



# Municipality of Brockton Report Office of the Ombudsman

Meeting held under the *Drainage Act* – September 27, 2016



# Information Gathering

- Complaint received by Ombudsman
- Ombudsman office determines if an investigation is warranted
- Ombudsman requests information by way of telephone and/or email contact with relevant parties
- Preliminary report is received for review (not public). Ability to comment.
- Ombudsman Final Report
- Report made available to the public



# If a quorum of council members attend an Information Meeting called under the Drainage Act is it a “Meeting” for the purposes of the Municipal Act ?

The Ombudsman Office determined the following:

- The attendance of a quorum of council at the information session was a "meeting" for the purposes of the *Municipal Act*.
- The *Municipal Act* applies to all meetings of municipal councils, even if those meetings are also governed by other legislation
- The Municipality of Brockton should have provided public notice of the information session and observed the other meeting requirements contained in its procedure by-law.



# Opinion of the Ombudsman

*The Municipal Act prescribes various procedural requirements before a meeting can be closed to the public, and it is important to remember that these procedural requirements are not a mere formality. Open meeting legislation ensures effective democracy. The Act's provisions are intended to increase the public's confidence in the integrity of local government and ensure that municipal power is exercised in an open and transparent manner.*

- The Council for the Municipality of Brockton did contravene the Act on September 27, 2016 when a quorum of councillors attended an information session related to a *Drainage Act* petition. Council's attendance at this information session constituted a "meeting" under the *Municipal Act*. While notice of the meeting was provided to affected landowners in compliance with the *Drainage Act* and members of the public were welcome to attend the meeting, the Municipality of Brockton was also required to comply with the *Municipal Act*'s open meeting requirements. Council for the Municipality of Brockton should have provided public notice of the information session and observed the other meeting requirements contained in its procedure by-law.



# Recommendations of the Ombudsman

- The Municipality of Brockton should carefully evaluate whether council's attendance at information sessions and other similar meetings would nonetheless come within the definition of "meeting" contained in the *Municipal Act, 2001* and, where appropriate, conduct these meetings in accordance with the requirements of the Act and the municipality's procedure by-law.

*"Section 238(1) of the Municipal Act defines a "meeting" as "any regular, special or other meeting of a council, of a local board or of a committee of either of them". This definition is circular and not particularly helpful in determining whether a meeting has actually occurred. Our Office has developed the following definition to assist in the interpretation of the definition contained in the Act:*

*Members of council (or a committee) must come together for the purpose of exercising the power or authority of the council (or committee), or the purpose of doing the groundwork necessary to exercise that power or authority.*

- Brockton may consider implementing procedures to confirm councillor attendance at events that may **lay the groundwork for future council decision-making**



## How do Municipal staff implement procedures to confirm councillor attendance at events that **may lay the groundwork for future council decision-making?**

- Brockton now posts all Information Meetings held under the Drainage Act in the Public Notice section of the municipal website whether Councillors attend or not. The Engineer takes the notes and if requested we will make them available to the public. The Deputy Clerk attends the meetings and if a quorum of council members should happen to be in attendance would then proceed to record minutes for the Municipal records.
- How do we address the uncertainty of council member attendance at a variety of public meetings organized by third parties and still meet the requirements of the Municipal Act?
- To date Brockton has not obtained legal advice on this matter.



# Based on the Ombudsman decision how would you meet the requirements of the Municipal Act in the following situations ?

- ▶ A local developer holds a public meeting to advise neighbours of his proposed plans and invites council members to attend to gain information?
- ▶ The Bruce County Federation of Agriculture holds it's annual Politician's Meeting and invites council members to attend?
- ▶ The local Lake Association invites council members to it's AGM every year?

## If a quorum of council members attend how do Municipalities meet the requirements of the Municipal Act?

- ✓ Public Notice
- ✓ How do we ensure that the Clerk or designate is in attendance “just in case” ?
- ✓ Even though we have offered to attempt to make any minutes or notes available to the public they may not be recorded by the Clerk or designate and therefore not part of the public record nor can they be adopted.
- ✓ The Mayor will not have the opportunity to sit as the presiding officer if there is a quorum of council members.
- ✓ Council members will not be making decision or adopting motions.
- ✓ When council members attend any type of information meeting they are gaining information that **may** assist in future decision making – do municipal staff advise that they stay home and remain uninformed?

