



Ombudsman Report

**Investigation into a complaint about
closed meetings held by the
Municipality of The Nation
in December 2018 and January 2019**

**Paul Dubé
Ombudsman of Ontario
July 2019**

Complaint

- 1 On January 30, 2019, my Office received a complaint about several closed meetings of council for the Municipality of the Nation.
- 2 The complaint alleged that council's resolutions to enter closed sessions had not provided sufficient information to allow members of the public to gauge whether the topics of discussion properly fit within the exceptions permitted under the *Municipal Act, 2001*.
- 3 The complaint also noted that the French and English versions of the municipality's bilingual agendas and minutes inconsistently refer to "personnel matters" and "personal matters" when stating closed meeting exceptions.

Ombudsman jurisdiction

- 4 Under the *Municipal Act, 2001*, all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 5 As of January 1, 2008, the Act gives citizens 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.
- 6 The Ombudsman is the closed meeting investigator for the Municipality of The Nation.
- 7 When investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality's governing procedures have been observed.

Council procedures

- 8 The municipality's procedure by-law (by-law no. 16-2018) states that all meetings of council, its committees, and local boards shall be open to the public. Prior to proceeding *in camera*, council and any committees must state by resolution the

fact of holding a closed meeting and the general nature of the subject matter to be considered.

- 9 The municipality's procedure by-law also states that the Clerk shall record the proceedings of council meetings without note or comment, including closed sessions.
- 10 The closed meeting exceptions set out in the procedure by-law generally reflect those set out in the *Municipal Act, 2001*. However, the exception with respect to matters relating to a request under the *Municipal Freedom of Information and Protection of Privacy Act* is incorrectly listed as discretionary ("may"), when under the Act it is mandatory ("shall"). In addition, the procedure by-law does not reference the "education or training" exception under section 239(3.1) of the Act, or the exception that requires a meeting be closed to discuss an ongoing Ombudsman investigation under section 239(3)(b).

Investigative process

- 11 On February 15, 2019, my Office issued notice in accordance with section 18(1) of the *Ombudsman Act* that we would be investigating this complaint. Members of my Office's open meeting team reviewed relevant portions of the municipality's by-laws and policies, and the Act.
- 12 My staff reviewed the agenda and minutes of the open and closed portions of three council meetings, held on December 17, 2018, January 7, 2019, and January 14, 2019. In addition, we reviewed documentation related to the matters discussed by council on those dates, including relevant staff reports and presentations, and the clerk's notes. (The municipality does not make audio or video recordings of council meetings.)
- 13 My staff interviewed the Clerk, the Mayor, and all members of council. We received full co-operation in this matter.

Background

The December 17 closed meeting

- 14 The agenda for the December 17, 2018 regular meeting of council indicated that the meeting would be closed under the exception for "personal matters about an

identifiable individual, including municipal or local board employees.” The title of this agenda item references the municipality’s Recreation Coordinator.

- 15** The English version of the public minutes records the resolution to enter closed session as follows:

Be it resolved that the present meeting be adjourned for a closed session for the following purposes:

Personnel matters about an identifiable individual, including municipal or local board employees.

- 16** No further description of the items to be discussed in closed session was provided. We were told that the discrepancy between “personal matters” and “personnel matters” was a typographical error in the English version of the minutes prepared by the Clerk. The French version of the minutes correctly cited the Act.¹
- 17** According to those we interviewed, all members of council were present, as well as the Clerk, the Director of Human Resources, and the Recreation Coordinator.
- 18** We were told that the purpose of the discussion was for council to receive and consider two confidential staff reports from the Recreation Coordinator. The first report, RE-22-2018, dealt with the hiring of two individuals for positions at community centres in the municipality. The report provided council with information regarding the compensation for each position, the number of applicants, and other issues such as insurance coverage and hours of work.
- 19** The second report, RE-23-2018, dealt with a proposed contract for a third individual who had been working for the municipality for some time. The report discussed terms specific to this individual’s working conditions, such as insurance coverage and remuneration.
- 20** According to those we interviewed, as part of both discussions, specific individuals were named.

¹ The wording of s. 239(2)(b) of the *Municipal Act* differs slightly in English and French; in English, it refers to “personal matters about an identifiable individual,” while in French, it refers to “des renseignements privés concernant une personne qui peut être identifiée,” or, essentially, private information about a person who could be identified.

- 21** After the resolution to enter closed session, the public minutes resume with a motion to re-open the meeting. Council then passed two resolutions in public:

18.1 That Council approves the Recreation Coordinator's Recommendation, as described in the report RE-22-2018 submitted in closed session December 17th, 2018.

18.2 That Council approves the Recreation Coordinator's Recommendation as amended, described in the report RE-23-2018 submitted in closed session December 17th, 2018.

- 22** The latter resolution was passed by a recorded vote, with one councillor voting against it.
- 23** The closed session minutes do not reflect that staff were directed by Council to amend report RE-23-2018. We were told that council did not provide a general summary of what was discussed in closed session after the reopening of the meeting, as there were no members of the public remaining.
- 24** We were also told that the Recreation Coordinator's reports were not made public after the closed session, nor were the titles of the reports or a brief summary provided.

The January 7 closed meeting

- 25** The agenda of the January 7, 2019, regular meeting of council indicated that two matters would be discussed in closed session under the "personal matters" exception. One agenda item referenced the Treasurer and the other item referenced the Planner.
- 26** The English public minutes record the resolution to enter closed session as follows:

Be it resolved that the present meeting be adjourned for a closed session for the following purposes:

Personnel matters about an identifiable individual, including municipal or local board employees.

- 27** No further description of the items to be discussed in closed session was provided. Again, we were told that the discrepancy between “personal matters” in the agenda and “personnel matters” in the resolution was a typographical error.
- 28** Although two matters had been placed on the agenda for closed session discussion, only the Treasurer item is recorded in the public and closed session minutes. We were told the second topic of discussion was postponed due to a lack of time. This change in the agenda was not recorded in the public or closed session minutes.
- 29** All members of council were present; however, the open meeting minutes note that one councillor declared a conflict of interest and left the council chamber for part of the closed session. The closed session minutes do not indicate precisely when this councillor left and re-entered the meeting.
- 30** According to those we interviewed, staff members who are part of the Executive Committee were also present. This information was not reflected in the closed session minutes.
- 31** We were told that council discussed remuneration for municipal staff during the closed session. Council received information from staff comparing compensation at other municipalities, including salary increases, cost of living increases, and mileage reimbursement for staff and members of council who drive their personal vehicles on municipal business.
- 32** We were told that council did not discuss any individual employees or their salaries during the closed session, and that the proposals discussed would apply to all municipal staff.
- 33** Council also discussed an increase to the salaries paid to the Mayor and members of council, in light of changes to income tax rules removing a partial tax deduction applicable to municipal council salaries. We were told that council also considered the Mayor’s increased workload and whether this merited a larger pay increase than other councillors and staff would receive.
- 34** We were told that during the closed session, council discussed a proposed across-the-board salary increase for municipal staff, an increase in the mileage reimbursement rate, an increase in council salaries, and an increase in the Mayor’s salary.

- 35** Most of the councillors we interviewed recalled that while in closed session, council directed the Treasurer/Human Resources Director to prepare a written report formally setting out the proposed terms regarding staff and council salaries for council's consideration at a future meeting. This direction is not reflected in the closed session minutes.
- 36** Council resolved to re-enter open session and did not pass any further resolutions with respect to the matters discussed in closed session.

The January 14 closed meeting

- 37** Council went into closed session prior to its January 14, 2019, special meeting. The agenda indicated that two matters would be discussed in closed session under the "personal matters" exception. One agenda item referenced the Director of Human Resources and the other item referenced the Economic Development Director. The public minutes note that council voted to add "Litigation" to the agenda for closed session discussion.
- 38** The public minutes record the resolution to enter closed session as follows:

Be it resolved that the present meeting be adjourned for a closed session for the following purposes:

Personnel matters about an identifiable individual, including municipal or local board employees.

[...]

Litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board.

- 39** No further description of the items to be discussed in closed session was provided. The "personal"/"personnel" discrepancy between the English agenda and the resolution was again attributed to typographical error.
- 40** All members of council were present; however, the open meeting minutes note that one councillor declared a conflict of interest and left the council chamber for part of the closed session. The closed session minutes do not indicate precisely when this councillor left or re-entered the meeting.

- 41 According to those we interviewed, the Clerk, Treasurer, and Planner (who also serves as the Economic Development Director) were also present. This information was not reflected in the closed session minutes.
- 42 We were told three topics were discussed during the closed session.

Litigation update

- 43 First, council received an oral update from the Clerk regarding a contractual dispute between the municipality and a third party. We were told that the municipality's solicitor was not present, nor did council receive any new legal advice or information. We were told that the purpose of this brief discussion was to ensure that the two new members of council were fully informed about the status of the ongoing contractual dispute, which predated the new term of council. We were told that in light of interest in this issue from constituents and the media, it was important that all councillors be aware of what they could and could not comment on publicly.

Economic development

- 44 Second, council received a report from the Director of Economic Development about proposed activities to be undertaken in the upcoming year to further economic development in the municipality. The report updated council on various ongoing and proposed economic development initiatives, such as marketing activities, the preparation of an action plan, and a particular economic development initiative. We were told that the closed session discussion concentrated primarily on this initiative and the consultant responsible for it.
- 45 We were told that the municipality had hired a consultant to attract particular companies to set up businesses in the municipality. During the closed session, council was provided with a list of prospective businesses that had been identified by the consultant. The consultant had initiated preliminary discussions with some of these companies about locating within the municipality. We were told that discussions were at a preliminary stage, and neither the consultant nor the municipality were actively engaged in detailed negotiations regarding any specific actions to be taken in order to attract investment.
- 46 We were also told that council discussed various aspects of the consultant's work, including the cost, council's satisfaction with the progress achieved, the level of detail in the consultant's reports previously brought to council, and

whether to continue working with the consultant or explore other economic development strategies, such as hiring permanent staff. Because the consultant responsible for the program was an individual rather than a firm, members of council felt that the topic was personal in nature and should remain confidential. We were also told that discussions about other aspects of the municipality's economic development strategy hinged on council's decision about whether to continue with this initiative or pursue other options.

- 47 The minutes from open session indicate that council amended the Economic Development Director's report during closed session. This amendment is not reflected in the closed session minutes. The final version of the report reviewed by my Office made two recommendations regarding economic development strategies. These recommendations were accepted by council in a resolution passed in open session, as follows:

Be it resolved that Council accepts the two directions recommended in the report EC-1-2019, dated January 4th, 2019 for Economic Development Opportunities with The Nation Municipality, as amended by Council and submitted in close[d] session on January 14th, 2019.

- 48 The contents of the directions accepted by council were not reported out in public or recorded in the public minutes.

Salaries

- 49 Third, council received a formal report from the Director of Human Resources, who also serves as the Treasurer of the municipality, which made specific proposals regarding salaries and compensation flowing from council's discussion during the January 7 meeting. The report made four recommendations regarding staff and council compensation, including:

- An annual across-the-board salary increase for all employees and members of council over the next four years,
- An additional increase in the mayor's salary for 2019,
- An additional increase in council salaries to compensate for the loss of the tax deduction, and
- An increase in the mileage reimbursement rate.

50 After returning to open session, council passed two resolutions:

18.1 That Council approves HR-01-2019 Report from the Human Resources Director as submitted in closed session on January 14, 2019.

18.2 That Council accepts the two directions recommended in the report EC_1-2019, dated January 4th, 2019, for Economic Development Opportunities within The Nation Municipality, as amended by Council and submitted in close session on January 14th, 2019.

Analysis

Applicability of the “personal matters” and “labour relations” exceptions

Personal matters

51 Council cited the “personal matters” exception in all three meetings in relation to various topics of discussion: hiring, employee compensation, council compensation, and economic development.

52 The “personal matters” exception at section 239(2)(b) of the Act applies to discussions that reveal personal information about an identifiable individual. My Office has found that in order to qualify as personal information, it must be reasonable to expect that an individual could be identified if the information were disclosed publicly.² Information will only qualify as personal if it pertains to the individual in his or her personal, rather than professional, capacity. However, information about a person in his or her professional capacity may still qualify if it reveals something personal.³

Labour relations

53 Given the topics discussed in the three meetings, my Office has also considered whether certain discussions may have fit under the exception to open meetings related to “labour relations or employee negotiations” at section 239(2)(d) of the Act. The purpose of the exception is to protect discussions relating to the relationship between a municipality and its employees.

² [Township of Russell, 2014](#)

³ [Township of Russell, 2015](#)

- 54 Discussions of compensation affecting a municipality’s workforce generally have been found to fit within the “labour relations or employee negotiations” exception under the Act. My Office has determined that compensation matters relating to a municipality’s non-unionized workforce fell within the exception for “labour relations” because remuneration is a term of employment.⁴
- 55 However, it is well established that discussions of council remuneration do not fall within the labour relations exception, or any of the Act’s closed meeting exceptions.⁵ In an investigation into closed meetings in the Town of Orangeville, another closed meeting investigator, Local Authority Services, determined that the setting of council members’ remuneration and expense policy is not eligible for consideration under either the personal matters or the labour relations or employee negotiations exceptions.⁶ Our Office reached the same conclusion when investigating closed meetings in the Township of Leeds and the Thousand Islands.⁷

December 17 - Hiring

- 56 My Office has found that discussions regarding the hiring of a specific individual, including their employment history and past job performance, fit within the “personal matters” exception.⁸ Although discussions of a hiring process and salary ranges in general are not considered personal information, information on individual salaries fits within the exception.⁹
- 57 In this instance, the closed session reports and council’s discussion identified candidates by name and discussed years of service and salary information. Accordingly, this discussion fit within the closed meeting exception for personal matters about an identifiable individual in section 239(2)(b) of the Act. Moreover, as the discussion related to the hiring of specific candidates, the exception with respect to labour relations and employee negotiations could also have applied in the circumstances.¹⁰
- 58 Discussion of the proposed changes to the contract of an individual already working for the municipality also fit within the personal matters exception, as

⁴ [Township of Leeds and the Thousand Islands, 2013](#)

⁵ [Township of Russell, 2016](#)

⁶ Local Authority Services, Report to the Council of the Town of Orangeville (October 2008)

⁷ [Letter from Ombudsman of Ontario to the Township of Leeds and the Thousand Islands \(18 April 2012\)](#)

⁸ [Township of Russell, 2015](#)

⁹ [Town of Mattawa, 2010](#)

¹⁰ [Township of Baldwin, 2014](#)

council discussed the history of service and remuneration of the named individual. This discussion could also have fit within the labour relations exception.

January 7 and 14 – Employee compensation

- 59 Council's discussion about across-the-board changes to compensation that would affect all municipal employees did not identify any individuals by name or discuss individual salaries or job performance. Therefore, the discussion did not fit within the "personal matters" exception.
- 60 However, though not cited by the municipality, council's closed session discussions on January 7 and 14 with respect to an across-the-board salary increase for all employees could have come within the labour relations closed meeting exception.

January 7 and 14 – Council compensation

- 61 My Office has previously concluded that given the important public interest in council members' remuneration, discussion of council member salaries and increases should always be done in an open and transparent fashion, and in a public forum.¹¹
- 62 In this case, council members discussed giving themselves the same annual raise that was being offered to all other municipal employees. However, council also discussed an additional adjustment to their pay to compensate for changes in income tax rules specific to municipal councillors. Therefore, elements of the discussion of council salaries were considered separately from the broader discussion about employee remuneration. This part of the discussion did not fall within the closed meeting exceptions for either labour relations or personal matters.

January 14 – Economic development

- 63 Generally, my Office has found that discussions of individuals in their professional capacity do not fit within the personal matters exception. However, information about an individual in his or her professional capacity could fit within the exception if it would reveal something of a personal nature about the

¹¹ [Letter from Ombudsman of Ontario to the City of Timmins \(9 April 2014\)](#)

individual. For example, discussion of an individual in their professional capacity takes on a more personal character if it relates to scrutiny of an individual's conduct or job performance.¹²

- 64** When reviewing the parameters of the open meeting exceptions, my Office has often considered the case law of the Information and Privacy Commissioner (IPC). Although not binding on my Office, these cases can be informative. The Information and Privacy Commissioner has found that information outside the scope of the personal sphere and within the scope of profit-motivated business activity does not constitute personal information. Information that speaks to a business arrangement is not considered personal information.¹³
- 65** In a report on a closed meeting in the Township of Alfred and Plantagenet, I found that a discussion about contracting with a consulting firm did not fit the personal matters exception. In that case, the discussion was in the context of a proposed professional relationship. Although individuals working at the firm and their qualifications were identified, this was strictly in a business context.¹⁴
- 66** In this case, council's discussion of economic development activities, including work performed by a consultant hired to carry out the Project Champion program, did not fit within the personal matters exception. Although council discussed a named individual who had been awarded a consulting contract to carry out this work, this person was discussed in a professional, rather than personal capacity. Council's discussion focused on the value for money of the particular contract, the progress made on the economic development file, and the level of detail in the reports submitted by the contractor.

Applicability of the "negotiation" exception

- 67** According to those we interviewed, parts of council's discussion about economic development on January 14, 2019, had to be kept confidential because the municipality's ability to attract the prospective businesses identified by the consultant could have been compromised if those businesses were named and discussed in open session.

¹² *Municipality of South Huron*, 2015, online.

¹³ PO-2225 (12 January 2004) online: [IPC](#); Order MO-2368 (26 November 2008) online: [IPC](#).

¹⁴ [Alfred and Plantagenet, 2017](#)

68 Although it was not cited by council, subsection 239(2)(k) of the Act provides for a meeting to be closed if the subject matter being considered is:

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.

69 The IPC has established a four-part test to determine whether an institution can refuse to disclose a record because it contains information related to negotiations carried on by the institution. The institution must show that:

- the record contains positions, plans, procedures, criteria or instructions;
- the positions, plans, procedures, criteria or instructions are intended to be applied to negotiations;
- the negotiations are being carried on currently, or will be carried on in future; and
- the negotiations are being conducted by or on behalf of the institution.¹⁵

70 The purpose of the exception under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*, which is similar to the language of the open meeting exception under the *Municipal Act*, is to protect information that could undermine an institution's bargaining position or give the public an unfair advantage over the institution.¹⁶

71 We were told that the municipality was not actively engaged in negotiations with any of the businesses contacted by the consultant, nor was there any activity related to negotiation, such as a rezoning application or a contemplated sale of municipal property.

72 The discussion on January 14 does not satisfy any of the above criteria. Rather than setting out a detailed plan of negotiations or discussing active negotiations, council's discussion focused instead on the progress made by the contractor in identifying potential economic development opportunities for the municipality. Although negotiations might eventually result, we were told that the economic development project was at a preliminary stage at the time of council's

¹⁵ IPC, Order M-92, Town (Ajax) (Re), 1993 CanLII 5077 (ON IPC); see also IPC, Order PO-3570, Office of the Public Guardian and Trustee (Re), 2016 CanLII 4760 (ON IPC).

¹⁶ Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980, vol. 2 (Toronto: Queen's Printer, 1980).

discussion. At the time of the meeting, council had not yet developed a position, plan, procedure, criteria or instructions to be applied to future negotiations.

- 73 Therefore, the negotiation exception could not have applied to the discussion of the staff report on economic development.

Applicability of the “litigation” exception

- 74 The meaning of “litigation or potential litigation” is not explicitly defined in the *Municipal Act*. However, as the courts have explained with respect to litigation privilege:

It is not necessary that litigation have been commenced, nor is it necessary that it be created at a time when there is a certainty of litigation but merely that litigation is a reasonable prospect. On the other hand, there must be more than a mere suspicion that there will be litigation.¹⁷

- 75 In this case, there was an ongoing legal dispute between the municipality and a third party with respect to a particular contract. The possibility of litigation went beyond mere speculation. While several councillors had no recollection of this discussion, we were told by others that the matter had previously been discussed in closed session and that it was necessary to provide an update to new members of council. No further actions were taken by council at the time.
- 76 Accordingly, council was entitled to rely on the closed meeting exception for “litigation or potential litigation” during its January 14, 2019, meeting.

Procedural matters

Resolution to proceed *in camera*

- 77 In order to exclude the public from a meeting, council must pass a resolution closing the meeting. Under the open meeting rules, the resolution must state the fact of the closed meeting and the general nature of the topic to be discussed.¹⁸ The municipality’s procedure by-law also requires that prior to proceeding *in*

¹⁷ C. R., Re, 2004 CanLII 34368 (ON SC), at para 21 citing *Carlucci v. Laurentian Casualty Co. of Canada*, [1991] O.J. No. 269.

¹⁸ *Municipal Act, 2001* s 239(4)

camera, council must state by resolution the fact of holding a closed meeting and the general nature of the subject matter to be considered.

- 78 In *Farber v. Kingston*, the Ontario Court of Appeal emphasized that the resolution 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.¹⁹
- 79 For each of the closed sessions that occurred on December 17, 2018, and January 7 and 14, 2019, the resolutions to proceed *in camera* reproduced the wording of an exception from the *Municipal Act, 2001* without providing a general description of the matter to be discussed.

Reporting back

- 80 After its closed session discussions on December 17, 2018, and January 7 and 14, 2019, council did not report back in open session about its discussion *in camera*.
- 81 The minutes for the meetings we reviewed do not indicate that council for the Municipality of the Nation follows a practice of reporting back to the public after a closed session. Numerous closed meeting investigators, including our Office, recommend that municipalities report back.²⁰
- 82 As a best practice, the municipality should report back after closed sessions and provide general information about what occurred *in camera*. Public reporting might consist of a general discussion in open session of subjects considered in closed session, together with information about any decisions, resolutions, and directions given to staff. In other cases, the nature of the discussion might allow for considerable information about the closed session to be provided publicly.
- 83 We were advised by the Clerk and several councillors that the municipality has now adopted the practice of reporting back after closed sessions.

¹⁹ *Farber v. Kingston (City)*, 2007 ONCA 173 (CanLII), <http://canlii.ca/t/1qtzl> at para 21

²⁰ [City of Oshawa, 2016](#)

Minutes

- 84** Subsection 239(7) of the Act requires municipalities to record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not. Although the Act prohibits notes or comments from being included in the official record, this does not mean that the subjects discussed at a meeting should not be documented. Minutes should include a detailed description of the substantive and procedural matters discussed.
- 85** The open session minutes for the December 17, January 7 and January 14 meetings did not include a general description of the matters to be discussed.
- 86** My Office has found that a record of a closed meeting should include reference to:
- 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 documents considered; and
 - Any motions, including who introduced the motion and seconders;
 - All votes taken, and all directions given.²¹
- 87** The closed session minutes for the December 17, January 7 and January 14 meetings failed to record procedural matters, directions given to staff, at what times the closed session started and adjourned, who was in attendance, and whether any participants left or arrived during the meeting.
- 88** More and more municipalities are opting to digitally record closed sessions for the sake of accuracy. My Office is aware of at least 23 municipalities in Ontario

²¹ [Municipality of South Huron, 2015](#)

that currently do so, including the Cities of Brampton, London, Niagara Falls, Oshawa., Sarnia and Sault Ste. Marie.

- 89** As noted in our handbook, *Open Meetings: Guide for Municipalities*,²² my Office encourages 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.
- 90** To assist municipal councils, staff, and citizens, we have also developed an online digest of open meeting decisions, which allows users to search summaries of my Office’s investigations and findings. This searchable repository was created to provide interested parties with 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 a matter should or may be discussed in closed session. Summaries of all decisions cited in this report can be found in our digest.

Opinion

- 91** Council for the Municipality of The Nation did not violate the *Municipal Act, 2001* on December 17, 2018, when it discussed the hiring of individual contractors in closed session. The discussion fit within the exception cited under the Act for “personal matters” and could have fit within the exception for “labour relations or employee negotiations.”
- 92** Council for the Municipality of The Nation did not violate the *Municipal Act, 2001* on December 17, 2018, when it discussed the employment conditions of individual contractors in closed session. The discussion fit within the exception cited under the Act for “personal matters” and could have fit within the exception for “labour relations or employee negotiations.”
- 93** Council for the Municipality of The Nation did not violate the *Municipal Act, 2001* on January 7 and 14, 2019, when it discussed compensation for municipal employees in closed session, as the matter could have fit within the exception for “labour relations or employee negotiations.”

²² <https://www.ombudsman.on.ca/have-a-complaint/who-we-oversee/municipalities/municipal-closed-meetings/open-meetings-guide-for-municipalities>

- 94 Council did contravene the *Municipal Act, 2001* when it discussed changes to councillor remuneration. This discussion did not fall within the “personal matters” exception, or any other exception, under the Act.
- 95 Council for the Municipality of The Nation did not violate the *Municipal Act, 2001* on January 14, 2019, when it discussed litigation involving the municipality in closed session. The discussion fit within the exception cited under the Act for “litigation or potential litigation.”
- 96 Council for the Municipality of The Nation violated the *Municipal Act, 2001* on January 14, 2019, when it discussed economic development activities in closed session. The discussion did not fall within the “personal matters” exception, or any other exception, under the Act.
- 97 Council for the Municipality of the Nation contravened the requirements of section 239(4)(a) of the *Municipal Act, 2001*, and its procedure by-law by failing to state by resolution the general nature of the matters to be considered in camera.

Recommendations

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

Recommendation 1

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

Recommendation 2

The Municipality of The Nation should ensure that no subject is discussed in closed session unless it clearly comes within one of the statutory exceptions to the open meeting requirements.

Recommendation 3

The Municipality of The Nation should ensure that its 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 4

The Municipality of The Nation should ensure that it creates a complete record of all meetings, both open and closed.

Recommendation 5

The Municipality of The Nation should implement a practice of audio or video recording both open and closed session meetings.

Recommendation 6

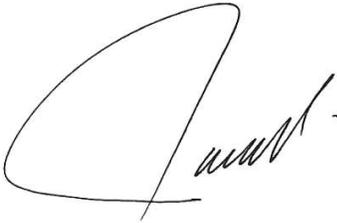
Council for the Municipality of the Nation should amend its procedure by-law to accurately reflect the exceptions to open meetings set out at sections 239(3)(a), 239(3)(b) and 239(3.1) of the *Municipal Act, 2001*.

Recommendation 7

Council for the Municipality of the Nation should adopt the best practice of reporting back in open session following an *in camera* meeting.

Report

- 99 Council for the Municipality of The Nation was given the opportunity to review a preliminary version of this report and provide comments to our Office. Comments received were considered in the preparation of this final report.
- 100 My report should be shared with the Council for the Municipality of The Nation and made available to the public as soon as possible, and no later than the next council meeting. In accordance with s.239.2(12) of the *Municipal Act, 2001*, council should pass a resolution stating how it intends to address this report.



Paul Dubé
Ombudsman of Ontario