



Toronto, April 21, 2020

Council for the Municipality of Northern Bruce Peninsula
56 Lindsay Road 5
Lion's Head, ON
N0H 1W0

Sent via email

Dear Council:

Re: Closed meeting complaint

My Office received a complaint about a closed meeting held by council for the Municipality of Northern Bruce Peninsula on November 25, 2019. The complaint alleged that council's discussion did not fit within the *Municipal Act's* (the Act's) closed meeting exception cited by the municipality.

I am writing to advise that my review has determined council was entitled to go into closed session on November 25, 2019, to discuss by-law enforcement, and that my Office will not be further assessing this complaint.

Closed meeting investigator

As of January 1, 2008, the *Municipal Act* gives citizens the right to request an investigation into whether a municipality or its local boards have complied with the Act in closing a meeting to the public.¹ Municipalities and local boards 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. I am the closed meeting investigator for the Municipality of Northern Bruce Peninsula.

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¹ *Municipal Act*, SO 2001, c 25, s 239.1.

To assist municipal councils, staff, and citizens, we have developed an online digest of open meeting decisions that contains summaries of the Ombudsman's open meeting cases. This searchable repository was created to provide interested parties with easy access to the Ombudsman's past 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, as well as issues related to open meeting procedure. Summaries of all previous Ombudsman decisions may be consulted in the digest at www.ombudsman.on.ca/digest.

Review

My Office reviewed the relevant meeting agenda, open and closed session minutes, and other closed session meeting materials including a staff report and letter from the municipal solicitor. We also reviewed the municipality's procedure by-law and spoke with the Clerk.

With regard to the by-law enforcement matter discussed in camera on November 25, 2019, the agenda and meeting minutes indicate that council relied on the "personal matters" (s. 239(2)(b)), "litigation or potential litigation" (s. 239(2)(e)) and the "advice subject to solicitor-client privilege" (s. 239(2)(f)) closed meeting exceptions. The agenda and resolution each indicate that council's discussion related to a "by-law enforcement" matter.

According to our discussion with the Clerk, as well as the closed session minutes and materials, council discussed written legal advice from its solicitor regarding a by-law enforcement matter where litigation had been specifically threatened. Staff also provided a report to council summarizing the matter and providing additional information about several identified individuals. Following this discussion, council returned to open session and reported that it had directed staff to provide a response regarding the by-law enforcement matter.

Section 239(2)(f) of the Act allows a municipality to proceed in camera to discuss "advice subject to solicitor-client privilege." This exception covers discussions that include communications between the municipality and its solicitor in seeking or receiving legal advice intended to be confidential.² The purpose of the exception is to ensure that municipal officials can speak freely about legal advice without fear of disclosure. It is not necessary that the municipality's lawyer be present for the exception to apply.

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² *Timmings (City of) (Re)*, 2017 ONOMBUD 4 at para 28, online: <<http://canlii.ca/t/h4rwt>>.

For example, a written legal opinion may be considered in closed session under the exception, or staff may convey legal advice from a lawyer to council during a closed session.³

My review indicates that council's discussion of specific written legal advice during its November 25 closed session was permissible under this section of the *Municipal Act*. Accordingly, it is not necessary to consider whether council was also entitled to rely on the other closed meeting exceptions cited.

I would like to thank the municipality for its co-operation during my investigation. You indicated to us that this letter would be included as correspondence at the next council meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul Dubé', written over a light blue horizontal line.

Paul Dubé
Ontario Ombudsman

cc: Mayor McIver, mayor@northernbruce.ca

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