



## **Ombudsman Report**

**Investigation into complaints about a meeting  
held by the Township of Lanark Highlands'  
Committee of the Whole on June 27, 2023**

**Paul Dubé  
Ombudsman of Ontario**

**August 2024**

## Overview

- 1 My Office received two complaints that the Committee of the Whole for the Township of Lanark Highlands (the “Township”) contravened the open meeting rules on June 27, 2023. The complaints alleged that a management letter regarding draft financial statements was improperly discussed in the course of the *in camera* portion of the meeting.
- 2 My review has found that the discussion of the management letter fit within the open meeting exception cited by the Township, namely the exception for security of the property of the municipality. However, the Township did contravene the open meeting rules by failing to take adequate closed meeting minutes.

## Ombudsman jurisdiction

- 3 Under the *Municipal Act, 2001*<sup>1</sup> (the “Act”), all meetings of a council, local board, and committee of either must be open to the public unless they fall within prescribed exceptions.
- 4 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 or use the services of the Ombudsman. 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 Township of Lanark Highlands.
- 6 In investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the municipality’s governing procedures have been observed.
- 7 Since 2008, my Office has investigated hundreds of closed meetings in municipalities throughout Ontario. 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. Summaries of the Ombudsman’s previous decisions can be found in the digest: [www.ombudsman.on.ca/digest](http://www.ombudsman.on.ca/digest).

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

- 8 The Ontario Ombudsman also has the authority to conduct impartial reviews and investigations of hundreds of public sector bodies. This includes municipalities, local boards, and municipally controlled corporations, as well as provincial government organizations, publicly funded universities, and school boards. In addition, the Ombudsman’s mandate includes reviewing complaints about the services provided by children’s aid societies and residential licensees, and the provision of French language services under the *French Language Services Act*. Read more about the bodies within our jurisdiction here: [www.ombudsman.on.ca/have-a-complaint/who-we-oversee](https://www.ombudsman.on.ca/have-a-complaint/who-we-oversee).

## Investigative process

- 9 On November 8, 2023, my Office advised the Township of our intent to investigate these complaints.
- 10 Members of my Office’s open meeting team reviewed relevant portions of the Municipality’s procedural by-law, as well as the Act. We reviewed the meeting records, which included the minutes for the open and closed portions of the Committee of the Whole (“the Committee”) meeting on June 27, 2023. We also reviewed a copy of the management letter discussed at this meeting.
- 11 Finally, a member of my Office’s open meeting team spoke with the Clerk and interviewed all members of council present for this Committee meeting.
- 12 My Office received full co-operation in this matter.

## Background

- 13 Under the *Municipal Act, 2001*, each municipality must appoint an auditor, and must make its annual audited financial statements available to the public.<sup>2</sup>
- 14 Prior to the meeting of the Committee on June 27, 2023, an auditor prepared a management letter regarding the Township’s draft financial statements for 2021. We were told that the auditor requested that one item of the management letter be discussed *in camera* due to risks to the security of the Township’s property.

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<sup>2</sup> *Municipal Act, 2001*, SO 2001, c 25, ss 294.1 – 296.

## June 27, 2023 Committee of the Whole meeting

- 15 The Committee met in council chambers on June 27, 2023, at 6:08 p.m., with all seven members of council present.
- 16 Towards the end of the open portion of the meeting, the auditor, attending virtually, gave a presentation to the Committee about the draft financial statements for 2021. The presentation was accepted as information by the Committee.
- 17 Immediately after the presentation, at 8:49 p.m., the Committee moved into closed session to discuss an item described as “Draft Financial Statement Management Letter.” The Committee cited the exception for security of the property of the municipality to proceed into closed session.
- 18 The closed session minutes state that information was provided to the Committee by the auditor regarding security of the property of the municipality relating to the management letter. No other information about the discussion in closed session was recorded in the closed session minutes.
- 19 Most members of council interviewed by my Office described the *in camera* session as a presentation or auditor-led discussion. Most members (five of seven) explained that this *in camera* session was about a single item identified in the auditor’s management letter that could not be discussed publicly due to a risk to the security of the property of the Township. We were told that council was advised of its role in resolving the issue and that the issue was ongoing. We were also told that this discussion included technical details about the issue and questions about how it could be addressed.
- 20 One member of council, who told us they had a poor recollection of this meeting, indicated that they believed that the presentation during the closed session was about various issues, not limited to the single item mentioned by the other five members. Another member of council told us that the *in camera* discussion pertained to various financial issues identified by the auditor.
- 21 We were told that no direction to staff was given during the closed session, and the Committee received the information provided. The Committee returned to open session at 9:13 p.m.
- 22 In open session, the Committee approved the draft financial statements for the year ending December 31, 2021 as presented by the auditor. The Committee of the Whole meeting was adjourned at 9:17 p.m.

## Analysis

### The exception for security of the property of the municipality

- 23** The Committee of the Whole relied on the exception for security of the property of the municipality to discuss the management letter regarding the Township’s draft financial statements for 2021.
- 24** Paragraph 239(2)(a) of the *Municipal Act, 2001* allows closed session discussions about the security of property of the municipality or local board. The Act does not define “security” for the purposes of section 239.
- 25** In a previous report, my Office found that “security of the property of the municipality” should be given its plain meaning: The phrase applies to the protection of property from loss or damage, and the protection of public safety in relation to that property.<sup>3</sup> This exception may apply to both corporeal and incorporeal property of the municipality.<sup>4</sup>
- 26** In this case, in light of the evidence reviewed by my Office, I am satisfied on a balance of probabilities that a single matter relating to an ongoing threat to the security of the municipality’s property was discussed during the closed session. I am satisfied that the presentation by the auditor on the issues identified, and the discussion and questions that ensued, pertained to this security issue. Accordingly, the discussions under this item fit within the exception for security of the property of the municipality.

### The resolution to move *in camera*

- 27** The complainants told our Office that it was hard to understand how a management letter regarding financial information could qualify under the exception for security of the property of the municipality. As explained above, the resolution to move *in camera* merely described the subject matter as “Draft Financial Statement Management Letter.”
- 28** In *Farber v. Kingston (City)*, the Ontario Court of Appeal noted that “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>5</sup>

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<sup>3</sup> *Amherstburg (Town of) (Re)*, 2018 ONOMBUD 8, online: <<https://canlii.ca/t/hvmv1>>.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Farber v. Kingston (City)*, 2007 ONCA 173 (CanLII) at para 21 [*Farber*], online: <<https://canlii.ca/t/1qtzl>>.

29 The sufficiency of the subject matter disclosed in the resolution to move *in camera* is always a balancing act, as explained by the Ontario Court of Appeal in *Farber*. In the present case, given the sensitive nature of the subject matter discussed, I am satisfied that the Township provided in its resolution the information that could be made public.

## The adequacy of the minutes

- 30 The closed meeting minutes for the meeting we reviewed were sparse and lacked detail regarding the discussions that occurred during the closed session. The closed meeting minutes merely reiterated the information contained in the resolution to move *in camera*. The minutes do not even mention the only matter that we were told was discussed at this closed session.
- 31 Section 239(7) of the Act provides that all resolutions, decisions and other proceedings that take place during a meeting be recorded without comment. This requirement also applies to closed meetings.
- 32 In a 2018 report to the Township of Lanark Highlands, my Office indicated that the minutes should include a detailed description of the substantive and procedural matters discussed and recommended that the Township ensures that its meeting records are complete and accurate.<sup>6</sup>
- 33 Despite my previous recommendation to the Township, the minutes for the June 27, 2023 closed session lacked substantive detail and failed to describe the proceedings that took place during the meeting. The lack of detailed minutes also leaves the municipality without a record of the proceedings. In this case, the memories of council members differed regarding what took place during the meeting, hindering our investigation.
- 34 The Township of Lanark Highlands approves its closed meeting minutes in closed session and therefore the information in the minutes remains confidential. Meeting minutes should include when and where the meeting took place, who was in attendance, a detailed description of the substantive and procedural matters discussed (including reference to any specific documents considered), any motions, and all votes taken or directions given. Municipalities should ensure that they have clear and accessible records for closed meeting investigators to review.

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<sup>6</sup> *Lanark Highlands (Township of) (Re)*, 2018 ONOMBUD 1 (CanLII), online: <<https://canlii.ca/t/hvmtf>>.

- 35 Such records assist our Office in ensuring that officials do not stray from the legal requirements during closed meetings. The Township should ensure that its closed meeting minutes are detailed and comprehensive.
- 36 As a best practice, the Township may also wish to keep audio recordings of its closed sessions. A recommendation to this effect was also made in my 2018 report to the Township.<sup>7</sup> Audio or video recordings can assist greatly in case of an investigation. Moreover, such recordings enhance the public's confidence in the municipality's compliance with the open meeting rules.
- 37 Had the Township created an audio or video recording of the Committee's meeting, a complete and reliable record of the discussion would have been available to assist during our investigation.

## Opinion

- 38 The Committee of the Whole for the Township of Lanark Highlands did not contravene the *Municipal Act, 2001* on June 27, 2023 when it discussed risks to the security of municipal property. The discussions fit within the closed meeting exception for security of the property of the municipality, provided at paragraph 239(2)(a) of the Act.
- 39 However, the Committee of the Whole for the Township of Lanark Highlands contravened the requirements of section 239(7) of the Act on June 27, 2023 by failing to keep an adequate record of what was discussed *in camera*.

## Recommendations

- 40 I make the following recommendations to assist the Township of Lanark Highlands in fulfilling its obligations under the Act and enhancing the transparency of its meetings:

### Recommendation 1

**All members of council for the Township of Lanark Highlands should be vigilant in adhering to their individual and collective obligation to ensure compliance with their responsibilities under the *Municipal Act, 2001* and the Municipality's procedural by-law.**

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<sup>7</sup> *Ibid.*

**Recommendation 2**

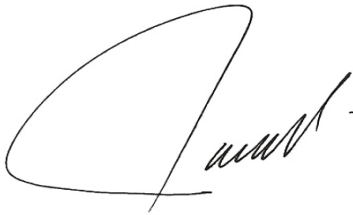
**The Township of Lanark Highlands should ensure that adequate minutes are kept of all closed session meetings.**

**Recommendation 3**

**As a best practice, the Township of Lanark Highlands should make audio or video recordings of its closed sessions.**

## Report

- 41 Council for the Township of Lanark Highlands was given the opportunity to review a preliminary version of this report and provide comments to my Office. All comments we received were considered in the preparation of this final report.
- 42 This report will be published on my Office's website, and should also be made public by the Township. In accordance with subsection 239.2(12) of the *Municipal Act, 2001*, council is required to pass a resolution stating how it intends to address this report.



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**Paul Dubé**  
**Ombudsman of Ontario**

*Ce rapport est aussi disponible en français*