



Ombudsman Report

**Investigation into a complaint about a meeting
held by council for the Municipality of Casselman
on October 26, 2021**

**Paul Dubé
Ombudsman of Ontario
August 2022**

Complaint

- 1 My Office received a complaint about a meeting held by council for the Municipality of Casselman (the “Municipality”) on October 26, 2021. The complaint alleged that council failed to pass a resolution describing the general nature of the matter to be discussed in closed session before moving *in camera*.

Ombudsman jurisdiction

- 2 Under the *Municipal Act, 2001*¹ (the “Act”), all meetings of a council, local board, and committees of either must be open to the public unless they fall within prescribed exceptions.
- 3 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 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 Municipality of Casselman.
- 5 In investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the municipality’s governing procedures have been observed.
- 6 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.

¹ SO 2001, c 25.

Investigative process

- 7 On January 7, 2022, we advised the Municipality of our intent to investigate the complaint regarding the October 26, 2021 meeting of council.
- 8 Members of my Office's open meeting team reviewed relevant portions of the Municipality's by-laws, as well as the Act. We also reviewed the minutes from the open and closed portions of the meeting on October 26, 2021, the agenda, and the audio recording. We also spoke with the Clerk and interviewed the Mayor.
- 9 My Office received full co-operation in this matter.

October 26, 2021 meeting

- 10 Council met in person at the community centre at 6:01 p.m. on October 26, 2021. Council then unanimously adopted a resolution to add six items to the agenda, as permitted by section 4.18 of the Municipality's procedure by-law.
- 11 Of the six items added to the agenda, one was a closed session matter. The minutes indicate that council agreed to add the item "Employee negotiations - Municipal Act. Art. 239 (2)(D)" to be discussed in a closed session. A review of the audio recording reveals that this addition was read aloud in French before approval as "*huis clos: relations humaines.*"
- 12 According to the minutes, at 6:35 p.m. council resolved to move *in camera* and a resolution was adopted indicating that council was moving *in camera* to discuss employee relations:

Be it resolved that the present meeting be adjourned for a closed session at 6:35 P.M. to address matters pertaining to Section 239 (2) (d) of the Municipal Act, 2001, S.O. 2001, chapter 25 to consider matters relating to:

1. Employee negotiations - Municipal Act. Art. 239 (2) (D)

- 13 However, our review of the audio recording indicates that the content of the resolution was not stated verbally during the meeting. That is, before proceeding *in camera*, the Mayor verbally stated that council was moving to a closed session, but did not state the general subject matter to be considered *in camera*. The Clerk then asked for a mover and a seconder. The vote itself is not audible on the audio recording of the meeting we reviewed, but the Clerk and the Mayor confirmed to my Office that the resolution to move *in camera* was adopted by council.

- 14 Council then proceeded *in camera* for discussions pertaining to employee negotiations.
- 15 During my investigation, my Office was told that the resolution to move *in camera* is normally read aloud prior to a vote, but, as described in paragraph 13 above, it was not done at this particular meeting. My Office was also told that, generally, council projects the agenda on a screen for the public to view during the council meeting, which would have made the text of the resolution visible to the public. However, because the closed session on October 26, 2021 was added to the agenda at the beginning of the council meeting, staff explained that the information pertaining to this resolution was not made visible to the public.

Analysis

The resolution to move *in camera*

- 16 Subsection 239(4) of the *Municipal Act, 2001* establishes a procedural obligation for a municipal council or local board or committee of either to move *in camera*. This obligation is twofold: First, the fact of the holding of the closed meeting must be disclosed to the public, and second, the general nature of the matter to be considered at the closed meeting must also be disclosed to the public.
- 17 Subsection 239(4) requires this information to be stated “by resolution.” It is imperative that the information contained in the resolution be public.² The Court of Appeal stated in *Farber v. Kingston* that subsection 239(4) of the Act requires 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.”³
- 18 Publicly stating that a meeting will be closed and identifying what issues will be discussed in the closed session is not a mere procedural technicality. The purpose of this obligation is to enhance the transparency of local democracy and ensure that decision-makers are accountable when they discuss matters behind closed doors. Failing to comply with this requirement can result in a loss of public confidence in municipal governance.⁴

² *Baldwin (Township of) (Re)*, 2009 ONOMBUD 3 at para 31, online: <<https://canlii.ca/t/gttgp>>.

³ *Farber v. Kingston (City)*, 2007 ONCA 173 (CanLII) at para 21 [*Farber*], online: <<https://canlii.ca/t/1qtz/>>.

⁴ *Ibid* at para 35.

- 19 My Office’s investigation confirmed that the Mayor stated the fact that a closed meeting would be held. Thereafter, a resolution to this effect was passed by council. Although council certainly could have been clearer in stating that it was voting on a resolution to move *in camera*, I am satisfied based on the evidence I have reviewed that the fact of the holding of the closed meeting was indeed stated by resolution.
- 20 However, based on my Office’s review of the audio recording, the general nature of the subject matter to be considered in closed session was not stated by resolution.
- 21 I recognize that, at the beginning of the council meeting, council added the closed session item agenda “Employee negotiations - Municipal Act. Art. 239 (2)(D)” (according to the minutes), and stated “*huis clos: relations humaines*” aloud. However, the inclusion of this item earlier in the meeting does not satisfy the requirement at subsection 239(4) of the Act, as the general nature of the matter to be discussed must be included in the resolution to close the meeting.
- 22 Finally, I note that even if the item appearing in the minutes —“Employee negotiations - Municipal Act. Art. 239 (2) (D)” — had been stated as part of the resolution, it merely refers to the applicable exception. As noted above, the general nature of the subject to be discussed must be included in the resolution in a way that maximizes the information available to the public while not undermining the reason for excluding the public.”⁵ There may be instances where additional information cannot be included in the resolution, but in my experience those cases are a rarity. The requirement to provide the general nature of the subject to be discussed in the closed meeting is generally not satisfied by only citing the exception from the Act.⁶

Recording the resolution in the minutes

- 23 The minutes indicate that council moved into closed session after adopting a resolution “to address matters pertaining to Section 239(2)(d) of the Municipal Act, 2001, S.O. 2001, chapter 25 to consider matters relating to: Employee negotiations - Municipal Act. Art. 239 (2) (D).” The audio recording of the meeting reveals that the resolution that was put to council does not match this more detailed wording. As a best practice, the Municipality should take care to ensure that minutes accurately reflect the proceedings of meetings.

⁵ *Farber*, *supra* note 3 at para 21.

⁶ *Brockville (City of)*, 2016 ONOMBUD 12 at para 53 online: <<https://canlii.ca/t/h2ssr>>.

Opinion

- 24 Council for the Municipality of Casselman contravened subsection 239(4) of the *Municipal Act, 2001* on October 26, 2021 when it failed to state by resolution the general nature of the matter to be considered *in camera*.

Recommendations

- 25 I make the following recommendations to assist the Municipality of Casselman in fulfilling its obligations under the Act and enhancing the transparency of its meetings:

Recommendation 1

All members of council for the Municipality of Casselman should be vigilant in adhering to their individual and collective obligation to ensure that the municipality complies with its responsibilities under the *Municipal Act, 2001* and its procedure by-law.

Recommendation 2

Council for the Municipality of Casselman should ensure that all resolutions to proceed *in camera* 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.

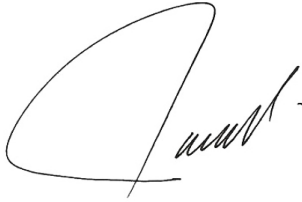
Recommendation 3

As a best practice, council for the Municipality of Casselman should ensure that meeting records are complete and accurately reflect all substantive and procedural items discussed.

Report

- 26 Council for the Municipality of Casselman was given the opportunity to review a preliminary version of this report and provide comments to my Office. Due to restrictions in place related to COVID-19, some adjustments were made to the normal preliminary review process and we thank council and staff for their co-operation and flexibility. All comments we received were considered in the preparation of this final report.

27 This report will be published on my Office’s website, and should also be made public by the Municipality of Casselman. In accordance with s. 239.2(12) of the *Municipal Act, 2001*, council is required to pass a resolution stating how it intends to address this report.



Paul Dubé
Ombudsman of Ontario