



## **Ombudsman Report**

**Investigation into the allegation that  
the Public Works Committee for  
the Township of Bonfield  
violated the *Municipal Act, 2001*  
on May 19 and June 2, 2015**

**Barbara Finlay  
Acting Ombudsman of Ontario  
November 2015**

## Complaint

- 1** In June 2015, our Office received two complaints about closed meetings held by the Public Works Committee for the Township of Bonfield on May 19 and June 2, 2015. Each complaint alleged that the committee failed to take closed meeting minutes and that the committee's in camera discussion did not fit within the exceptions to the open meeting provisions of the *Municipal Act, 2001* (the Act).

## Ombudsman jurisdiction

- 2** Under the Act, all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 3** As of January 1, 2008, the Act gives citizens the right to request an investigation into whether a municipality has properly closed a meeting to the public. Municipalities may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 4** The Ombudsman is the closed meeting investigator for the Township of Bonfield.
- 5** When investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality's procedure by-law have been observed.

## Background

- 6** The Public Works Committee is a standing committee of the township. It meets on the first Tuesday of each month and consists of the Mayor and all four councillors. The Mayor chairs the committee.
- 7** The Public Works Clerk records the open meeting minutes for the committee.
- 8** From August 2013 to June 2014, the township's 16 unionized workers were on strike. At the time, the township had no managers or non-unionized employees.<sup>1</sup> The absence of management staff meant that the strike was particularly disruptive

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<sup>1</sup> Gord Young, "Bonfield: Strike May Impact Election", *The Nugget* (16 January 2014), online: <<http://www.nugget.ca/2014/01/16/bonfield-strike-may-impact-election>>.

to municipal services.<sup>2</sup> The ten-month strike was resolved on June 14, 2014.

## Investigative process

- 9** On June 23, 2015, we advised council for the Township of Bonfield of our intent to investigate this complaint.
- 10** Members of our Open Meeting Law Enforcement Team (OMLET) reviewed relevant portions of the township's procedure by-law and the Act, as well as relevant meeting agendas, minutes, and materials. They spoke with the township's Mayor and CAO.
- 11** We received full co-operation in this matter.

## Council procedure

- 12** Section 5.1 of the township's procedure by-law<sup>3</sup> pertains to closed meetings and mirrors the exceptions found in section 239 of the Act.
- 13** Section 5.2 of the by-law requires that council pass a resolution to enter closed session setting out i) "the fact of the holding of the closed meeting" and ii) "the general nature of the matter to be considered at the closed meeting; *and the only exceptions to the above would be as set out in the Municipal Act*" [emphasis added]. There is no provision in the Act that exempts councils from the requirement to pass a resolution setting out the general nature of the matter to be considered before proceeding in camera. For the sake of greater clarity, council should amend its by-law to remove this inaccurate reference to the *Municipal Act*.
- 14** Section 13.1 of the by-law states that it is the Clerk's responsibility to maintain accurate meeting minutes, and that these minutes shall record:
  - the date and time of the meeting;
  - the name of the Head of Council and Council members present;
  - the correction, amendment and adoption of minutes; and

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<sup>2</sup> "Bonfield Municipal Strike, 7 Months Long, Worries Observers", *CBC News* (28 February 2014), online: <<http://www.cbc.ca/news/canada/sudbury/bonfield-municipal-strike-7-months-long-worries-observers-1.2555196>>.

<sup>3</sup> Township of Bonfield, by-law No 2007-50, *Being a by-law to govern the proceedings of the Council of the Corporation of the Township of Bonfield, its committees and boards* (11 December 2007), online: <<http://www.ebonfield.org/wp-content/uploads/2009/03/2007-50-To-Govern-the-Proceedings-of-Council-Committees-and-Boards.pdf>>.

- without note or comments, all resolutions, decisions and other proceedings of the Council.

- 15** The by-law further provides that all committees appointed by council shall follow the procedure by-law, with the word “committee” being substituted for “council” as necessary. This, in combination with section 13.1, indicates that the township’s Clerk is required to maintain committee meeting minutes for the Public Works Committee.
- 16** Section 2.5 of the by-law requires that all committees submit to council an annual schedule of meetings for approval. Alternate or additional meeting dates require the prior approval of council. Following the submission of the annual committee meeting schedule, a meeting schedule for all council, committee and board meetings will be placed on the township’s website and posted at the municipal office.

## **May 19, 2015 committee meeting**

- 17** On May 19, 2015, at 7:00 p.m., the Public Works Committee for the Township of Bonfield held a regular committee meeting in council chambers.
- 18** Typically, the committee meets on the first Tuesday of the month (i.e. May 5), not the third Tuesday (i.e. May 19). My Office was informed that the committee meeting scheduled for May 5 was cancelled on the same day because the Mayor was suddenly unable to attend. A paper notice was posted on the chamber door indicating that the meeting had been rescheduled; the township’s website also reflected this change.
- 19** The agenda indicated that one matter would be discussed in closed session. It was listed as “CAO Report on PW Dept. (part of this discussion will need to be in camera as it involves personnel)”. Two distinct matters were discussed in camera as part of the CAO’s report.
- 20** The open session minutes indicate that the committee passed a resolution to proceed in camera at 8:07 p.m. The resolution indicated that the closed session discussion was “for the purpose of personal matters about an identifiable individual, including municipal or local board employees; [and] labour relations or employee negotiations”.
- 21** The Public Works Clerk was excluded from the in camera discussion and formal closed meeting minutes were not taken. However, the CAO did take in camera

“notes” on a form created specifically for that purpose. These notes recorded the agenda item number of each matter discussed, a brief description of the matter, and the direction (if any) provided by the committee.

## Closed session discussion

- 22** The CAO orally presented two matters for the committee’s consideration during the closed session.
- 23** The first item related to an employee matter within the public works department. In his report to the committee, the CAO identified a unionized employee by name and described aspects of the employee’s conduct. Because the employee was unionized, the CAO also discussed related labour relations issues, including the grievance process.
- 24** During his interview, the CAO indicated that the purpose of the discussion was to brief the committee, not obtain direction or approval. However, the CAO’s closed session “notes” indicate that the committee provided him with direction to “[p]roceed as required”. During interviews, the Mayor and CAO indicated the committee did not vote on a formal resolution; rather, it came to informal consensus and this was recorded by the CAO.
- 25** The second item presented by the CAO related to his investigation into concerns regarding the township’s process for a recent small equipment tender. His oral report identified an employee by name and discussed that employee’s conduct in relation to the tender process.
- 26** The CAO informed my Office that, as with the previous employee matter, he was presenting information to the committee and not seeking direction. The record of the closed session supports this conclusion; in the area to record a direction, it indicated “[n]one required”.
- 27** The committee resumed in open session at 9:27 p.m. The committee did not report back regarding the closed session discussion. During their interviews, the Mayor and CAO indicated that the committee does not have a practice of reporting back. No resolutions were passed. The meeting adjourned at 9:28 p.m.

## Analysis

### ***Closed meeting exceptions***

- 28** The Public Works Committee discussed two matters during its closed session on May 19. It relied on two closed meeting exceptions – the “personal matters” and

“labour relations or employee negotiations” exceptions – to close the meeting to the public. The resolution to proceed in camera did not specify which exception was intended to apply to each matter.

### Personal matters about an identifiable individual

- 29** In a 2015 report regarding closed meetings in the Municipality of South Huron, our Office specifically found that discussions of the performance of a particular employee fit within the “personal matters” exception.<sup>4</sup>
- 30** The committee’s first discussion related to the conduct of an identified municipal employee. The second discussion related to the CAO’s investigation into concerns regarding the township’s tender process. His oral report identified a municipal employee by name and discussed that employee’s conduct during the tender process. Accordingly, these discussions fit within the “personal matters” exception.

### Labour relations or employee negotiations

- 31** In 2003, the Ontario Court of Appeal found that the ordinary meaning of the phrase “labour relations” in the Freedom of Information and Protection of Privacy Act extended to relations and conditions of work beyond those of collective bargaining.<sup>5</sup> Similarly, the Information and Privacy Commissioner has determined that the labour relations exception applied to details related to an employee’s dismissal<sup>6</sup> and a grievance under a collective agreement.<sup>7</sup>
- 32** In a 2015 report regarding closed meetings in the Municipality of South Huron, our Office determined that council could have cited the labour relations exception to discuss staff performance reviews, staff conduct, discipline, and the salaries of specific employees.<sup>8</sup>

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<sup>4</sup> Ombudsman of Ontario, *Investigation into closed meetings held by council for the Municipality of South Huron* (February 2015), online:

<[http://www.ombudsman.on.ca/Files/sitemedia/files/SouthHuronFinal\\_2015.pdf](http://www.ombudsman.on.ca/Files/sitemedia/files/SouthHuronFinal_2015.pdf)>.

<sup>5</sup> *Ontario (Minister of Health & Long-Term Care) v Ontario (Assistant Information & Privacy Commissioner)*, [2003] OJ No 4123 (Ont CA).

<sup>6</sup> Order MO-1654-I (29 May 2003), online: IPC <[https://www.ipc.on.ca/images/Findings/Attached\\_PDF/MO-1654-I.pdf](https://www.ipc.on.ca/images/Findings/Attached_PDF/MO-1654-I.pdf)>.

<sup>7</sup> Order M-832 (10 September 1996), online: IPC <[https://www.ipc.on.ca/images/Findings/Attached\\_PDF/M-832.pdf](https://www.ipc.on.ca/images/Findings/Attached_PDF/M-832.pdf)>; Order PO-1769 (23 March 2000), online: IPC <[https://www.ipc.on.ca/images/Findings/Attached\\_PDF/PO-1769.pdf](https://www.ipc.on.ca/images/Findings/Attached_PDF/PO-1769.pdf)>.

<sup>8</sup> Ombudsman of Ontario, *Investigation into closed meetings held by Council for the Municipality of South Huron* (February 2015), online:

<[http://www.ombudsman.on.ca/Files/sitemedia/files/SouthHuronFinal\\_2015.pdf](http://www.ombudsman.on.ca/Files/sitemedia/files/SouthHuronFinal_2015.pdf)>.

- 33** As both matters discussed by the committee pertained to the conduct of unionized township employees, these discussions fit within the exception contained in section 239(2)(d).
- 34** The committee’s closed session discussion on May 19, therefore, was permitted within the exceptions cited in the *Municipal Act*. However, the meeting did raise some procedural issues that will be analyzed later in this report.

## **June 2, 2015 committee meeting**

- 35** On June 2, 2015, 7:00 p.m., the Public Works Committee held a regular committee meeting in Bonfield’s council chambers.
- 36** The agenda listed one matter that would be discussed in closed session. It was described as “Outstanding Small Equipment tenders – CAO will have a verbal report for Committee than [sic] in camera discussions”.
- 37** At 7:57 p.m., the committee resolved to enter closed session, relying on two exceptions: the “litigation or potential litigation” exception and the “matter allowed under another Act” exception.
- 38** As with the meeting on May 19, the committee excluded the Public Works Clerk from the in camera discussion. No formal closed meeting minutes were taken, although the CAO did again take informal notes on a specified form.
- 39** Interviews with the CAO and the Mayor indicate that the CAO verbally provided the committee with various courses of action related to the township’s recent small equipment tender. The CAO informed our Office that he had identified concerns with the propriety of the tender process and wanted to mitigate the possibility of litigation from an identified source.
- 40** As a result of the discussion, the committee directed the CAO to prepare a resolution of council for council’s next meeting. When asked how the committee came to consensus on this direction, the CAO indicated that there was no vote; rather, the Mayor asked whether any of the committee members had any comments or objections. When there was none, the CAO understood that he had been directed.
- 41** The committee resumed in open session at 8:26 p.m. The committee did not report back and no other resolutions were passed. The meeting adjourned at 8:30 p.m.

## Analysis

### ***Closed meeting exceptions***

- 42** The Public Works Committee relied on two exceptions to discuss the small equipment tender process in camera. These included the “litigation or potential litigation” exception and the “matter allowed under another Act” exception.

#### Litigation or potential litigation

- 43** In order for the “litigation or potential litigation” exception to apply, litigation must be more than a remote possibility, but it does not need to be a certainty. Council or a committee must believe that litigation is a reasonable prospect, and must use the closed meeting to explore that prospect in some way.<sup>9</sup>
- 44** In a 2015 report regarding the Village of Westport, our Office found that, although litigation had not been initiated at the time of the in camera discussion, there was sufficient reason for the municipality to anticipate that it was a realistic possibility.<sup>10</sup> Therefore, council was entitled to rely on the litigation or potential litigation exception. Local Authority Services (LAS), in a 2013 report regarding closed meetings in the City of Windsor, concluded that a council “should only invoke this exception if litigation has commenced (i.e. through an application to the court or a tribunal) or if the potential for future legal action is more than mere speculation”.<sup>11</sup>
- 45** At the June 2 meeting, the Public Works Committee considered various courses of action related to the township’s recent tender process. These options were considered in order to mitigate the potential for litigation from an identified source. Although there was no litigation ongoing at the time of the meeting, it was a reasonable prospect under consideration and not mere speculation. Therefore, the committee was entitled to rely on the exception in section 239(2)(e) of the Act.

#### Permissible under another Act

- 46** The exception pertaining to holding a closed meeting as required “under another

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<sup>9</sup> *R(C) v CAS of Hamilton* (2004), 50 RFL (5th) 394 (Ont SCJ) at para 21, citing *Carlucci v Laurentian Casualty Co of Canada* (1991), 50 CPC (2d) 62 (Ont Ct (Gen Div)).

<sup>10</sup> Ombudsman of Ontario, *Investigation into whether council for the Village of Westport held an illegal closed meeting on October 28, 2014* (January 2015), online: <[http://www.ombudsman.on.ca/Files/sitemedia/files/Westport\\_2015\\_Final.pdf](http://www.ombudsman.on.ca/Files/sitemedia/files/Westport_2015_Final.pdf)>.

<sup>11</sup> Local Authority Services, *A Report to the council of the City of Windsor* (May 2013) at 9-10, online: <<http://www.agavel.com/wp-content/uploads/2015/01/Windsor-2-2012-final.doc>>.

Act” has limited application.

- 47** In *London (City) v. RSJ Holdings Inc.*,<sup>12</sup> the Supreme Court of Canada considered whether this exception applied to the closure of a meeting under the *Planning Act* to consider an interim control by-law. The court concluded that the city’s obligation to give notice and hold a public meeting under the *Municipal Act* was distinct from the provision in the *Planning Act* permitting interim control by-laws to be passed without a hearing or public participation, and that the meeting should have been conducted openly. The court did offer an example to illustrate when this exception might be applied, observing that under the *Emergency Management and Civil Protection Act*, certain municipal meetings are required to be closed for security reasons.
- 48** During interviews, neither the CAO nor Mayor could explain why this exception had been cited. The CAO hypothesized that it may have been selected because there was a potential that the tender process violated the *Municipal Conflict of Interest Act*. However, the *Municipal Conflict of Interest Act* does not require that any municipal meetings be closed to the public. Therefore, the committee was not entitled to rely on this exception for its in camera discussion on June 2.

### ***Procedural matters***

- 49** Our investigation revealed several issues with the township’s closed meeting procedures at both the May 19 and the June 2 committee meetings. While the *Municipal Act* sets the same procedural standards for all municipalities, we acknowledge the practical challenges that the Township of Bonfield faces due to its modest size and limited number of staff.

### **Date of the meeting – May 19**

- 50** For the May 19 committee meeting, the Public Works Committee did not meet on its regularly scheduled meeting date because the Mayor was unable to attend. The public was informed of this change by a notice posted on the chamber doors and an update to the township’s website.
- 51** Section 2.5 of the procedure by-law requires that committees submit to council for approval an annual schedule of meetings. The by-law required that committees must also receive prior approval from council for alternate or additional meeting dates. The CAO indicated that this “approval” for changes is usually sought informally through emails or telephone calls to councillors, and that he believes

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<sup>12</sup> [2007] SCJ No 29.

this process was followed for the May 19 meeting. However, even if this informal process was followed, the committee failed to meet the requirements of the procedure by-law because the committee did not obtain formal approval of the change at a meeting of council.

### Inadequate meeting minutes

**52** The Public Works Committee has a practice of only taking open meeting minutes for resolutions passed by the committee. The open meeting minutes from May 19 and June 2 reflect this practice; the meeting minutes record the resolutions passed by the committee and several declarations related to conflicts of interest. The Public Works Clerk was excluded from the in camera discussion and formal closed meeting minutes were not taken. Rather, the CAO took closed session “notes” on a specified form. The CAO indicated that he thought this process met the requirements of the *Municipal Act* after speaking with a representative from the Ministry of Municipal Affairs and Housing.

**53** In accordance with section 239(7) of the Act, a municipality is required to record, without note or comment, all resolutions, decisions and other proceedings at its meetings, including any closed sessions. Similarly, section 13.1 of the township’s procedure by-laws requires that meeting minutes contain:

- the date and time of the meeting;
- the name of the Head of Council and Council members present;
- the correction, amendment and adoption of minutes; and
- without note or comments, all resolutions, decisions and other proceedings of the Council.

**54** In a 2009 report regarding closed meetings in the City of Ottawa, Douglas R. Wallace provided the following commentary on section 239(7):

Although subsection 239(7) of the *Municipal Act* does not define precisely what proceedings must be recorded, or specifically require the recording of each and every question asked, when a matter is considered of sufficient weight to merit mention in the motion to resolve *in camera*, best practices at least would dictate that a record be kept of how the matter was disposed of.<sup>13</sup>

He concluded that the City of Ottawa failed to comply with section 239(7) of the Act in failing to record one of the proceedings of its closed meeting.

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<sup>13</sup> Douglas R Wallace, *Report to the Council of the City of Ottawa* (March 2009), online: <<http://ottawa.ca/en/city-hall/accountability-and-transparency/accountability-framework/january-28th-2009>>.

**55** As discussed in our Office’s July 2010 report regarding the Town of South Bruce Peninsula, the following information should be included in meeting minutes:

- where the meeting took place;
- when the meeting started and adjourned;
- who chaired the meeting;
- who was in attendance, with specific reference to the Clerk or other designated official responsible for recording the meeting;
- whether any participants left or arrived while the meeting was in progress and if so, at what time this occurred;
- a detailed description of the substantive and procedural matters discussed, including reference to any specific documents considered;
- any motions, including who introduced the motion and seconders; and
- all votes taken, and all directions given.<sup>14</sup>

**56** The committee’s open meeting minutes from May 19 and June 2 recorded limited information. While they did record the committee’s resolutions, they did not record the content or the nature of the committee’s discussion. In addition, there were no formal closed meeting minutes. The closed session “notes” taken by the CAO did not record precisely when or where the closed session occurred, who was in attendance, the motions introduced, or the substance of the discussion. Therefore, both the open and closed meeting minutes fell short of the requirements established in section 239(7) of the Act and the township’s procedure by-law.

**57** I strongly encourage municipalities to make audio or video recordings of council proceedings. This provides the most clear, accessible record for closed meeting investigators to review, and assists in ensuring that officials do not stray from the legal requirements during closed meetings.

**58** Increasingly, municipalities are opting to digitally record closed sessions for the sake of accuracy. Those that follow this practice include: the Townships of Tiny, Adelaide Metcalfe and McMurrich-Monteith, the Town of Midland, the Municipalities of Lambton Shores and Brighton, and the Cities of Oshawa, Sault Ste. Marie and Welland.

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<sup>14</sup> Ombudsman of Ontario, “*Open Conflict*”: *Investigation into whether the Town of South Bruce Peninsula Council improperly held closed meetings* (July 2010) at para 79, online: <<http://www.ombudsman.on.ca/Files/Sitemedia/Documents/Resources/Reports/Municipal/omletsouthbrucefinaljuly5.pdf>>.

## Delegation of minute-taking responsibility

- 59** The township relied on the Public Works Clerk, rather than the Clerk or Deputy Clerk, to record the open meeting minutes for the Public Works Committee on May 19 and June 2. Closed session “notes” were taken by the CAO.
- 60** Section 228(1) of the *Municipal Act* requires a municipality to appoint a Clerk whose duties include “to record, without note or comment, all resolutions, decisions and other proceedings of the council”. Section 228(4) of the Act states that “the Clerk may delegate **in writing** to any person, other than a member of council, any of the Clerk’s powers and duties” [emphasis added]. The township’s procedure by-law also provides that it is the Clerk’s responsibility to maintain accurate meeting minutes.
- 61** LAS has interpreted section 228(1) of the *Municipal Act* strictly. In a 2011 investigation into closed meetings in the Municipality of French River, it concluded that if neither the Clerk or Deputy Clerk will be taking meeting minutes, the Clerk must “delegate his authority in writing” or Council must “appoint an Acting Clerk by by-law”.<sup>15</sup> In a 2009 investigation into closed meetings in the Town of Deep River, LAS confirmed that only the Clerk or Deputy Clerk can delegate their minute-taking powers and that this delegation must be done in writing.<sup>16</sup>
- 62** In this case, the Clerk’s minute-taking responsibilities were not formally delegated to either the Public Works Clerk or the CAO in writing. Rather, it is a long-standing practice in the township. This practice is contrary to both the *Municipal Act*, which requires that any delegation of a Clerk’s duties be done in writing, and the township’s procedure by-law, which states that it is the Clerk’s responsibility to take meeting minutes.

## Informal direction to staff

- 63** The CAO’s closed meeting “notes” from May 19 and June 2 indicate that the committee provided direction regarding various in camera matters. The Mayor and CAO indicated that the committee did not vote on these directions, but rather

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<sup>15</sup> Local Authority Services, *A Report to the council of the Municipality of French River* (March 2011) at 7, online: <[http://www.agavel.com/wp-content/uploads/2013/09/French\\_River\\_Report\\_Final\\_08\\_07\\_11.docx](http://www.agavel.com/wp-content/uploads/2013/09/French_River_Report_Final_08_07_11.docx)>.

<sup>16</sup> Local Authority Services, *A Report to the council of the Town of Deep River* (March 2010) at 7, online: <[http://www.agavel.com/wp-content/uploads/2013/09/Deep\\_River\\_Report\\_Final\\_Mar\\_16\\_2010\\_08\\_07\\_11.doc](http://www.agavel.com/wp-content/uploads/2013/09/Deep_River_Report_Final_Mar_16_2010_08_07_11.doc)>.

came to informal consensus.

- 64** Under section 239(6)(b), a council or committee may only vote in closed session if:

the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board.

- 65** This exception allows a council to preserve the confidential nature of the closed meeting while nonetheless giving effect to council's decisions through directions to staff.

- 66** In a review of closed meetings in the Township of Seguin in 2010, our Office noted that "the taking of a vote in certain circumstances, clearly outlining the direction or instruction to staff, is a good practice".<sup>17</sup> Similarly, in a 2009 investigation regarding closed meetings in the County of Essex, LAS noted that the "[b]est practice is to take votes when giving direction or instructions" to staff.<sup>18</sup> LAS reached the same conclusion in reports in 2008 regarding closed meetings in the Municipality of Highlands East and the Township of East Luther Grand Valley.<sup>19</sup>

- 67** As a best practice, the Public Works Committee should ensure that it provides direction to staff through formal resolutions, passed by a vote of the committee.

## Resolution

- 68** The committee's resolutions to proceed in camera on May 19 and June 2 only referenced the exceptions relied on to close the meetings to the public. The meeting agendas, however, stated the general matters that the committee would be discussing in camera.

- 69** Both the Act (section 239(4)) and the township's procedure by-law require that the resolution to proceed into closed session includes the general nature of the subject matter to be considered. As noted by the Court of Appeal in *Farber v.*

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<sup>17</sup> Letter from Ombudsman of Ontario to Township of Seguin (9 November 2010) at pg 2.

<sup>18</sup> Local Authority Services, *A Report to the corporation of the County of Essex* (September 2009) at 14, online: <[http://www.agavel.com/wp-content/uploads/2013/09/Essex\\_County\\_Report\\_Sep\\_18\\_Final.doc](http://www.agavel.com/wp-content/uploads/2013/09/Essex_County_Report_Sep_18_Final.doc)>.

<sup>19</sup> Local Authority Services, *A Report to the council of the Municipality of Highlands East* (November 2008) at 7, online: <<http://www.agavel.com/wp-content/uploads/2013/09/HighlandsEast.doc>>; Local Authority Services, *A Report to the council of the Township of East Luther Grand Valley* (February 2008) at 8, online: <[http://www.agavel.com/wp-content/uploads/2013/09/ELGV\\_Investigation\\_Report\\_April\\_22\\_08.doc](http://www.agavel.com/wp-content/uploads/2013/09/ELGV_Investigation_Report_April_22_08.doc)>.

*Kingston City*, “the resolution to go into closed session should provide 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”.<sup>20</sup>

- 70** In a 2014 report regarding closed meetings in the Municipality of Kincardine, LAS interpreted this as requiring that “the wording of the resolution...do more than simply refer to the section of the *Municipal Act* that permits the closed meeting exception”.<sup>21</sup> Rather, there is a requirement that municipalities add a “level of informative detail” to the resolution.
- 71** Our Office has also recommended that councils provide more substantive detail, where appropriate, in resolutions authorizing closed sessions. For instance, in our Office’s 2015 review of closed meetings in the Municipality of South Huron, we noted that council’s resolution to go in camera “should provide a brief description of the subject matter to be considered in closed session”.<sup>22</sup>
- 72** In its resolutions to enter closed session on May 19 and June 2, the Public Works Committee only included the exceptions that it intended to rely on to go in camera. Merely citing the applicable closed meeting exception is not sufficient. The committee should have provided greater information to the public and could have done so without undermining the reason for excluding the public. At the very least, the committee could have repeated the information that was already available on the meeting agenda.
- 73** The township should ensure that, when possible, resolutions to enter closed session contain a general description of the issue to be discussed and do not merely cite a list of closed meeting exceptions.

### Reporting back

- 74** The committee did not report back following its closed sessions on May 19 or June 2. During their interviews, the Mayor and the CAO indicated that the committee does not have a practice of reporting back.
- 75** Numerous closed meeting investigators, including our Office, have recommended

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<sup>20</sup> [2007] OJ No 919 at pg 151.

<sup>21</sup> Local Authority Services, *A Report to the corporation of the Municipality of Kincardine* (July 2014) at 8, online: <<http://www.agavel.com/wp-content/uploads/2015/01/Kincardine-Investigation-Final-Report-July-2014.docx>>.

<sup>22</sup> Ombudsman of Ontario, *Investigation into closed meetings held by council for the Municipality of South Huron* (February 2015) at para 58, online: <[https://www.ombudsman.on.ca/Files/sitemedia/files/SouthHuronFinal\\_2015.pdf](https://www.ombudsman.on.ca/Files/sitemedia/files/SouthHuronFinal_2015.pdf)>.

that municipalities adopt the practice of reporting back.<sup>23</sup> In a 2009 report regarding closed meetings in the County of Essex, LAS recommended that councils “report...in a general way, what happened at the closed session”.<sup>24</sup> Similarly, Douglas R. Wallace noted in his 2009 investigation into closed meetings in the City of Ottawa that council should report in open session the fact that council had met in camera, the matters which were considered, and that no votes were taken other than to give directions to staff or to deal with procedural matters.<sup>25</sup>

- 76** The committee’s current practice of not reporting back fails to provide even a general idea of what was discussed in camera or the fact that direction to staff was provided. As a best practice, the committee should report back after closed sessions and provide information, even of a general nature, on what occurred in camera.

## Opinion

- 77** The closed session discussions held by the Public Works Committee for the Township of Bonfield on May 19 and June 2, 2015 fell within the closed meeting exceptions listed in the *Municipal Act, 2001*, and as such did not violate the Act’s open meeting rules.

- 78** I have however identified several procedural violations and areas where best practices can be improved. The committee did not comply with section 239(4)(a) of the Act when it failed to state by resolution the general nature of the matters to be considered at the closed meetings on May 19 and June 2, 2015. Likewise, the committee did not comply with section 239(7) of the Act when it failed to take formal and sufficiently detailed minutes. The committee also did not comply with section 228(1) of the Act by failing to have the Clerk delegate, in writing, her minute-taking responsibility.

- 79** In addition, the committee did not comply with the township’s procedure by-law when it failed to follow the formal procedure to move the committee’s meeting date for the May 19 meeting.

- 80** Council also did not follow the best practices of providing direction to staff

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<sup>23</sup> Ombudsman of Ontario, *Investigation into whether council for the Municipality of Magnetawan held illegal closed meetings* (June 2015) at para 54, online:

<[http://www.ombudsman.on.ca/Files/sitemedia/files/FinalReport-Magnetawan\\_2015.pdf](http://www.ombudsman.on.ca/Files/sitemedia/files/FinalReport-Magnetawan_2015.pdf)>.

<sup>24</sup> Local Authority Services, *A Report to the corporation of the County of Essex* (September 2009) at 17, online: <[http://www.agavel.com/wp-content/uploads/2013/09/Essex\\_County\\_Report\\_Sep\\_18\\_Final.doc](http://www.agavel.com/wp-content/uploads/2013/09/Essex_County_Report_Sep_18_Final.doc)>.

<sup>25</sup> Douglas R Wallace, *Report to the council of the City of Ottawa*, online: <<http://ottawa.ca/en/city-hall/accountability-and-transparency/accountability-framework/december-19-2008-january-6-2009>>.

through formal resolutions passed by a vote of the committee, and of reporting back following the closed session.

## Recommendations

**81** I make the following recommendations to assist the township in fulfilling its obligations under the Act and enhancing the transparency of its meetings.

### Recommendation 1

All members of the Public Works Committee for the Township of Bonfield should be vigilant in adhering to their individual and collective obligations to ensure that the committee complies with its responsibilities under the *Municipal Act, 2001* and its own procedure by-law.

### Recommendation 2

The Public Works Committee for the Township of Bonfield should take care to cite only the closed meeting exceptions in the Act that apply to the in camera discussion.

### Recommendation 3

The Public Works Committee should ensure that all changes to its meeting dates are done in accordance with the Township of Bonfield's procedure by-law.

### Recommendation 4

The Township of Bonfield should ensure that both open and closed session minutes are kept of all meetings of council, local boards, and committees of either of them.

### Recommendation 5

The Public Works Committee for the Township of Bonfield should ensure that meeting records are complete and accurately reflect all of the substantive and procedural items that were discussed.

### Recommendation 6

The Public Works Committee for the Township of Bonfield should implement the practice of audio or video recording its open and closed sessions.

### Recommendation 7

The Clerk for the Township of Bonfield should ensure that his or her minute-taking responsibility is delegated, in writing, to the individual(s) who will be taking meeting minutes for the Public Works Committee.

### **Recommendation 8**

As a best practice, the Public Works Committee for the Township of Bonfield should ensure that any direction to staff is provided through a formal resolution, passed by a vote of the committee.

### **Recommendation 9**

When proceeding in camera, the Public Works Committee for the Township of Bonfield should pass a resolution that includes both the fact of holding the closed meeting and the general nature of the subject matter to be discussed.

### **Recommendation 10**

The Public Works Committee for the Township of Bonfield should adopt the best practice of reporting back after closed sessions.

## **Report**

- 82** OMLET staff spoke with the CAO and Mayor on November 10, 2015 to provide an overview of these findings and to give the committee an opportunity to comment. Their comments were taken into account in preparing this report.
- 83** This report should be made available to the public as soon as possible, and no later than the next council meeting.



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**Barbara Finlay**  
Acting Ombudsman of Ontario