

**BY EMAIL**

May 15, 2023

Council for the Town of Huntsville  
c/o Mayor Nancy Alcock  
37 Main Street East  
Huntsville, Ontario P1H 1A1

Dear Members of Council for Town of Huntsville:

**Re: Closed meeting complaint**

My Office received a complaint regarding a closed meeting held by the General Committee of the Town of Huntsville (the “Town”) on September 28, 2022. The complaint alleged that the General Committee discussed in closed session a proposal to lease a portion of a municipally owned recreational complex, and that this discussion should have been held in open session. The complaint raised additional concerns that the agenda did not accurately reflect the nature of the closed session discussion, that the Town did not provide proper notice of this discussion, and that the General Committee may have held an improper vote regarding the lease proposal in closed session.

For the reasons set out below, I have determined that the General Committee’s discussion regarding the lease proposal did not contravene the *Municipal Act, 2001* (the “Act”).<sup>1</sup> However, the General Committee of the Town of Huntsville did contravene section 239(4)(a) of the Act by failing to provide sufficient information about the general topic of discussion in its resolution to proceed into closed session.

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<sup>1</sup> SO 2001, c 25.

## Ombudsman's role and authority

As of January 1, 2008, the Act gives anyone 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. My Office is the closed meeting investigator for Town of Huntsville.

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](http://www.ombudsman.on.ca/digest).

## Investigative process

My Office notified the Town of our intent to investigate this complaint on February 13, 2023. My Office interviewed the Director of Legislative Services/Clerk and also reviewed the open and closed meeting materials for the General Committee's September 28, 2022 meeting, including the agendas, minutes, and a report discussed in the closed session which provided information about the proposal to lease.

## September 28, 2022 General Committee meeting

The General Committee, which is comprised of all members of council, met in council chambers on September 28, 2022 at 9:00 a.m. At 1:17 p.m., the General Committee passed the following resolution to go into closed session:

**IT IS RECOMMENDED THAT:** The next portion of the meeting be closed to the public commencing now at 1:17 p.m. for the purpose of considering the following matters under the "Municipal Act, 2001":

Section 239 (2):

(c) proposed or pending acquisition or disposition of land by the municipality or local board; and

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(k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board

8.1.1. Confidential Report CS-2022-27

This resolution was very similar to the description of the closed session in the meeting agenda, which also included the name of the Director of Community Services.

In closed session, the Director of Community Services presented the contents of the report referred to on the agenda and in the resolution. The report provided information about a proposal to lease a portion of a municipally owned recreational complex. Aspects of this proposal had been discussed at previous General Committee meetings in open session. After the presentation, the General Committee considered the report and provided direction to staff. The General Committee returned to open session at 1:41 p.m. and passed a resolution authorizing staff to proceed as directed in closed session.

The meeting adjourned two minutes later at 1:43 p.m.

## Analysis

### *Applicability of the exception for acquisition or disposition of land*

On September 28, 2022, the General Committee cited the exception for acquisition or disposition of land under section 239(2)(c) of the Act to proceed *in camera* to discuss a proposal to lease a portion of a municipally owned recreational complex. The purpose of this exception is to protect the Town's bargaining position during negotiations to purchase or sell land.<sup>2</sup> I have previously found that discussions of whether or not to lease a property fit within the exception.<sup>3</sup>

Our review confirmed that the General Committee received and discussed a staff report that evaluated a proposal to lease a portion of a municipally owned recreational complex to a third party, and provided options to the General Committee regarding how it could direct staff. As there was a specific leasing arrangement under consideration, the Town had a bargaining position to protect.

Accordingly, the General Committee's closed session discussion of the lease proposal fit within the exception at section 239(2)(c) of the Act for the acquisition or disposition of land.

<sup>2</sup> *Fort Erie (Town of) (Re)*, 2018 ONOMBUD 2, online: <<https://canlii.ca/t/hvmtm>>.

<sup>3</sup> *Port Colborne (City of)*, 2015 ONOMBUD 32, online: <<https://canlii.ca/t/gtp7c>>.



*Applicability of the exception for plans and instructions for negotiations*

The General Committee also cited the exception for plans and instructions for negotiations at section 239(2)(k) of the Act. 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 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.

I have previously determined that a closed session discussion of a staff report regarding the status and next steps related to a lease negotiation, as well as the resulting directions to staff, fit within the exception for plans and instructions for negotiations.<sup>4</sup> My review indicates that on September 28, 2022, the General Committee discussed a proposal to lease a portion of a municipally owned recreational complex and then provided instructions to staff about how to proceed with respect to the proposal.

Accordingly, the General Committee's closed session discussion of the lease proposal fit within the exception at section 239(2)(k) of the Act for plans and instructions for negotiations.

*Did the General Committee provide sufficient information on the agenda about the topic to be discussed in closed session?*

The complaint raised a concern that the agenda for the September 28, 2022 General Committee meeting did not provide sufficient information regarding the topic of the scheduled closed session discussion. The information on the agenda about the closed session discussion included the two open meeting exceptions, the name of the staff member presenting on the report, and the confidential report number.

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<sup>4</sup> *Saugeen Shores (Town of) (Re)*, 2020 ONOMBUD 3, online: <<https://canlii.ca/t/j93c3>>.



As I have previously noted,<sup>5</sup> the Act does not require municipalities to provide advance notice of the matters to be discussed in closed session. However, it is a best practice to post a public agenda that lists the matters to be discussed, with enough information to allow citizens to make an informed choice about whether to attend a particular meeting. I encourage the Town to consider adopting this best practice.

*Did the General Committee provide sufficient information about the topic to be discussed in its resolution to proceed into closed session?*

My Office also considered whether the General Committee provided sufficient information about the topic of discussion in its resolution to proceed into closed session.

Section 239(4) of the Act requires that, before holding a closed meeting, council must state by resolution “the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting.” The Court of Appeal for Ontario stated in *Farber v. Kingston (City)* that a resolution to go into a closed meeting 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 proceeding into closed session.<sup>6</sup>

This means that municipalities are required to add a “level of informative detail” to the resolution to close a session to the public,<sup>7</sup> and I have previously recommended that councils provide more substantive detail in resolutions authorizing closed sessions.<sup>8</sup> In a report to Norfolk County, I found that council could have provided additional information without undermining the reason for proceeding into closed session.<sup>9</sup> In that circumstance, the resolution stated that council would discuss a “contractual matter” and provided a report number.

In this case, the General Committee’s resolution to move into closed session cited two exceptions from section 239 of the Act and identified a confidential report by number. My Office was told that this resolution followed the Town’s standard practice with regards to the information included in the resolution, but that the Town sometimes included additional information about the topic of discussion. On this occasion, however, the administrative information in the General Committee’s resolution did not provide meaningful information to the public about the subject of the closed session discussion.

<sup>5</sup> *Woolwich (Township of) (Re)*, 2015 ONOMBUD 24, online: <<https://canlii.ca/t/gtp6r>>.

<sup>6</sup> *Farber v. Kingston (City)*, 2007 ONCA 173, online: <<https://canlii.ca/t/1qtz>>.

<sup>7</sup> *Brockville (City of)*, 2016 ONOMBUD 12, online: <<https://canlii.ca/t/h2ssr>>.

<sup>8</sup> *Emo (Township of) (Re)*, 2020 ONOMBUD 6, online: <<https://canlii.ca/t/jb1g6>>.

<sup>9</sup> *Norfolk (County) (Re)*, 2016 ONOMBUD 7, online: <<https://canlii.ca/t/h2sth>>.



As the General Committee had discussed the particular lease proposal in previous open sessions and public reports, I find the General Committee could have provided additional information without undermining its reason for going into closed session. For example, the General Committee could have identified that it was going to discuss leasing or a proposal related to the municipally owned recreation complex.

Accordingly, the General Committee of the Town of Huntsville contravened section 239(4)(a) of the Act by failing to provide sufficient information about the general nature of the matter to be considered in closed session.

*Did the General Committee hold an improper vote in closed session?*

Section 239(6) of the Act permits voting during a closed session if the meeting is properly closed to the public and the vote is for a procedural matter or for giving directions to staff.

In this case, I have determined that the *in camera* discussion on September 28, 2022 fit within the open meeting exceptions for the acquisition or disposition of land and for plans and instructions for negotiations. While in closed session, the General Committee voted on a recommendation to direct staff. Subsequently, in open session, the General Committee voted to authorize staff to proceed as directed in closed session.

Accordingly, the vote in closed session was a direction to staff, and was permissible under the Act.

## Conclusion

The General Committee of the Town of Huntsville did not contravene the *Municipal Act, 2001* on September 28, 2022 when discussing a proposal to lease a portion of a municipally owned recreational complex in closed session. The General Committee also did not contravene the Act with respect to the information provided on the agenda about the subject of the closed session discussion or by voting to direct staff in closed session.

However, the General Committee did contravene section 239(4)(a) of the Act by failing to provide sufficient information about the general topic of discussion in its resolution to proceed into closed session. In the future, the General Committee should ensure it provides an appropriate level of informative detail in its resolutions to move into closed session.

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The Mayor and Director of Legislative Services/Clerk for the Town of Huntsville were given the opportunity to review the contents of this letter and provide comments to my Office. All comments received were considered before the finalization of this letter.

I would like to thank the Town of Huntsville for its co-operation during my review. This letter will be published on my Office's website, and should also be made public by the Town. In accordance with section 239.2(12) of the *Municipal Act, 2001*, council is required to pass a resolution stating how it intends to address this letter.

Sincerely,



Paul Dubé  
Ombudsman of Ontario

cc: Tanya Calleja, Director of Legislative Services/Clerk, Town of Huntsville

*Cette lettre est aussi disponible en français*

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