

August 4, 2021

Council for Township of McKellar
c/o Peter Hopkins, Mayor
PO Box 69,
701 Highway 124
McKellar, ON P0G 1C0

Dear Council for the Township of McKellar:

Re: Closed meeting complaint

My Office received a complaint alleging that council for the Township of McKellar improperly met in closed session on June 24, 2021, to discuss the West Parry Sound Pool and Wellness Centre contrary to the *Municipal Act, 2001* (the Act).¹ Specifically, the complaint alleged that during the closed session, council discussed and voted on the pool and wellness centre, and whether to enter into a related joint local services board.

I am writing to advise that my review has determined that council for the Township of McKellar did not contravene the Act's open meeting requirements on June 24, 2021.

Ombudsman jurisdiction

As of January 1, 2008, the *Municipal 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.² Municipalities may appoint their own investigator. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own. My Office is the closed meeting investigator for the Township of McKellar.

¹ SO 2001, c 25.

² *Municipal Act*, s 239.1.

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 open 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.

Review

Under the Act, all meetings of council, local boards, and committees of either must be open to the public, unless they fall within prescribed exceptions. Votes may only take place during a closed meeting if the meeting is properly closed, and the vote is for a procedural matter or to give directions to staff or officials.

My Office reviewed the meeting agenda, open and closed session minutes, and closed meeting materials for the June 24, 2021 meeting. My staff spoke with the Township's Chief Administrative Office (CAO)/Clerk and the Mayor about the meeting.

According to the information we reviewed, council met at 5:30 p.m. on June 24, 2021. Regarding the "WPS Pool and Wellness Centre," the open session minutes indicate that council resolved to proceed in camera to discuss this topic under the closed meeting exception for "plans or instructions for negotiations," section 239(2)(k).

Our review indicates that once in closed session, council discussed its position in ongoing negotiations related to funding and governance for the proposed pool and wellness centre. We understand that this facility will be shared and financed by up to seven municipalities and two First Nation communities. We were told that the Township had recently learned the project was approved for partial federal funding, which brought increased urgency and specificity to the negotiation. According to the Mayor and CAO/Clerk, the participating municipalities and First Nation communities are in the process of determining how capital costs, operating costs, and governance structures will be divided.

During the discussion on June 24, council considered its position on various governance and finance matters so that the CAO/Clerk would be able to present the municipality's position to the other project partners. We were told that there are many matters currently under negotiation and little has been finalized at this point. This discussion was guided by a PowerPoint presentation, which according to our review set a number of possible positions the Township could take on various issues related to the pool and wellness centre.

Both the Mayor and the CAO/Clerk emphasized the importance of getting a “good deal” for the municipality and indicated that the discussion needed to occur in private to protect the Township’s bargaining position. We were told that once the negotiations are further along and a draft agreement has been created, final decisions related to the pool and wellness centre will occur in open session.

According to the closed meeting minutes, after this discussion council directed the CAO/Clerk to provide information about the Township’s negotiating position to the relevant parties.

Application of the “plans and instructions for negotiations” exception

Section 239(2)(k) of the Act allows municipal councils to discuss “plans and instructions for negotiations” in closed session. The purpose of this exception is to allow a municipality to protect information that could undermine its bargaining position or give another party an unfair advantage over the municipality during an ongoing negotiation.

In order for the exception to apply, the municipality must show that:

1. The *in camera* discussion was about positions, plans, procedures, criteria, or instructions;
2. The positions, plans, procedures, criteria, or instructions are intended to be applied to negotiations;
3. The negotiations are being carried on currently, or will be carried on in future; and
4. The negotiations are being conducted by or on behalf of the municipality.³

My review indicates that on June 24, 2020, council was discussing its position regarding ongoing negotiations with six municipalities and two First Nation communities relating to a joint pool and wellness centre. Accordingly, this discussion was permissible under section 239(2)(k) of the *Municipal Act*.

Alleged in camera vote

The complaint alleged that council improperly voted in closed session regarding the pool and wellness centre and whether to enter into a related joint local services board.

³ *St. Catharines (City of) (Re)*, 2019 ONOMBUD 1, <<https://canlii.ca/t/hxrk5>>, at paras 30-31.


Section 239(6)(b) of the *Municipal Act* prohibits voting during a closed session unless the vote is for a procedural matter or for giving directions to staff. My Office's review confirms that the only vote taken in camera related to the pool and wellness centre was for giving direction to staff. My review found no evidence that council voted on whether to enter into a joint local services board.

Conclusion

My Office's review found that council was permitted to rely on the "plans and instructions for negotiations" closed meeting exception to discuss the WPS Pool and Wellness Centre on June 24, 2021. My review found no evidence that council improperly voted in camera during the meeting.

I would like to thank the Township for its co-operation during my review. The CAO/Clerk confirmed that this letter would be included as correspondence at an upcoming council meeting.

Sincerely,



Paul Dubé
Ombudsman of Ontario

CC: Lance Sherk, CAO/Clerk, Township of McKellar