



Township of
**Leeds and the
Thousand Islands**

February 20, 2014

Pat Vanini, Executive Director
Association of Municipalities of Ontario (AMO)
200 University Ave.,
Suite 801
Toronto, ON
M5H 3C6

Dear Ms. Vanini:

**RE: Township of Leeds and the Thousand Islands Council
Meeting – New Motion – February 10, 2014**

I would confirm that the Township of Leeds and the Thousand Islands Council at its regular meeting held on February 10, 2014, approved the following resolution,

*Moved by Councillor Lesage-Tye
Seconded by Councillor Emmons*

WHEREAS two complaints were received by the Ombudsman alleging failure to comply with Section 239 of the Municipal Act and the Township Procedural By-law, the first complaint was in respect to an informal gathering November 16, 2012, the second complaint was in respect to a closed meeting of the Personnel Committee of February 19, 2013;

WHEREAS the Municipality did not appoint its own Investigator pursuant to Section 239.2 (1), of the Municipal Act, by default the Ombudsman is appointed the Investigator of the municipality under the *Ombudsman Act*. The Ombudsman also undertook to investigate a matter of November 26, 2012, which was not subject of a complaint;

WHEREAS the Ombudsman undertook an investigation of the two complaint incidents of November 16th, 2012 and February 19th, 2013, and the additional meeting for which there was no complaint of November 26th, 2012 and made certain findings of these closed meetings;

WHEREAS the Ombudsman clearly had the authority on the matters of November 16th and February 19th he also undertook a matter for which he did not appear to have authority under the pertinent legislation;

WHEREAS after the completion of the investigation the Ombudsman submitted a preliminary report and the Township responded through its counsel questioning the findings, particularly the Ombudsman's interpretation of a "working definition" of what constitutes a meeting;

WHEREAS the Township took particular issue with the following: Ombudsman's "working definition" of what constitutes a meeting

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

WHEREAS the Township's legal counsel, Cunningham Swan, provided the Ombudsman with a number of court definitions of what constitutes a meeting and what has been implemented by the courts, particularly as it deals with the Ontario divisional court decision in Southam Inc. vs City of Ottawa, wherein the court states

"..... a function at which matters which would ordinarily form the basis of Council's business are dealt with in such a way as to move them materially along the way in the overall spectrum of a Council decision. In other words, is the public being deprived of the opportunity to observe a material part of the decision-making process?"

WHEREAS the Township made the argument, through its legal counsel, that "At the core of the Court's definition is the notion that members of Council must not just be assembled in the same place, but must engage in a degree of discussion and activity that 'materially' advances the decision-making process"

WHEREAS the Township, through its legal counsel, further stated that "implicit in this definition is that there may indeed be some discussion or activity among the assembled members of Council related to a municipal issue, but that in itself does not mean that there has been a 'meeting'. The discussion must go beyond just identifying and acknowledging a particular issue that Council must ultimately decide. Instead, Council must actually delve into the substantive (i.e. material) elements of the issue"

WHEREAS the Township, through its legal counsel, also provided the definition of material "to mean significant; important: Law (of evidence or a fact) significant or relevant, especially to the extent of determining a cause or affecting a judgement"

WHEREAS the Township, through its legal counsel, further stated that the *Municipal Act 2001* does not make provision for the Ombudsman to broaden their investigation of meetings of council other than those under complaint;

WHEREAS this rebuttal to the preliminary report was submitted by the Township's legal counsel to the Ombudsman on November 12th, 2013 with a request that the definition of the meeting be revisited;

WHEREAS a significant number of municipalities in Ontario have appointed a investigator and are investigated by the definition of a meeting in the *Municipal Act* and in accordance with the decisions of the courts;

WHEREAS those remaining municipalities such as the Township of Leeds and the Thousand Islands who has remained under the Ombudsman jurisdiction are compelled to be subject to a different test due to the Ombudsman creation of this new "working definition" of what constitutes a meeting;

WHEREAS the responsibility to ensure consistency of the intent of the law set down by legislature is a Provincial responsibility, it is the Province that needs to ensure consistent application particularly as it relates to the appointed office of its Ombudsman;

THEREFORE BE IT RESOLVED that the Township of Leeds and the Thousand Islands is requesting that the Province review the decisions of its Ombudsman as it relates to all of the decisions where the Ombudsman has been applying his "working definition" of what constitutes a meeting and further, if there is a lack of clarity in the legislatures to the applicability or definition of what constitutes a meeting the legislation be reviewed and amended.

BE IT RESOLVED that this resolution be forwarded directly to the Premier of Ontario and the Minister of Municipal Affairs and Housing for their response.

BE IT FURTHER RESOLVED this resolution be circulated to all Ontario municipalities and AMO seeking their support.

I would ask AMO to distribute to all Ontario Municipalities on our behalf seeking their support.

Yours sincerely,

Milena Avramovic,
CAO

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