



## **Ombudsman Report**

**Investigation into meetings held by council  
for the Township of McMurrich/Monteith  
on September 5 and September 14, 2023**

**Paul Dubé  
Ombudsman of Ontario**

**May 2024**

## Complaint

- 1 My Office received a complaint that council for the Township of McMurrich/Monteith held closed session meetings on September 5 and September 14, 2023, that did not fit within the closed meeting exceptions in the *Municipal Act, 2001*<sup>1</sup> (the “Act”).
- 2 My investigation determined that the Township of McMurrich/Monteith met properly *in camera* on September 5, 2023 under the exception for acquisition and disposition of land, and on September 14, 2023 under the exceptions for advice subject to solicitor-client privilege, and acquisition or disposition of land.

## Ombudsman jurisdiction

- 3 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.
- 4 As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipality or local board has complied with the Act in closing a meeting to the public. 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 McMurrich/Monteith.
- 6 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the applicable governing procedures have been observed.
- 7 Our 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

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

Ombudsman’s previous decisions can be found in the digest:  
[www.ombudsman.on.ca/digest](http://www.ombudsman.on.ca/digest).

- 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](http://www.ombudsman.on.ca/have-a-complaint/who-we-oversee).

## Investigative process

- 9 My Office notified the Township of our intent to investigate this complaint on November 10, 2023.
- 10 My Office interviewed all members of council, the Clerk, and the Deputy Clerk. We reviewed the open and closed meeting agendas, open and closed meeting minutes, closed meeting recordings, and other materials related to the meetings.
- 11 My Office received full co-operation in this matter.

## September 5, 2023 meeting

- 12 On September 5, 2023, council met in council chambers. At 8:22 p.m., council resolved to move into closed session, citing the exception for information subject to solicitor-client privilege to discuss the topic “disposal of property”.
- 13 According to the *in camera* recording, there were two portions of council’s closed discussion. Council first reviewed and discussed correspondence from its solicitor related to the disposal of a piece of municipally owned property. This property significantly affects the accessibility of two abutting private properties.

- 14 After council discussed the advice from its solicitor, council invited the private property owners to join the closed session one at a time to discuss a matter related to the municipally owned property. The owners left the closed session after each individually briefly discussing the matter with council.
- 15 Council returned to open session at 9:05 p.m. and adjourned the meeting.

## Analysis

*Applicability of the exception for advice subject to solicitor-client privilege, s. 239(2)(f)*

- 16 Council cited the exception for advice subject to solicitor-client privilege to discuss a “disposal of property” on September 5, 2023.
- 17 The exception for advice subject to solicitor-client privilege applies to discussions between a municipality and its solicitor in seeking or receiving legal advice intended to be confidential, and includes communications for that purpose.<sup>2</sup> The purpose of the exception is to ensure that municipal officials can speak freely about legal advice without fear of disclosure. A solicitor need not be present for the exception to apply, as advice subject to solicitor-client privilege may be contained in written correspondence.<sup>3</sup>
- 18 In the first portion of the closed meeting, council received and reviewed written legal advice from its solicitor intended to be confidential. Council discussed that advice and relied on it to determine how to proceed. Accordingly, this portion of the closed meeting fit within the exception for advice subject to solicitor-client privilege.
- 19 However, during the portion of the meeting when the individual property owners were invited into the closed session, council did not discuss confidential legal advice. Accordingly, this latter portion of council’s *in camera* discussion did not fit within the exception.

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<sup>2</sup> *Amherstburg (Town of) (Re)*, 2022 ONOMBUD 11 at para 26, online: <<https://canlii.ca/t/jr5rc>>.

<sup>3</sup> *Greater Sudbury (City of) (Re)*, 2017 ONOMBUD 2, online: <<https://canlii.ca/t/h4rwp>>.

*Applicability of the exception for acquisition or disposition of land, s. 239(2)(c)*

- 20 Although not cited by the Township, several councillors told my Office the exception for acquisition or disposition of land would have applied to the second portion of the discussion, which involved two private property owners.
- 21 This exception allows discussions about a proposed or pending acquisition or disposition of land to be held *in camera*. The purpose of the exception is to protect council's bargaining position during negotiations for a land transaction.<sup>4</sup> For the exception to apply, a municipality must be either the seller or purchaser of the land.<sup>5</sup> Further, the discussion must involve an actual land transaction that is either pending or has been proposed.<sup>6</sup>
- 22 In this case, council spoke with the two private property owners separately regarding a specific, proposed land transaction. If discussed publicly, the negotiation with each property owner would have substantially affected the municipality's future bargaining position when disposing of the land. Accordingly, I am satisfied that the discussion fit within the exception for acquisition or disposition of land, as council was discussing a proposed disposition of land and had a bargaining position to protect.

## September 14, 2023 meeting

- 23 Council met again on September 14, 2023, for an "Emergency/Special Council Meeting" at 3:00 p.m., and proceeded *in camera* at 3:22 p.m. The agenda indicated that council would be discussing a "disposition" and council relied on the acquisition or disposition of land exception to proceed into closed session.
- 24 According to the *in camera* recording, council discussed the same property disposition as at the September 5 meeting. My Office was told by multiple council members that council had learned that one of the abutting property owners had changed their position since speaking to council at the September 5 meeting. The discussion that occurred on September 14 was about how to proceed in light of that change. Council debated several different options, and came to a consensus on what to do with the municipally owned property.

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<sup>4</sup> *Fort Erie (Town of) (Re)*, 2015 ONOMBUD 12 at para 23, online: <<https://canlii.ca/t/gtp5w>>.

<sup>5</sup> *Port Colborne (City of)*, 2015 ONOMBUD 32 at para 77, online: <<https://canlii.ca/t/gtp7c>>.

<sup>6</sup> *Burk's Falls/Armour (Village of/Township) (Re)*, 2015 ONOMBUD 26, online: <<http://canlii.ca/t/gtp6w>>.

25 Council returned to open session at 4:27 p.m. and adjourned.

## Analysis

### *Applicability of the exception for acquisition or disposition of land, s. 239(2)(c)*

- 26 As previously stated, the exception for acquisition or disposition of land allows discussions about a proposed or pending acquisition or disposition of land to be held *in camera*. The purpose of the exception is to protect council's bargaining position<sup>7</sup> and the municipality must be either the seller or purchaser of the land.<sup>8</sup> Further, the discussion must involve an actual land transaction that is either pending or has been proposed.<sup>9</sup>
- 27 My Office has also found that this exception applies to discussions by council regarding how to dispose of specific property. In a 2014 report, my Office reviewed a meeting held by council for the Town of Ajax that was closed under the exception for acquisition or disposition of land.<sup>10</sup> Council discussed how to respond to a property owner's encroachment on municipal property, including whether or not to sell, lease all, or lease portions of the land to the property owner.<sup>11</sup> My Office found that the exception applied to this discussion, as council was discussing how it would dispose of property.
- 28 In this case, council's discussion was regarding how to dispose of a specific piece of property, and publicly discussing this strategy would have affected its bargaining position with the abutting property owners and other members of the public. Therefore, this discussion was permitted under the exception for acquisition or disposition of land.

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<sup>7</sup> *Supra* note 6.

<sup>8</sup> *Supra* note 7.

<sup>9</sup> *Supra* note 8.

<sup>10</sup> Letter from the Ombudsman of Ontario to Town of Ajax (March 28, 2014), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2014/town-of-ajax>>.

<sup>11</sup> *Ibid.*

## Opinion

- 29 Council for the Township of McMurrich/Monteith did not contravene the *Municipal Act, 2001* on September 5, 2023, when it went *in camera* to discuss a potential disposition of land. The first portion of council's discussion fit within the exception for advice subject to solicitor-client privilege, and the second portion fit within the exception for the acquisition or disposition of land.
- 30 Council did not contravene the *Municipal Act, 2001* on September 14, 2023, when it went *in camera* to discuss the same disposition of land. This discussion was permitted under the exception for acquisition or disposition of land.

## Report

- 31 The Mayor, the Deputy Mayor and the Clerk for the Township of McMurrich/Monteith were given the opportunity to review the preliminary version of this report and provide comments to my Office. All comments received were considered in the preparation of this final report.
- 32 The Mayor indicated my report will be included as correspondence at an upcoming meeting. At that time, it will also be posted on my website at [www.ombudsman.on.ca](http://www.ombudsman.on.ca).



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**Paul Dubé**  
Ombudsman of Ontario

*Ce rapport est aussi disponible en français*