



Ombudsman Report

**Investigation into whether
Council for the Town of Cochrane
held an illegal closed meeting on
January 27, 2015**

**André Marin
Ombudsman of Ontario
April 2015**

Complaint

- 1** On February 3, 2015, my Office received a complaint about a closed session held by council for the Town of Cochrane on January 27, 2015.
- 2** According to the complaint, the closed session discussions that took place that day did not fit within any of the exceptions to the open meeting requirements outlined in the *Municipal Act, 2001* (the Act) and should have taken place in open session.

Ombudsman jurisdiction

- 3** Under the *Municipal Act, 2001*(the Act), all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 4** As of January 1, 2008, the Act gives citizens the right to request an investigation into whether a municipality has properly closed 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.
- 5** The Ombudsman is the closed meeting investigator for the Town of Cochrane.
- 6** In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipal procedure by-law have been observed.

Investigative process

- 7** My Office's Open Meeting Law Enforcement Team (OMLET) reviewed relevant portions of the municipality's procedure by-law (by-law 289-2003) and the Act, as well as the meeting materials for the January 27, 2015 meeting. They also spoke with municipal staff and the mayor.

Council procedures

- 8** The town's procedure by-law states that meetings of council take place on the first Tuesday of the month, and Committee of the Whole meetings take place on the second, third and fourth Tuesdays of the month at 6:00 p.m. in Council Chambers. This information is also available on the town's website.
- 9** The by-law states that meetings will be open to the public, except as provided for in the by-law. Section 11 of the by-law outlines the subjects that can be discussed in closed session, and mirrors section 239 of the Act.
- 10** Section 11.8 of the by-law in place at the time of the complaint stated that no minutes would be recorded of closed sessions, with the exception of the motions to come out of the closed session. In a previous report, released in January of this year, I noted that it is a requirement of the Act that records be kept of both open and closed sessions. I recommended that the procedure by-law be amended to reflect the requirements of the Act, and the town's actual practice of keeping closed session minutes. Council amended the by-law in February.
- 11** I also recommended that the town implement a practice of audio or video recording closed sessions, in order to provide the most accurate and accessible record of closed meetings.

The January 27, 2015 meeting

- 12** The January 27 meeting was a regular council meeting, held in council chambers. The agenda indicated that council would be proceeding in camera to discuss a matter of solicitor-client privilege.
- 13** The open meeting minutes indicate that council passed a resolution to proceed in camera at 7:13 p.m. under the "solicitor and client privilege" exception (s. 239(2)(f) of the *Municipal Act, 2001*), to discuss its legal counsel's advice on my Office's recommendations, and also to discuss a personnel matter pertaining to the accounts payable/receptionist position. Only the first item was the subject of the complaint to my Office.
- 14** According to the closed session minutes, the clerk and all of council were present at the in-camera session. The minutes indicate that council considered privileged legal advice, but the substance of the discussion was redacted from the minutes my Office received. Both the clerk and the Mayor confirmed to us that only

written legal advice received from the town's solicitor was discussed during that portion of the meeting.

- 15** The open session resumed at 7:43 p.m. Council reported back that my Office's recommendation that the town implement a practice of audio or video recording closed sessions was discussed. Council then passed a resolution to acknowledge my previous report, and to amend section 11.8 of the procedure by-law in accordance with my recommendation.

Analysis

- 16** Council is permitted under s. 239(2)(f) of the *Municipal Act, 2001* to close a meeting to the public if the subject matter of the discussion is "advice that is subject to solicitor-client privilege, including communications necessary for that purpose."
- 17** The information provided to my Office indicates that on January 27, 2015, council proceeded in camera to consider specific legal advice from the town's solicitor. These discussions fit within the s. 239(2)(f) exception.

Opinion

- 18** My investigation established that council for the Town of Cochrane did not contravene the *Municipal Act, 2001* during the January 27, 2015 closed session. The discussions that took place fell within the "solicitor-client privilege" exception to the open meeting requirements.

Report

- 19** OMLET staff spoke with the Mayor and the clerk on April 21, 2015 to provide an overview of these findings, and to give the municipality an opportunity to comment. Any comments received were taken into account in preparing this report.
- 20** My report should be shared with council for the Town of Cochrane and made available to the public as soon as possible, and no later than the next council meeting.



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