



Ombudsman Report

**Investigation into meetings held by council
for the Township of Jocelyn on January 10 and 13,
February 7, April 4, and October 10, 2023**

**Paul Dubé
Ombudsman of Ontario**

September 2024

Complaint

- 1 My Office received three complaints that council for the Township of Jocelyn (the “Township”) held closed meetings on January 10 and 13, February 7, April 4, and October 10, 2023 that did not fit within the closed meeting exceptions in the *Municipal Act, 2001*¹ (the “Act”). One complaint raised concerns that illegal votes were held at the first four of these closed meetings. Another complaint alleged that members of the public were unable to attend the start of the October 10, 2023 meeting because the doors to the meeting room were locked.
- 2 My investigation determined that the closed session discussions on each of these dates fit within the Act’s closed meeting exceptions. My investigation also determined that no illegal voting occurred at the meetings on January 10 and 13, February 7 and April 4, 2023. However, it is recommended as a best practice that council clearly identify any specific directions given in closed meetings, formally vote on them, and record that vote in the closed meeting minutes.
- 3 Lastly, my investigation determined that although the Township’s closed meeting discussion on October 10, 2023 fit within the cited exception for advice subject to solicitor-client privilege, the Township contravened the Act by failing to pass a resolution to enter into its closed meeting, failing to take closed meeting minutes, and by improperly closing the beginning of the meeting to the public by locking the door to council chambers.

Ombudsman jurisdiction

- 4 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.
- 5 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.
- 6 The Ombudsman is the closed meeting investigator for the Township of Jocelyn.

¹ SO 2001, c 25.

- 7 When investigating closed meeting complaints, we consider whether the open meeting requirements in the Act and the municipality's procedure by-law have been observed.
- 8 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 Ombudsman's previous decisions can be found in the digest: www.ombudsman.on.ca/digest.
- 9 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.

Investigative process

- 10 My Office notified the municipality of our intent to investigate the complaints on November 23 and December 14, 2023.
- 11 My Office spoke with the Mayor, all councillors present at the relevant meetings, the Treasurer, the office administrator, and the Deputy Clerk. We reviewed the Township's procedure by-law, meeting agendas, open meeting minutes and related material for each of the five meetings. We also reviewed the closed meeting minutes for all but the October 10, 2023 meeting, where no closed meeting minutes were prepared.
- 12 My Office received full co-operation in this matter.

January 10, 2023 council meeting

- 13 On January 10, 2023, council met in council chambers for a regular council meeting. After some discussion in the open session, council resolved to move *in camera* to discuss the topic “P Line and Otter Lake Road right of way” under the exceptions for acquisition or disposition of land and advice subject to solicitor-client privilege.
- 14 Council’s *in camera* discussion of this topic had two portions. The Township had recently come to learn that a section of a municipally owned road was situated on two privately owned properties. The Township was determining how to resolve the issues stemming from this, while still maintaining public access to a nearby lake.
- 15 In the first portion of the discussion, council reviewed and discussed correspondence from the lawyer of one of the affected property owners. The correspondence proposed options to council to resolve the issue.
- 16 In the second portion of the *in camera* discussion, a different member of the public affected by the matter was invited into the discussion and made a proposal to council to assist in resolving the issue.
- 17 Following this discussion, council returned to open session and resolved to direct the Clerk to co-ordinate a meeting with the Township solicitor on January 13, 2023 to obtain advice on the topic.

Analysis

Exception for advice subject to solicitor-client privilege, s. 239(2)(f)

- 18 Council cited the exception for advice subject to solicitor-client privilege to discuss “P Line and Otter Lake Road right of way” in closed session.
- 19 Under this exception, a meeting or part of a meeting may be closed to the public if the discussion includes communications between the municipality and its solicitor in seeking or receiving legal advice intended to be confidential.² The purpose of this exception is to ensure that municipal officials can speak freely about legal advice without fear of disclosure.

² Letter from the Ombudsman of Ontario to the Township of Ryerson (November 8, 2013), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2013/township-of-ryerson-en>>; Letter from the Ombudsman of Ontario to the Township of Adelaide Metcalfe (May 23, 2012), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2012/township-of-adelaide-metcalfe>>.

- 20 Our investigation did not identify any instances where council discussed or received legal advice that was subject to solicitor-client privilege during its *in camera* discussion on January 10, 2023. Accordingly, the *in camera* discussion did not fit within the exception for advice subject to solicitor-client privilege.

Exception for acquisition or disposition of land, s. 239(2)(c)

- 21 Council also relied on the exception for acquisition or disposition of land during the closed session on January 10, 2023. The purpose of the exception is to protect the municipality's bargaining position during negotiations for a land transaction. For the exception to apply, a municipality must be either the seller or purchaser of the land. Further, the discussion must involve an actual land transaction that is either pending or has been proposed.
- 22 Previously, my Office has found that this exception applies to discussions regarding how to dispose of specific property. In a 2014 letter to the Town of Ajax, my Office investigated a closed meeting where 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.³ My Office found that the exception for acquisition or disposition of land applied to this discussion, as council was determining how it would dispose of property.
- 23 In the present case, the first portion of council's discussion related to various options for acquiring the land over which a portion of a municipally owned road runs, including the specific price the Township might pay for the land, and the land it would be willing to swap as a fair exchange.
- 24 In the second portion of the discussion, council discussed how it might proceed with a land transaction that was proposed as a potential solution to the issue of public access to a lake.
- 25 The Township would potentially need to enter into transactions with multiple property owners to resolve issues relating to the boundaries of Otter Lake Road. The agreement reached in each transaction would impact the Township's bargaining position in the other related negotiations.

³ Letter from the Ombudsman of Ontario to the Town of Ajax (March 28, 2014), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2014/town-of-ajax>>.

- 26 Consequently, council had a bargaining position to protect regarding the acquisition of specific property during both portions of the *in camera* discussion, and I am satisfied that the discussion on January 10, 2023 fit within the exception for acquisition or disposition of land.

Voting

- 27 Under section 239(6) of the Act, voting is only permitted *in camera* if the subject matter is permitted or required to be discussed in closed session, and if the vote is for a procedural matter or for giving direction or instructions to officers, employees, or agents of the municipality, local board or committee of either of them, or persons retained by or under a contract.
- 28 There is no evidence that council conducted a vote during the January 10, 2023 *in camera* meeting.

January 13, 2023 council meeting

- 29 On January 13, 2023, council met in council chambers for a council meeting. Council promptly moved *in camera* to discuss the agenda items “Otter Lake Road” and “P Line and Otter Lake Road right of way” under the exceptions for acquisition or disposition of land and advice subject to solicitor-client privilege, respectively.
- 30 Once in closed session, a lawyer for one of the affected private property owners briefly spoke to council to inquire about a potential land transaction. The property owner’s legal counsel then left the closed session.
- 31 Next, council sought legal advice from the Township solicitor related to this proposal. Council also conferred with the solicitor about the proposal it heard at the previous *in camera* meeting.
- 32 Following its discussion, council returned to open session, and resolved to direct the Township solicitor to negotiate a land exchange with the property owner’s lawyer, and to hold a public meeting on February 7, 2023, to finalize its plan for portions of P Line Road.

Analysis

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

- 33 Council cited the exception for advice subject to solicitor-client privilege to discuss P Line and Otter Lake roads *in camera* on January 13, 2023. As previously stated, this exception allows a municipality to proceed *in camera* to discuss or receive advice subject to solicitor-client privilege.⁴
- 34 At the beginning of its discussion, council heard from the lawyer for one of the property owners with which it was negotiating. There is no evidence that council received or discussed legal advice from the Township solicitor during this portion of the meeting. Therefore, this portion did not fit within the exception for advice subject to solicitor-client privilege.
- 35 After the property owner's lawyer exited the meeting, council directly consulted with the Township solicitor and received advice about the legality of the transaction it envisioned. Since council received legal advice, this latter portion of the meeting fit within the exception for solicitor-client privilege.

Exception for acquisition or disposition of land, s. 239(2)(c)

- 36 Council also cited the exception for acquisition or disposition of land during the closed session on January 13, 2023. As previously stated, this exception protects a municipality's bargaining position by permitting *in camera* discussions about a proposed or pending acquisition or disposition of land.⁵
- 37 In this case, council received input from the property owner's lawyer on a potential land transaction, and subsequently discussed the details of that transaction and another related transaction. Public disclosure of council's discussion could have adversely impacted the municipality's bargaining position in both of these specific transactions. Consequently, council had a bargaining position to protect, and all of the *in camera* discussion fit within the exception for acquisition or disposition of land.

⁴ *Supra* note 2.

⁵ *Supra* note 3.

Voting

- 38 There is no evidence suggesting that council voted *in camera* on January 13, 2023.

February 7, 2023 council meeting

- 39 Council met again on February 7, 2023 for a council meeting. After some discussion in open session, council proceeded *in camera* to discuss the western portion of Otter Lake Road under the exception for acquisition or disposition of land.
- 40 In closed session, council received and discussed correspondence from the lawyer of the owner of the land on which the western portion of Otter Lake Road runs, inquiring about a potential land transaction. Council then discussed how it might proceed in this land transaction.
- 41 Council voted on a resolution *in camera* to direct the Township solicitor regarding this land transaction. Council returned to open session and directed the Clerk to provide information to the Township solicitor to negotiate a resolution with the owner of the land on which the western portion of Otter Lake Road runs.

Analysis

Exception for acquisition or disposition of land, s. 239(2)(c)

- 42 Council relied on the exception for acquisition or disposition of land to discuss the western portion of Otter Lake Road *in camera* on February 7, 2023. This exception permits *in camera* discussions about proposed or pending acquisitions or dispositions of property and protects a municipality's bargaining position relating to those transactions.⁶
- 43 In this meeting, council discussed the specific deal it would propose in a land transaction for a specific piece of property. Consequently, council had a bargaining position that it was protecting in closed session, and its discussion fit within the exception for acquisition or disposition of land.

⁶ *Ibid.*

Voting

- 44 As previously stated, council is permitted to vote in closed session when the subject matter is permitted or required to be discussed in closed session, and the vote is for a procedural matter or for giving direction or instructions to officers, employees, or agents of the municipality, or persons retained by or under a contract. In this case, council’s discussion was properly closed to the public and the vote was regarding a direction to the Township solicitor. Accordingly, the *in camera* vote on February 7, 2023 was permitted.

April 4, 2023 council meeting

- 45 Council met again on April 4, 2023. Following discussion of unrelated items in open session, council resolved to move into closed session to discuss the agenda item “Algie consent” under the exception for advice subject to solicitor-client privilege, and the agenda item “Land Development – 10th Side Road” under the exception for personal matters about an identifiable individual.

“Algie consent” severance application

- 46 Once in closed session, council first discussed the “Algie consent” matter. This related to a severance application by a member of the public to divide their property, and a contentious condition the municipality sought to impose in potentially granting this application. The Township solicitor was not present at this meeting.
- 47 Council received correspondence from the applicant’s lawyer, setting out the history of the property, a position on the condition being sought by the municipality, and proposed options for moving forward. The correspondence also detailed a personal dispute relating to the property involving the applicant and another member of the public.
- 48 Our review indicates that council discussed this letter and how to proceed on the matter, with particular focus on a proposed easement raised in the correspondence. Council did not come to any decisions following this discussion.

“Land Development – 10th Side Road”

- 49 Council subsequently discussed *in camera* the matter of “Land Development – 10th Side Road.” This matter referred to an area in the municipality by a steep hill, along 10th Side Road, a section of which was acquired by the Township several decades ago. The Township had recently learned information which would affect the publicly used trail in the area, and council was discussing how to move forward.
- 50 The Mayor provided an update to council about a recent dialogue he had with the owner of an abutting property. The property owner and the specific property contemplated were both identified. After receiving this update, council discussed options for how it might proceed, although no decisions were made.
- 51 Following this discussion, council returned to open session and requested the Clerk arrange a future teleconference with the Township solicitor. The meeting was then adjourned.

Analysis

Exception for advice subject to solicitor-client privilege, s. 239(2)(f)

- 52 Council relied on the exception for advice subject to solicitor-client privilege to discuss the matter of “Algie consent” *in camera*. This exception allows a municipality to proceed *in camera* to discuss, receive or review confidential advice that is subject to solicitor-client privilege.⁷
- 53 There is no evidence that council received or discussed legal advice during its *in camera* meeting. The Township solicitor was not present, and none of the individuals interviewed by my Office could recall any legal advice being discussed.
- 54 Consequently, the *in camera* discussion does not fit within this exception.

Exception for acquisition or disposition of land, s. 239(2)(c)

- 55 Although not cited by council, my Office also assessed whether the exception for acquisition or disposition of land could apply to the *in camera* discussion of the “Algie consent” matter on April 4, 2023.

⁷ *Supra* note 2.

- 56** As previously noted, my Office has found the exception to apply where council debates *how* to proceed with a disposition of a specific property.⁸ In this case, council was discussing how to move forward in a potential property transaction in light of a disagreement between the municipality and the property owner. Council discussed a potential easement and debated various proposals put forth by the property owner. This discussion could have impacted the municipality’s bargaining position in the transaction if publicly disclosed.
- 57** Consequently, council’s discussion of the “Algie consent” matter fit within the exception for acquisition or disposition of land.

Exception for personal matters about an identifiable individual, s. 239(2)(b)

- 58** Council relied on the exception for personal matters about an identifiable individual to discuss the topic of “Land Development – 10th Side Road” in closed session.
- 59** This exception applies to discussions that reveal personal information about an identifiable individual. To qualify as personal information, it must be reasonable to expect that an individual could be identified if the information were disclosed publicly.⁹ The information must also qualify as personal; that is, not as professional information or information in a business capacity¹⁰ or as information related to profit-motivated business activity.¹¹
- 60** In this case, council discussed a property owner’s preliminary expression of interest in an undefined land transaction, which had been proposed by the municipality in an effort to resolve a property issue. There was no expectation that the property owner would profit from the transaction. The information was not related to the individual in a professional or business capacity, or to profit-motivated business activity, and the property owner’s willingness to consider the transaction constitutes personal information.
- 61** Furthermore, because the individual in question was identified by name during the discussion, they would be identifiable to the public.

⁸ *Supra* note 6.

⁹ *Ontario (Ministry of Correctional Services) v Goodis* [2008], OJ No 289 at para 69.

¹⁰ *Amherstburg (Town of) (Re)*, 2022 ONOMBUD 11, online: <<https://canlii.ca/t/jr5rc>>.

¹¹ *Burk’s Falls / Armour (Village of / Township) (Re)*, 2015 ONOMBUD 26, online: <<https://canlii.ca/t/gtp6w>>.

- 62 Therefore, council's *in camera* discussion about "Land Development – 10th Side Road" fit within the cited exception.

Voting

- 63 With respect to the complaint that council improperly voted in closed session on April 4, 2023, our review was inconclusive about whether or not a vote was conducted in either open or closed session. The open meeting minutes indicate the Clerk was requested to arrange a teleconference with the Township solicitor, but there is no indication this direction was voted on. Those my Office spoke with could not remember whether or not a vote occurred, or if it happened in open or closed session.
- 64 My Office has deemed a "verbal consensus" to be a vote of council under the Act.¹² Consequently, the direction made to the Clerk in this case can be considered a vote. If this vote occurred *in camera*, council was permitted to do so because the meeting was both appropriately closed and was a direction to staff.
- 65 Nevertheless, as a best practice for the future, council should clearly identify the specific direction given, formally vote on it, and record that vote in its closed meeting minutes.

October 10, 2023 council meeting

- 66 Council met again on October 10, 2023 for a regular council meeting. This meeting began with the *in camera* portion, followed by the open session. We were told the meeting was structured this way to accommodate the Township solicitor, who was attending the *in camera* session.
- 67 Our review indicates that council chambers were locked from the beginning of the meeting – including during the initial call to order by council – until the completion of the closed session. Our review also indicates there was no resolution passed by council to move *in camera*.
- 68 Council discussed three agenda items *in camera* under the exception for advice subject to solicitor-client privilege: "Ken Wards Hill and the private roads access act," "P-Line Taxes – Legal counsel to prepare letter," and "To make addendum to existing code of conduct by-law. Legal counsel review draft changes."

¹² *Plympton-Wyoming (Town of) (Re)*, 2021 ONOMBUD 4, online: <<https://canlii.ca/t/jd49k>>.

- 69 First, council discussed “Ken Wards Hill and the private roads access act.” This is the same topic discussed at council’s April 4, 2023 meeting under the description “Land Development – 10th Side Road.” Council again discussed issues related to municipally owned land in this area. Council spoke with the Township solicitor about concerns related to the use of a trail in the area, and the solicitor provided legal advice.
- 70 Next, council discussed “P-Line Taxes – Legal counsel to prepare letter.” This topic refers to a Township citizen who was seeking relief from municipal taxes owed. Council received legal advice about potential tax relief for the individual. Ultimately, council directed the Township solicitor to draft a letter.
- 71 Lastly, council discussed making an addendum to its code of conduct by-law. Council consulted with the Township solicitor as to the legality of possible changes to the code of conduct. No decisions or changes were made.

Analysis

Exception for advice subject to solicitor-client privilege, s. 239(2)(f)

- 72 Council relied on the exception for advice subject to solicitor-client privilege to discuss three topics in closed session. This exception applies to discussions where council receives or reviews confidential advice that is subject to solicitor-client privilege.¹³
- 73 During the October 10, 2023 meeting, council directly consulted with and received advice from the Township solicitor for each of the topics discussed. Consequently, the *in camera* discussions fit within the cited exception.

¹³ *Supra* note 2.

Public attendance at the October 10, 2023 meeting

- 74** One complaint raised concerns that members of the public were not able to attend the October 10, 2023 meeting in person because the council chamber doors were locked. My Office's investigation found that the doors to council chambers were locked for the beginning of council's meeting, including the initial call to order, and remained locked until council returned from closed session and proceeded into open session.
- 75** Section 239(1) of the Act requires that all meetings of a municipal council be open to the public, subject to prescribed exceptions. My Office has previously found that council meetings where portions were publicly inaccessible due to doors being physically locked contravened this section of the Act.¹⁴
- 76** In this case, although chamber doors were locked for only a brief period just prior to council entering into a closed session, this portion of council's October 10, 2023 meeting was improperly closed to the public, contrary to the Act.
- 77** The Mayor advised my Office that council does not typically hold closed sessions at the start of its meetings, and that this format led to the mistakenly locked door. The Mayor told my Office that council in future will ensure the issue does not occur again.

Resolution to enter into closed session at the October 10, 2023 meeting

- 78** At its October 10, 2023 meeting, council did not vote on or pass a resolution to move into closed session.
- 79** Section 239(4)(a) of the Act requires that before holding a meeting that is to be closed to the public, a municipality shall state by resolution the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting. My Office has reiterated that the Act requires council to pass a resolution stating the fact of holding a closed meeting and the general nature of the matter *before* holding a closed session.¹⁵

¹⁴ Letter from the Ombudsman of Ontario to the City of London (May 12, 2023), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2023/city-of-london-en>>.

¹⁵ *Supra* note 15.

- 80 In this case, council neither voted on nor passed a resolution in open session to move *in camera* on October 10, 2023, contrary to section 239(4)(a) of the Act.

Minutes of the closed portion of the October 10, 2023 meeting

- 81 My Office learned in the course of its investigation that council did not take meeting minutes during the closed portion of its October 10, 2023 meeting. My Office was told this was because the Township was in a transitional period, and newly hired staff were given responsibility for recording meeting minutes shortly after this meeting.
- 82 Section 239(7) of the Act requires that a municipality record, without note or comment, all resolutions, decisions and other proceedings at its meetings. This obligation applies to both open and closed meetings.
- 83 My Office has also previously stated that “keeping complete and accurate minutes of closed session meetings ensures that members of the public feel confident that matters dealt with in closed session were appropriate for *in camera* discussion and that requirements of the *Municipal Act* and local by-laws have been followed.”¹⁶
- 84 In this case, council did not take meeting minutes during the *in camera* portion of its October 10, 2023 meeting. Consequently, council contravened section 239(7) of the Act.

Opinion

- 85 Council for the Township of Jocelyn did not contravene the *Municipal Act, 2001* in its January 10, 2023 meeting. Council was permitted to discuss issues relating to P Line and Otter Lake roads under the exception for acquisition or disposition of land.
- 86 Council did not contravene the *Municipal Act, 2001* in its January 13, 2023 meeting. Council was permitted to discuss issues relating to P Line and Otter Lake roads under the exceptions for advice subject to solicitor-client privilege and acquisition or disposition of land.

¹⁶ *Tehkummah (Township of) (Re)*, 2018 ONOMBUD 3, online: <<https://canlii.ca/t/hvmtpt>>.

- 87 Council did not contravene the *Municipal Act, 2001* in its February 7, 2023 meeting, as it was permitted to discuss issues relating to the western portion of Otter Lake Road under the exception for advice subject to solicitor-client privilege.
- 88 Council did not contravene the *Municipal Act, 2001* in its April 4, 2023 meeting, as it was permitted to discuss the “Algie consent” issue and “Road Development – 10th Side Road” under the exceptions for acquisition or disposition of land and personal matters about an identifiable individual.
- 89 Council did not conduct any illegal votes at these four meetings.
- 90 Council contravened the *Municipal Act, 2001* at its October 10, 2023 meeting by improperly closing the beginning of its meeting to the public, failing to pass a resolution to move into closed session, and failing to take closed meeting minutes. However, council was permitted under the Act to hold its *in camera* discussion under the exception for advice subject to solicitor-client privilege.

Recommendations

- 91 I make the following recommendations to assist the Township of Jocelyn in fulfilling its obligations under the *Municipal Act, 2001*, and enhancing the transparency of its meetings:

Recommendation 1

All members of council for the Township of Jocelyn 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 procedural by-law.

Recommendation 2

Council for the Township of Jocelyn should ensure that complete and accurate records are kept of all meetings, including closed meetings.

Recommendation 3


Council for the Township of Jocelyn should pass a resolution in open session stating the fact of a closed meeting and the general nature of the subject(s) to be discussed before proceeding *in camera*.

Recommendation 4

Council for the Township of Jocelyn should ensure that the public has access to observe all open sessions of council, including those that take place just prior to a closed session.

Report

- 92** Council for the Township of Jocelyn was given the opportunity to review a preliminary version of this report and provide comments to my Office. No comments were received.
- 93** This report will be published by my Office's website and should also be made public by the Township of Jocelyn. In accordance with section 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