- 21** The meeting was recessed from 7:41 p.m. to 8:11 p.m. There is no video recording confirming what took place during the recess. However, the Mayor explained that he left council chambers and talked to some councillors and the Clerk about how to proceed. One of the options considered was moving the meeting to another room.
- 22** The Mayor explained that since the August 18 meeting had been prematurely adjourned, there were many items on the August 27 agenda that had to be addressed. The Acting Chief Administrative Officer told us that some agenda items were pressing, especially given the looming municipal election. The Clerk also confirmed that, as staff had few delegated authorities, a further adjournment would not have been in the best interests of the city.
- 23** A city by-law enforcement officer told us that, during the course of the meeting, the Mayor asked him to call the OPP. The Mayor told us that, during the recess, he spoke with the OPP officer who arrived in response to the call. The OPP officer explained to the Mayor that he could not intervene unless there was an imminent threat to public safety. The Commander of the OPP Russell Detachment told us that the OPP was called to the August 27 meeting because there was a request to remove someone who was causing a disturbance, but the officer did not remove anyone because there was no threat to public safety.
- 24** The city by-law enforcement officer explained that during the meeting recess, he and the OPP officer spoke with the disruptive councillor in an attempt to encourage him to either leave voluntarily or apologize to the Mayor for his behaviour. The Clerk told us she also spoke briefly with the councillor and tried to persuade him to apologize.
- 25** The video shows that when the meeting resumed, the Mayor requested an apology from the councillor. The Mayor cautioned that if the councillor did not apologize, everyone would be asked to leave the room. The councillor refused to apologize or to leave the meeting.
- 26** The Mayor later told us that his intention in recessing the meeting was to give everyone a chance to calm down, but when the meeting resumed, it became clear that the meeting could not continue with this councillor and the disruptive

members of the public present. The Mayor then directed that council move the meeting to the conference room in the basement. The meeting recessed from 8:13 p.m. to 8:31 p.m., while the council (other than the disruptive councillor) and city staff moved to the basement. The Mayor invited the video crew from a local television station to attend the meeting in the conference room. Some other members of the media also joined the meeting once it resumed.

- 27** The by-law enforcement officer told us that the basement conference room was too small to accommodate all those who had been in council chambers. He explained that one or two members of the public attempted to enter the room, but they had to be turned away due to the lack of space. The rest of the assembled crowd eventually dispersed. The Acting Chief Administrative Officer explained that there was some discussion of having a live video feed set up in another room, but that this was not technically feasible in the circumstances.
- 28** The meeting continued in the basement until 9:37 p.m. The video recording of the entire meeting was subsequently posted online.
- 29** On September 4, 2014, the city issued a press release on its website, entitled “Legality of August 27, 2014 Special Meeting.” The press release stated that due to a “loss of decorum,” the meeting had to be moved in accordance with the procedure by-law. It also indicated that two members of the public were present in the conference room after the meeting moved. My investigators later confirmed that at least one of the members of the public who were referred to in the press release was, in fact, a member of the media. The Mayor also told our Office that, at the time of the meeting, both individuals identified themselves as members of the media.
- 30** The Clerk was emphatic that the decision to move the meeting was valid under the circumstances, that the meeting was open, and that there had been no attempt to hide anything from the public.

Analysis

- 31** The right of citizens to attend public meetings and view council proceedings in action is a longstanding one, and is the foundation of the municipal open meeting requirements. As noted by the Supreme Court of Canada in *London (City) v. RSJ Holdings Inc.*¹, the open meeting requirements set out in the *Municipal Act* demonstrate that the public has “the right to observe municipal government in process” (emphasis added). This right was frustrated by the Mayor’s decision to

¹ *London (City) v. RSJ Holdings Inc.*, [2007] 2 S.C.R. 588, 2007 SCC 29 at paragraph 32

move the meeting to a location that proved inaccessible to the public. By excluding members of the public from the meeting in this manner, the city effectively turned it into a closed session. The desire to have the meeting continue without disruptions should not have taken precedence over the public's right to view the proceedings during an open council session

- 32** The fact that a video of the session was available for viewing some time later does not make up for the fact that the public was effectively barred from attending while council business was being transacted. If this were sufficient to allow council to meet its open meeting obligations, municipal meetings could take place at any time behind closed doors, as long as a recording was available for public viewing at a later date. This was clearly not the intention of the framers of the open meeting requirements.
- 33** The Mayor does have the authority under the *Municipal Act* and the city's procedure by-law to control improper conduct during meetings, including ejecting disruptive individuals if necessary. In this case, the Mayor was of the opinion that there was no option other than to move the meeting to a private room. The police officer who attended the meeting, however, did not view the situation as being hazardous to public safety and did not consider it necessary to remove anyone from the meeting.
- 34** The evidence does not support that moving the meeting to a location where the public could not attend was the only viable option. In doing so, the Mayor failed to fully consider the implications of the open meeting law and the right of the public to attend the open council meeting.

The September 15 meeting

- 35** Two of the items on the agenda for the 7:15 p.m. September 15, 2014 council meeting concerned a controversial 16-storey building in Rockland. Just prior to the council meeting, commencing at 6:00 p.m., the building developer held a public information session on the project in council chambers. The session had been advertised in the local *Focus* newsletter.
- 36** According to a representative for the developer, because space in council chambers was limited, priority was given to the approximately 40 people who contacted the developer in advance of the meeting and expressed interest in seeing the presentation. Others who arrived at the meeting but had not contacted the developer in advance had to wait until those who had confirmed attendance arrived. The developer was responsible for controlling access to the meeting, and gave priority to members of the public who had not already seen the presentation at a

September 3 Planning Committee meeting.

- 37** City staff informed us that council chambers can be reserved for meetings by private parties. However, having a private meeting booked immediately prior to a meeting of council is not common.
- 38** The developer's information session ended at 6:55 p.m. and a by-law officer took over control of the room. Some members of the public who attended the information session stayed for the council meeting. The council chamber has the capacity to hold 67 people. The by-law officer informed several people who had not attended the information session but were waiting to attend the council meeting that they could not enter the chambers because the room was full. Only if someone already in the chambers left could another person enter. We were unable to confirm how many people were turned away.
- 39** City staff told us that, under the circumstances, it was not possible to set up additional rooms for the public to view council's proceedings remotely (e.g., by live video feed) in real time. The city's meetings are video recorded, but it does not have a live feed available; the community television station that records the meetings makes videos available on its website a day or two after each meeting.
- 40** The individuals who complained to our Office alleged that the developer deliberately booked the information session prior to the council meeting, to ensure that only those who supported the development project would be present when council considered the items relating to the project. My Office does not have the authority to consider the conduct of private persons, such as the developer. My focus is on whether or not the municipality breached the open meeting law.

Analysis

- 41** The September 15 council meeting was open to the public, but some who wished to attend were excluded due to limits on the capacity of the council chamber. This situation is different from the circumstances of August 27, when the Mayor moved the meeting out of council chambers to a small conference room, excluding all members of the general public from attending.
- 42** In this case, it was alleged that the developer's meeting was purposely scheduled prior to the council meeting in order to prohibit members of the public who disagreed with the project from attending the council meeting that followed. My investigation did not uncover evidence to substantiate this allegation.

- 43** The municipality has an obligation to ensure that a meeting that is open to the public is truly open, in that attendance is not arbitrarily or unreasonably restricted. The meeting was open to the usual number of persons, restricted only by the capacity of the room, and there was no evidence to support the allegation that city staff or council were responsible for any unfair restrictions on attendance.
- 44** Accordingly, the September 15 meeting was an open meeting of council, and did not violate the open meeting requirements of the Act.

Opinion

- 45** My investigation established that the August 27, 2014 council meeting was improperly closed to the public when council moved to a small conference room in the basement that could only accommodate council and select members of the media. The subjects discussed during the meeting did not fall within any of the permitted exceptions of the *Municipal Act*. The portion of the August 27, 2014 council meeting that was held in the basement of City Hall therefore violated the open meeting requirements of the *Municipal Act*.
- 46** The September 15, 2014 meeting that preceded the council meeting was a private meeting organized by a developer. It was not a meeting of council subject to the open meeting requirements of the *Municipal Act*.
- 47** The September 15, 2014 public council meeting followed the normal procedures of council and permitted members of the public to attend, within the normal capacity allotted for council chambers. This meeting was an open meeting of council and did not violate the requirements of the *Municipal Act*. Although council and city staff must ensure that members of the public are able to attend and observe open meetings of council, it was not directly foreseeable by city staff that there would be insufficient space during the council meeting, such that alternative arrangements should have been made.
- 48** In the future, however, when deciding whether to permit private parties to make use of council chambers for meetings, city staff should consider the potential impact of such a meeting. This includes assessing whether or not there will likely be sufficient space for all members of the public to attend if an open council meeting is also scheduled, and/or whether alternative arrangements for more space should be made.
- 49** I urge Clarence-Rockland's new council to work collectively and co-operatively to ensure it complies with its open meeting obligations in the future. I am making

four recommendations to assist council in meeting the legal requirements of the open meeting provisions.

Recommendations

Recommendation 1

All members of council for the City of Clarence-Rockland should be vigilant in adhering to their individual and collective obligations to comply with the open meeting requirements of the *Municipal Act, 2001*.

Recommendation 2

The council for the City of Clarence-Rockland should ensure that council meetings are held in the location specified by the city's procedure by-law and that the public is not excluded from attending open meetings of council.

Recommendation 3

The City of Clarence-Rockland should limit the use of council chambers by third parties in close proximity to public council and committee meetings, to avoid any issues arising concerning meeting room capacity and public accessibility.

Recommendation 4

The City of Clarence-Rockland should ensure that it takes reasonable steps to provide access to all members of the public who wish to attend and observe open meetings of council, including making alternative arrangements where the need is foreseeable.

Report

- 50** Staff from my Office spoke with the new Mayor, the Clerk and the Chief Administrative Officer on December 16, 2014, to provide an overview of these findings, and to give the City an opportunity to comment. Their comments were taken into account in preparing this report.
- 51** My report should be shared with Council for the City of Clarence-Rockland and made available to the public as soon as possible, and no later than the next council meeting.



André Marin
Ombudsman of Ontario