



Ombudsman Report

**Investigation into complaints about a closed meeting held
by the Municipality of West Nipissing on March 19, 2019**

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Ombudsman of Ontario
October 2019**

Complaint

- 1 My Office received three complaints about a meeting held by council for the Municipality of West Nipissing (the “municipality”) on March 19, 2019. During the meeting, council met in closed session under the exception for personal matters. The meeting agenda indicated that the topic of discussion was “Municipal Act/Roles & Responsibilities.”
- 2 The complaints alleged that the *in camera* discussion did not fit within the exceptions to the open meeting rules.

Ombudsman jurisdiction

- 3 Under the *Municipal Act, 2001*¹ (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, the Act gives citizens 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.
- 5 The Ombudsman is the closed meeting investigator for the Municipality of West Nipissing.
- 6 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality’s governing procedures have been observed.
- 7 To assist municipal councils, staff, and citizens, we have developed an online digest of open meeting decisions that contains summaries of the Ombudsman’s open meeting cases. This searchable repository was created to provide easy access to the Ombudsman’s past 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 a matter should or may be discussed in closed session, as well as issues related to open meeting procedure. Summaries of all the Ombudsman’s previous decisions cited in this report can be found in the digest: www.ombudsman.on.ca/digest.

¹ SO 2001, c 25.

Committee procedures

- 8 The municipality's procedure by-law states that no meeting shall be closed except in accordance with the *Municipal Act, 2001*.
- 9 Section 8 of the municipality's procedure by-law states that:

Any Agenda item which may require research and/or preparation by staff, shall be submitted to the CAO for approval, prior to being delivered to the Clerk for inclusion on a subsequent Agenda unless such item is of a time-sensitive nature requiring an action or decision by Council
- 10 Sections 4.2 and 4.6 of the municipality's procedure by-law also indicate that it is the role of council to "carry out the duties of Council under the *Municipal Act*," and "prepare for meetings, including reviewing the agenda and background information prior to the meeting."
- 11 The procedure by-law and the *Municipal Act* require that before a meeting is closed, council state by resolution the general nature of the matter to be considered during the closed meeting.

Investigative process

- 12 On April 3, 2019, we advised the municipality of our intent to investigate the complaints.
- 13 Members of my Office's open meeting team reviewed relevant portions of the municipality's by-laws and policies, and the Act. We also reviewed the records from the open and closed sessions of the council meeting held on March 19, 2019. When we reviewed the records, the minutes from the closed session had not been approved by council, and so they were provided to my Office in draft form.
- 14 We interviewed members of council and staff who were present during the closed meeting. We also received and reviewed notes taken by individuals present at the meeting. These notes were taken during the meeting or were completed within a few days of the meeting.
- 15 My Office received full co-operation in this matter.

Background

Prior to the March 19, 2019 meeting

- 16 Mayor Joanne Savage told my Office that prior to the meeting on March 19, she consulted multiple people about the appropriateness of holding an *in camera* session to discuss divisions on council and personal conflict between council members. The Mayor spoke to the Chief Administrative Officer and a third-party expert in municipal law about discussing what would be titled “council issues” *in camera*. According to the Mayor, the third-party expert advised her that a discussion about the roles of council members would fit within the exception for education or training under the open meeting rules, however, the title “council issues” could be renamed to “Municipal Act/Roles & Responsibilities”.
- 17 Staff were instructed by the Mayor to add an item with the subject matter “Municipal Act/Roles & Responsibilities” to the *in camera* agenda for the March 19, 2019 meeting. Despite the advice that she received from the third-party expert, we were told that the Mayor instructed staff that the personal matters exception would apply to the discussion, not the education or training exception. Staff prepared the agenda and resolution to proceed *in camera* on this basis.

The March 19, 2019 meeting

- 18 Council met for a regular meeting at 6:30 p.m. on March 19, 2019. All of council was present. The meeting agenda included two items for *in camera* consideration. The first item involved ongoing litigation. The second item was “Municipal Act/Roles & Responsibilities.”
- 19 Before council adopted the meeting agenda in open session, a councillor raised a point of order about the closed meeting agenda. The councillor questioned why “Municipal Act/Roles & Responsibilities” was on the agenda. The Mayor responded that she had consulted with various sources who confirmed the discussion would fit within the open meeting exception. The councillor that raised the point of order expressed dissatisfaction with the Mayor’s response; however, the agenda was approved by council and the meeting continued.

members. Eventually the meeting broke up when council members started to leave the room.

- 27 One council member spoke about what she perceived was a lack of respect from staff members toward a group of councillors. Her statements were described to my Office by another individual present at the meeting as a “tirade.” At one point, another council member intervened and the discussion turned into a shouting match about an incident between the two council members that took place during a previous public council meeting.
- 28 We were told that, after a short interval of heated discussions and raised voices between groups of councillors, a council member voiced the opinion that council members demonstrated a lack of respect for each other during council meetings. The council member called on council to work together in future and on the Mayor to support her council. In response, another councillor yelled that the council member should “get over it.”
- 29 We were told that during the closed session discussion a few council members indicated that they were not comfortable with continuing the discussion *in camera*. We were told that some councillors indicated they wanted to leave the session; however, they needed to wait until the Chairperson (in this case the Mayor) left, to be compliant with their procedure by-law.
- 30 Matters continued to escalate and a council member hit the table with his hand, and yelled that the council members needed to respect the Mayor.
- 31 Eventually the Mayor advised the Clerk to adjourn the closed meeting since she did not believe she would be able to achieve her intended objective during that discussion.
- 32 Those we interviewed described the meeting as “chaotic,” “toxic,” “intense” and “disrespectful.” One council member told my Office that the meeting was traumatic. Another council member described the meeting as a battle. Some council members felt that the fact that the meeting took place outside of the public eye was an important reason why the discussion became chaotic.

Analysis

Applicability of the exception for personal matters

- 33 Council cited the exception for personal matters when it moved into closed session on March 19, 2019.

- 34 The personal matters exception applies to discussions that reveal personal information about an identifiable individual. Generally, information that pertains to an individual in their professional capacity will not fit within the exception for personal matters.² However, in some cases information about a person in their professional capacity may still fit within the exception if it reveals something personal or relates to scrutiny of an individual's conduct.³
- 35 In a letter to the Town of Fort Erie, council relied on the personal matters exception to discuss public comments made by the Mayor there.⁴ The Mayor's comments had been made in the course of his official duties and in relation to municipal business. The *in camera* discussion about those comments involved councillors opining on the Mayor's conduct, however, no inherently personal information was discussed. My Office found that the discussion did not fit within the personal matters exception.
- 36 In a 2014 letter to the Town of Midland, my Office determined that an *in camera* meeting of council to consider a councillor's request for indemnification of legal fees did not constitute personal information.⁵ In that case, the councillor had incurred legal fees in his role as a member of the local police services board. The information discussed did not qualify as personal information because it related to the council member in his official capacity and much of the information was already public knowledge.
- 37 The fact that an *in camera* discussion includes sensitive information does not necessarily mean that the information is personal in nature. For example, my Office investigated two closed meetings that involved a discussion about the relationship between staff and council.⁶ In both of those investigations, we found that while the discussion may have contained information council did not want to discuss publicly, the subject matter did not fall within any exception to the open meeting requirements.

² Letter to the Township of Russell, August 8, 2014, online <<https://www.ombudsman.on.ca/Files/sitemedia/Documents/Russell-Twp-Closing-Letter-FINAL-EN.pdf>>.

³ Letter to the City of Elliot Lake, September 8, 2014, online <<https://www.ombudsman.on.ca/Files/sitemedia/Documents/Elliot-Lake-Sept-8-2014.pdf>>.

⁴ Letter to the Town of Fort Erie, May 9, 2013, online <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2013/town-of-fort-erie>>

⁵ Letter to the Town of Midland, February 4, 2014, online <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2014/town-of-midland>>

⁶ Lanark Highlands (Township of) (Re), 2018 ONOMBUD 1 (CanLII), <<http://canlii.ca/t/hvmtf>>; Adelaide Metcalfe (Township of) (Re), 2012 ONOMBUD 4 (CanLII), <<http://canlii.ca/t/gttqv>>

38 Similarly, the tone of a closed session discussion does not affect whether the discussion fits within the personal matters exception. In a report to the Town of Amherstburg, my Office examined an instance where council held a closed session discussion about which municipal officials should have authority to sign cheques on behalf of the municipality.⁷ The Town of Amherstburg's Mayor and some staff told my Office that the meeting was held in closed session because the overall tone of the discussion was one of distrust of municipal staff. My Office found that the general tone of the meeting was not sufficient to bring the discussion within the exception for personal matters.

39 My Office has also commented previously that it is council's responsibility to ensure that an *in camera* discussion remains on topic and to avoid involving personal information in discussions that would not otherwise fit within the open meeting exceptions:

In the interest of transparency, however, I would caution council to endeavor, wherever possible, to individually and collectively ensure that its discussion in closed session is focused on those matters within the statutory exceptions, as set out in the resolution to close the meeting.⁸

40 In the present circumstances, council resolved to move into closed session to discuss the "Municipal Act/Roles & Responsibilities." Generally, this topic would not fit within the personal matters exception. The actual *in camera* discussion had very little to do with either the *Municipal Act, 2001* or the roles and responsibilities of council.

41 The *in camera* discussion began with the Mayor's short opening statement on improving the relationship between council members. The Mayor did not refer to any specific member of council during her statement or to any personal information.

42 After the floor was opened to council, the ensuing discussion was unrestricted and covered a wide range of topics but did not involve any personal information that would have brought the discussion within the personal matters exception. Information that pertains to an individual in their professional capacity will not fit within the personal matters exception. Council's discussion was focused on incidents that related to council members in their professional capacity as councillors and to council-related

⁷ Amherstburg (Town of) (Re), 2015 ONOMBUD 13 (CanLII), <<http://canlii.ca/t/gtp5z>>

⁸ Amherstburg (Town of), 2016 ONOMBUD 9 (CanLII), <<http://canlii.ca/t/h2stm>>

business. Further, the arguments between council members did not reveal something of a personal nature.

- 43 Part of the discussion involved council's relationship with staff. These comments were general in nature and no individual members of staff were mentioned. My Office has previously found that discussions about the relationship between staff and council do not fit within the personal matters exception, even if the discussions involve sensitive information that the municipality would rather not discuss publicly.
- 44 My Office was told that the meeting could not have occurred in public because of the overall "clearing the air" atmosphere. The meeting was described as toxic, chaotic and disrespectful. There was shouting, aggressive pointing, and banging on desks. As noted above, my Office has previously found that the overall tone of a meeting does not bring a discussion within the exception for personal matters.
- 45 Accordingly, the closed session discussion did not fit within the personal matters exception.

Applicability of the exception for education or training

- 46 Council did not cite the education or training exception in its resolution to move into closed session. However, the Mayor told council during the closed session that this exception would apply to the discussion. The Mayor also told my Office that the education or training exception applied to the closed session.
- 47 The education or training exception is narrowly construed and the use of the exception will be carefully scrutinized.⁹ The exception will only apply to closed session discussions that are solely for the purpose of educating or training council members.¹⁰ If a council member discusses any matter that advances council business or council decision-making, the exception will not apply.
- 48 In the present circumstances, the Mayor told my Office that her objective in holding the *in camera* meeting was to discuss the roles of council members, and in particular highlight issues relating to decorum and interacting with staff. Based on the advice the Mayor received from the third-party expert,

⁹ Brockville (City of), 2016 ONOMBUD 12 (CanLII), <<http://canlii.ca/t/h2ssr>>

¹⁰ Oshawa (City of) (Re), 2016 ONOMBUD 10 (CanLII), <<http://canlii.ca/t/h2ssm>>

she believed that these topics would fit within the education or training exception.

- 49 Despite the Mayor's stated intent to educate council regarding its role as outlined in the *Municipal Act, 2001*, the actual closed session discussion did not involve any education or training. During her opening statement, the Mayor briefly referenced the role of council and the *Municipal Act*. However, her subsequent statement did not include any information related to educating or training council on their roles. Rather, the Mayor's statement focused on her opinions regarding council's divisions and behaviour. The remaining portion of the closed session consisted of an unrestricted discussion among council members relating to interpersonal disputes and opinions on various topics.
- 50 Accordingly, the *in camera* session did not fit within the exception for education or training.

Procedural matters: Resolution to proceed *in camera*

- 51 Council's resolution to proceed *in camera* did not include a general description of the matters to be discussed. The Clerk told my Office that it is not the municipality's general practice to include the topic of discussion in its resolution because this information is provided in the meeting agenda. The Clerk agreed to include the topic of discussion in the resolution in future.
- 52 Council also failed to cite the education or training exception in its resolution to proceed *in camera*. The Mayor told my Office that she believed that the resolution included that exception.
- 53 Section 239(4)(b) of the *Municipal Act, 2001* specifically requires that where a meeting is closed for the purpose of education or training, the resolution to proceed *in camera* must include the fact that the exception for education or training is being relied upon.

(4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,

(b) in the case of a meeting under subsection (3.1), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection.

- 54 In future, the resolution to proceed *in camera* should cite all exceptions that council intends to rely on, including – if applicable – the education or training exception.

Procedural matters: Decorum during meetings

- 55 Almost every individual my Office spoke to raised concerns about the unprofessional atmosphere during the closed session.
- 56 The *Municipal Act* states that it is the role of the head of council to “preside over council meetings so that its business can be carried out efficiently and effectively” and to “provide leadership to council.”
- 57 The municipality’s procedure by-law also contains provisions regarding decorum during council meetings. Under section 4 of the procedure by-law, the Mayor or presiding officer is responsible for enforcing the observance of order and decorum during meetings. It is the duty of the Mayor or presiding officer to maintain order and, where it is impossible to maintain order, to adjourn the meeting. The Mayor or presiding officer is also empowered to expel an individual from a meeting due to improper conduct.
- 58 Section 5 of the procedure by-law governs the conduct of individual members of council during meetings, including prohibiting profane language, creating a disturbance or interrupting another member of council. Members of council are also prohibited from leaving a meeting without first obtaining the permission of the Mayor or presiding officer.
- 59 The municipality’s procedure by-law is clear that members of council are responsible for conducting themselves in a professional and respectful manner during council meetings.
- 60 My Office was told that during the closed session, some members of council engaged in disrespectful behaviour and that the meeting ended in disorder to the point that some council members got up to leave the room and the Clerk had no choice but to adjourn the meeting. Although the Mayor is empowered under the procedure by-law to maintain order during meetings, we were told by some of those interviewed that she did not use those powers, despite the meeting’s chaotic atmosphere.
- 61 In future, whether in public or in closed session, council should ensure that its business is carried out in an efficient and effective manner during council meetings.

Opinion

- 62 Council for the Municipality of West Nipissing violated the *Municipal Act, 2001* on March 19, 2019 when it held a closed session under the personal matters exception to discuss “Municipal Act/Roles & Responsibilities.”
- 63 Council for the Municipality of West Nipissing contravened the requirements of section 239(4)(a) of the *Municipal Act, 2001* by failing to state by resolution the general nature of the matters to be considered *in camera*.
- 64 Council for the Municipality of West Nipissing should ensure that all of the closed meeting exceptions it relies on to discuss matters *in camera* are cited in its resolution to proceed into closed session.

Recommendations

- 65 I make the following recommendations to assist council in fulfilling its obligations under the *Municipal Act, 2001* and enhancing the transparency of its meetings.

Recommendation 1

All members of council for the Municipality of West Nipissing should be vigilant in adhering to their individual and collective obligation to ensure that council complies with its responsibilities under the *Municipal Act, 2001* and its own procedure by-law.

Recommendation 2

The Municipality of West Nipissing should ensure that its resolution to proceed *in camera* provides a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public.

Recommendation 3

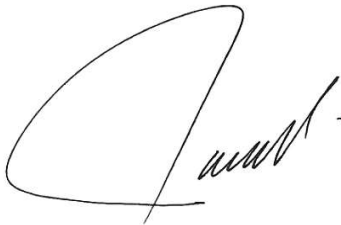
Council for the Municipality of West Nipissing should take care to cite the closed meeting exceptions in the Act that apply to the matters considered during the *in camera* discussion.

Recommendation 4

All members of council for the Municipality of West Nipissing should ensure that their conduct is consistent with the expectations set out in the procedure by-law.

Report

- 66 The Municipality of West Nipissing was given the opportunity to review a preliminary version of this report and provide comments. Comments received were considered in the preparation of this final report.
- 67 In one comment received during our investigation, it was suggested that my Office recommend that the municipality implement audio and/or video recordings of its closed meetings, because this practice could promote greater efficiency and accuracy in investigations of meetings. However, since launching this investigation, we were told that the municipality has implemented a process to start video recording council's closed meetings. We were told that recording equipment has been purchased and a by-law regarding its use has been passed to allow the practice to begin this fall.
- 68 Audio and video recordings provide the most accurate and complete record of a meeting, and we commend the municipality for adopting the practice of video recording its council meetings.
- 69 My report should be shared with council for the Municipality of West Nipissing. My report should be made available to the public as soon as possible, and no later than the next council meeting. In accordance with section 239.2(12) of the *Municipal Act*, council should pass a resolution stating how it intends to address this report.



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