



BY EMAIL

July 28, 2026

Council for the Township of Armour
56 Ontario Street, PO Box 533
Burk's Falls, Ontario P0A 1C0

Dear Members of Council for the Township of Armour:

Re: Closed meeting complaint

My Office received a complaint that council for the Township of Armour improperly voted in closed session during a special meeting on April 22, 2026, contrary to the open meeting rules under the *Municipal Act, 2001* (the "Act").¹

I am writing to advise that following my Office's review, I have determined that the meeting held on April 22, 2026 did not contravene the open meeting rules under the Act.

Ombudsman's role and authority

The *Municipal Act, 2001* gives anyone the right to request an investigation into whether a municipality has complied with the open meeting rules 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. My Office is the closed meeting investigator for the Township of Armour.

My 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/en/info-public-bodies-and-officials/municipalgovernment/municipal-meeting-digest.

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,

¹ SO 2001, c 25.

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/en/make-complaint/what-we-can-helpyou/organizations-you-can-complain-about.

Review

My Office reviewed the agenda and open and closed meeting minutes for the April 22, 2026 meeting. We also spoke with the Clerk of the Township.

April 22 2026 meeting

On April 22, 2026 at 10:00 a.m., council gathered for a special meeting. At the start of the meeting, council passed a resolution to move into closed session to discuss a matter related to litigation or potential litigation and advice subject to solicitor client privilege, pursuant to sections 239(2)(e) and (f) of the Act.

During the closed session, council received updates about an ongoing appeal before the Ontario Land Tribunal (the "Tribunal") relating to an Official Plan and Zoning By-law amendment application for a proposed battery energy storage system. Council received updates from staff related to the litigation and received legal advice from the Township's solicitor. Council decided by consensus to direct staff to proceed with the recommended next steps.

At 11:11 a.m., council returned to open session. The Mayor reported on council's closed session discussion and council passed a resolution to acknowledge that the "No Lithium Way - Citizens United Inc." group had submitted a request for participant status in the Tribunal proceeding, and that the Township does not oppose granting of the group participant status.

Council adjourned the special meeting at 11:19 a.m.

Analysis

Applicability of the exception for litigation or potential litigation

Section 239(2)(e) of the Act allows a municipality or local board to proceed in camera to discuss "litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board."² The Act does not define what constitutes "litigation or potential litigation," but the courts have determined that this exception is

² *Municipal Act*, s 239(2)(e).

reserved for circumstances where the subject matter is related to ongoing litigation or involves a reasonable prospect of litigation.³

My Office has previously found that this exception permits council to discuss and prepare for pending litigation before an administrative tribunal in a closed meeting, as well as to receive and consider new information affecting an ongoing appeal.⁴

In the matter at hand, council discussed updates from staff related to ongoing litigation before the Ontario Land Tribunal. Accordingly, this closed meeting discussion fit within the exception for litigation or potential litigation.

Applicability of the exception for solicitor-client privilege

Council also cited the exception for solicitor-client privilege under section 239(2)(f) of the Act as a basis for the discussion being held in closed session. This exception applies to discussions between a municipality and its lawyer in seeking or receiving legal advice intended to be confidential.⁵ The purpose of the exception is to ensure that municipal officials can speak freely about legal advice without fear of disclosure. The Supreme Court of Canada has stated that solicitor-client privilege applies when the following conditions are met:

1. There is a communication between a lawyer and a client;
2. Which entails the seeking or giving of legal advice; and
3. Which is considered to be confidential by the parties.⁶

In the present case, council received legal advice from the Township's solicitor during the closed session in relation to ongoing litigation. No other subject was discussed during the closed session. Accordingly, council's discussion also fit within the exception for advice subject to solicitor-client privilege.

Direction to staff

As explained above, council discussed ongoing litigation and received legal advice during the closed session, as permitted by sections 239(2)(e) and (f) of the Act. Council then came to a consensus to direct staff to proceed with the recommended next steps related to the ongoing litigation matter.

³ *RSJ Holdings Inc. v. London (City)*, 2005 CanLII 43895 (ON CA), at para 22, online: <<https://canlii.ca/t/1m32m>>.

⁴ *Norfolk (County of) (Re)*, 2016 ONOMBUD 18 at para 36, online: <<https://canlii.ca/t/h2st5>>; Letter from Ombudsman of Ontario to the City of Greater Sudbury, (14 February 2013), online: <<https://www.ombudsman.on.ca/en/our-work/municipal-meetings/city-greater-sudbury-february-14-2013-0>>.

⁵ *Timmins (City of) (Re)*, 2017 ONOMBUD 4 at para 28, online: <<https://canlii.ca/t/h4rwt>>.

⁶ *Solosky v. The Queen*, [1980] 1 SCR 821 at p 837, online: <<https://canlii.ca/t/1mjtq>>.

Under section 239(6) of the Act, voting is only permitted in closed session 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 directions 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 with the municipality or local board.⁷ For the purposes of closed meetings, reaching a consensus is considered to be a vote.⁸

While council's consensus constitutes a vote, council provided a direction to staff as permitted by section 239(6). Accordingly, the closed session vote met the requirements of the Act and was permissible.

Conclusion

I find that the meeting held on April 22, 2026, did not contravene the open meeting rules under the *Municipal Act, 2001*. I would like to thank the Township for its co-operation during my Office's review.

The Clerk indicated that this letter will be shared with council and placed on the agenda for the next council meeting, and that a copy will be made available to the public prior to that meeting. At that time, I will also post a copy of this letter on my website at www.ombudsman.on.ca.

Sincerely,



Barbara Finlay
Acting Ombudsman of Ontario

CC: Charlene Watt, Municipal Clerk, Township of Armour

Cette lettre est aussi disponible en français

⁷ *Municipal Act*, s 239(6).

⁸ *South Bruce Peninsula (Town of) (Re)*, 2015 ONOMBUD 25 at para 67, online: <<https://canlii.ca/t/gtp6t>>.