

SENT BY EMAIL

Council for the Municipality of West Elgin
22413 Hoskins Line
Rodney, ON N0L 2C0

September 7, 2023

Dear Members of Council for the Municipality of West Elgin:

Re: Complaint concerning the March 23, 2023 council meeting

My Office received a complaint about a meeting of council for the Municipality of West Elgin (the “Municipality”) held on March 23, 2023. The complaint alleged that members of the public could not access the live broadcast of the meeting after council returned to open session after a closed session.

I am writing to share the outcome of our review of this complaint. For the reasons set out below, I have concluded that the Municipality of West Elgin contravened the open meeting rules when it failed to ensure that a portion of its March 23, 2023 meeting was accessible to the public watching via livestream. Staff acknowledged this oversight and confirmed that going forward, members of the public will be able to observe all open portions of meetings, even after council rises out of closed session.

Ombudsman’s role and authority

As of January 1, 2008, the *Municipal Act, 2001*¹ gives anyone 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. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own. The Ombudsman is the closed meeting investigator for the Municipality of West Elgin.

¹ 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 closed 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.

Our review

In response to the complaint, my Office reviewed the meeting records from the council meeting on March 23, 2023, including the meeting notice, the agenda, and the closed and open meeting minutes. We reviewed the recorded livestream of the meeting that is available on the Municipality's website. We also reviewed the Municipality's procedure by-law and spoke to the Municipality's Clerk.

Background

Notice of the March 23, 2023 council meeting was posted on the Municipality's website. The notice indicated that the meeting would be held in a hybrid format: Members of the public could attend this meeting in person at the West Elgin Community Complex, or watch a livestream of the meeting on Zoom.

The complainant told my Office that he watched the livestream of the meeting. According to the complainant, after council moved into a closed session, the livestream ended and he was unable to watch the remainder of the meeting that occurred after council reconvened in open session.

My review of the minutes indicates that the meeting was called to order at 9:30 a.m. and that Council passed a resolution to go into closed session at 11:34 a.m. The closed session concluded and council reported out at 12:49 p.m., following which the meeting was adjourned at 12:51 p.m. The livestream recording of the meeting captures council moving into closed session and then ends. The recording does not capture any business that occurred after council reconvened in open session.

The Clerk confirmed that the livestream of the meeting was turned off when council moved into closed session and was not reactivated when council moved back into open session. The Clerk pointed out that members of the public could observe the remaining open session by attending the meeting in person, despite the livestream ending.

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Analysis

Live broadcast of electronic meetings

Section 239(1) of the *Municipal Act, 2001* requires that all meetings of a municipal council 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 reflect the public's "right to observe municipal government in process."² As my Office has noted in previous closed meeting investigation reports, amendments to the *Municipal Act, 2001* permit municipalities to amend their procedure by-laws to permit council members to participate in meetings electronically. However, this has not changed the basic requirement to hold meetings that are open to the public, including any council business or report back that occurs after council reconvenes in open session.³

With respect to the March 23 meeting, the municipality advertised the meeting as hybrid in its meeting notice, indicating that members of the public could attend both in person or virtually. My review determined that although members of the public attending the meeting in person were able to observe the portion of the meeting that occurred after council rose from closed session, those observing the meeting virtually via the livestream were unable to do so. Because the public could not access the livestream when council reconvened in open session, the portion of the March 23, 2023 meeting that occurred after council reconvened in open session was closed to the public contrary to the *Municipal Act, 2001*.

During the course of my review, staff from the Municipality confirmed that going forward, the Municipality will ensure that members of the public watching a live broadcast of meetings will be able to observe any business that takes place after council rises out of a closed session.

Conclusion

My review has determined that the council meeting on March 23, 2023 did not comply with the open meeting rules set out in the *Municipal Act, 2001* because council failed to ensure that the portion of the meeting following the closed session was accessible to the public watching via the livestream. Staff acknowledged this oversight and confirmed that going forward, members of the public will be able to observe all open portions of meetings, even after council rises out of closed session.

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

³ Russell (Town of) (Re), 2020 ONOMBUD 1, online: <<https://canlii.ca/t/j6n2t>>.



The Mayor and the Clerk of the Municipality were given the opportunity to review these findings and provide comments to my Office. All comments we received were considered in the preparation of this letter. I would like to thank the Municipality for its co-operation during my review. This letter will be published on my Office's website, and should also be made public by the Municipality. In accordance with section 239.2(12) of the *Municipal Act, 2001*, the Municipality is required to pass a resolution stating how it intends to address this letter.

Sincerely,



Paul Dubé
Ombudsman of Ontario

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